



COMPANIES

Chapter 42:01

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 S.I. 19, 1975
 Act 12, 1976
 S.I. 36, 1976
 Act 22, 1978
 Act 36, 1980
 Act 34, 1982
 S.I. 142, 1984.
 Short title
 Interpretation

An Act to consolidate and amend the laws in force in Botswana relating to the constitution, incorporation, registration, management, administration and winding up of companies and other associations, and for other purposes incidental thereto

[Date of Commencement: 20th November, 1959]

PART I *Preliminary*

1. This Act may be cited as the Companies Act.
2. In this Act, unless the context otherwise requires—
 - "accounts" includes a company's group accounts, whether prepared in the form of accounts or not; "articles" means the articles of association of a company as originally framed, or as altered by special resolution; and includes, so far as they apply to a company, the regulations set out in Table A in the First Schedule; "attorney" means an attorney admitted to practise in Botswana; "body corporate" includes an external company but does not include a corporation sole; "books or papers" and "books and papers" include accounts, deeds, writings and other documents; "certified", in relation to a copy or translation of any document, means certified in the prescribed manner to be a true copy or a correct translation; "company" means a company limited by shares or a company limited by guarantee as described in section 8; "contributory" has the meaning assigned to it under section 168; "court", in relation to any company, means the High Court of Botswana, and in relation to any offence against this Act, includes a magistrate's court having jurisdiction in respect of that offence; "creditors' voluntary winding up" has the meaning assigned to it under section 212(2) "debenture" includes debenture stock or bonds; "director" includes any person occupying the position of director or alternate director of a company, by whatever name he may be called;

"equity share capital" has the meaning assigned to it under section 114(6); "expert" means any person whose professional or technical training gives authority to a statement made by him; "external company" means a body corporate other than a corporation sole which is registered or incorporated in an external country under the laws of that country; "external country" means any state, dominion, country, colony or territory other than Botswana; "financial year" means, in relation to any body corporate, the period in respect of which any profit and loss account of the body corporate laid before it in general meeting is made up, whether that period is a year or not; "foreign language" means any language other than English; "group accounts" has the meaning assigned to it by section 115(1); "holding company" means a holding company as defined by section 114; "issued generally" means, in relation to a prospectus, issued to persons who are not existing members or debenture holders of the company; "Master" means the Master of the High Court of Botswana or any person acting in that capacity; "members' voluntary winding up" has the meaning assigned to it under section 212(2); "memorandum" means the memorandum of association of a company, as originally framed or as altered in pursuance of the provisions of any law hitherto in force or of this Act; "minimum subscription" has the meaning assigned to it under section 50(3); "officer", in relation to a company, includes a director, manager or secretary; "officer who is in default" has the meaning assigned to it under section 295(1); "ordinary resolution" has the meaning assigned to it under section 105(5); "prescribed" means prescribed by rules or regulations made under section 312 or 313, as the case may be; "prescribed form" means a form set out in the First, Second, Fourth or Fifth Schedules or any form added to or altered in the said Schedules under the provisions of this Act or any form prescribed by rules or regulations made under sections 312 or 313, as the case may be; "printed" includes typed, handwritten in ink, lithographed, cyclo-styled or any other mode of representing words, figures or symbols in a permanent visible form, but unless prescribed does not include any carbon copy of a document;

"private company" has the meaning assigned to it under section 29; "promoter" means, in relation to a prospectus, any person who is a party to the preparation of the prospectus but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of a company; "prospectus" means any prospectus, notice, circular, advertisement or other printed or duplicated invitation offering to the public for subscription or purchase any shares or debentures of a company; "quoted" means, in relation to any share, debenture or other investment, an investment for which a quotation or permission to deal has been granted in respect of any stock exchange of good repute, and the term "unquoted" shall be construed accordingly; "recognized stock exchange" means a stock exchange prescribed as a recognized stock exchange for the purposes of this Act "Registrar" means the Registrar of Companies or any person acting in that capacity; "secretary" includes any official of a company by whatever name called who is performing the duties normally performed by a secretary of a company; "share" means a share in the share capital of a company and includes stock, except where a distinction between stock and shares is expressed or implied; "special notice" has the meaning assigned to it under section 106; "special resolution" means a resolution passed at a general meeting of a company in the manner provided by section 105(1), (2), (3) and (4); "subsidiary" and "wholly owned subsidiary" have the meanings assigned to them under section 114; "unable to pay its debts", in relation to a company, has the meaning assigned to it under section 171 and, in relation to an unregistered association, has the meaning assigned to it under section 278(d); "unregistered association" has the meaning assigned to it under section 277; "winding up order" means any order whereby a company is placed under liquidation or under provisional liquidation when such order for provisional liquidation has not been set aside.

3. (1) Nothing contained in this Act shall apply to any cooperative societies, the formation, registration and management

Non –
application
of Act to
certain
institutions

whereof are governed by any other law, except as may be otherwise provided in any such law.

(2) The provisions of this Act shall not be construed as applying to any building society or trade union.

(3) In this section— "building society" means a society to which the provisions of the

Building Societies Act apply; "trade union" has the meaning assigned to it under section 2 of

the Trade Unions and Employers' Organizations Act.

4. Where a company or an external company is subject to the provisions of any law which is specially applicable to insurance companies or societies, the provisions of this Act which would otherwise apply in respect of such company shall not apply wherever those provisions would be inconsistent with any such law.

Restricted application of Act in case of insurance companies

5. (1) There shall be a Registrar of Companies (in this Act referred to as "the Registrar") who shall be a public officer.

Registrar of companies

(2) The Registrar shall be appointed in accordance with the provisions of the Public Service Act.

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(3) He shall, subject to the control of the Minister, be responsible for the administration of this Act and shall perform such functions as are conferred on him by this Act or any other enactment.

PART II *Incorporation of Companies and matters incidental thereto*

Prohibition of partnership exceeding 20 persons

6. (1) No company, association, syndicate or partnership consisting of more than 20 persons shall be formed in Botswana for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association, syndicate or partnership, or by the individual members thereof, unless it is registered as a company under this Act or is formed in pursuance of some other law.

Prohibition of association or partnership exceeding 20 persons

(2) No association of persons formed in Botswana for the purpose of carrying on any business that has for its object the acquisition of gain by the association or by the individual members thereof shall be a body corporate, unless it is registered as a company under this Act or is formed in pursuance of some other law.

Memorandum of Association

7. Any seven or more persons (or, where the company to be formed will be a private company, any two or more persons)

Mode of forming company

associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company (that is to say) either—

- (a) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act referred to as "a company limited by shares"); or
- (b) if a licence is granted in terms of section 22, a company having no share capital but having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act referred to as "a company limited by guarantee").

8. (1) In the case of a company limited—

- (a) by shares, the memorandum shall be in the English language and must state—

- (i) the name of the company and, unless a licence has been granted under section 22, with "Limited" as the last word in its name, and if the company is a private company with the term "(Proprietary)" added before "Limited", (ii) the objects of the company, (iii) that the liability of the members is limited, (iv) the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;

- (b) by guarantee, the memorandum shall be in the English language and must state— (i) the name of the company, (ii) the objects of the company, (iii) that the liability of the members is limited, (iv) that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year after he ceases to be a member for payment of the debts and liabilities of the company contracted before he ceases to be a member and of the costs, charges and expenses of the winding up and for the adjustment of the rights of the contributories among themselves such amount as may be required not exceeding a specified amount.

(2) No subscriber to the memorandum of a company limited by shares may take less than one share.

Memorandum
of company

(3) Each subscriber to the memorandum of a company limited by shares must write in words opposite to his name the number of shares he takes.

(4) Every public company which converts itself into a private company in terms of section 29(3) shall, within 30 days after that conversion, insert the term "(Proprietary)" before the word "Limited" in its name.

(5) The insertion of the term "(Proprietary)" in compliance with the provisions of this section shall be regarded as a change of name for the purposes of section 21(2), (3) and (4) but not for the purposes of subsection (1) of that section.

9. The memorandum shall be printed by some mode other than by handwriting in ink and shall be signed and dated, in the presence of at least one attesting witness, by each subscriber; and opposite every such signature of a subscriber or a witness there shall be written in legible characters his full name, occupation, and full residential or business address.

Signing of memorandum

10. A company may not alter the conditions contained in its memorandum except in the cases and in the mode and to the extent for which express provision is made in this Act.

Restriction on alteration of memorandum

11. (1) A company may by special resolution—

(a) subject to the provisions of section 164 alter any condition contained in its memorandum which could lawfully have been contained in articles of association:

Provided that this paragraph shall not apply where the memorandum itself provides for or prohibits the alteration of all or any of the said conditions, and shall not authorize any variation or abrogation of the special rights of any class of members;

(b) subject to the provisions of subsection (2) alter the provisions of its memorandum with respect to the objects of the company so far as may be required to enable it— (i) to carry on its business more economically or more

efficiently, (ii) to attain its main purpose by new or improved

means,

(iii) to enlarge or change the local area of its operations,

(iv) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company, (v)

to restrict or abandon any of the objects specified in the memorandum,

Alteration of conditions in memorandum which could have been contained in articles and alteration of objects of company

- (vi) to sell or dispose of the whole or any part of the undertakings of the company, or
- (vii) to amalgamate with any other company or body of persons.

(2) If any application is made to the court by the holders of not less in the aggregate than 15 per cent in nominal value of the company's issued share capital or of any class thereof or, if the company is one limited by guarantee, not less than 15 per cent of the company's members, for any alteration in terms of subsection (1) to be cancelled, the alteration shall not have effect except in so far as it is confirmed by the court:

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

(3) An application under the provisions of subsection (2) shall be made within 21 days after the date on which the resolution altering the condition contained in the memorandum of the company's objects (as the case may be) was passed, and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(4) On such application the court may make an order confirming the alteration either wholly or in part and on such terms and conditions as it thinks fit, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members, and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement:

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

(5) In the case of a company which is by virtue of a licence from the Minister exempt from the obligation to use the word "Limited" as part of its name, a resolution altering the company's objects shall require the same notice to the Minister as to members of the company, and where such a company alters its objects the Minister (unless he sees fit to revoke the licence) may vary the licence by making it subject to such conditions and regulations as he thinks fit, in place of or in addition to the conditions and regulations, if any, to which the licence was formerly subject.

(6) Where a company passes a resolution altering its objects—

- (a) if no application is made with respect thereto under this section, it shall within 15 days from the end of the period for making such an application deliver to the Registrar a copy of its memorandum as altered; and
- (b) if such an application is made it shall—

- (i) forthwith give notice of that fact to the Registrar,
and
- (ii) within 15 days from the date of any order cancelling or confirming the alteration, deliver to the Registrar a certified copy of its memorandum as altered.

(7) The court may by order at any time extend the time for the delivery of documents to the Registrar under subsection 6(b) for such period as the court may think proper.

(8) If a company makes default in giving notice or delivering any document to the Registrar as required by subsection (6) the company shall be guilty of an offence and liable to a fine not exceeding P20.

(9) The validity of an alteration of the provisions of a company's memorandum with respect to the object of the company shall not be questioned on the ground that it was not authorized by subsection (1) except in proceedings taken for the purpose (whether under this section or otherwise) before the expiration of 21 days after the date of resolution in that behalf; and where any such proceedings are taken otherwise than under this section the provisions of subsections (6), (7) and (8) shall apply in relation thereto as if they had been taken under this section and as if an order declaring the alteration invalid were an order cancelling it and as if an order dismissing the proceedings were an order confirming the alteration.

Articles of Association

12. There may, in the case of a company limited by shares, and there shall in the case of a company limited by guarantee, be registered with the memorandum and articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

Articles
prescribing
regulations
for companies

13. (1) In the case of a company limited by guarantee, the articles must state the number of members with which the company proposes to be registered.

Regulations
required in
case of
company
limited by
guarantee

(2) Where a company limited by guarantee has increased the number of its members beyond the registered number, it shall within 30 days after the increase was resolved on or took place deliver to the Registrar notice of the increases, and the Registrar shall record the increase.

(3) If default is made in complying with the requirements of this section the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding P10 for every day during which the offence continues.

14. (1) Articles of association of a company limited by shares may adopt all or any of the regulations contained in Table A of the First Schedule.

(2) In the case of a company limited—

(a) by shares, if articles of association are not registered, or if articles of association are registered, insofar as the articles do not exclude or modify the regulations contained in Table A, those regulations shall, so far as applicable be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles;

(b) by guarantee, articles of association as near as circumstances permit in the form set out in Table C shall be registered.

(3) Any provision contained in a company's articles shall be void in so far as it would have the effect either—

(a) of excluding the right to demand a poll at a general meeting on any question other than the election of the chairman of the meeting or the adjournment of the meeting; or

(b) of making ineffective a demand for a poll on any such question which is made— (i) by not less than five members having the right to vote

at the meeting,

(ii) by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting, or (iii) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid out on all the shares conferring that right.

15. Articles shall be in the English language, shall be printed

(a) be divided into paragraphs numbered consecutively; and

(b) be signed and dated by each subscriber to the memorandum in the presence of at least one attesting witness; and opposite every such signature of a subscriber or a witness there shall be written in legible characters his full name, occupation and full residential or business address.

16. Subject to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles and any alteration or addition so made in the articles shall be as valid as if originally contained therein, and be subject in like manner to alteration by special resolution.

Application
of Table A
and void
provisions

Application
of Table A
and void
provisions

Alteration of
Articles

Registration

17. (1) The memorandum and the articles, if any, together with either a duplicate original or a printed notarial copy, shall be delivered to the Registrar.

Registration of memorandum and articles

(2) Subject to due compliance with the provisions of section 141 whenever that section is applicable and upon payment of the prescribed fees, the Registrar shall, if the memorandum and the articles, if any, are in accordance with the provisions of this Act, register the same, and shall return to the company a duplicate original or one notarial copy of the memorandum and of the articles, if any, with the date of the registration endorsed thereon.

18. (1) On registering the memorandum of a company the Registrar shall certify under his hand that the company is incorporated, and the date of such incorporation.

Effect of registration and use of seal

(2) From the date of incorporation, the subscribers to the memorandum, together with such other persons as may from time to time also become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company, and having perpetual succession, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

(3) A company may have a seal and, if it has, such seal shall be affixed to instruments in the manner prescribed in its articles.

19. (1) A certificate of incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of this Act, in respect of registration and of matters precedent and incidental thereto, have been complied with, and that the association is a company authorized to be registered and duly registered under this Act.

Conclusiveness of certificate of incorporation

(2) A solemn declaration by an attorney of the High Court of Botswana, engaged in the formation of a company, or by a person named in the articles as a director or secretary of the company, of compliance with all or any of the said requirements shall be produced to the Registrar, and the Registrar may accept such a declaration as sufficient evidence of compliance.

Provisions with respect to names of Companies

20. (1) The Registrar may, on written application, reserve a name pending registration of a company or a change of name by an existing company; and such reservation shall be for a period of 30 days or such longer period, not exceeding in all 60 days, as the Registrar may, for special reasons, allow.

Name

(2) No name shall be reserved and no company shall be registered by a name which is identical with that for which a reservation is current or with that of a registered company or a registered external company or which so nearly resembles any such name as to be calculated to deceive unless the registered company or registered external company is in liquidation and signifies its consent to the registration in such manner as the Registrar may require.

(3) Unless otherwise ordered by the Minister, the Registrar shall not register a company by a name which in his opinion is calculated to mislead the public or to cause offence to any person or class of persons or is suggestive of blasphemy or indecency.

(4) Without the consent of the Minister, no company shall be registered by a name which includes the words "Commonwealth", "Government", "National", "President", "State" or the combined words "United Nations" or any other word or words which import or suggest that it enjoys the patronage of the President or of the Government of Botswana or of the Government of any other country or of any department of any such Government or of the General Assembly of the United Nations.

(5) If a company through inadvertence or otherwise is registered, whether originally or by reason of a change of name, by a name which would not, under the provisions of this section, be permitted to be used for the registration of a company, the Minister within five years of the registration of that name may by writing order the company to change its name and the company shall thereupon do so within a period of six weeks from the date of the written order or such longer period as the Minister may see fit to allow.

21. (1) A company may, by special resolution and with the written approval of the Registrar, change its name.

Change of
Name

(2) The Registrar shall not give such approval unless there has been published in the Gazette and in a newspaper circulating in Botswana an advertisement stating that application will be made to the Registrar for his approval not less than 14 days after the last publication of the advertisement.

(3) Where the name of a company is changed in terms of the provisions of this section, the Registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case, or a certificate that the new name is entered on the register in place of the former name.

(4) Upon the production by a company to the Registrar of Deeds, Mining Commissioner or other officer responsible for the registration of deeds or mining titles of a certificate by the Registrar in terms of subsection (3) together with the relevant

documents and application, in writing, and on payment of the prescribed fees, such Registrar of Deeds, Mining Commissioner or other officer shall make in his registers all such alterations as are necessary by reason of the changed name and shall endorse the change of name on the said documents.

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

22. (1) Where the Minister is satisfied that an association for any lawful purpose, the pursuit of which is calculated to be in the interests of the public, or any section of the public, and intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members, and that it is desirable that such association should be incorporated, the Minister may by licence under his hand direct that the association be registered as a company without the addition of the word "Limited" to its name, and the association may thereupon be registered accordingly.

Power to dispense with "Limited" in certain cases

(2) The association, upon such registration, shall enjoy all the privileges of a company and be subject to all the obligations thereof, except those of using the word "Limited" as any part of its name and of complying with the provisions of sections 50, 51, 55, 86, 95, 96, 120 and 141.

(3) A licence under this section may at any time be revoked by the Minister, and upon revocation the Registrar shall enter the word "Limited" at the end of the name of the association upon the register, and the association shall thereupon cease to enjoy the exemptions and privileges granted by this section.

(4) Before a licence is revoked under subsection (3) the Minister shall give to the association notice in writing of his intention, and shall afford it an opportunity of submitting in writing arguments in opposition to revocation.

(5) An association whose licence has been revoked may appeal to the court within such period and in accordance with such rules as may be prescribed under section 312; and on any such appeal the court may make such order as it deems fit.

(6) Whenever it is proved to the satisfaction of the Minister that the objects of a company are those defined in subsection (1) and objects incidental or conducive thereto, and that by its constitution the company is required to apply its profits, if any, or other income in promoting its objects and is prohibited from paying any dividend to its members, the Minister may by a licence authorize the company to change its name by special

resolution by the omission therefrom of the word "Limited", and as from the date of registration of the special resolution passed pursuant to such licence the company shall be deemed to be a company licensed under this section.

(7) The provisions of section 21 shall apply to a change of name under this section.

(8) A licence by the Minister under this section may be granted on such conditions and subject to such regulations as he may think fit, and those conditions and regulations shall be binding upon the association or company and shall, if the Minister so directs, be inserted in the memorandum and articles, or in one of those documents.

General Provisions with Respect to Memorandum and Articles

23. (1) Subject to the provisions of this Act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by each member and contained undertakings on the part of each member to observe all the provisions of the memorandum and of the articles.

Effect of memorandum and articles

(2) All moneys payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

24. (1) Every company shall send to every member at his request, on payment of P1 or such less sum as the company may be given to prescribe a copy of the memorandum and of the articles if and to every member or to his duly authorized agent reasonable facilities for making a copy of the memorandum and of the articles, if any.

Copies of memorandum and articles to be given to members

(2) If a company makes default in complying with this section the company and every officer of the company who is in default shall be guilty of an offence, and liable to a fine not exceeding P4 for each default.

25. (1) Where an alteration is made in the memorandum or memorandum articles of a company, every copy of the memorandum or articles issued after the date of the alteration shall be in accordance therewith.

Copies of memorandum and articles to embody alterations

(2) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copy of the memorandum or articles which is not in accordance with the alteration, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding P4 for each copy so issued.

Membership of Company

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

Definition of member

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

27. (1) Except in the cases hereafter in this section mentioned, a body corporate cannot be a member of a company which is its holding company, and any allotment or transfer of shares in a company to its subsidiary shall be void.

Membership of holding company

(2) Nothing in this section shall apply where the subsidiary is concerned as personal representative, or where it is concerned as trustee, unless the holding company or a subsidiary thereof is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

(3) Subject to the provisions of subsection (2), subsection (1) shall apply in relation to a nominee for a body corporate which is a subsidiary, as if references in subsection (1) to such a body corporate included references to a nominee for it.

28. If at any time the number of members of a company is reduced, in the case of a private company, below two, or in the case of any other company, below seven, and it carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognizant of the fact that it is carrying on business with fewer than two members, or seven members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.

Liability of members when fewer than legal minimum

Private Companies

29. (1) The expression "private company" means a company which by its articles—

Definition of private company

- (a) restricts the right to transfer its shares;
- (b) limits the number of its members to 50, not including persons who are in the employment of the company, and persons who, having been formerly in the employment of the company were while in that employment and have

continued, after the determination of that employment, to be members of the company; and

(c) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

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

(3) With the sanction of a special resolution and subject to confirmation by the court, a public company may convert itself into a private company.

30. Where the articles of a company include the provisions which, under section 29, are required to be included in the conditions for a articles of a company in order to constitute it a private company but default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies by this Act and the provisions thereof shall in all respects apply to the company as if it were not a private company:

Provided that the court, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any other persons interested and on such terms and conditions as seem to the court just and expedient, order that the company be relieved from such consequences.

Consequences
Of default in
complying
with
conditions for
a private
company

31. (1) If a company, being a private company, alters its articles in such manner that they no longer include the provisions which, under section 29, are required to be included in the articles of & company in order to constitute it a private company, the company shall, as on the date of the alteration, cease to be a private company and shall, within a period of 21 days after the said date, remove the term "(Proprietary)" or "(Pty.)" from its name and, unless within the same period a prospectus relating to the company which complies with the Third Schedule is issued and lodged with the Registrar as required by section 41, shall within that period deliver to the Registrar for registration a statement in lieu of prospectus in the form and containing the particulars set out in Part I of the Second Schedule and, in the cases mentioned in Part II of that Schedule, setting out the reports specified therein; and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(2) Every statement in lieu of prospectus delivered under subsection (1) where the persons making any such report have made therein or have without giving the reasons, indicated

Procedure on
company
ceasing to be
a private
company

therein any such adjustments as are mentioned in paragraph 5 in Part III of the said Schedule, shall have endorsed thereon or attached thereto a written statement signed by those persons setting out the adjustments and giving reasons therefor.

(3) If default is made in complying with subsection (1) or (2), the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding P100 for every day during which the offence continues.

(4) The provisions of section 51(5) and (6) shall *mutatis mutandis* apply to every statement in lieu of prospectus lodged under this section as they apply to a statement in lieu of prospectus lodged under that section.

(5) The removal of the term "(Proprietary)" or "(Pty.)" from the name of a company in compliance with subsection (1) shall be regarded as a change of name for the purposes of section 21(3), (4) and (5) but not for the purposes of subsections (1) and (2) of that section.

Contracts, etc.

32. Any contract made in writing by a person professing to act as agent or trustee for a company not yet formed, incorporated or registered shall be capable of being ratified or adopted by or otherwise made binding upon and enforceable by such company after it has been duly registered as if it had been duly formed, incorporated and registered at the time when the contract was made, if—

- (a) the memorandum contains as one of the objects of such company the adoption or ratification of or the acquisition of rights and obligations in respect of such contract; and
- (b) the contract or a certified copy thereof is delivered to the Registrar simultaneously with the delivery of the memorandum in terms of section 17.

Prohibition of association or partnership exceeding 20 persons

33. (1) Contracts on behalf of a company may be made in the following manner—

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

Form of contracts

or implied, and may in the same manner be varied or discharged.

(2) All contracts made in accordance with this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto.

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

Promissory
notes and
bills of
exchange

(2) All documents, other than the documents mentioned in this section and section 33 shall, if executed on behalf of a company, be signed as prescribed in section 33 by any person acting under its authority, express or implied, unless the articles otherwise provide.

35. A company may, by writing, which if it has a seal shall be under its seal and the hand of one of its directors "or, if it has not a seal, shall be under the hands of two of its directors or of one director and of the secretary, empower any person, either generally or in respect of any specified matters, as its agent, to execute deeds on its behalf in any external country; and every deed signed by such agent, on behalf of the company, shall bind the company, if valid in other respects.

Execution of
deeds in
external
countries

36. (1) any company whose objects require or comprise the use transaction of business in external countries may, if authorized by its articles, have for use in any external country an official seal, which shall be a facsimile of the seal of the company, if any, with the addition on its face of the name of the external country where it is to be used.

Official seal
for use in
external
countries

(2) A company having such an official seal may, by writing, which if it has a seal for use in Botswana shall be under that seal and the hand of one of its directors or, if it has not such a seal, shall be under the hands of two of its directors or of one director and of the secretary, empower any person appointed for the purpose in any external country, to affix the said official seal to any deed or other document to which the company is party.

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

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

(5) A deed or other document to which such an official seal is duly affixed shall bind the company, if valid in other respects.

37. A document or proceedings requiring authentication by a company may be signed by a director, secretary or other authorized officer of the company, and need not be under its seal.

Authentication
of documents

PART III *Share Capital and Debentures*

Prospectus

38. A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

Dating of
prospectus

39. (1) Every prospectus issued by or on behalf of a company or on behalf of any person who is or has been engaged or interested in the formation of the company shall be in the out in English language and must state the matters specified in Parts I P^{ros}P^{ectus}s and II of the Third Schedule and set out—

Matters to be
stated and
reports to be
set out in
prospectus

(a) the reports specified in Part II of that Schedule, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule;

(b) the report of any expert who is mentioned in the prospectus or an abstract from such report certified by the expert as truly conveying the substance of his report and of his opinions and conclusions.

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

(3) It shall not be lawful to issue, distribute or deliver or cause to be issued, distributed or delivered any form of application for shares in or debentures of a company unless the form is issued, distributed or delivered, as the case may be, with a prospectus which complies with the requirements of this section:

Provided that this subsection shall not apply if it is shown that the form of application was issued either —

(i) in connexion with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures, or (ii) in relation to shares or debentures which were not offered

to the public.

(4) If any person contravenes any of the provisions of subsection (3), he shall be guilty of an offence and liable to a

Fine not exceeding PI000 or to imprisonment for a term not exceeding two years, or to both.

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

- (a) as regards any matter not disclosed, he proves that he was not cognizant thereof;
- (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or
- (c) the non-compliance or contravention was in respect of matters which in the opinion of the court dealing with the case were immaterial or was otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 15 of the Third Schedule, no director or other person shall incur any liability in respect of the failure unless it is proved that he had knowledge of the matters not disclosed.

(6) This section shall not apply to—

- (a) the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, where an applicant for shares or debentures will or will not have the right to announce in favour of other persons; or
- (b) the issue of a prospectus or form of application relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a recognized stock exchange,

but, subject as aforesaid, this section shall apply to a prospectus or a form of application whether issued on or with reference to the formation of a company or subsequently.

(7) Nothing in this section shall limit or diminish any liability which any person may incur under the Penal Code or this Act apart from this section.

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(8) Every newspaper or other advertisement whatsoever offering or calling attention to an offer or intended offer of shares in or debentures of a company to the public for subscription or purchase shall be deemed to be a prospectus issued by the person responsible for publishing or disseminating the advertisement (and all enactments and rules of law as to the contents of prospectuses and as to liability in respect of statements in and omissions from prospectuses or otherwise relating to prospectuses shall apply and have effect accordingly), unless it

contains a statement as to the places at and times during which copies of the prospectuses may be obtained and no more than the following—

- (a) the number and description of the shares or debentures concerned;
 - (b) the name and date of registration of the company;
 - (c) the general nature of the main business or proposed main business of the company;
 - (d) the names of the directors or proposed directors.
- (9) No statement that or to the effect that the advertisement is not a prospectus shall avail to prevent the operation of subsection (8).

40. (1) A prospectus inviting persons to subscribe for shares in or debentures of a company and including a statement purporting to be made by an expert shall not be issued unless—

- (a) he has given and has not, before delivery of a copy of the prospectus for registration, withdrawn his written consent to the issue thereof with the statement included in the form and context in which it is included; and
- (b) a statement that he has given and has not withdrawn his consent as aforesaid appears in the prospectus.

(2) If any prospectus is issued in contravention of this section, the company and every person who is knowingly a party to the issue thereof shall be guilty of an offence and liable, in the case of the company, to a fine not exceeding P1000 and, in the case of any such person, to a fine not exceeding P1000 or to imprisonment for a term not exceeding two years, or to both.

Experts
consent to
issue of
prospectus
containing
statement by
him

41. (1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, a copy thereof has been filed with and registered by the Registrar.

(2) Such copy shall be signed by every person who is named therein as a director or proposed director of the company, or by his agent authorized in writing, and shall have endorsed thereon or attached thereto—

- (a) any consent to the issue of the prospectus required by section 40 from any person as an expert; and
- (b) in the case of a prospectus issued generally, also—
 - (i) a copy of any contract required by paragraph 14 of the Third Schedule to be stated in the prospectus or, in the case of a contract not reduced to writing, a memorandum giving full particulars thereof, and
 - (ii) where the persons making any report required by Part II of that Schedule, have made therein, or have, without giving the reasons, indicated therein any such

Registration
of prospectus

adjustments as are mentioned in paragraph 26 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(3) The references in subsection (2)(b)(i) to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a foreign language, be taken as references to a copy of a certified translation of the contract or a copy embodying a certified translation of the parts in a foreign language, as the case may be.

(4) Every prospectus shall, on the face of it—

(a) specify the date of its registration under subsection (1); and

(b) specify, or refer to statements included in the prospectus which specify any documents required by this section to be endorsed on or attached to the copy so delivered.

(5) The Registrar shall not register a prospectus unless it is dated and the copy thereof signed in the manner required by this section and unless it has endorsed thereon or attached thereto the documents, if any, specified as aforesaid.

(6) If a prospectus states that the whole or a portion of the share capital or debentures offered for subscription has been underwritten, the prospectus shall not be registered until there is lodged with the Registrar the documents required by section 45.

(7) The Registrar shall not register any prospectus which names any person as the auditor, attorney, banker or broker of the company or proposed company unless it is accompanied by the consent in writing of the person so named to act in the capacity stated, but such person shall not be deemed thereby to have authorized the issue of the prospectus.

(8) No prospectus shall be issued more than three months after the date of its registration by the Registrar, and if a prospectus is so issued it shall be deemed to be a prospectus a copy of which has not been registered.

(9) If a prospectus is issued—

(a) without a copy thereof being filed with and registered by the Registrar; or

(b) without the copy so filed and registered having endorsed thereon or attached thereto the required documents, the company, and every person who is knowingly a party to the issue of the prospectus shall be guilty of an offence and liable, in the case of the company, to a fine not exceeding P1000 and, in the case of any such person, to a fine not exceeding P1000 or to imprisonment for a term not exceeding two years, or to both.

42. A company not being a private company shall not prior to the statutory meeting vary in any material respect the terms of a contract referred to in the prospectus, or statement in lieu of contract in prospectus, except when the variation is made subject to the approval of the statutory meeting.

Restriction on variation of terms of contract in prospectus ,etc

43. (1) Subject to the provisions of this section, where a prospectus invites persons to subscribe for shares in or debentures of a company, the following persons shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement included therein, that is to say—

Civil liability for mis - statements in prospectus

- (a) every person who is a director of the company at the time of the issue of the prospectus;
- (b) every person who has in writing authorized himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;
- (c) every person being a promoter of the company; and
- (d) every person who has authorized the issue of the prospectus:

Provided that—

(i) where, under section 40, the consent of a person is required to the issue of a prospectus and he has given that consent, he shall not by reason of his having given it be liable under this subsection as a person who has authorized the issue of the prospectus except in respect of an untrue statement purporting to be made by him as an expert, (ii) no person whose ordinary business or part of whose ordinary business it is to do secretarial or administrative work, shall be liable under this subsection as a person who has authorized the issue of the prospectus by reason only that he is employed by the company to perform on its behalf the secretarial and administrative work of the issue of shares or debentures to which the prospectus relates and is named in the prospectus as secretary or manager for the issue.

(2) No person shall be liable under subsection (1) if he proves—

- (a) that, having consented to become a director of the company, he withdrew his consent in writing before the issue of the prospectus, and that it was issued without his authority or consent;
- (b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he

forthwith gave reasonable public notice that it was issued without his knowledge or consent; (c) that, after the issue of the prospectus and before allotment thereunder, he, on becoming aware of the untrue statement, made an immediate written withdrawal of his consent thereto and gave reasonable public notice of such withdrawal and of the reason therefor; or (d) that—

- (i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable grounds to believe and did up to the time of the allotment of the shares or debentures, as the case may be, believe that the statement was true,
- (ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he had reasonable grounds to believe and did up to the time of the issue of the prospectus believe that the person making the statement was competent to make it and had given the consent required by section 40 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder; and
- (iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document:

Provided that this subsection shall not apply in the case of a person liable, by reason of his having given a consent required of him under section 40 as a person who has authorized the issue of the prospectus in respect of an untrue statement purporting to be made by him as an expert.

- (3) A person who, apart from this subsection would under Subsection (1) be liable, by reason of his having given the Consent required of him under section 40, as a person who has authorized the issue of a prospectus in respect of an untrue

statement purporting to be made by him as an expert shall not be so liable if he proves—

- (a) that, having given his consent under section 40 to the issue of the prospectus, he withdrew it in writing before delivery of a copy of the prospectus for registration;
- (b) that, after delivery of a copy of the prospectus for registration and before allotment thereunder, he, on becoming aware of the untrue statement, made an immediate written withdrawal of his consent and gave reasonable public notice of such withdrawal, and of the reason therefor; or
- (c) that he was competent to make the statement and that he had reasonable ground to believe and did up to the time of the allotment of the shares or debentures, as the case may be, believe that the statement was true. (4) Where-

(a) the prospectus contains the name of the person as a director of the company, or as having agreed to become a director thereof, and he has not consented in writing to become a director or has in writing withdrawn his consent before the issue of the prospectus and has not authorized or consented to the issue thereof; or (b) the consent of a person is required under section 40 to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus,

the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorized the issue thereof shall be liable, jointly and severally, to indemnify the person named as aforesaid or whose consent was required as aforesaid, as the case may be, against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any action or legal proceeding brought against him in respect thereof:

Provided that a person shall not be deemed for the purposes of this subsection to have authorized the issue of a prospectus by reason only of his having given the consent required by section 40 to the inclusion therein of a statement purporting to be made by him as an expert.

44. (1) Where a prospectus issued includes any untrue statement, any person who authorized the issue of the prospectus shall be guilty of an offence and liable to a fine not exceeding PI000, or to imprisonment for a term not exceeding two years,

Criminal
liability for
mis -
statements in
prospectus

or to both, unless he proves either that the statement was immaterial or that he had reasonable grounds to believe and did, up to the time of the issue of the prospectus, believe that the statement was true.

(2) A person shall not be deemed for the purposes of this section to have authorized the issue of a prospectus by reason only of his having given the consent required under section 40 to the inclusion therein of a statement purporting to be made by him as an expert.

45. (1) If the whole or any portion of the share capital or debentures of a company being offered for subscription has been or is being underwritten there shall be lodged by the company with the Registrar not later than the day before the date of the proposed offer of shares or debentures, a copy of the underwriting contract and a sworn declaration by the person named as underwriter or, if such underwriter is a company, by each of two directors of such company, that to the best of the deponent's knowledge and belief the underwriter is and will be in a position to carry out his obligations even if no shares or debentures, as the case may be, are applied for.

Responsibility
of underwriter
to make sworn
declaration of
his ability to
carry out his
obligations

(2) It shall be the duty of the underwriter to furnish the company within 14 days of a written request by the company with the sworn declaration required by subsection (1), in default whereof the underwriter shall be guilty of an offence and liable to a fine not exceeding P1000 or to imprisonment for a term not exceeding two years, or to both.

(3) Where an underwriter, in respect of whom the declaration referred to in subsection (1) has been made, fails, when duly called upon, to carry out his obligations under the underwriting contract, the declaration shall be deemed to have been made without reasonable grounds for belief that the person named as underwriter was or would be able to carry out the obligation of the contract, and any person making such declaration shall be guilty of an offence unless he proves that he did so believe and have reasonable grounds for that belief, and shall be liable to a fine not exceeding P1000 or to imprisonment for a term not exceeding two years, or to both.

(4) If default is made by the company in lodging a copy of the underwriting contract and sworn declaration with the Registrar within the time prescribed under subsection (1), the company shall be guilty of an offence and liable to a fine not exceeding P200.

46. (1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company, and the provisions of this Act shall apply and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of mis-statements contained in the document or otherwise in respect thereof.

Document
containing
offer of
shares or
debentures
for sale to be
deemed
prospectus

(2) For the purposes of this Act it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown—

- (a) that an offer of the shares or debentures or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or
- (b) that at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(3) Section 39 as applied by this section shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus—

- (a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates; and
- (b) the place and time at which the contract under the said shares or debentures have been or are to be allotted may be inspected,

and section 41 as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as directors of a company.

(4) Where an offer to which this section relates is made by a company or a partnership, it shall be sufficient if the document aforesaid is signed on behalf of the company or partnership by two directors of the company or not less than half the partners, as the case may be, and any such director or partner may sign by his agent authorized in writing.

47. For the purpose of this Act.

- (a) a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included;
- (b) a statement shall be deemed to be included in a

Interpretation
of provisions
relating to
prospectus

prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith; and (c) if any matter which ought, under the provisions of sections 39 and 40 and the Third Schedule or under section 46(3), to be inserted in a prospectus is omitted therefrom and if such omission is calculated to mislead then the prospectus shall be deemed, in respect of such omission, to be a prospectus in which an untrue statement is included.

48. (1) For the purposes of the provisions of this Part any reference in this Act to an offer of shares or debentures to the public or for sale to the public shall, unless the contrary is stated, include an offer to any section of the public and references in a company's articles to invitations to the public to subscribe for shares or debentures shall be construed accordingly:

Construction of references to offering shares or debentures to the public

Provided that an offer or invitation shall not be deemed to have been made to the public if, in all the circumstances, it is not calculated to cause the said shares or debentures to become available for subscription or purchase by persons other than those to whom the offer or invitation is specifically made or if it is wholly the domestic concern of the persons making and receiving it.

(2) A provision in a company's articles prohibiting invitations to the public to subscribe for shares or debentures shall not be deemed to prohibit an offer or invitation to members or debenture holders of such company which complies with the proviso to subsection (1), and the provisions of this Act relating to private companies shall be construed accordingly.

49. (1) It shall not be lawful for any person to go from house to house, or from farm to farm, offering shares or debentures for subscription or purchase or offering to purchase shares.

Restriction on offering to sell or purchase shares

(2) For the purposes of subsection (1) "house" includes any office, shop or business premises, except the office or business premises of a person whose ordinary business or part of whose ordinary business it is to deal in shares or debentures, whether as principal or agent.

(3) No person shall either verbally or in writing, including any newspaper advertisement—

(a) make an offer of shares for sale to the public or any member of the public; or

(b) invite offers from the public or any member of the public to purchase any shares,

and no person shall issue, distribute or publish any material which in its form and context is calculated to be understood as

an offer or invitation as aforesaid unless the offer, invitation or material is accompanied either by a prospectus complying with the provisions of this Act or by a written statement containing the particulars required by this section to be included therein.

(4) The said statement shall be dated and signed by the person or persons making the offer or invitation or issuing, distributing or publishing the said material, and if such person is a company, by every director thereof:

Provided that the provisions of subsection (3) shall not apply—

- (i) if the shares to which the offer or invitation or material relates are shares which are quoted on, or in respect of which permission to deal has been granted by a recognized stock exchange, and the person making the offer or invitation or publishing the material so states in writing specifying the stock exchange,
- (ii) if the shares in question are shares which a company has allotted or agreed to allot with a view to their being offered for sale to the public, (iii) if the offer or invitation is made or the material is published only to persons whose ordinary business or part of whose ordinary business it is to deal in shares or debentures whether as principals or agents,
- (iv) to an offer for sale to the public of or an invitation to the public to tender for unquoted shares made in the course of winding up a company in liquidation or in a deceased, insolvent or assigned estate or in an estate held under curatorship or in execution of a judgment of any competent court, or (v) to an offer or invitation not made to the public generally and made in respect of unquoted shares by a person who is at the time of the offer or invitation the *bonafide* registered beneficial owner of of them.

(5) The said statement shall contain particulars with respect to the following matters—

- (a) whether the person making the offer is acting as principal or agent, and if as agent the name of his principal and an address in Botswana where that principal can be served with process and the nature and extent of the remuneration received or receivable by the agent for his services;
- (b) the date on which and the country in which the company was incorporated and the address of its registered or principal office in Botswana or, if none, the address of its principal office outside Botswana;

- (c) the authorized share capital of the company and the amount thereof which has been issued, the classes into which it is divided and the rights of each class of members in respect of capital, dividends and voting and the number and amount of shares issued for cash and the number and amount thereof issued for a consideration other than cash, giving the dates on which and the prices at which or the consideration for which such shares were issued;
 - (d) the dividends, if any, paid by the company on each class of shares during each of the five financial years immediately preceding the offer of such lesser period as the company may have operated and, with respect to the rates of such dividends, particulars of each such class of shares on which such dividends have been paid, and if no dividend has been paid in respect of shares of any particular class during any of those years, a statement to that effect;
 - (e) the total amount of any debentures issued by the company and outstanding at the date of the statement, together with the rate of interest payable thereon;
 - (f) the names and addresses of the directors of the company;
 - (g) whether or not the shares offered are fully paid up, and, if not, to what extent they are paid up;
 - (h) whether or not the shares are quoted on, or permission to deal therein has been granted by, any stock exchange in Botswana or elsewhere, and, if so, which and, if not, a statement that they are not so quoted or that no such permission has been granted;
 - (i) if the offer relates to units, particulars of the names and addresses of the persons in whom the shares represented by the units are vested, the date of and the parties to any document defining the terms on which those shares are held, and an address in Botswana where that document or a copy thereof can be inspected;
 - (j) particulars of the dates on which and the prices at which the shares offered were— (i) originally issued by the company, and (ii) acquired by the person making the offer, or by his principal,
giving the reasons for any difference between such prices and the prices at which the shares are being offered.
- (6) In subsection (5) the expression "company" means the company by which shares to which a statement relates were or are to be issued.
- (7) If any person contravenes this section he shall be guilty of an offence and liable to a fine not exceeding P1000 or to imprisonment for a term not exceeding two years, or to both.

(8) If a person convicted of an offence under this section is a company (whether a company within the meaning of this Act or not), every director of the company shall be guilty of the like offence and subject to the like penalties unless he proves that the act constituting the offence took place without his knowledge or consent.

(9) In this section, unless the context otherwise requires, the expression "offer" includes an invitation to make an offer, the expression "shares" means the shares of a company, whether a company within the meaning of this Act or not, and includes debentures and units, and the expression "unit" means any right or interest (by whatever name called) in a share, and for the purposes of this section a person shall not in relation to a company be regarded as not being a member of the public by reason only that he is a holder of shares in the company or a purchaser of goods from the company.

(10) If any person is convicted of having made an offer in contravention of the provisions of this section, the court before which he is convicted may order that any contract made as a result of the offer shall be void, and, where it makes any such order, may give such consequential directions as it thinks proper for the repayment of any money or the retransfer of any shares.

Allotment

50. (1) No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which, in the minimum opinion of the directors, must be raised by the issue of share capital in order to provide for the matters specified in paragraph 4 of the Third Schedule has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company.

Prohibition of
allotment
unless
minimum
subscription
received

(2) For the purposes of subsection (1) an amount stated in any cheque received by the company in payment shall be deemed not to have been paid to and received by the company—

- (a) until the amount of the cheque has been credited to the account of the company with its bankers;
- (b) if the company has at any time delivered to the payer and has not been repaid the amount or value of any money, bill, promissory note, cheque or other valuable consideration otherwise than in discharge of a debt *bona fide* due by the company to such payer, then to the extent of the amount or value of such money, bill, promissory note, cheque or other valuable consideration.

(3) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Act referred to as "the minimum subscription".

(4) The amount payable on application on each share shall be the same in respect of all shares of the same class in any one share and shall not be less than 10 per cent of the nominal amount of the share.

(5) The amount paid on application shall be set apart by the directors in a separate bank account and shall not be available for the purposes of the company or for the satisfaction of its debts until the minimum subscription has been made up.

(6) If the conditions aforesaid have not been complied with on the expiration of 60 days after the first issue of the prospectus, all money received from applicants for shares shall forthwith be repaid to them without interest, and, if any such money is not so repaid within 70 days after the issue of the prospectus, the directors of the company shall be guilty of an offence and liable to a fine not exceeding P100 and, further, shall be jointly and severally liable to repay that money with interest at the rate of five per cent per annum from the expiration of the seventieth day:

Provided that a director shall not be guilty of an offence nor personally liable to repay the money if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(7) Any condition requiring or binding any applicant for shares to waive compliance with any requirements of this section shall be void.

51. (1) This section shall not apply to a private company.

(2) A company, which does not issue a prospectus on or with unless reference to its formation, or which has issued such a prospectus to allot any of the shares offered to the prospectus public for subscription, shall not allot any of its shares or debentures unless at least three days before the first allotment of either shares or debentures there has been delivered to the Registrar for registration a statement in lieu of prospectus signed by every person who is named therein as a director or a proposed director of the company or by his agent authorized in writing, in the form and containing the particulars set out in Part I of the Fourth Schedule and, in the cases mentioned in Part II of that Schedule setting out the reports specified therein, and the said Parts II and I shall have effect subject to the provisions contained in Part III of that Schedule.

(3) Every statement in lieu of prospectus delivered under subsection (2) shall, where the persons making any such report as aforesaid have made therein or have, without giving the

Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to Registrar

reasons, indicated therein any such adjustments as are mentioned in paragraph 5 of the Fourth Schedule, have endorsed thereon or attached thereto a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(4) If a company contravenes subsection (2) or (3) the company and every director of the company who knowingly and wilfully authorizes or permits the contravention shall be guilty of an offence and liable to a fine not exceeding P200.

(5) Where a statement in lieu of prospectus delivered to the Registrar under subsection (2) includes any untrue statement, any person who authorized the delivery of the statement in lieu of prospectus for registration shall be guilty of an offence and liable to a fine not exceeding P1000 or to imprisonment for a term not exceeding two years, or to both, unless he proves either that the untrue statement was immaterial or that he had reasonable grounds to believe and did up to the time of the delivery for registration of the statement in lieu of prospectus believe that the untrue statement was true.

(6) For the purposes of this section—

- (a) a statement included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included;
- (b) a statement shall be deemed to be included in a statement in lieu of prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein; and
- (c) if any matter which ought, under the provisions of the Fourth Schedule, to be inserted in a prospectus is omitted therefrom and if such omission is calculated to mislead then the statement in lieu of prospectus shall be deemed, in respect of such omission, to be a statement in lieu of prospectus in which an untrue statement is included.

52. (1) An allotment made by a company in contravention of section 50 or 51 shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting and not later; or in any case, where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment, and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2) If any director of a company knowingly contravenes, or permits or authorizes the contravention of, any provisions of section 50 or 51 he shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which

Effect of
irregular
allotment

the company or the allottee may have sustained or incurred thereby:

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

- 53.** Where an application form is required by section 39 to be attached to a prospectus, every allotment of shares or debentures form not made otherwise than in pursuance of an application form which a distributed or delivered with a prospectus as required by section 39(3) shall be voidable at the instance of the allottee within one month after allotment unless it is shown that the allottee at the time of his application was in fact possessed of a copy of the prospectus or was aware of its contents.

Allotment voidable if application form not attached to prospectus

- 54.** (1) No allotment shall be made of any shares in or debentures of a company in pursuance of a prospectus, issued generally, and no proceedings shall be taken on applications made in pursuance of a prospectus so issued, until the beginning of the third day after that on which the prospectus is first so issued or such later time, if any, as may be specified in the prospectus.

Application for and allotment of shares

(2) The beginning of the said third day or such later time as aforesaid is in this Act referred to as "the time of the opening of the subscription lists".

(3) In subsection (1) the reference to the day on which the prospectus is first issued generally shall be construed as referring to the day on which it is first issued as a newspaper advertisement: Provided that, if it is not so issued as a newspaper advertisement before the third day after that on which it is first so issued in any other manner, the said reference shall be construed as referring to the day on which it is first so issued in any manner.

(4) The validity of an allotment shall not be affected by any contravention of the foregoing provisions of this section but, in the event of any such contravention, the company and every officer of the company who is knowingly a party to the default shall be guilty of an offence and liable to a fine not exceeding PI 000.

(5) In the application of this section to a prospectus offering shares or debentures for sale, subsections (1), (3) and (4) shall have effect with the substitution of references to sale for references to allotment, and with the substitution for the reference to the company and every officer of the company who is knowingly a party to the default of a reference to any person by or through whom the offer is made and who knowingly and wilfully authorizes or permits the contravention.

(6) An application for shares in or debentures of a company which is made in pursuance of a prospectus issued generally shall not be revocable until after the expiration of the third day after the time of the opening of the subscription lists, or the giving before the expiration of the said third day, by some person responsible under section 43 for the prospectus, of a public notice having the effect under that section of excluding or limiting the responsibility of the person giving it.

(7) In reckoning for the purposes of this section the third day after another day, any intervening day which is a Saturday or Sunday or which is a public holiday in Botswana shall be disregarded and if the third day (as so reckoned) is itself a Saturday or Sunday or a public holiday, there shall for the said purposes be substituted the first day thereafter which is none of them.

55. (1) Every company shall keep a register of allotments at its registered office.

Register and
return as to
allotments

(2) A company, whenever it makes any allotment of its shares, shall, within one month thereafter, lodge with the Registrar—

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

(b) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing and signed by the parties thereto, constituting the title of the allottee to the allotment, together with any contract of sale, or for services or other consideration in respect of which that allotment was made, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(3) If default is made in complying with the requirements of this section, the company and every officer of the company who is knowingly a party to the default, shall be guilty of an offence and liable to a fine not exceeding P10 for every day during which the offence continues:

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

Commissions and Discounts

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

- (a) the payment of the commission is authorized by the articles;
- (b) the commission paid or agreed to be paid does not exceed five per cent of the price at which the shares are issued or the amount or rate authorized by the articles, whichever is the less;
- (c) the amount or rate per cent of the commission paid or agreed to be paid is— (i) in the case of shares offered to the public for subscription, disclosed in the prospectus, or (ii) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and delivered, before the payment of the commission, to the Registrar, for registration, and, where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice; and
- (d) the number of shares which persons have agreed for a commission to subscribe absolutely is disclosed in the manner aforesaid.

(2) Except as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money is paid out of the nominal purchase money or contract price, or otherwise.

(3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay.

(4) A vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have and

Power to pay certain commissions and prohibition of payment of all other commissions, discounts etc.

shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

(5) If default is made in complying with the provisions of this section relating to the delivery to the Registrar of the statement in the prescribed form, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding P10 for every day during which the offence continues.

57. (1) It shall not be lawful for a company to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connexion with a purchase or subscription purchase of us made or to be made by any person of or for any shares in the company, or, where the company is a subsidiary company, in its holding company:

Prohibition of financial assistance by the company for purchase of its own or its holding company's shares

Provided that nothing in this section shall be taken to prohibit—

(i) where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business, (ii) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of, or subscription for, fully-paid shares in the company or its holding company, to be held by or in trust for the benefit of employees of the company, including any director holding a salaried employment or office in the company, (iii) the making by a company of loans to persons, other than directors, *bona fide* in the employment of the company with a view to enabling those persons to purchase or subscribe for fully-paid shares in the company or its holding company to be held by themselves by way of beneficial ownership. (2) If a company contravenes any of the provisions of this section, the company and every director of the company who is a party to such contravention shall be guilty of an offence and liable to a fine not exceeding P1000.

Issue of Shares at Premium and Redeemable Preference Shares

58. (1) Where a company issues shares at a premium whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account, to be called "the share premium account", and the

Application of premiums received on issue of shares

provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the share premium account were paid-up share capital of the company.

(2) The share premium account may, notwithstanding anything in subsection (1), be applied by the company—

- (a) in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares;
- (b) in writing off—
 - (i) the preliminary expenses of the company, (ii) the expenses of, or the commission paid on any issue of shares or debentures of the company; or
- (c) in providing for the premium payable, if any, on redemption of any redeemable preference shares or of any debentures of the company.

59. (1) A company may, if so authorized by its articles, issue preference shares which are, or at the option of the company are to be liable, to be redeemed:

Provided that—

- (i) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption,
- (ii) no such shares shall be redeemed unless they are fully paid,
- (iii) the premium, if any, payable on redemption must have been provided for out of the profits of the company or out of the company's share premium account before the shares are redeemed,
- (iv) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall out of profits which would otherwise have been available for dividend be transferred to a reserve fund, to be called "the capital redemption reserve fund", a sum equal to the nominal amount of the shares redeemed, and the provisions of this Act relating to the redemption of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company.

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

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

Power to
issue
redeemable
preference
shares

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

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

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

Miscellaneous Provisions as to Share Capital

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

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

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

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

Reserve liability of company

62. (1) A company, if authorized by its articles, may by ordinary resolution alter the conditions of its memorandum so as to—

Power of company to alter its share capital

- (a) increase its share capital by new shares of such amount as it thinks expedient;
- (b) consolidate and divide all or any part of its share capital into shares of larger amount than its existing shares;
- (c) convert all or any of its paid-up shares into stock, and reconvert such stock into paid-up shares of any denomination;
- (d) subdivide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as was in the case of the share from which the reduced share is derived;
- (e) cancel shares which at the time of the passing of the resolution in that behalf have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled. (2) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

63. (1) If a company has—

- (a) consolidated and divided its share capital into shares of larger amount than its existing shares; converted any shares into stock;
- (c) re-converted stock into shares;
- (d) subdivided its shares or any of them;
- (e) redeemed any redeemable preference shares; or
(f) cancelled any shares, otherwise than in connexion with a reduction of share capital under section 66,

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

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding P10 for every day during which the offence continues.

64. (1) Where a company, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, it shall give to the Registrar notice thereof within 21 days after the passing of the resolution authorizing such increase, and the Registrar shall record the increase, and the resolution shall not take effect until the increase is so recorded.

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

Notice of increase of share capital

(2) If default is made in complying with the requirements of this section, the company and every officer of the company who is in default shall be guilty of an offence, and liable to a fine not exceeding P10 for every day during which the offence continues.

65. (1) If, in the case of a company the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorizing the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provisions the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than 15 per cent of the issued shares of that class, being persons who did consent to or vote in favour of the resolution for the variation, may apply to the court to have the variation cancelled, and, where any such application is made, the variation shall not have effect unless it is confirmed by the court.

(2) An application under this section must be made within 30 days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the members entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

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

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

(5) The company shall within 15 days after the making of an order by the court on any such application forward a copy of the order to the Registrar, and, if default is made in complying with this provision, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding P10 for every day during which the offence continues.

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

Variation of
the rights
attaching to
shares

Reduction of Share Capital

- 66.** (1) Subject to confirmation by the court, a company may, if authorized by its articles, by special resolution reduce its share capital in any way, and in particular, without prejudice to the generality of the foregoing power, may—
- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid-up;
 - (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or
 - (c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company, and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

Special
resolution for
reduction of
share capital

- (2) A special resolution under this section is in this Act referred to as "a resolution for reducing share capital".

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

Application
to court to
confirm
order,
objections by
creditors, etc

- (2) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any member of any paid-up share capital, and in any other case if the court so directs, the following provisions shall have effect, subject nevertheless to subsection (3)—
- (a) every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction;
 - (b) the court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction;
 - (c) where a creditor entered on the list whose debt or claim is not discharged or has not been determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the court may direct, the following amount—

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

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

68. (1) The court, if satisfied, with respect to every creditor of the company who, under section 67 is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged, or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit, and in particular may—

Order
confirming
reduction and
powers of
court therein

(a) direct that the company shall, during such period, commencing on or at any time after the date of the order, as is specified in the order, add to its name as the last words thereof the words "and reduced"; or

(b) require the company to publish, as the court directs, the reasons for reduction or such other information in regard thereto as the court may think expedient, with a view to giving proper information to the public, and, if the court thinks fit, the causes which led to the reduction. (2) Where a company is ordered to add to its name the words "and reduced" those words shall, until the expiration of the period specified in the order, be deemed to be part of the name of the company.

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

Registration
of order and
minute of
reduction

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

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

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

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

(6) The substitution of any such minute as aforesaid for part of the memorandum of the company shall be deemed to be an alteration of the memorandum within the meaning of section 25.

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

Liability of
members in
respect of
reduced
shares

Provided that, if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, through no default on his part, ignorant of the proceedings for reduction, and is in consequence not entered on the list of creditors and if at any time within 12 months after the reduction the company is unable within the meaning of section 171 to pay the amount of his debt or claim then—

- (a) every person who was a member of the company at the date of the registration of the order for reduction and minute shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before the said date; and
- (b) if the company is wound up, the court, on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

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

71. If any officer of the company—

- (a) wilfully conceals the name of any creditor entitled to object to the reduction; creditor, etc.
 - (b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or
 - (c) aids, abets or is privy to any such concealment or misrepresentation as aforesaid,
- he shall be guilty of an offence, and liable to a fine not exceeding P200 or to imprisonment for a term not exceeding 12 months, or to both.

Penalty for
concealing
name of
creditor, etc

Transfer of Shares and Debentures, Evidence of Title, etc.

72. (1) The shares or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles of the company.

Nature and
numbering of
shares

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

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

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

73. Notwithstanding anything in the articles of a company, it shall not be lawful for the company to register a transfer of shares in or debentures of the company unless a proper production of instrument of transfer has been delivered to the company: Provided that nothing in this section shall prejudice any power of the company to register as member or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

Transfer not
to be
registered
except on
production of
instrument of
transfer

74. On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for entry were

Registration
of transfer at
request of
transferor

made by the transferee and subject also to the law relating to stamp duty.

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

Notice of refusal to register transfer

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding P10 for every day during which the offence continues.

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

Transfer by executor

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

Duties of company with respect to issue of certificates

(2) For the purposes of subsection (1), the expression "transfer" means a transfer duly stamped and otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.

(3) If default is made in complying with the requirements of this section the company, and every officer of the company who is in default, shall be guilty of an offence and liable to a fine not exceeding P10 for every day during which the offence continues.

(4) If any company, on whom a notice has been served requiring the company to make good any default in complying with the provisions of subsection (1), fails to make good the default within 10 days after the service of the notice, the court may, on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order, and any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company responsible for the default.

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

Certificate to be evidence of title

79. If any person falsely and deceitfully personates any owner of any share or interest in any company, and thereby obtains or endeavours to obtain any such share or interest or receives or endeavours to receive any money due to any such owner as if the impersonator were the true and lawful owner, he shall be guilty of an offence and be liable to a fine not exceeding P2000 or to imprisonment for a term not exceeding 10 years.

Unlawful personation

Special Provisions as to Mortgages and Debentures

80. (1) A company, if so authorized by its memorandum or by its articles, may create and issue debentures, and as security for the fulfillment of the obligation undertaken thereunder may, in the manner hereinafter described, bind movable or immovable property or both movable and immovable property of the company.

Creation and registration of debentures

(2) The binding of immovable property as security for any debenture or debentures shall be effected in the Deeds Registry by means of a mortgage bond or bonds executed on behalf of the company.

(3) The binding of movable property as security for any debenture or debentures shall be effected by a bond or bonds executed on behalf of the company before a notary public and registered in the Deeds Registry.

(4) The binding of both immovable and movable property as security for any debenture or debentures shall be effected by the execution and registration of—

(a) a mortgage bond or bonds hypothecating the immovable property and of a collateral notarial bond or bonds hypothecating the movable property; or

(b) by a notarial bond or bonds or notarial debenture or debentures hypothecating the collateral movable property and a mortgage bond or bonds hypothecating the immovable property.

(5) Whenever it is desired to hypothecate movable or immovable property as additional security to any mortgage bond, notarial bond or notarial debenture, such movable or immovable property shall be hypothecated by collateral notarial bond in the case of movable property and by collateral mortgage bond in the case of the immovable property.

(6) If the bond is in favour of one or more debenture holders, the original debenture shall be annexed to one copy of the bond,

and a duplicate or certified copy of the debenture shall be annexed to the other copy.

(7) If the bond is in favour of trustees for debenture holders, a certified copy of the trust deed by which the trustees are appointed and in which their rights and duties are defined, together with a specimen form of the debentures, shall be annexed to each copy of the bond.

(8) Registration of such notarial bonds or mortgage bonds and cancellation or cession thereof in whole or in part shall be effected in accordance with the regulations and practice of the Deeds Registry relating to notarial bonds or mortgage bonds respectively.

(9) When such notarial bonds or mortgage bonds have been registered, they shall, as from the date of registration, subject to any prior rights arising out of any bond or debenture previously registered or out of any legal hypothec, pledge, or right of retention, operate as a first or preferential charge in respect of so much of the movable or immovable property of the company as is mentioned and described therein as bound by way of security for the fulfillment of the obligation undertaken by the company thereunder.

(10) In any bond executed in favour of trustees for debenture holders generally, provision may be made that the debentures thereby secured, or to be secured, may be issued from time to time and at different dates, as the company may determine, but all such debentures, whenever issued, shall rank for preference concurrently with one another as from the date of registration of the bond.

(11) Every holder of a debenture secured by a bond executed in favour of trustees for debenture holders generally shall, unless it is otherwise provided by the terms of the bond or of the trust deed and form of debenture annexed thereto, be entitled to enforce his rights under "such debenture as soon as it has been issued to him in the same manner as if he were himself the holder of such bond.

(12) No notice of the cession of any such debenture shall be necessary in order to confer upon any cessionary thereof the rights of the cedent.

81. (1) Every company shall keep at its registered office— (a) a register of mortgages, notarial bonds and debentures, and enter therein within 14 days of the date of any hypothecation full particulars thereof, giving in each case the date of the hypothecation, a short description of the property mortgaged, the amount of the debt secured, the rate of interest payable thereon and the

Register of
mortgages
and
debentures
and register
of debenture
holders

names and addresses of the mortgagees and debenture holders;

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

(2) If default is made in complying with subsection (1) the company shall be guilty of an offence and liable to a fine not exceeding P100.

(3) The register of mortgages, notarial bonds and debentures shall be open at all reasonable times to the inspection of the Registrar or any person authorized by him or any creditor or member of the company without fee, and any other person on payment of such fee not exceeding 20 thebe per hour or part of an hour for such inspection as the company may prescribe.

(4) The register of debenture holders shall, except when closed during such period or periods (not exceeding in the whole 60 days in any year) as may be specified in the articles, be open to the inspection of any creditor or member of the company but subject to such reasonable restrictions as the company may in general meeting impose so that at least two hours in each business day are appointed for inspection and the company shall furnish to any creditor or member at his request extracts from the register on payment of 15 thebe for every 100 words or fractional part thereof required to be extracted.

(5) A copy of any trust deed for securing any issue of debentures shall be transmitted to any holder of such debentures at his request on payment of the sum of 75 thebe or such less sum as may be prescribed by the company.

(6) If any inspection, copy, extract or other facility prescribed by subsection (3), (4) or (5) is refused or not transmitted the company shall be guilty of an offence and liable to a fine not exceeding P10 and to a further fine not exceeding P4 for every day during which the offence continues, and the court, including the court convicting, may by order direct that an immediate inspection be granted of the register concerned or that copies required shall, subject to payment of the prescribed sums, be delivered to the person requiring them.

82. Where a company has redeemed any debentures previously issued, then -

- (a) unless any provision to the contrary, whether expressed or certain cases implied, is contained in the articles or in any contract entered into by the company; or
 (b) unless the company has, by passing a resolution to that

Power to re-issue redeemed debentures in certain cases

effect or by some other act, manifested its intention that the debentures shall be cancelled and not re-issued, the company shall have, and shall be deemed always to have had, power to re-issue the debentures, either by re-issuing the same debentures or by issuing other debentures in their place.

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

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

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

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

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

Specific
performance of
contract

PART IV *Management and Administration*

Registered Office and Name

84. (1) Every company shall have a registered office in Botswana, to which all communications and notices may be addressed, and at which all process may be served.

Registered
office of
company

(2) Notice of the situation of the registered office, and of any change therein, shall be given within 21 days after the date of the incorporation of the company, or of any change, as the case may be, to the Registrar, who shall record the same.

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall

be guilty of an offence and liable to a fine not exceeding P10 for every day during which the default continues.

- 85.** (1) Every company—
- (a) shall continuously display its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible;
 - (b) shall have its name engraved in legible characters on its seal, if any;
 - (c) shall have its name mentioned in legible characters in all business letters, notices, and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company, and in all delivery notes, invoices, receipts and letters of credit of the company:

Provided that, for the purposes of this subsection the abbreviation "Ltd." and "(Pty.)" may be used for the words "Limited" and "(Proprietary)" respectively in a company's name.

(2) If default is made in complying with subsection (1)(a) the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding P10 and to a further fine not exceeding P10 for every day during which the offence continues.

(3) If default is made in complying with subsection (1)(b) or (c), the company shall be guilty of an offence and liable to a fine not exceeding P100.

(4) If any officer of a company, or any person on its behalf —

- (a) uses or permits the use of any seal purporting to be a seal of the company whereon its name is not so engraved as aforesaid;
- (b) issues or permits the issue of any business letter, notice or other official publication of the company, or signs or permits to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque or order for money or goods wherein its name is not mentioned in the manner aforesaid; or
- (c) issues or permits the issue of any delivery note, invoice, receipt or letter of credit of the company wherein its name is not mentioned in the manner aforesaid, he shall be guilty of an offence, and liable to a fine not exceeding P100, and shall further be personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods for the amount thereof, unless it is duly paid by the company.

Publication of
name by
company

Restrictions on Commencement of Business

86. (1) Nothing in this section shall apply to a private company or to an association licensed under section 22.

Restrictions on
commencement
of business

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

- (a) shares held subject to the payment of the whole amount thereof in cash have been allotted to a total amount of not less than the minimum subscription;
- (b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription;
- (c) there has been delivered to the Registrar for registration an affidavit by the secretary, or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with; and
- (d) the Registrar has certified that the company is entitled to commence business.

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

- (a) there has been delivered to the Registrar for registration a statement in lieu of prospectus;
- (b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash;
- (c) there has been delivered to the Registrar for registration an affidavit by the secretary or one of the directors in the prescribed form that paragraph (b) has been complied with; and
- (d) the Registrar has certified that the company is entitled to commence business.

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

(5) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and

shall not be binding on the company until that date, and on that date it shall become binding.

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

(7) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be guilty of an offence and liable to a fine not exceeding P100 for every day during which the offence continues.

Register and Index of Members

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

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

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

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

- (i) if the work of making it up is done at another office of the company, it may be kept at that other office, and
- (ii) if the company arranges with some other person for the making up of the register to be undertaken on behalf of the company by that other person, it may be kept at the office of that other person, so, however, that it shall not be kept at a place outside Botswana. (3) Every company shall send notice in writing to the Registrar of the place where its register of members is kept and of any change in that place within 30 days of the date of its incorporation or change of place:

Provided that a company shall not be bound to send notice under this subsection where the register has, at all times since it

Register and
index of
members

came into existence, been kept at the registered office of the company.

(4) Every company having more than 50 members shall, unless the register of members is in such form as to constitute in itself an index, keep an index of the names of the members of the company and shall, within 14 days after the date on which any alteration is made in the register of members, make any necessary alteration in the index.

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

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

(7) If default is made in complying with this section the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding P10 for every day during which the offence continues and for the purposes of this section any person with whom the company makes an arrangement in terms of proviso (ii) to subsection (2) shall be deemed to be an officer of the company and liable accordingly.

88. (1) Except where the register of members is closed under provisions of this Act, the register and index of the names of the members of a company shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge and of any other person on payment of 25 thebe per hour or part of an hour, or such less sum as the company may prescribe, for each inspection.

Inspection of
register and
index

(2) Any member may require a copy of the register, or of any part thereof, on payment of 20 thebe or such less sum as the company may prescribe, for every 100 words or fractional part thereof required to be copied.

(3) The company shall cause any copy so required by any member to be sent to such member within a period of 21 days commencing on the day next after the day on which the requirement is received by the company.

(4) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper period, the company and every officer of the company who is in default shall be guilty of an offence and liable on each offence to a fine not exceeding P4 and to a further fine not exceeding P4 for every day during which the offence continues, and the court, including the court so convicting, may by order compel an immediate inspection of the register and index or

direct that the copies required shall, subject to payment of the appropriate sum, be sent to the persons requiring them.

89. A company may, on giving prior notice by advertisement in a newspaper circulating in the district in which the registered office of a company is situate, close the register of members for any time or times not exceeding in the whole 30 days in each year.

Power to
close register

90. (1) If—

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

Power of the
court to
rectify
register

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

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

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

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

91. No notice of any trust, express, implied or constructive, shall be entered on the register, or be receivable by the Registrar, in the case of companies registered in Botswana.

Trusts in
respect of
shares

92. The register of members shall be *prima facie* evidence of any matters by this Act directed or authorized to be inserted therein.

Register to
be evidence

Branch Register

93. (1) A company may, if so authorized by its articles, cause to be kept in any external country a register (in this Act called a

Power to
keep branch
register in
external
countries

"branch register") of members resident in that or any other external country.

(2) The company shall give to the Registrar notice of the situation of the office where any branch register is kept, and of any change in its situation, and if it is discontinued of the discontinuance, and any such notice shall be given within 30 days of the opening of the office or of the change or discontinuance, as the case may be.

(3) If default is made in complying with subsection (2) the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding P10 for every day during which the offence continues.

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

Regulations
as branch
register

(2) It shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the prior newspaper advertisement required by section 89 shall be inserted in a newspaper circulating in the district where the branch register is kept.

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

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

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

(6) If default is made in complying with subsection (3) the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding P10 for every day during which the offence continues.

Annual Return

95. (1) Every company shall, once in every calendar year (other than any year in which the company need not, under the provisions of section 97, hold an annual general meeting), and within 42 days after the date of its annual general meeting, make and file with the Registrar an annual return consisting of—

Annual return
to be made
by company

- (a) a list, in the form and embodying the particulars contained in the Fifth Schedule or as near thereto as circumstances admit, of all persons who, on the date of the said annual general meeting, were members holding shares not fully paid-up, and of all persons who, holding shares not fully paid-up, ceased to be members of the company since the date of the last preceding annual general meeting or in the case of the first list, since the date of the incorporation of the company;
- (b) a summary, in the form contained in the Fifth Schedule or as near thereto as circumstances admit, specifying the following particulars—
- (i) all such particulars with respect to the persons who at the date of the return are the directors of the company and any person who at that date is secretary of the company as are by this Act required to be contained with respect to directors and the secretary respectively in the register of directors and secretaries of a company and the name and address of every person appointed as an auditor of the company,
 - (ii) the situation of the registered office of the company, (iii) the place where the register of members is kept if, under the provisions of this Act, it is not kept at the registered office of the company, (iv) the amount of the share capital of the company, and the number of the shares into which it is divided, (v) the number of shares taken from the date of incorporation of the company up to the date of the return,
 - (vi) the number of shares issued for cash, (vii) the number of shares issued as fully or partly paid-up otherwise than in cash and the nature of the consideration given for such shares, (viii) the amount called up on each share, (ix) the total amount of calls unpaid,
 - (x) the total amount of the sums, if any, paid by way of commission in respect of any shares or debentures, or allowed by way of discount in respect of any debentures, since the date of the last return, (xi) the total number of shares forfeited, (xii) the total amount of debt due by the company secured otherwise than by operation of law;
- (c) in the case of a private company, a certificate as to the matters set out in subsection (4).
- (2) If the names in the said list are not arranged in alphabetical order there shall be annexed to it an alphabetical index sufficient to enable the name of any person to be readily found.

- (3) There shall be annexed to the annual summary—
- (a) a copy certified both by a director and by the secretary of the company to be a true copy, of every balance sheet laid before the company in general meeting during the period to which the summary relates (including every document required by law to be annexed to the balance sheet); and
 - (b) a copy, certified as aforesaid, of the report of the auditors on, and of the report of the directors accompanying, any such balance sheet:

Provided that the provisions of this subsection shall not apply to a private company unless one or more shareholders of such private company is a company which is not a private company.

- (4) The certificate required by subsection (1)(c) shall state—
- (a) that the company has not since the date of the last return or, in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares, stock or debentures of the company;
 - (b) the number of members of the company at the date of the certificate; and
 - (c) if the number exceeds 50, that such excess consists only of persons who, under section 29, are to be excluded in reckoning the number of 50.

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

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

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

(8) If the company makes default in complying with any of the requirements of this section, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding P10 for every day during which the offence continues.

Meetings and Proceedings

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

Statutory
meeting and
statutory
report

(2) The directors shall, at least 14 days before the day on which the meeting is held, forward a certified report (in this Act referred to as "the statutory report") to every member of the company:

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

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

- (a) the total number of shares allotted distinguishing shares allotted as fully or partly paid-up or otherwise than in cash, and stating in the case of shares partly paid-up the extent to which they are so paid-up, and in either case the consideration for which they have been allotted;
- (b) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid;
- (c) an abstract of the receipts of the company and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company;
- (d) the names, addresses and descriptions of the directors, auditors if any, managers, if any, and secretary of the company; and
- (e) if the modification or proposed modification of any contract is to be submitted to the meeting for its information or approval, full particulars thereof.

(4) The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of

such shares, and to the receipts, and payments of the company be certified as correct by the auditors, if any, of the company.

(5) The directors shall cause a copy of the statutory report, certified as required by this section, to be filed with the Registrar within 14 days of the date on which it is so certified.

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

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

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

(9) If default by any director is made in complying with any provisions of this section which expressly impose a duty on the directors, he shall be guilty of an offence and liable to a fine not exceeding P20.

97. (1) Every company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than 15 months shall elapse between the date of one annual general meeting of a company and that of the next:

Annual
general
meeting

Provided that, so long as a company holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

(2) If default is made in holding a meeting of the company in accordance with subsection (1) the Minister may, on the application of any member of the company, call, or direct the calling of, a general meeting of the company and give such ancillary or consequential directions as he thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the company's articles; and such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(3) A general meeting held in pursuance of subsection (2) shall, subject to any directions of the Minister, be deemed to be an annual general meeting of the company; but, where a meeting so held is not held in the year in which the default in holding the company's annual general meeting occurred, the meeting so held shall not be treated as the annual general meeting for the year in which it is held unless at that meeting the company resolves that it shall be so treated.

(4) Where a company resolves that a meeting shall be so treated, a copy of the resolution shall, within 14 days after the passing thereof, be forwarded to the Registrar and recorded by him, and if default is made in complying with this subsection the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding P4 for every day during which the offence continues.

(5) If default is made in complying with the requirements of subsection (1) or with any direction given by the Minister under subsection (2) the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding P100.

98. (1) On the requisition of members of a company holding at the date of the deposit of the requisition not less than one-twentieth of such of the paid-up capital of the company as at the date of the deposit carries the right of voting at general meetings of the company, or, in the case of a company limited by guarantee, members of the company representing not less than one-twentieth of the total voting rights of all the members having at the said date a right to vote at general meetings of the company, the directors of the company, notwithstanding anything in its articles, shall within 21 days of the deposit of the requisition issue a notice to members convening an extraordinary general meeting of the company for a date not less than 14 nor more than 28 days from the date of the notice:

Convening of
extraordinary
general
meeting on
requisition

Provided that if a special resolution is to be submitted the period of the notice shall not be less than 21 days.

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

(3) If the directors do not within 21 days from the date of the deposit of the requisition issue a notice as required by subsection (1) the requisitionists or any of them numbering more than 50 or representing more than one-half of the total voting rights of all of them, may themselves convene a meeting, stating the objects thereof, on 21 days' notice, but no meeting so convened shall be held after the expiration of three months from the said date.

(4) Any meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

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

(6) Any officer of the company who is knowingly a party to a default in convening a meeting as required by subsection (1) shall be guilty of an offence and liable to a fine not exceeding P100.

99. (1) A company's annual general meeting may be called by 21 days' notice in writing, and a meeting of a company other than an annual general meeting or a meeting for the passing of a special resolution may be called by 14 days' notice in writing or in the case of a private company, by seven days' notice in writing; and any provision of a company's articles shall be void as far as it provides for the calling of a meeting of the company (other than an adjourned meeting) by shorter notice than that specified in this section.

Length of
notice for
calling
meetings

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

- (a) in the case of a meeting called as the annual general meeting by all the members entitled to attend and vote thereat; and
- (b) in the case of any other meeting, by a majority in a number of the members having a right to attend and vote at the meeting, being a majority holding not less than 95 per cent in nominal value of the shares giving a right to attend and vote at the meeting, or in the case of a company limited by guarantee, together representing not less than 95 per cent of the total voting rights at that meeting of all the members.

100. (1) The following provisions shall have effect in so far as the articles of a company do not make other provision in that notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by Table A;

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

- (b) two or more members holding not less than one-tenth of the issued share capital or, if the company is limited by guarantee, not less than one-twentieth in number of the members of the company, may call a meeting;
- (c) in the case of a private company, two members and in the case of any other company three members, personally present shall be a quorum;
- (d) any member elected by the members present at a meeting may be chair man thereof;
- (e) every member shall have one vote in respect of each share or each P20 worth of stock held by him and in any other case every member shall have one vote.

(2) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in a manner prescribed by the articles or this Act, or if for any other reason the court sees fit, the court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the court thinks fit, and where any such order is made give such ancillary or consequential directions as it thinks expedient, including a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(3) Any meeting called, held and conducted in accordance with an order under subsection (2) shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.

101. (1) Any member of a company, other than a private company, who is entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a member or not) as his proxy to attend any meeting of the company in his stead.

Proxies and
voting on a
poll

(2) Any member of a private company who is entitled to attend and vote at a meeting of the company shall be entitled to appoint another member of the company or such other person as the articles of the company may allow to attend any meeting of the company in his stead.

(3) A proxy appointed to attend a meeting of a company instead of a member shall have the same right as the member to speak at the meeting but shall not be entitled to vote except on a poll.

(4) In every notice calling a meeting of a company and on the face of every proxy form issued at the company's expense shall appear with reasonable prominence a statement that a member

entitled to attend and vote is entitled to appoint a proxy to attend and vote and speak in his stead, and, where that is so, that a proxy need not also be a member; and if default is made in complying with this subsection as respects any meeting, every officer of the company who authorizes, knowingly permits or is party to the default shall be guilty of an offence and liable to a fine not exceeding PI00.

(5) Any provision contained in a company's articles shall be void in so far as it would have the effect of requiring the instrument appointing a proxy, or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy, to be received by the company or any other person more than 48 hours before a meeting in order that the appointment may be effective thereat.

(6) If for the purpose of any meeting of a company invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to some only of the members entitled to be sent a notice of the meeting and to vote thereat by proxy, every officer of the company who authorizes or knowingly permits or is a party to the issue as aforesaid shall be guilty of an offence and liable to a fine not exceeding PI00:

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

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

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

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

Procedure for
compulsory
adjournment

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

- (a) the time and place to which the meeting was adjourned;
- (b) the matter before the meeting at the time when it was adjourned; and
- (c) the ground for adjournment.

(3) Subsection (2) shall not apply to a private company.

(4) Any person acting as chairman of a meeting of a company who fails to comply with the requirements of subsection (1) and any secretary of a company other than a private company who fails to comply with the requirements of subsection (2) shall be guilty of an offence and liable to a fine not exceeding P100.

103. (1) A corporation, whether a company within the meaning of this Act or not, may—

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

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

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

- (a) to give to members of the company entitled to receive notice of the next annual general meeting notice of any resolution which may properly be moved and is intended to be moved at that meeting;
- (b) to circulate to members entitled to have notice of any general meeting sent to them any statement of not more

Representation of corporations at a meeting of company and of creditors

Circulation of member's resolutions, etc

than 1000 words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

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

- (a) any number of members representing not less than one-twentieth of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or
- (b) not less than 100 members holding shares in the company on which there has been paid up an average sum, per member, of not less than P200.

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

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

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

- (a) a copy of the requisition signed by the requisitionists (or two or more copies which between them contain the signatures of all the requisitionists) is deposited at the registered office of the company— (i) in the case of a requisition requiring notice of a

resolution not less than six weeks before the meeting, and (ii) in the case of any other requisition, not less than

21

days before the meeting; and

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

Provided that if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date six weeks or less after the copy has been deposited, the copy though not deposited within the time

required by this subsection shall be deemed to have been properly deposited for the purposes thereof.

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

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

(7) In the event of any default in complying with the provisions of this section every officer of the company who authorizes, or knowingly permits or is party to the default shall be guilty of an offence and liable to a fine not exceeding PI000.

105. (1) A resolution shall be a special resolution when it has been passed by a majority of not less than three-fourths of such members entitled to vote who vote in person or by proxy at a general meeting of which not less than 21 days' notice has been given, specifying the intention to propose the resolution as a special resolution and the terms of the resolution and at which members holding in the aggregate not less than one-fourth of the total votes of the company are present in person or by proxy.

Definition of special resolution

(2) If the members present at the meeting hold less than one-fourth of the total votes of all members entitled to vote, the meeting shall stand adjourned to the same day in the following week or, if that is a public holiday, to the next succeeding day other than a public holiday.

(3) At the adjourned meeting the members present in person or by proxy may deal with the business for which the original meeting was convened and a resolution passed by not less than three-fourths of such members shall be deemed to be a special resolution, notwithstanding that less than one-fourth of the total votes of the company are represented at such adjourned meeting.

(4) If it is so agreed by a majority in number of the members having the right to attend and vote at any such meeting, being a majority together holding not less than 95 per cent in nominal value of the shares giving that right or, in the case of a company limited by guarantee, together representing not less than 95 per cent of the total voting rights at that meeting of all the members,

a resolution may be proposed and passed as a special resolution at a meeting of which less than 21 days' notice has been given, and subsection (9) shall not apply for the purposes of this subsection.

(5) In the case of a private company a resolution which is dated and signed by all members of the company, stating that it is passed as a special resolution shall be a special resolution passed on the said date, notwithstanding that it was so passed at a meeting of which less than 21 days' notice has been given, and subsection (9) shall not apply for the purposes of this subsection:

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

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

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

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

106. (1) Where by any provision in this Act or of the articles of association of a company special notice is required of a resolution, the resolution shall not be effective unless notice of the intention to move it has been given to the company not less than 28 days before the meeting at which it is moved, and the company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice thereof, either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the articles, not less than 21 days before the meeting:

Provided that if, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date 28 days or less after the notice has been given, the notice though not given within the time required by this subsection shall be deemed to have been properly given for the purposes thereof.

(2) If the status of any person in relation to a company will be affected by the terms of a resolution of which special notice has been given, the company shall send to or serve upon such person a copy of such resolution and of the notice of the meeting at

Resolutions
requiring
special notice

which it will be moved at the time when similar notice is given to the members of the company, and such person shall be entitled to speak on the resolution at the meeting before any vote is taken upon it.

(3) If default is made by a company in giving notice to its members or to any person whose status is affected as aforesaid, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding P100.

107.(1) Within 15 days from the passing of any special resolution, the Registrar, who shall, subject to the provisions of subsection (2), record the same and the special resolution shall be of no force or effect until so recorded.

Registration
and copies of
special
resolution

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

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

(4) Where articles have not been registered, a copy of every special resolution shall be transmitted to any member of the company at his request on payment of P1 or such less sum as the company may direct.

(5) If default is made in transmitting the copy of a special resolution to the Registrar, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding P4 for every day during which the offence continues.

(6) If default is made in complying with subsection (3) or subsection (4) the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding P2 for each copy of articles or special resolution in respect of which the default is made.

108. If a resolution is passed at an adjourned meeting of—

- (a) a company;
- (b) the holders of any class of shares in a company; or
- (c) the directors of a company,

Resolution
passed at
adjourned
meetings

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

- 109.** (1) Every company shall cause minutes of all proceedings of general meetings, all proceedings at meetings of its directors company or and, where there are managers, all proceedings meetings of its managers to be entered in books kept for that purpose.
- (2) Any such minute if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.
- (3) Where minutes have been made in accordance with the provisions of this section of the proceedings at any general meeting of the company or meeting of directors or managers, then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors, managers, secretaries or liquidators shall be deemed to be valid.
- (4) If default is made in complying with subsection (1) the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding P200.

Minutes of
proceedings
of meetings
of company
or directors
or managers

- 110.** (1) The books or copies of the books certified by a director or secretary containing the minutes of proceedings of any general meeting of a company shall be kept at the registered office of the company, and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge.

Inspection of
minute books

- (2) Any member shall be entitled to be furnished within 14 days after he has made a request in that behalf to the company with a copy of such minutes as aforesaid certified by the secretary or a director, as correct, at a charge not exceeding 20 thebe for every 100 words.
- (3) If any inspection required under this section is refused, or if any copy required under this section is not sent within the proper time, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding P4, and to a further fine not exceeding P4 for every day during which the offence continues.
- (4) In the case of any such refusal or default the court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings or direct that the copies required shall, subject to the payment of the appropriate sum, be sent to the persons requiring them.

Accounts and Audit

111. (1) Every company shall cause to be kept in the English language proper books of account with respect to —

- (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
- (b) all sales and purchases of goods by the company; and
- (c) the assets and liabilities of the company.

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

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

Provided that if books of account are kept at a place outside Botswana there shall be sent to, and kept at a place in Botswana, and be at all times open to inspection by the directors such accounts and returns with respect to the business dealt with in the books of account so kept as will disclose with reasonable accuracy the financial position of that business at intervals not exceeding 12 months and will enable to be prepared in accordance with this Act the company's balance sheet, its profit and loss account or income and expenditure account, and any document annexed to any of those documents giving information which is required by this Act and is thereby allowed to be so given.

(4) If any director of a company fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own wilful act been the cause of any default by the company thereunder, he shall, in respect of each default and subject to the provisions of section 119, be guilty of an offence and liable to a fine not exceeding P400.

112. (1) The directors of every company shall at some date not later than 18 months after the incorporation of the company, and subsequently once at least in every calendar year, lay before the company in general meeting a profit and loss account for the period, in the case of the first account, since the incorporation of the company, and, in any other case, since the preceding account, made up to a date not earlier than the date of the meeting by more than nine months; and every such account shall comply with the provisions of section 113:

Provided that the Registrar on cause shown to his satisfaction may, in the case of any company, extend by a period not

Keeping of
books of
account

Profit and
loss account
and balance
sheet and
financial year
of holding
company and
subsidiary

exceeding three months for either the period of 18 months or nine months aforesaid.

(2) The directors shall cause to be made out in every calendar year, and to be laid before the company in general meeting, a balance sheet as at the date to which the profit and loss account is made up.

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

(4) If any director of a company fails to take all reasonable steps to comply with the requirements of this section he shall, subject to the provisions of section 119, be guilty of an offence and liable to a fine not exceeding P400 or to imprisonment for a term not exceeding 12 months, or to both.

113. (1) Every balance sheet of the company shall give a true and fair view of the state of affairs of the company as at the end of its financial year, and every profit and loss account of a company shall give a true and fair view of the profit or loss of the company for the financial year.

(2) A company's balance sheet and profit and loss account shall comply with the requirements of the Sixth Schedule so far as applicable thereto.

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

(4) The Minister may, on the application or with the consent of a company's directors, modify in relation to that company any of the requirements of this Act as to the matters to be stated in a company's balance sheet or profit and loss account (except the requirements of subsection (1)) for the purpose of adapting them to the circumstances of the company.

(5) Subsections (1) and (2) shall not apply to a company's profit and loss account if—

- (a) the company has subsidiaries; and
- (b) the profit and loss account is framed as a consolidated profit and loss account dealing with all or any of the company's subsidiaries as well as the company and— (i) complies with the requirements of this Act relating to consolidated profit and loss accounts, and (ii) shows how much of the consolidated profit or loss for the financial year is dealt with in the accounts of the company.

(6) If a director of a company fails to take all reasonable steps to secure compliance by the company as respects any accounts required to be laid before the company in general meeting with

General provisions as to contents and form of accounts

the provisions of this section and with the other requirements of this Act as to the matters to be stated in accounts, he shall, subject to the provisions of section 119, be guilty of an offence and liable in respect of each offence to a fine not exceeding P400 or to imprisonment for a term not exceeding six months, or to both.

(7) For the purposes of this Act, except where the context otherwise requires—

- (a) any reference to a balance sheet or profit and loss account shall include any note thereon or document annexed thereto giving information which is required by this Act and is thereby allowed to be so given; and
- (b) any reference to a profit and loss account shall in the case of a company not trading for profit, be taken as including an income and expenditure account or any similar account which may be appropriate and references to profit or to loss and, if the company has subsidiaries, references to a consolidated profit and loss account shall be construed accordingly.

114. (1) A company shall, subject to the provisions of subsection (3), be deemed to be a subsidiary of another if but only if-

- (a) that other either—
 - (i) is a member of it and controls the composition of its board of directors, or
 - (ii) holds more than half in nominal value of its equity share capital; or
- (b) the first-mentioned company is a subsidiary of any company, which is that other's subsidiary:

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

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

- (a) that a person cannot be appointed thereto without the

Meaning of holding company, subsidiary, and wholly owned subsidiary

exercise in his favour by that other company of such power as aforesaid;

- (b) that a person's appointment thereto follows necessarily from his appointment as director of that other company; or
- (c) that the directorship is held by that other company itself or by a subsidiary of it.

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

- (a) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it;
- (b) subject to paragraphs (c) and (d), any shares held or power exercisable— (i) by any person as a nominee for that other except where that other is concerned only in a fiduciary capacity, or (ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity, shall be treated as held or exercisable by that other;
- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded;
- (d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by that other if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

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

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

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

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

(2) Notwithstanding anything in subsection (1)—

- (a) group accounts shall not be required where the company is at the end of its financial year the wholly-owned subsidiary of another company incorporated in Botswana;
- (b) group accounts need not deal with a subsidiary of the company if the company's directors are of the opinion that—
 - (i) it is impracticable, or would be of no real value to members of the company, in view of the insignificant amounts involved, or would entail expenses or delay out of proportion to the value to members of the company;
 - (ii) the result would be misleading, or harmful to the business of the company or any of its subsidiaries, or
 - (iii) the business of the holding company and that of the subsidiary are so different that they cannot reasonably be treated as a single undertaking; and
- (c) group accounts shall not be required if the directors are of an opinion described in paragraph (b) about each of the company's subsidiaries:

Provided that the auditor of the holding company shall in every case report on the decision of directors not to deal in group accounts with any subsidiary:

Provided further, that the approval of the Minister shall be required for not dealing in group accounts with a subsidiary on the ground that the result would be harmful or on the ground of the difference between the business of the holding company and that of the subsidiary.

(3) If any director of a company fails to take all reasonable steps to secure compliance as respects the company with the requirements of this section he shall, subject to the provisions of section 119, be guilty of an offence and liable to a fine not exceeding P400 or to imprisonment for a term not exceeding 12 months, or to both:

Provided that he shall not be sentenced to imprisonment unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

Obligation to
lay group
accounts
before
holding
company

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

- (a) a consolidated balance sheet dealing with the state of affairs of the company and all the subsidiaries to be dealt with in the group accounts;
- (b) a consolidated profit and loss account dealing with a profit or loss of the company and those subsidiaries.

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

- (a) of presenting the same or equivalent information about the state of affairs and profit or loss of the company and those subsidiaries; and
- (b) of so presenting it that it may be readily appreciated by the company's members,

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

(3) The group accounts may be wholly or partly incorporated in the company's own balance sheet and profit and loss accounts.

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

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

(6) Without prejudice to subsection (4), the group accounts, if prepared as consolidated accounts, shall comply with the requirements of the Sixth Schedule so far as applicable thereto, and if not so prepared shall give the same or equivalent information:

Provided that the Minister may, on the application or with the consent of a company's directors, modify the said requirements

Form and
contents of
group
accounts

in relation to that company for the purpose of adapting them to the circumstances of the company.

117. (1) The profit and loss account and, so far as not incorporated in the balance sheet or profit and loss account, any group accounts laid before a company in general meeting shall be annexed to the balance sheet and approved by the board of directors before the balance sheet is signed on its behalf, and the auditor's report shall be attached thereto, except in the case of a private company which in terms of section 121(8) is not required to appoint an auditor.

Accounts and
auditor's
report to be
annexed to
signed
balance sheet

(2) If any copy of a balance sheet is issued, circulated, or published without having a copy annexed thereto of the profit and loss account or any group accounts required by this section to be so annexed or without having attached thereto a copy of the auditor's report as required by this section, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding PI00.

(3) Every balance sheet of a company shall be signed on behalf of the board by two of the directors of the company, or, if there is only one director, by that director.

(4) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated or published, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding PI00.

118. (1) Except in the case of a private company there shall be attached to every balance sheet laid before a company in general meeting a report by the directors with respect to the state of the company's affairs, the amount, if any, already paid or declared or which they recommend should be paid by way of dividend and the amount, if any, which they propose to carry to reserves within the meaning of the Sixth Schedule, and if directors' remuneration is to be determined at the meeting the amount of remuneration recommended.

Director's
report to be
attached to
balance sheet

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

(3) If any director of a company fails to take all reasonable steps to comply with the provisions of subsection (1) he shall, subject to the provisions of section 119, be guilty of an offence

and liable to a fine not exceeding P400 or to imprisonment for a term not exceeding 12 months, or to both:

Provided that he shall not be sentenced to imprisonment unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

119. In any proceedings against a person under section 111(4), 112(4), 113(6), 115(3) or 118(3) for failing to take all reasonable steps to comply or secure compliance by a company with the requirements referred to in the subsection under which he is so charged, it shall be a defence for him to prove that he had reasonable grounds to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that the requirements or provisions referred to in that subsection were complied with and was in a position to discharge that duty.

Defense to
certain
charges

120. (1) Except in the case of a private company, a copy of every balance sheet, including every document required by this Act to be annexed thereto, which is to be laid before the company in general meeting, together with group accounts, if any, prepared under sections 115 and 116 and a copy of the auditor's report shall, not less than 14 days before the date of the meeting, be sent to all persons entitled to receive notices of general meetings of the company.

Right to
receive copy
of balance
sheet and
auditor's
report

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

(3) If default is made in complying with the provisions of subsection (1), the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding P100, and if, when any person makes a demand for any document to which he is by virtue of subsection (2) entitled to be furnished, default is made in complying with the demand within 14 days "after the making thereof, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding P10 for every day during which the offence continues.

121. (1) The first auditor of a company shall be appointed by the directors within 30 days of the issue of the certificate that the company is entitled to commence business in the case of a company to which section 86 applies, and in the case of other companies within 30 days of the issue of the certificate of

Appointment
and
remuneration
of auditor's

incorporation; and an auditor so appointed shall hold office until the conclusion of the first annual general meeting: Provided that—

(i) subject to the provisions of section 122 the company may at a general meeting remove any such auditor and appoint in his place any other person who has by special notice been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than 14 days before the date of the meeting, (ii) if the directors fail to exercise their powers under this subsection, the company in general meeting may appoint the first auditor, and thereupon the said powers of the directors shall cease, and (iii) if neither the directors nor the company appoint an auditor under this subsection, the Minister may on the application of any member do so.

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

(3) Where at an annual general meeting no auditor is appointed or re-appointed, the Minister may appoint a person to fill the vacancy.

(4) The company shall, within one week of the Minister's power under subsection (3) becoming exercisable, give him notice of that fact, and, if a company fails to give notice as required by this subsection, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding P10 for every day during which the offence continues.

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

(6) The remuneration of the auditor of a company—

(a) in the case of an auditor not appointed by the Minister, shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine;

(b) in the case of an auditor appointed by the Minister, shall be fixed by the Minister.

(7) For the purposes of subsection (6), any sums paid by the company in respect of the auditor's expenses shall be deemed to be included in the expression "remuneration".

(8) Notwithstanding anything to the contrary contained in this section, a private company shall not be required to appoint an auditor if, but only if—

- (a) the number of shareholders in such company does not exceed 10;
- (b) none of the shareholders in such company is a company; and
- (c) all the shareholders in such company agree that an auditor shall not be appointed.

122. (1) Special notice shall be required for a resolution at a company's annual general meeting appointing as auditor a person other than a retiring auditor or providing expressly that a retiring auditor shall not be re-appointed.

Special notice
required of
resolution to
appoint or
remove
auditor

(2) On receipt of notice of such an intended resolution as aforesaid, the company shall forthwith send a copy thereof to the retiring auditor (if any).

(3) Where notice is given of such an intended resolution as aforesaid and the retiring auditor makes with respect to the intended resolution representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so—

- (a) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and
- (b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company),

and if a copy of the representations is not sent as aforesaid because it was received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting:

Provided that copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on an application under this section to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

(4) Subsection (3) shall apply to a resolution to remove the first auditors by virtue of section 121(1) as it applies in relation to a resolution that a retiring auditor shall not be re-appointed.

123. (1) A person shall not be qualified to be appointed as an auditor of a company unless either— (a) he is a member of a body of accountants—

- (i) established by an enactment in any part of the Commonwealth,
- (ii) established by an enactment in any country outside the Commonwealth designated by the Minister, by order published in the Gazette, for the purposes of this paragraph, or
- (iii) established in the United Kingdom and for the time being recognized by the Ministry of Commerce and Industry for the purposes of the qualification of auditors of companies incorporated in the United Kingdom; or

(b) he is for the time being authorized by the Minister to be so appointed as having adequate alternative qualifications or as having obtained adequate knowledge and experience in the course of employment under articles.

(2) None of the following persons shall be qualified for appointment as auditors of a company—

- (a) an officer or servant of the company;
- (b) a person who is a partner of an officer or servant of the company;
- (c) a person who is an employer or an employee of an officer or servant of the company;
- (d) a body corporate;
- (e) a person who is an officer or servant of a body corporate which is an officer of the company; (f) a person who by himself, or his partner, or his employee, regularly performs the duties of secretary or book-keeper to the company.

(3) Reference in subsection (2) to an officer or servant shall be construed as not including reference to an auditor.

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

(5) Any person who acts as auditor of a company when disqualified in terms of this section shall be guilty of an offence and liable to a fine not exceeding P200.

124. (1) The auditor shall make a report to the members on the accounts examined by him, and on every balance sheet, every profit and loss account and all group accounts laid before the company in general meeting during his tenure of office, and the report shall contain statements as to the following matters—

Disqualification for appointment as auditor

Contents of auditor's report

- (a) whether he has examined or satisfied himself of the existence of the securities and examined the books and accounts and vouchers of the company;
 - (b) whether he has obtained all the information and explanations, which to the best of his knowledge and belief were necessary for the purposes of his audit;
 - (c) whether, in his opinion, proper books of account have been kept by the company, so far as appears from his examination of those books, and proper returns adequate for the purposes of his audit have been received from branches not visited by him;
 - (d) (i) whether the company's balance sheet and profit and loss account dealt with by the report are in agreement with the books of accounts and returns,
 - (ii) whether, in his opinion and to the best of his information and according to the explanations given to him, the said accounts give the information required by this Act in the manner so required and give a true and fair view, in the case of the balance sheet, of the state of the company's affairs as at the end of its financial year, and in the case of the profit and loss account, of the profit or loss for its financial year, or, as the case may be, give a true and fair view thereof subject to the non-disclosure of any matters (to be indicated in the report) which by virtue of Part III of the Sixth Schedule are not required to be disclosed;
 - (e) in the case of a holding company submitting group accounts whether, in his opinion, the group accounts have been properly prepared in accordance with the provisions of this Act so as to give a true and fair view of the state of affairs and profit or loss of the company and its subsidiaries dealt with thereby, so far as concerns members of the company, or, as the case may be, so as to give a true and fair view thereof subject to the non-disclosure of any matters (to be indicated in the report) which by virtue of Part III of the Sixth Schedule are not required to be disclosed.
- (2) In the event of the auditor being unable to make such report, or to make it without qualification, he shall inscribe upon or attach to the balance sheet a statement of that fact or of the nature of the qualification, as the case may be, and he shall set forth therein the facts or circumstances which prevent him from making the report or from making it without qualification.
- (3) The auditor's report or any statement under subsection (2) shall, unless all the members present agree to the contrary, be read before the company in general meeting, and shall, in any event, be open to inspection by any member.

125. (1) Every auditor of a company shall have a right of access at all times to the books, accounts, vouchers and securities of the company, and shall be entitled to require from the officers of the company such information and explanation as he thinks necessary.

Auditor's
right of
access to
books and to
attend general
meetings

(2) Every auditor of a holding company shall have a right of access to all current and former accounts of any company subsidiary thereto and shall be entitled to require from the officers of the holding or subsidiary company all such information and explanation in connexion therewith as he may deem necessary.

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

126. References in this Act to a document annexed or required to be annexed to a company's accounts or any of them shall not include the directors report or the auditors report: Provided that any information [which is required by this Act to be given in accounts, and is thereby allowed to be given in a statement annexed, may be given in the directors' report instead of in the accounts, and, if any such information is so given, the report shall be annexed to the accounts and this Act shall apply in relation thereto accordingly, except that the auditor shall report thereon only so far as it gives the said information.

Construction
of references
to documents
annexed to
accounts

Inspection

127. (1) The Minister may appoint one or more inspectors to investigate the affairs of a company and to report thereon in such manner as he may direct—

(a) in the case of a company limited by shares, on the application either of not less than 100 members or of members holding not less than one-twentieth of the issued shares of such company;

(b) in the case of a company limited by guarantee, on the application of not less than one-tenth in number of the persons on the company's register of members. (2) The application shall be supported by such evidence as the Minister may require for the purpose of showing that the applicants have good reason for requiring the investigation, and the Minister may, before appointing an inspector, require the applicants to give satisfactory security in an amount not exceeding P400 for payment of the costs of the investigation.

Investigation
of company's
affair on
application of
members

128. Without prejudice to his powers under section 127 the Minister—

(a) shall appoint one or more inspectors to investigate the affairs of a company and to report thereon in such manner as he directs if—

- (i) the company by special resolution, or
- (ii) the court by order,

declares that its affairs ought to be investigated by an inspector appointed by him; and (b) may do so, if it appears to him that there are circumstances suggesting—

- (i) that its business is being conducted with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose or in a manner oppressive of any part of its members or that it was formed for any fraudulent or unlawful purpose,
- (ii) that persons concerned with its formation or the management of its affairs have in connexion therewith been guilty of fraud or other misconduct towards it or towards its members, or
- (iii) that its members have not given all the information with respect to its affairs which they might reasonably expect.

129. If an inspector appointed under either section 127 or 128 to investigate the affairs of a company thinks it necessary for that purpose to investigate also the affairs of any other body corporate which is or has at any relevant time been the company's subsidiary or holding company or a subsidiary of its holding company or a holding company of its subsidiary, he shall, with the sanction of the Minister, have power to do so, and shall report on the affairs of the other body corporate so far as he thinks the results of his investigation thereof are relevant to the investigation of the affairs of the first-mentioned company.

130. (1) It shall be the duty of all officers and agents of the company and of all officers and agents of any other body corporate whose affairs are investigated by virtue of section 127, 128, 129 or 134, as the case may be, to produce to the inspector all books and documents of or relating to the company or, as the case may be, the other body corporate which are in their custody or power and otherwise to give to the inspector all assistance in connexion with the investigation which they are reasonably able to give.

Investigation
of company's
affairs in
other cases

Power of
inspectors to
investigate
related
companies

Production of
documents
and evidence
on
investigation

(2) The inspector may examine on oath the officers and agents of the company or other body corporate in relation to its business and may administer an oath accordingly.

(3) If any officer or agent of the company or other body corporate refuses to produce to the inspector any book or document which it is his duty under this section so to produce, or refuses on any ground other than that the answer may tend to incriminate him, to answer any question which is put to him by the inspector with respect to the affairs of the company or other body corporate, as the case "may be, the inspector may certify the refusal under his hand to the court, and the court may thereupon inquire into the case, and after hearing any witness who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, convict and punish the offender in like manner as if he had been guilty of contempt of the court.

(4) If an inspector thinks it necessary for the purpose of his investigation that a person whom he has no power to examine on oath, should be so examined, he may apply to the court and the court may if it sees fit order that person to attend and be examined on oath before it on any matter relevant to the investigation, and on any such examination—

- («) the inspector may take part therein either personally or by attorney or counsel;
- (b) the court may put such questions to the person examined as the court thinks fit;
- (c) the person examined may at his own cost employ an attorney with or without counsel who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him:

Provided that the court may allow the person examined such costs as in its discretion it may think fit, and any costs so allowed shall be paid as part of the expense of the investigation.

(5) Notes of any examination made in terms of this section shall be taken down in writing, shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him.

(6) In this section any reference to officers or to agents shall include past as well as present officers or agents, as the case may be, and for the purposes of this section the expression "agents" in relation to a company or other body corporate shall include the bankers and attorneys of the company or other body corporate and any persons employed by the company or other body corporate as auditors, whether those persons are or are not officers of the company or other body corporate.

131. (1) The inspector may and, if so directed by the Minister, shall, make interim reports to the Minister, and on the conclusion of the investigation shall make a final report to the Minister.

Inspector's
report

(2) The Minister shall—

- (a) send a copy of any report made by the inspector to the registered office of the company;
- (b) where the inspector is appointed under section 127, furnish each applicant for the investigation, on request, with a copy of the report; and
- (c) where the inspector is appointed under section 128 in pursuance of an order of court, furnish a copy to the court; and may—
 - (d) furnish a copy thereof on request and on payment of the prescribed fee, to any person who is a member of the company or of any other body corporate dealt with in the report by virtue of section 129 or whose interests as a creditor of the company or of any such other body corporate as aforesaid appear to the Minister to be affected;
 - (e) cause the report to be printed and published.

132. (1) If from any report made under section 131 it appears to the Minister that any person has, in relation to the company or any other body corporate whose affairs have been investigated by virtue of section 129, been guilty of an offence for which he is criminally liable, the Minister shall refer the matter to the Attorney-General.

Proceedings
on inspector's
report

(2) If, in the case of a body corporate liable to be wound up under this Act, it appears to the Minister from any such report as aforesaid, that it is expedient to do so by reason of any such circumstances as are referred to in section 128(b)(i) or (ii) the Minister may, unless the body corporate is already being wound up by the court, present a petition for it to be so wound up if the court thinks it just and equitable that it should be wound up or a petition for an order and under section 164, or both.

(3) If from any such report as aforesaid it appears to the Minister that proceedings ought in the public interest to be brought by any body corporate dealt with by the report for the recovery of damages in respect of any fraud or other misconduct in connexion with the promotion or formation of that body corporate or the management of its affairs, or for the recovery of any property of the body corporate which has been misapplied or wrongfully retained, the Minister may himself bring the proceedings for that purpose in the name of the body corporate.

(4) The Minister shall indemnify the body corporate against any costs or expenses incurred by it or in connexion with any proceedings brought by virtue of subsection (3).

133. (1) The expenses of and incidental to an investigation by an inspector appointed by the Minister under this Act shall be defrayed in the first instance by the Minister from public funds, but the following persons shall, to the extent mentioned, be liable to repay the Minister—

Expenses of investigation of company's affairs

- (a) any person who is convicted on a prosecution instituted as a result of the investigation, or who is ordered to pay damages or restore any property in proceedings brought by virtue of section 132(3), may in the same proceedings be ordered to pay the said expenses to such extent as may be specified in the order;
- (b) any body corporate in whose name proceedings are brought as aforesaid shall be liable to the amount or value of any sums or property recovered by it as a result of those proceedings; and
- (c) unless as a result of the investigation a prosecution is instituted—
 - (i) any body corporate dealt with by the report, where the inspector was appointed otherwise than of the Minister's own motion, shall be liable, except so far as the Minister may otherwise direct, and
 - (ii) the applicants for the investigation, where the inspector was appointed under section 127, shall be liable to such extent (if any) as the Minister may direct, and any amount for which a body corporate is liable by virtue of paragraph (b) shall be a first charge on the sums or property mentioned in that paragraph.

(2) The report of an inspector appointed otherwise than of the Minister's own motion may, if he thinks fit, and shall, if the Minister so directs, include a recommendation as to the directions, if any, which he thinks appropriate, in the light of his investigation, to be given under subsection (1)(c).

(3) For the purposes of this section, any costs or expenses incurred by the Minister in or in connexion with proceedings brought by virtue of section 132(3) (including expenses incurred by virtue of section 132(4) thereof) shall be treated as expenses of the investigation giving rise to the proceedings.

(4) Any liability to repay the Minister imposed by subsection (1)(a) and (b) shall, subject to satisfaction of the Minister's right to repayment, be a liability also to indemnify all persons against liability under subsection (1)(c), and any such liability imposed by the said paragraph (a) shall, subject as aforesaid, be a liability also to indemnify all persons against liability under the

said paragraph (b); and any person liable under the said paragraph (a) or (b) or either subparagraph of the said paragraph (c) shall be entitled to contribution from any other person liable under the same paragraph or subparagraph, as the case may be, according to the amount of their respective liabilities thereunder.

134. (1) The Minister may, with or without an application by members of the company, appoint one or more inspectors to investigate and report on the membership of any company and otherwise with respect to the company for the purpose of determining the true persons who are or have been financially interested in the success or failure of the company or able to control or materially to influence the policy of the company and may determine the limits, conditions and methods of such investigation.

Appointment
and powers
of inspectors
to investigate
ownership of
company

(2) The expenses of any investigation under this section shall be defrayed by the Minister out of public funds.

135. (1) Where it appears to the Minister that there is good reason to investigate the ownership of any shares in or debentures of a company and that it is unnecessary to appoint an inspector for the purpose, he may require any person whom he has reasonable cause to believe—

Power to
require
information
as to persons
interested in
shares or
debentures

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

to give him any information which he has or can reasonably be expected to obtain as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures.

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

(3) Any person who fails to give any information required of him under this section, or who in giving any such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be guilty of an offence and liable to a fine not exceeding P1000 or to imprisonment for a term not exceeding two years, or to both.

136. (1) Where in connexion with an investigation under section 134 or 135 it appears to the Minister that there is difficulty in finding out the relevant facts about any shares (whether issued or to be issued) and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned or any of them to assist the investigation as required by this Act, he may by order direct that the shares shall until further ordered be subject to the restrictions imposed by this section.

Power to
impose
restrictions
on shares or
debentures

(2) So long as any shares are directed to be subject to the restrictions imposed by this section—

- (a) any transfer of those shares, or in the case of unissued shares any transfer of the right to be issued therewith and any issue thereof, shall be void;
- (b) no voting rights shall be exercisable in respect of those shares;
- (c) no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder thereof;
- (d) except in a liquidation, no payment shall be made of any sums due from the company on those shares, whether in respect of capital or otherwise.

(3) Where the Minister makes an order directing that shares shall be subject to the said restrictions, or refuses to make an order directing that shares shall cease to be subject thereto, any person aggrieved thereby may apply to the court, and the court may, if it sees fit, direct that the shares shall cease to be subject to the said restrictions and may make such order as to costs as it deems fit.

(4) Any order (whether of the Minister or of the court) directing that shares shall cease to be subject to the said restrictions which is expressed to be made with a view to permitting a transfer of those shares may continue the restrictions mentioned in subsection (2)(c) and (d) either in whole or in part, so far as they relate to any right acquired or offer made before the transfer.

(5) Any person who—

- (a) exercises or purports to exercise any right to dispose of any shares which, to his knowledge, are for the time being subject to the said restrictions or of any right to be issued with any such shares;
- (b) votes in respect of any such shares, whether as holder or proxy, or appoints a proxy to vote in respect thereof; or
- (c) being the holder of any such shares, fails to notify of their being subject to the said restrictions any person whom he does not know to be aware of that fact but does know to be entitled, apart from the said restrictions, to vote in respect of those shares whether as holder or proxy,

shall be guilty of an offence and liable to a fine not exceeding P1000 or to imprisonment for a term not exceeding two years, or to both.

(6) Where shares in any company are issued in contravention of the said restrictions, the company shall be guilty of an offence and liable to a fine not exceeding P1000.

(7) This section shall apply in relation to debentures as it applies in relation to shares.

137. Nothing in this Act shall require disclosure to the Minister or to an inspector appointed by him—

(a) by an attorney of any privileged communication made to him in that capacity, except as respects the name and address of his client; or

(b) by a company's bankers as such of any information as to the affairs of any of their customers other than the company.

Saving for
attorneys and
bankers

138. A copy of any report of any inspector appointed under this act shall be admissible in any legal proceedings as evidence of the opinion of the inspector in relation to any matter contained in the report.

Inspectors
report to be
evidence

Directors and other Officers

139. (1) Every company not being a private company shall have at least two directors and every private company at least one director, and every company shall have a secretary.

(2) The sole director of a company shall not also be secretary nor shall any company have as secretary to the company a corporation the sole director of which is a sole director of the company.

(3) Every subscriber to a memorandum of association of a private company shall, until other directors are appointed, be deemed to be a director of the company and be liable for all the duties and obligations of a director.

(4) Any provision requiring or authorizing a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as or in place of the secretary.

Directors and
secretary

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

Validity of
acts of
directors

141. (1) This section shall not apply to—

- (a) an association licensed under section 2, I;
- (b) a private company;
- (c) a company which was a private company before becoming a public company; or
- (d) a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company was entitled to commence business.

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

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

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

(4) When application is made under section 17 for registration of the memorandum and of the articles, if any, of a company the applicant shall lodge with the Registrar a list, in the prescribed form, of the persons, if any, not being less than two, with their full names, addresses and occupations, who have consented to be directors of the company and, upon such registration, the persons who have so consented shall, until other directors are appointed, be deemed to be the directors of the company and liable for all the duties and obligations of a director.

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

142. (1) Without prejudice to the restrictions imposed by section 141, it shall be the duty of every director who is by the articles of the company required to hold a specified share qualification and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the articles.

Share
qualifications
of directors

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

(3) A person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his qualification.

(4) If after the expiration of the said period or shorter time any unqualified person acts as a director of the company, he shall be guilty of an offence and liable to a fine not exceeding P10 for every day between the expiration of the said period or shorter time, or the day on which he ceased to be qualified, as the case may be, and the last day on which it is proved that he acted as a director.

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

Disqualificati
on for
appointment
as director

- (a) a body corporate;
- (b) a minor or any other person under legal disability, provided that a woman married in community of property may be a director if her husband gives his written consent and that consent is lodged with the Registrar;
- (c) except with the leave of the court, an unrehabilitated insolvent;
- (d) except with the leave of the court, any person who has at any time been convicted (whether in Botswana or elsewhere) of theft, fraud, forgery or uttering a forged document, or perjury and has been sentenced therefor to serve a term of imprisonment without the option of a fine, or to a fine exceeding P100;
- (e) any person who is subject to any order under this Act disqualifying him as director;
- (f) except with the leave of the court, any person removed by a competent court from an office of trust on account of misconduct.

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

- (a) his estate is sequestrated as insolvent;
- (b) he is convicted (whether in Botswana or elsewhere) of

theft, fraud, forgery or uttering a forged document, or perjury and has been sentenced therefor to serve a term of imprisonment without the option of a fine, or to a fine exceeding PI00; or

(c) he is removed by the court from any office of trust on account of misconduct.

(3) If any person who is disqualified under this section from being or continuing to be a director of any company directly or indirectly takes part in or is concerned in the management of any company, he shall be guilty of an offence and liable to a fine not exceeding PI 000 or to imprisonment for a term not exceeding two years, or to both.

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

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

Appointment
of directors to
be voted on
individually

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

Provided that— (i) this subsection shall not be taken as excluding the

operation of section 140, and

(ii) where a resolution so moved is passed, no provision for the automatic re-appointment of retiring directors in default of another appointment shall apply.

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

145. (1) A company may by ordinary resolution of which special notice has been given remove a director before the expiration of his period of office notwithstanding anything in its articles or in any agreement between it and him:

Removal of
directors

Provided that this subsection shall not, in the case of a private company, authorize the removal of a director holding office for life whether or not he is subject to retirement under an age limit by virtue of the articles or otherwise.

(2) Where the director concerned makes with respect to the intended resolution representations in writing to the company, not exceeding 1000 words, and requests their notification to

members of the company, the company shall, unless the representations are received by it too late for it to do so—

- (a) in any notice of the resolution given to members of the company state the fact of the representations having been made; and
- (b) send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent, and if a copy of the representations is not sent as aforesaid, because it was received too late or because of the company's default, the director may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting:

Provided that copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on an application under this section to be paid in whole or in part by the director notwithstanding that he is not a party to the application.

(3) A vacancy created by the removal of a director under this section if not filled at the meeting at which he is removed, may be filled as a casual vacancy.

(4) A person appointed director in place of a person removed under this section shall be treated, for the purposes of determining the time at which he or any other director is to retire, as if he had become director on the day on which the person in whose place he is appointed was last appointed a director.

(5) Nothing in this section shall be taken as depriving a person removed thereunder of compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director or as derogating from any power to remove a director which may exist apart from this section.

146. (1) It shall not be lawful for a company to pay a director remuneration (whether as director or otherwise) free of any taxation in respect of income, or otherwise calculated by reference to or varying with the amount of such taxation, or with the rate of taxation on incomes.

(2) Any provision contained in a company's articles, or in any contract, or in any resolution of a company or a company's directors, for payment to a director of remuneration shall have effect as if it provided for payment, as a gross sum subject to taxation, of the net sum for which it actually provides.

Prohibition of
tax-free
payments to
directors

147. (1) It shall not be lawful for a company to make a loan either of money or any other property to any person who is its director or a director of its holding company, or to enter into any guarantee or provide any security in connexion with a loan made to such a person as aforesaid by any other person:

Prohibition of
loans to
directors

Provided that nothing in this section shall apply either— (i) to anything done by a private company with the consent of all the members,

- (ii) subject to the provisions of subsection (2), to anything done to provide any such person as aforesaid with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company, or
- (iii) in the case of a company whose ordinary business includes the lending of money or the giving of guarantees in connexion with loans made by other persons, to anything done by the company in the ordinary course of that business.

(2) Proviso (ii) to subsection (1) shall not authorize the making of any loan, or the entering into any guarantee, or the provision of any security, except either—

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

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

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

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

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

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

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

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

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

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

(2) If-

- (a) any such director fails to take reasonable steps as aforesaid; or

(b) any person who has been properly required by any such director to include the said particulars in or send them with any such notice as aforesaid fails to do so, such director or such person, as the case may be, shall be guilty of an offence and liable to a fine not exceeding PI 00.

(3) If-

- (a) the requirements of subsection (1) are not complied with in relation to any such payment as is therein mentioned; or
- (b) the making of the proposed payment is not, before the transfer of any shares in pursuance of the offer,

Duty of director to disclose payments for loss of office etc. made in connexion with transfer of shares in company

approved by a meeting summoned for the purpose of the holders of the shares to which the offer relates and of other holders of shares of the same class as any of the said shares,

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

(4) Where the shareholders referred to in subsection (3) (b) are not all members of the company and no provision is made by the articles for summoning or regulating such a meeting as is mentioned in that paragraph, the provisions of this Act and of the company's articles relating to general meetings of the company shall, for that purpose, apply to the meeting either without modification or with such modifications as the Minister on the application of any person concerned may direct for the purpose of adapting them to the circumstances of the meeting.

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

151.(1) Where in proceedings for the recovery of any payment as having by virtue of section 149(1) and (2) or section 150(1) and (3), been received by any person in trust it is shown that—

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

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

(2) If in connexion with any such transfer as is mentioned in either section 149 or 150—

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

Provisions
supplementary
to sections
148, 149 and
150

deemed to have been a payment made to him by way of compensation for loss of office or as consideration for or in connexion with his retirement from office.

(3) References in section 148, 149 or 150 to payments made to any director of a company by way of compensation for loss of office, or as consideration for or in connexion with his retirement from office, do not include any *bona fide* payment by way of damages for breach of contract or by way of pension in respect of past services, and for the purposes of this subsection the expression "pension" includes any superannuation allowance, superannuation gratuity or similar payment.

(4) Nothing in section 149 or 150 shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any such payments as are therein mentioned or with respect to any other like payments made or to be made to the directors of a company.

152. (1) Every company shall keep a register showing as respects each director of the company the number, description and amount of any shares in or debentures of the company or any other body corporate, being the company's subsidiary or holding company, or a subsidiary of the company's holding company, which are held by or in trust for him or of which he has any right to become the holder (whether on payment or not):

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

(2) Where any shares or debentures fall to be or cease to be recorded in the said register in relation to any director by reason of a transaction entered into after the commencement of this Act and while he is a director, the register shall also show the date of, and price or other consideration for, the transaction:

Provided that where there is an interval between the agreement for any such transaction and the completion thereof, the date shall be that of the agreement.

(3) The nature and extent of a director's interest or right in or over any shares or debentures recorded in relation to him in the said register shall, if he so requires, be indicated in the register.

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

(5) The said register shall, subject to the provisions of this section, be kept at the company's registered office and shall be open to inspection during business hours (subject to such reasonable restrictions as the company may by its articles or in

Register of
director's
share
holdings, etc

general meeting impose, so that not less than two hours in each day be allowed for inspection) as follows—

(a) during the period beginning 14 days before the date of the company's annual general meeting and ending three days after the date of its conclusion, it shall be open to the inspection of any member or holder of debentures of the company; and

(b) during that or any other period it shall be open to the inspection of any person acting on behalf of the Minister.

(6) In computing the 14 days and the three days mentioned in subsection (5) any day which is a Saturday or Sunday or public holiday shall be disregarded.

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

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

(9) If default is made in complying with subsection (1) or (2) the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding P1000.

(10) If default is made in complying with subsection (5) or (8) the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding P100, and the court, including the court convicting, may by order compel an immediate inspection of the register.

(11) For the purposes of this section—

(a) any person in accordance with whose directions or instruction the directors of a company are accustomed to act shall be deemed to be a director of the company; and

(b) a director of a company shall be deemed to hold, or to have an interest or right in or over, any shares or debentures if a body corporate other than the company holds them or has that interest or right in or over them, and either— (i) that body corporate or its directors are accustomed

to act in accordance with his directions or instructions, or (ii) he is entitled to exercise or control the exercise of

one-third or more of the voting power at any general meeting of that body corporate.

(12) It shall be the duty of every director of a company, and, of every person deemed to be a director under subsection (11) (a) to give notice to the company of such matters relating to himself as may be necessary for the purposes of this section.

(13) Any such notice shall be in writing and if it is not given at a meeting of directors the person giving it shall take reasonable steps to secure that it is brought up and read at the next meeting of directors after it is given.

(14) Any person who makes default in complying with the provisions of subsections (12) and (13) shall be guilty of an offence and liable to a fine not exceeding PI000 or to imprisonment for a term not exceeding two years, or to both.

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

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

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

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

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

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

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

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

Particulars of accounts of directors' salaries, pensions, etc.

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

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

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

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

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

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

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

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

(a) shall include all relevant sums paid by or receivable from—

(i) the company,

(ii) the company's subsidiaries, and (iii)

any other person,

except sums to be accounted for to the company or any of its subsidiaries or, by virtue of section 50, to past or present members of the company or any of its subsidiaries or any class of those members; and

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

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

(a) any sums are not shown in the accounts for the relevant financial year on the ground that the person receiving them is liable to account therefor as mentioned in subsection (5)(a), but the liability is thereafter wholly or partly released or is not enforced within a period of two years; or

(b) any sums paid by way of expenses' allowance are included in the recipient's taxable income after the end of the relevant financial year,

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

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

(8) If in the case of any accounts the requirements of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include

in their report thereon, so far as they are reasonably able to do so, a statement giving the required particulars.

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

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

(10) It shall be the duty of every director of a company and of every person who has at any time during the preceding two years been a director to give notice to the company of such matters relating to himself as may be necessary for the purposes of this section; and if he makes default in complying with such duty he shall be guilty of an offence and liable to a fine not exceeding P100.

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

- (a) the amount of any loans which during the period to which the accounts relate have been made either by the company or by any subsidiary company or by any other person under a guarantee from or on a security provided by the company or a subsidiary thereof to any director or other officer of the company, including any such loans which were repaid during the said period;
- (b) the amount of any loans made in the manner aforesaid to any director or officer at any time before the period aforesaid and outstanding at the expiration thereof. (2) The provisions of subsection (1) with respect to loans shall not apply—
 - (a) in the case of a company or a subsidiary thereof the ordinary business of which includes the lending of money, to a loan made by the company or the subsidiary in the ordinary course of its business; or
 - (b) to a loan made by the company or the subsidiary to any employee of the company if the loan does not exceed P4000, and is certified by the directors of the company or the subsidiary, as the case may be, to have been made in

Particulars of
accounts of
loans to
officers etc.

accordance with any scheme adopted by the company or the subsidiary with respect to loans to its employees.

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

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

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

(6) It shall be the duty of every director and of every other officer of a company and of every person who had at any time within the previous two years been a director or officer to give notice to the company of any such matters relating to himself as may be necessary for the purposes of this section; and if he makes default in complying with such duty he shall be guilty of an offence and liable to a fine not exceeding PI00.

156. (1) Subject to the provisions of this section, it shall be the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company to declare the nature and full extent of his interest at a meeting of the directors of the company.

(2) In the case of a proposed contract the declaration required by this section to be made by a director shall be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration, or if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he became so interested, and in a case where the director becomes interested in a contract after it is made, the said declaration shall be made at the first meeting of the directors held after the directors become so interested.

(3) For the purposes of this section, a general notice given to the directors of a company by a director to the effect that he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm shall be deemed to be a sufficient declaration of interest in relation to any contract so made:

Disclosure by
directors of
interest in
contracts

Provided that no such notice shall be of effect unless either it is given at a meeting of the directors or the director takes reasonable steps to secure that it is brought up and read at the next meeting of the directors after it is given.

(4) Any director who fails to comply with the provisions of this section shall be guilty of an offence and liable to a fine not exceeding P200.

(5) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting directors of a company from having any interest in contracts with the company.

157. (1) Every company shall keep at its registered office a register of its directors and secretaries, containing with respect to each of them the following particulars—

Register of
directors and
secretaries

(a) in the case of an individual, his present forenames and surname, and if he has changed his name or names, his former forenames and surname and when and where the change took place, his nationality, his usual residential address, his business occupation, if any, and particulars of any other directorships; and

(b) in the case of a body corporate, its corporate name and registered or principal office.

(2) The company shall, within the periods respectively mentioned in subsection (3), send to the Registrar a return in duplicate in the prescribed form, if any, containing the particulars specified in the said register and a notification of any change among its directors or secretaries or in any of the particulars contained in the register and of the date of any such change.

(3) The period within which the said return is to be sent shall be 21 days from the appointment of the first directors of the company, and the period in which the said notification of a change is to be sent shall be 14 days from the happening thereof.

(4) The register to be kept under this section shall, during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection), be open to the inspection of any member of the company without charge, and of any other person on payment of 20 thebe, or such less sum as the company may prescribe, for each inspection.

(4) If any inspection required under this section is refused, or if default is made in complying with subsection (1) or (2) the company which is in default shall be guilty of an offence and liable to a fine not exceeding P10 for every day during which the offence continues, and in the case of any such refusal the court, including the court convicting, may by order compel an immediate inspection of the register.

158. (1) Every company shall in all trade catalogues, trade circulars, and business letters on or in which the company's name appears and which are issued or sent by the company to any person as part of the Commonwealth, state in legible

Particulars of directors in trade catalogues, circulars, etc

characters with respect to every director his present forenames or the initials thereof, his present surname, and his nationality if he is not a citizen of Botswana:

Provided that the Minister may by order grant exemption from the provisions of this subsection subject to such conditions as he may prescribe in the order to any company.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding P100.

Avoidance of Provisions in Articles or Contracts Relieving Officers from Liability

159. Subject as hereinafter provided, any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any officer of the company, or any person employed by the company as auditor, from, or, indemnifying him against any liability which by law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void: Provided that—

Provision as to liability of officers and auditors

(i) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force; and (ii) notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid, indemnify any such officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connexion with any application under section 304 in which relief is granted to him by the court.

Arrangements and Reconstruction

160. (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or and members between a company and its members or any class of them, the court may, on the application of the company or of any creditor or member of the company, or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or

Power to compromise with creditors and members

class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the court directs.

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members, as the case may be, present and voting either in person or by a duly authorized agent or proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the court, be binding on all the creditors or class of creditors, or on the members or class of members, as the case may be, and also on the company, or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) An order made under subsection (2) shall have no effect until a copy of the order certified by the Registrar of the court has been delivered to the Registrar for registration, and a copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made.

(4) If a company makes default in complying with subsection (3), the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding P2 for each copy in respect of which default is made.

(5) In this section the expression "company" means any company or external company liable to be wound up under this Act and the expression "arrangement" includes a reorganization of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods.

161. (1) Where a meeting of creditors or any class of creditors or of members or any class of members is summoned under Section 160 there shall—

- (a) with every notice summoning the meeting which is sent to a creditor or member, be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors of the company, whether as directors or as members or as creditors of the company or otherwise, and the effect thereon of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons; and
- (b) in every notice summoning the meeting which is given by advertisement, be included either such a statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend

Information
as to
compromise
with creditors
and members

the meeting may obtain one copy each of such a statement as aforesaid.

(2) Where the compromise or arrangement affects the rights of debenture holders of the company, the said statement shall give the like explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company's directors.

(3) Where a notice given by advertisement includes a notification that copies of a statement explaining the effect of the compromise or arrangement proposed can be obtained by creditors or members entitled to attend the meeting, every such creditor or member shall, on making application in the manner indicated by the notice, be furnished by the company free of charge with a copy of the statement.

(4) Where a company makes default in complying with any requirement of this section, every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding PI000, and for the purpose of this subsection any liquidator of the company and any trustee of a deed for securing the issue of debentures of the company shall be deemed to be an officer of the company:

Provided that a person shall not be liable under this subsection if that person shows that the default was due to the refusal of any other person, being a director or trustee for debenture holders, to supply the necessary particulars as to his interests.

(5) It shall be the duty of any director of the company and of any trustee for debenture holders of the company to give notice to the company of such matters relating to himself as may be necessary for the purposes of this section, and any person who makes default in complying with this subsection shall be guilty of an offence and liable to a fine not exceeding PI00.

162. (1) Where an application is made to the court under section 160 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the court that the compromise or arrangement has been proposed for the purposes of or in connexion with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking, or the property of any company concerned in the scheme (in this section referred to as "a transferor company"), is to be transferred to another company (in this section referred to as "the transferee company"), the court may, either by the order sanctioning the compromise or arrangement or by any

Provisions for
facilitating
reconstruction
and
amalgamation
of companies

subsequent order, make provision for all or any of the following matters—

- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;
- (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person;
- (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
- (d) the dissolution, without winding up, of any transferor company;
- (e) the provisions to be made for any persons who, within such time and in such manner as the court directs, dissent from the compromise or arrangement; (f) such incidental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and, in the case of any property, if the order so directs freed from any pledge or hypothecation which is, by virtue of the compromise or arrangement, to cease to have effect.

(3) The transfer under subsection (2) of any immovable property or mining claims shall be made in accordance with the provisions of any law governing the transfer thereof.

(4) Where an order is made under this section, every company in relation to which the order is made shall cause a copy thereof certified by the Registrar of the court to be delivered to the Registrar for registration within 30 days after the making of the order, and if default is made in complying with this subsection, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding P10 for every day during which the offence continues.

(5) In this section the expression "property" includes property, rights and powers of every description, and the expression "liabilities" includes duties.

(6) Notwithstanding the provisions of section 160(5), the expression "company" in this section does not include any company other than a company within the meaning of the Act.

163. (1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as "the transferor company"), to another company, whether a company within the meaning of this Act or not (in this section referred to as "the transferee company"), has, within four months after the making of the offer in that behalf by the transferee company, been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary), the transferee company may, at any time within two months after the expiration of the said four months, give notice in the prescribed manner to any dissenting member that it desires to acquire his shares, and when such a notice is given, the transferee company shall, unless on an application made by the dissenting member within one month from the date on which the notice was given the court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving members are to be transferred to the transferee company:

Power to acquire shares of members dissenting from scheme or contract approved by majority

Provided that where shares in the transferor company of the same class or classes as the shares whose transfer is involved are already held as aforesaid to a value greater than one-tenth of the aggregate of their value and that of the shares (other than those already held as aforesaid) whose transfer is involved, the foregoing provisions of this subsection shall not apply unless—

- (a) the transferee company offers the same terms to all holders of the shares (other than those already held as aforesaid) whose transfer is involved, or, where those shares include shares of different classes, of each class of them; and
- (b) the holders who approve the scheme or contract, besides holding not less than nine-tenths in value of the shares (other than those already held as aforesaid) whose transfer is involved, are not less than three-fourths in number of the holders of those shares.

(2) Where, in pursuance of any such scheme or contract as aforesaid, shares in a company are transferred to another company or its nominee", and those shares together with any other shares in the first-mentioned company held by, or by a nominee for, the transferee company or its subsidiary at the date of the transfer comprise or include nine-tenths in value of the shares in the first-mentioned company or of any class of those shares, then—

- (a) the transferee company shall within one month from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement) give notice of that fact in the

prescribed manner to the holders of the remaining shares or of the remaining shares of that class, as the case may be, who have not assented to the scheme or contract; and (b) any such holder may within three months from the giving of the notice to him require the transferee company to acquire the shares in question,

and where a member gives notice under paragraph (b) with respect to any shares, the transferee company shall be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving members were transferred to it, or on such other terms as may be agreed or as the court on the application of either the transferee company or the member thinks fit to order.

(3) Where a notice has been given by the transferee company under subsection (1) and the court has not, on an application made by the dissenting member, ordered to the contrary the transferee company shall, on the expiration of one month from the date on which the notice has been given, or, if an application to the court by the dissenting member is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company together with an instrument of transfer executed on behalf of the member by any person appointed by the transferee company and on its own behalf by the transferee company, and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.

(4) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company in trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(5) In this section the expression "dissenting member" includes a member who has not assented to the scheme or contract and any member who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

Minorities

164. (1) Any member of a company who complains that the affairs of the company are being conducted in a manner oppressive to some part of the members (including himself), may make an application to the court for an order under this section;

Alternative
remedy to
winding up in
cases of
oppression

and in a case falling within section 132(2) the Minister may make the like application.

- (2) If on any such application the court is of opinion—
- (a) that the company's affairs are being conducted as aforesaid; and
 - (b) that to wind up the company or to make an order for judicial management would unfairly prejudice that part of the members, but otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up or an order for judicial management on the ground that such order was desirable,

the court may, with a view to bringing to an end the matters complained of, make such order as it thinks fit, whether for regulating the conduct of the company's affairs in future, be it for the purchase of the shares of any members of the company by other members of the company or by the company and, in the case of a purchase by the company, for the reduction accordingly of the company's capital, or otherwise.

(3) Where an order under this section makes any alteration or addition to any company's memorandum or articles, then notwithstanding anything in this Act but subject to the provisions of the order the company concerned shall not have power without the leave of the court to make any further alteration or addition to the memorandum or articles inconsistent with the provisions of the order; but, subject to the foregoing provisions of this subsection, the alterations or additions made by the order shall be of the same effect as if duly made by resolution of the company and the Act shall apply to the memorandum or articles as so altered or added to.

(4) A copy of any order under this section altering or adding to, or giving leave to alter or add to, a company's memorandum or articles shall, within 14 days after the making thereof, be delivered by the company to the Registrar for registration; and if a company makes default in complying with this subsection, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding P10 for every day during which the offence continues.

PART V *Winding Up and Judicial Management*
Preliminary

- 165.** (1) The winding up of a company may be either—
- (a) by the court; or
 - (b) voluntary.

Modes of
winding up

(2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company by either of those modes.

166. For the purposes of the winding up or judicial management of companies the Master shall have the jurisdiction conferred on him by this Part.

Jurisdiction
of Master

Contributories

167. In the event of a company being wound up, every present and past member shall, subject to the provisions of this section, be liable to contribute to the assets of the company to an amount past members sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to the following qualifications—

Liability as
contributories of
present and past
members

- (a) in the case of a company limited by shares no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;
- (b) in the case of a company limited by guarantee no contribution shall be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;
- (c) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up;
- (d) a past member shall not be liable to contribute unless at the commencement of the winding up there is unsatisfied debt or liability of the company contracted before he ceased to be a member;
- (e) a past member shall not be liable to contribute unless it appears to the court that the present members are unable to satisfy the contributions required to be made by them in pursuance of this Act;
- (f) a past member shall not be liable to contribute in respect of any debt or liability of the company other than a debt or liability contracted before he ceased to be a member and unsatisfied at the commencement of the winding up, or in respect of the costs, charges and expenses of the winding up, except in so far as these have been occasioned by the necessity of recovering a contribution from him under this section;
- (g) a past member shall not be liable to contribute in respect of the adjustment of the rights of the contributories among themselves;

- (h) notwithstanding anything in this section to the contrary, no transfer of shares improperly issued as fully or partly paid up shall relieve the transferor of any liability which he would have had to contribute in respect of the amount improperly credited as paid on the shares had he not transferred them; but in so far as the present member is liable to contribute in respect of the amount improperly credited, such liability shall be a joint and several liability of such transferor and the present member;
- (i) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract, whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;
- (j) a sum due to any member of a company, in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company; but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories amongst themselves.

168. The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings for determining and all proceedings prior to the final determination of the persons who are to be deemed contributories, includes any person alleged to be a contributory.

Definition of
"contributory"

169. The liability of a contributory shall constitute a debt liability of accruing due from him at the time when his liability commenced but payable at the times when calls are made for enforcing the liability.

Nature of
Liability of
contributory

170. (1) If a contributory dies before or after he has been placed on the list of contributories then either—

- (a) his executor shall, as such, be placed on the list of contributories in his stead and be liable accordingly; or
- (b) if his estate has passed into the hands of his heirs or legatees they shall be liable for his contribution to such extent and in such proportions as they would, by law, respectively be liable for debts of the estate payable but unprovided for at the time of distribution thereof, and shall be placed on the list of contributories accordingly.

Contributories,
in case of death
or insolvency

(2) If a contributory becomes insolvent or assigns his estate under the law relating to insolvent estates, either before or after he has been placed on the list of contributories, then—

- (a) his trustee in insolvency or his assignee, as the case may be, shall represent him for all the purposes of the winding up, and shall be a contributory accordingly; and
- (b) there may be proved against the estate of the insolvent or of the debtor who has assigned his estate the estimated value of his liability to future calls, as well as calls already made.

Definition of Inability to Pay Debts

171. A company shall be deemed to be unable to pay its debts—

- (a) if a creditor, by cession or otherwise, to whom the company is indebted in a sum exceeding PI00 then due, has served on the company a demand requiring it to pay the sum so due by leaving the demand at its registered office, and if the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor;
- (b) if the execution or other process issued, on a judgment, decree or order of any competent court in favour of a creditor, against the company is returned by the sheriff or messenger with the endorsement that no assets could be found to satisfy the debt or that the assets found were insufficient to do so; or
- (c) if it is proved to the satisfaction of the court that the company is unable to pay its debts, and in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.

When a company deemed unable to pay its debts

Winding Up by the Court

172. A company may be wound up by the court—

- (a) if the company has by special resolution resolved that the company be wound up by the court;
- (b) if default is made in lodging the statutory report or in holding the statutory meeting;
- (c) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
- (d) if the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven;

Circumstances in which company may be wound up by court

- (e) if 75 per cent of the paid up share capital of the company has been lost, or has become useless for the business of the company;
- (f) if the company is unable to pay its debts;
- (g) if the court is of opinion that it is just and equitable that the company should be wound up.

173. (1) An application to the court for the winding up of a company shall be by petition presented (subject to the provisions of this section) by the company or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories or by all or any of those parties together or separately or, in a case falling within section 132(2), by the Minister accompanied, except in the case of a petition by the Minister, by a certificate of the Master or administrative officer that due security has been found for payment of all fees and charges necessary for the prosecution of all proceedings until the appointment of a liquidator:

Petition for winding up a company

Provided that—

- (a) a contributory shall not be entitled to present a petition for winding up a company unless—
 - (i) the number of members is reduced in the case of a private company below two, or in the case of any other company below seven, or
 - (ii) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him and registered in his name for at least six months during the 18 months before the commencement of the winding up, or have devolved upon him through the death of a former holder;
 - (b) a petition for winding up a company on the ground of default in lodging the statutory report or in holding the statutory meeting shall not be presented by any person except a member, nor before the expiration of 14 days after the last day on which the meeting ought to have been held;
 - (c) the court shall not grant a petition for winding up a company by a contingent or prospective creditor until a *prima facie* case for winding up has been established to the satisfaction of the court; and
 - (d) a creditor shall not be entitled to present a petition for winding up a company unless such petition when presented is accompanied by the sum of P100 (hereinafter called "the petition fee").
- (2) Where a company is being wound up voluntarily, a petition may be presented by the Master, or by any other person

authorized in that behalf under the other provisions of this section, but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories.

(3) Notwithstanding any other provisions of this Act, the petition fee paid in accordance with paragraph (d) of the proviso to subsection (1) shall be dealt with as follows—

- (a) if the petition is refused, the petition fee shall be refunded by the Master to the petitioner after deduction of any costs which may be awarded under section 174(1);
- (b) if the petition is granted and the assets of the company are insufficient to pay the costs of the winding up, the petition fee, or such portion thereof as shall be necessary, shall be used to pay the costs of the winding up and the balance, if any, shall be refunded by the Master to the petitioner; or
- (c) if the petition is granted and there are sufficient assets to pay the costs of the winding up, the petition fee shall be refunded by the Master to the petitioner:

Provided that, if a petition is granted and the Master, having made due enquiry, has reasonable cause to believe that there are sufficient funds to pay the costs of the winding up, he may, on due application having been made to him, refund to the petitioner the petition fee notwithstanding the fact that the winding up has not been completed.

174. (1) On hearing the petition the court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally, or make any interim order or any other order that it deems just, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) Where the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the court if it is of opinion—

- (a) that the petitioners are entitled to relief either by winding up the company or by some other means; or
- (b) that in the absence of any other remedy it would be just and equitable that the company should be wound up, shall make a winding-up order, unless it is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

Powers of court
on hearing
petitions

(3) Where the petition is presented on the ground of default in delivering the statutory report to the Registrar or in holding the statutory meeting, the court may—

- (a) instead of making a winding-up order, direct that the statutory report shall be delivered or that a meeting shall be held; and
- (b) order the costs to be paid by any persons who, in the opinion of the court, are responsible for the default.

175. At any time after the presentation of a petition for winding up and before a winding-up order has been made, the company or any creditor or contributory may—

- (a) where any action or proceeding by or against the company is pending in any court of law in Botswana, apply to such court for a stay of proceedings therein; and
- (b) where any other action or proceeding is being or about to be instituted against the company, apply to the court to which the petition for winding up has been presented for an order restraining further proceedings in the action or proceeding, and the court to which application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit.

Court may stay or restrain proceedings against company

176. (1) Where before the presentation of a petition for the winding up of a company by the court a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution.

(2) In any other case, the winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up.

Commencement of winding up by court

177. Where a company is being wound up voluntarily and an order is made for its winding up by the court, the court may, if it thinks fit, by the same or any subsequent order, confirm all or ANY OF THE proceedings in the voluntary winding up.

Court may adopt proceedings of voluntary winding up

Consequences of Winding Up Order

178. An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if the petition had been presented by all creditors and contributories jointly.

Effect of winding up order

179. In a winding up by the court—

- (a) no action or proceeding shall be proceeded with or commenced against the company except by leave of the court and subject to such terms as the court may impose;
- (b) any attachment or execution put in force against the assets of the company after the commencement of the winding up shall be void;
- (c) every disposition of the property (including rights of action) of the company, and every transfer of shares or alteration in the status of its members, made after the commencement of the winding up, shall, unless the court otherwise orders, be void.

Action stayed and avoidance of certain attachments, executions and dispositions and alteration of status

180. (1) The Registrar of the court shall forthwith transmit a copy of every provisional and final winding-up order, and of every order amending or setting aside the same to the Registrar, to the Master and to the Sheriff of Botswana, and—

Transmission of winding up order to certain officers

- (a) in respect of any immovable property or any interest in minerals within Botswana which appears to be an asset of the company, to the Registrar of Deeds; and
- (b) to the messenger of every magistrate's court by the order whereof it appears that property of the company is under attachment:

Provided that when the assets of the company are under P400 in value, and the court so orders, the movable assets may remain in the custody of such person as the court may order upon such terms as to security as the court may direct, and in that case it shall not be necessary to transmit a copy of any order to the Sheriff or any messenger.

(2) Upon receipt by the Registrar of Deeds of a winding-up order he shall enter a caveat against the transfer of any immovable property or the cancellation or cession of any bond or the transfer of any interest whatsoever in minerals registered in the name of or belonging to the company.

(3) Every such public officer concerned shall register every copy of an order transmitted to him and note thereon the day and hour when it is received.

(4) Upon receipt of a copy of any winding-up order, the Master shall give notice thereof in the Gazette.

181. (1) Where the court has made a winding-up order, there shall be made and submitted to the Master a statement in duplicate as to the affairs of the company in the prescribed form, Master if any, showing as at the date of the winding-up order or such other convenient date as the Master shall allow, the particulars

Statement of company's affairs to Master

of its assets, debts and liabilities, the names, addresses and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as the Master may require; and the Master shall transmit the duplicate of such statement to the liquidator on his appointment.

(2) The statement shall be submitted and verified by affidavit by one or more persons who are at the relevant date directors and by the person who is at that date the secretary of the company, or by such of the persons hereinafter in this subsection mentioned as the Master may require to submit and verify the statement that is to say, persons—

- (a) who are or have been officers of the company;
- (b) who have taken part in the formation of the company at any time within one year before the relevant date;
- (c) who are in the employment of the company, or have been in the employment of the company within the said year, and are in the opinion of the Master capable of giving the information required;
- (d) who are or have been within the said year officers of or in the employment of a company which is, or within the said year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within 14 days from the date of the order, or within such extended time as the Master or the court may for special reasons allow.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the Master may consider reasonable.

(5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be guilty of an offence and liable to a fine not exceeding P20 for every day during which the offence continues.

(6) Any person shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.

182. Where the court has made a winding-up order the Master may, if he thinks fit, make a report to the court, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company or its creditors since the

Report by
Master

formation thereof and any other matters which in his opinion it is desirable to bring to the notice of the court.

Provisions Specially Applicable in a Winding Up by the Court

183. The provisions contained in sections 184 to 207, inclusive, shall apply in relation to the winding up of a company by the court.

Application of sections

184. (1) For the purpose of conducting the proceedings in a winding up by the court the Master shall, subject to the provisions of sections 185 and 240, appoint a liquidator or liquidators.

Custody of property and appointment of liquidator

(2) On a winding-up order being made or thereafter when, for whatever cause, there is no person acting as liquidator of the company—

(a) all the property of the company shall be deemed to be in the custody or control of the Master until a liquidator or provisional liquidator is appointed and is capable of acting as such;

(b) subject to the provisions of section 240 the Master may appoint any fit person or shall appoint any person whom the court has directed to be appointed as a provisional liquidator of the company to hold office until the appointment of a liquidator, and may, or shall, as so ordered by the court, restrict his powers by the terms of his letter of appointment.

(3) When a vacancy occurs in the office of liquidator the Master shall fill the vacancy by making an appointment under the provisions of sections 185 and 240.

185. (1) When a final winding up order has been made by the court, the Master shall summon separate meetings

Meetings of creditors and contributories

(a) of the creditors of the company for the proof of claims against the company and for the purpose of determining the persons or persons whose names shall be submitted for appointment as liquidator or liquidators; and

(b) of the contributories of the company for the purpose of determining the person or persons whose names shall be submitted for appointment as liquidator or liquidators.

(2) Where in regard to the said appointment there is no difference between the determinations of the meetings of the creditors and contributories, or where there is a determination of the meeting of the creditors only or of the meeting of the contributories only, the Master may make any appointment required to give effect to any such determination.

(3) Where there is a difference between the determinations of the meeting of the creditors and of the contributories the Master

shall call a joint meeting of the creditors and contributories with a view to reaching an agreement and, if no agreement is reached the Master shall make such appointment as he may think fit.

(4) Any such appointment shall be subject to an appeal within 14 days to a judge in chambers, made by the creditors or contributories or both.

(5) On any such appeal a judge may make such order thereon and as to costs as he may think fit.

(6) Meetings of creditors and contributories shall, unless otherwise in this Act specially provided, be convened and held in the manner prescribed in the rules framed under section 312.

186. (1) All claims against a company being wound up by the court shall be proved at a meeting of creditors called and held as nearly as possible in the manner provided by the law relating to insolvent estates for the proof of claims against an insolvent estate and subject to the provisions of section 253.

Proof of claims

(2) The Master, on the application of the liquidator, may fix a time or times within which creditors of the company are to prove their claims or to be excluded from the benefit of any distribution under any account lodged with the Master before those debts are proved.

187. (1) The liquidator in a winding up by the court shall have the following powers-

Powers of liquidator

- (a) to execute in the name and on behalf of the company all deeds, receipts and other documents, and for that purpose to use the company's seal;
 - (b) to prove a claim in the estate of any contributory or debtor and receive payment in full or a dividend in respect thereof;
 - (c) to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company, but so as not, except with the leave of the court or the authority mentioned in subsection (4) or for the purpose of carrying on the business of the company in terms of subsection (2),(e), to impose any additional liability upon the company.
- (2) He shall have power, with the leave of the court or with the authority mentioned in subsection (4)—
- (a) to bring or defend in the name and on behalf of the company any action or other legal proceeding of a civil nature, and subject to the provisions of any law relating to criminal procedure any criminal proceeding:

Provided that immediately upon the appointment of a liquidator or a provisional liquidator, the Master may authorize upon such terms as he thinks fit legal proceedings

for the recovery of any outstanding accounts, the collection of which appears to him to be urgent;

- (b) to agree to any offer of composition made to the company by any debtor or contributory, and take any reasonable part of the debt in discharge of the whole or give reasonable time, regard being had to the provisions of section 245;
- (c) to compromise or admit any claim or demand against the company, including an unliquidated claim;
- (d) to submit to the determination of arbitrators any dispute concerning the company or any claim or demand by or upon the company;
- (e) to carry on or discontinue any part of the business of the company in so far as may be necessary for the beneficial winding up thereof;

Provided that if necessary the liquidator may carry on or discontinue the same before he has obtained the leave of the court or the authority aforesaid, but it shall not then be competent for him as between himself and the creditors or contributories to charge the winding up with the cost of any goods purchased by him unless the same have been necessary for the immediate purpose of carrying on the business and there are funds available for payment of the same after providing for the cost of winding up or unless the court otherwise orders;

- (f) in the case of a company unable to pay its debts, to elect to adopt or to abandon any contract entered into by the company before the commencement of the winding up to buy or receive in exchange any immovable property, transfer of which has not been effected in favour of the company:

Provided that—

- (i) if the liquidator does not make his election within six weeks after being required in writing to do so, the person entitled under the contract may apply by motion to the court for cancellation of the contract and delivery of possession of the immovable property and the court may make such order as it thinks fit;
- (ii) nothing contained in this paragraph shall affect any concurrent claim against the company for damages for non-fulfilment of the contract; (g) to terminate any lease entered into by the company as lessee by notice in writing to the lessor, subject however to the following terms and conditions—
 - (i) nothing contained in this paragraph shall affect any claim by the lessor against the company for damages

he may have sustained by reason of the non-performance of the terms of the lease,

- (ii) if the liquidator does not within three months of his appointment notify the lessor that he is prepared to continue the lease on behalf of the company, he shall be deemed to have terminated the lease at the end of such three months,
- (iii) the rent due under any lease so terminated from the date of the commencement of the winding up to the termination of the lease by the liquidator shall be included in the costs of administration,
- (iv) the fact that a lease has been terminated by the liquidator shall deprive him of any right to compensation for improvements made during the period of the lease; (k) to sell, by public auction or otherwise, deliver or transfer the movable and immovable property of the company.

(3) He shall have power, with the leave of the court, to raise money on the security of the assets of the company or to do any other thing which the court may consider necessary for winding up the affairs of the company and distributing its assets.

(4) He may, with the authority of a resolution of creditors and contributories, duly passed at a joint meeting thereof, do any act or exercise any power for which he is not by this Act expressly required to obtain the leave of the court.

188. (1) The liquidator of a company which is being wound up by the court shall, in the administration of the assets of the company, take into account any directions that may be given by resolution of the creditors or resolution of the contributories at any general meeting.

Exercise
liquidator's
powers

(2) In regard to any matter which has been submitted by the liquidator for the directions of creditors and contributories in general meeting, but as to which no directions have been given or as to which there is a difference between the directions of creditors and contributories, the liquidator may apply to the court for directions and the court shall decide the matter and may make such order therein as it shall think fit.

(3) Any person aggrieved by any act or decision of the liquidator may apply to the court after notice of motion to the liquidator and therein the court may make such order as it thinks fit.

189. (1) The Master shall take cognizance of the conduct of liquidators of companies which are being wound up by the court, and if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules, or otherwise with respect to the performance of his duties,

Control by
Master over
liquidator

or if any complaint is made to the Master by any creditor or contributory in regard thereto, the Master shall inquire into the matter and take such action thereon as he may think expedient.

(2) The Master may at any time require any liquidator of a company which is being wound up by the court to answer any inquiry in relation to any winding up in which such liquidator is engaged, and may, if he thinks fit, examine such liquidator or any other person on oath concerning the winding up.

(3) The Master may also direct an investigation to be made of the books and vouchers of the liquidator.

(4) Any expenses incurred by the Master in carrying out any provision of this section shall be part of the costs of the winding up, but the court may order the liquidator to pay such expenses to the company *de bonis propriis*.

190. (1) Immediately after his appointment the liquidator of a company which is being wound up by the court shall open an account in the name of the company in liquidation, with a bank within Botswana and shall deposit therein to the credit of the company from time to time all moneys received by him on its behalf.

Banking
Account

(2) All cheques or orders which may be drawn upon the account shall contain the name of the payee and the cause of payment and shall be drawn to order and signed by the liquidator or by his agent.

(3) Immediately after opening the account the liquidator shall give the Master written particulars of the bank and the branch of the bank with which the account has been opened, and he shall not, without the written permission of the Master, transfer the account from that branch.

(4) The Master and any surety for the liquidator or any person authorized by such surety shall have the same right to information in regard to the account as the liquidator himself possesses and may examine all vouchers in relation thereto whether in the hands of the bank or of the liquidator.

(5) The Master may after notice to the liquidator direct the manager of the said branch of the bank, in writing, to pay into the Guardian's Fund all moneys standing to the credit of the account at the time of the receipt, by the said manager, of that direction and all moneys which may thereafter be paid into the account and the said manager shall carry out such direction.

(6) If any liquidator, without lawful excuse, retains any sum of money belonging to the company exceeding P40 or knowingly permits his co-liquidator to retain such a sum of money longer than the earliest day after its receipt on which it was reasonable for him or his co-liquidator to pay the money into the bank or uses or knowingly permits his co-liquidator to use any assets of

the company except for the benefit thereof he shall, in addition to any other penalty to which he may be liable, be liable to pay to the company an amount not exceeding double the sum so retained or double the value of the assets so used.

(7) The amount, which the liquidator is so liable to pay, may be recovered by action in any competent court at the instance of his co-liquidator, the Master or any creditor or contributory.

191. (1) When the liquidator of a company which is being wound up by the court has realized all the assets of the company and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, he may apply to the Master for his release, and upon such liquidator giving by advertisement in the Gazette not less than three weeks prior notice of his application, the Master shall take into consideration any objection to the release of the liquidator lodged by any creditor, contributory, or other person interested and upon consideration of the objections, if any, the Master may either grant or withhold the release.

Release of
liquidator

(2) The release of the liquidator by the Master shall discharge the liquidator from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such release may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(3) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

192. (1) In a winding up by the court every liquidator shall be entitled to a reasonable remuneration for his services, to be taxed by the Master according to the table of fees mentioned in the Seventh Schedule:

Remuneration
of liquidator

Provided that the Master may for good cause reduce or increase his remuneration"

Provided further that the Master may disallow his remuneration either wholly or in part on account of any failure or delay in the discharge of his duties.

(2) No person who employs or is a fellow-employee of or is in the ordinary employment of the liquidator shall be entitled to receive any remuneration out of the assets of the company for services rendered in the winding up, and no liquidator shall be entitled either by himself or by his partner to receive out of the assets of the company any remuneration for his services except the remuneration to which under this Act he is entitled.

General Powers of the Court case of Winding Up by the Court

193. The court may at any time after the making of an order for winding up, on the application of the liquidator or of any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed or set aside, make an order staying or setting aside the proceedings on such terms and conditions as the court deems fit.

Court may stay or set aside winding up

194. (1) As soon as may be after making a winding up order, the court shall settle a list of contributories with power to rectify the register of members in all cases where such rectification is required in pursuance of this Act:

Settlement of list of contributories

Provided that, where it appears to the court that it will not be necessary to make calls on or adjust the rights of contributories, the court may dispense with the settlement of a list of contributories.

(2) In settling the list of contributories, the court shall distinguish between persons who are contributories directly and persons who are contributories as being representatives of or liable for the debts of others.

195. The court may at any time after making a winding up order require any contributory for the time being settled on the list of contributories, and any trustee, banker, agent or officer of the company, to pay, deliver, convey, surrender or transfer forthwith, or within such time as the court directs, to the liquidator any money, property or books and papers in his hands to which the company is *prima facie* entitled.

Requiring order delivery of property

196. (1) The court may, at any time, after making a winding up order, make an order on any contributory settled on the list of contributories to pay, in a manner directed by the order, any money due from him, or from the estate of the person whom he represents, to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

Ordering payment of debt by contributory

(2) When all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

197. (1) The court may, at any time after making a winding up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs,

Making calls and ordering payment

charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.

(2) In making a call, the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

198. (1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into a bank, to be named by the court, to the account of the liquidator instead of to the liquidator, and such order may be enforced in the same manner as if it had directed payment to the liquidator.

Ordering
payment into
Bank

(2) All moneys and securities paid or delivered into a bank as aforesaid in the event of a winding up by the court shall be subject in all respects to the orders of the court.

199. (1) An order made by the court on a contributory shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

Order on
contributory
conclusive
evidence

(2) All other pertinent matters stated in such order shall be taken *prima facie* as truly stated as against all persons and in all proceedings whatsoever.

200. The court shall adjust the rights of the contributories among themselves, and apportion any surplus among the persons entitled thereto.

Court to adjust
rights of
contributories

201. (1) The court may, at any time after making a winding-up order, make such order for inspection of the books and papers of the company by creditors and contributories as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly but not further or otherwise.

Inspection of
books by
creditors and
contributories

(2) Nothing in this section shall be taken to exclude or restrict any statutory rights of a government department or of a person acting under the authority of a government department.

202 (1) When the affairs of a company have been completely wound up, the court shall upon the application of the Master make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

Dissolution of
comp any

(2) A copy of the order shall forthwith be transmitted by the Registrar of the court—

- (a) to the Registrar, who shall make a minute in his books of the dissolution of the company and shall publish notice thereof in the Gazette; and

(b) to the Master.

(3) An application made by the Master under this section may be by way of a report submitted to the court through the Registrar thereof.

(4) Notwithstanding any dissolution in terms of this section, in the event of any property thereafter becoming available which would have accrued to the company if not dissolved, the Master shall give instructions for the realization thereof and for the distribution of the proceeds, less the cost of realization and distribution, to such persons as would have been entitled thereto in the winding up; and the same shall apply to any moneys becoming so available.

203. (1) The court may, after it has made a winding up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs, or property of the company.

(2) The court may examine him on oath, either orally or by written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The court may require him to produce any books and papers in his custody or power relating to the company; but where he claims any lien on books or papers produced by him, the production shall be without prejudice to such lien, and the court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, fails to come before the court at the time appointed without reasonable excuse, made known to the court at the time of its sitting and allowed by it, the court may cause him to be apprehended, and brought before the court for examination.

204. (1) When an order has been made for winding up a company by the court, and the Master has made a report under this Act showing that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by a director or officer of the company, in relation to the company or any creditor thereof since its formation, the court may direct that any person who has taken part in the promotion or formation of the company, or has been a director or officer of the company, shall attend before the court on a day appointed by the court for that purpose, and be publicly examined as to the promotion or formation, or the conduct of the business of the

Summoning persons suspected of having property of company

Ordering public examination of promoters, directors, etc

company, or as to his conduct and dealings as director or officer thereof.

(2) The Master may take part in the examination, and for that purpose may employ an attorney with counsel.

(3) The liquidator, and any creditor or contributory, may also take part in the examination, either personally or by attorney with counsel.

(4) The persons examined shall be examined on oath and shall answer all such questions as the court may put or allow to be put to him notwithstanding that any answer may tend to incriminate him.

(5) A person ordered to be examined under this section shall, before his examination, be furnished at his request with a copy of the Master's report, and may at his own cost employ an attorney with counsel, who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him:

Provided that, if he is, in the opinion of the court, exculpated from any charges made or suggested against him, the court may allow him such costs as in its discretion it may think fit.

(6) Notes of the examination shall be taken down in writing, and shall be read over to or by and signed by the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

205. The court, at any time before or after making a winding order, on proof that there is reason to believe that a contributory or officer is about to quit Botswana or otherwise to abscond, or to remove or conceal any property for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may cause the contributory or officer to be arrested, and his books and papers and property to be seized, and him and them to be safely kept until such time as the court may order.

Arrest of
absconding
contributory

206. Any powers conferred on the court by this Act shall be deemed to be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

Powers to be
cumulative

Appeal from Orders

207. An appeal from any order or decision made or given for or in the winding up of a company by the court under this Act shall lie in the same manner and subject to the same conditions

Appeal from
any order

as an appeal from any order or decision of the court in cases within its ordinary jurisdiction.

Voluntary Winding Up of Company

208. A company may be wound up voluntarily—

- (a) when the period, if any, fixed for the duration of the company by the articles expires, or the event, if any, occurs on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;
- (b) if the company resolves by special resolution that the company be wound up voluntarily.

Circumstances in which company may be wound up voluntarily

209. (1) When a company has passed a resolution for voluntary winding up, it shall, within 14 days after the passing thereof—

- (a) give notice of the resolution by advertisement in the Gazette;
- (b) give written notice of the resolution to the Master, to the Registrar and, if any immovable property or interest in minerals within Botswana appears to be an asset of the company, to the Registrar of Deeds.

Notice of resolution for voluntary winding up

(2) If default is made by a company in complying with the requirements of this section, the company and every officer of the company who is in default, shall be guilty of an offence and liable to a fine not exceeding P10 for every day during which the offence continues and for the purposes of this subsection the liquidator of the company shall be deemed to be an officer of the company.

210. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding

Commencement of voluntary winding up

211. When a company is wound up voluntarily the company shall, from the commencement of the winding up, cease to carry on its business, except in so far as may be required for the business and beneficial winding up thereof:

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything in its articles, continue until it is dissolved.

Effect of voluntary winding up on business and status of company

Provision and Effect of Security for Payment of Debts

212. (1) If it is proposed to wind up a company voluntarily, Provision and the directors of the company may, prior to the date of the notices effect of security

Provision and effect of security

of the meeting at which the resolution for the winding up of the company is to be proposed, furnish security to the satisfaction of the Master for the payment of the debts of the company within a period not exceeding 12 months from the commencement of the winding up, and may recover from the company any costs reasonably incurred by them in furnishing such security:

Provided that the Master may dispense with such security if the majority of the directors of the company furnish him with a sworn statement supported by a certificate from the auditors of the company that the company has no liabilities.

(2) A winding up in the case of which such security has been furnished or dispensed with in accordance with this section is (in this Act referred to as "members voluntary winding up"), and a winding up in the case of which security has neither been furnished nor dispensed with as aforesaid is (in this Act referred to as "a creditors' voluntary winding up").

Provisions Specially Applicable to a Members' Voluntary Winding Up

213. The provisions contained in sections 214 to 216 inclusive, shall apply in relation to a members' voluntary winding up.

Application of sections

214. (1) The company in general meeting shall, subject to the provisions of section 240, appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.

Appointment, powers and remuneration of liquidator

(2) If the company fails so to fix the remuneration, the provisions of section 192 shall apply.

(3) On the appointment of a liquidator in terms of this section all the powers of the directors shall cease except so far as the liquidator or the company in general meeting sanctions their continuance.

(4) The liquidator may, without the sanction of the court, exercise all the powers given by section 187 to the liquidator in a winding up by the court, subject to such directions as may be given by the company in general meeting.

215. (1) If a vacancy occurs by death, resignation or otherwise in the office of the liquidator appointed by the company, the company in general meeting may, subject to the provisions of section 214, fill the vacancy.

Power to fill vacancy in office of liquidator

(2) For that purpose a general meeting may be convened by any contributory, or by the continuing liquidator or liquidators, if any.

(3) The meeting shall be held in the manner prescribed by the articles or in such manner as may, on application by any

contributory or by the continuing liquidator or liquidators, be determined by the court.

216. (1) Where a company is proposed to be or is being wound up voluntarily and the whole or part of its business or property is proposed to be transferred or sold to another company, whether registered under this Act or not (in this section called "the transferee company"), the liquidator of the first-mentioned company (in this section called "the transferor company") may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale, shares, policies or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may in lieu of receiving cash, shares, policies or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

Liquidator may accept shares, etc as consideration for sale of property of company

(2) Any sale or arrangement made in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company, who did not vote in favour of the special resolution, expresses his dissent therefrom in writing addressed to the liquidator and left at the registered office of the company within seven days after passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration under the provisions of any law in force in Botswana concerning arbitration.

(4) If the liquidator elects to purchase the member's interest, the purchase price shall be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but if an order is made within a year for winding up the company by the court, the special resolution shall not be valid unless sanctioned by the court.

Provisions Specially Applicable to Creditors' Voluntary Winding Up

217. The provisions contained in sections 218 to 220, inclusive, shall apply in relation to a creditors' voluntary winding up.

Application of sections

218. (1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the said meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the said meeting of the company.

(2) The company shall cause not less than seven days' notice of the meeting of the creditors to be advertised once in the Gazette and once at least in a newspaper circulating in the district where the registered office or principal place of business of the company is situate.

(3) The directors of the company shall—

(a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of creditors to be held as aforesaid; and

(b) appoint one of their number to preside at the said meeting, and it shall be his duty to do so.

(4) If the meeting of the company, at which the resolution for voluntary winding up is to be proposed, is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of subsection (1) shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

(5) If default is made—

(a) by the company complying with subsection (1) or (2);

(b) by any director of the company in complying with subsection (3),

the company or director, as the case may be, shall be guilty of an offence and liable to a fine not exceeding P200.

(6) The creditors and the company at their respective meetings mentioned in this section may nominate a person to be liquidator subject to the provisions of section 240 for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, subject to the provisions of section 240 as aforesaid:

Provided that in the case of different persons being nominated any director, member, or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the court for an order directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator

instead of the person appointed by the creditors, and the court may thereupon make such order as it thinks fit.

(7) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the creditors' voluntary winding up, the vacancy shall be filled in the same manner as is provided in subsection (6).

(8) The provisions of section 192 shall apply to every liquidator appointed in a creditors' voluntary winding up.

219.(1) All the powers of the directors shall cease except so far as the liquidator or the creditors of the company sanction their continuance.

Power of liquidator

(2) The liquidator may, without the sanction of the court and without requiring the authority of the contributories, exercise all powers given by section 187 to the liquidator in a winding up by the court, subject to such directions as may be given by the creditors.

220. The provisions of section 216 shall apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up with the modification that the powers of the liquidator under the said section shall not be exercised except with the consent of three-fourths in number and according to the value of their claims, of the creditors present or represented at a meeting called by the liquidator for that purpose and of which at least 14 days' notice has been given or with the sanction of the court.

Application of section 216

Provisions Applicable to Both Modes of Voluntary Winding Up

221. The provisions contained in sections 222 to 231, inclusive, shall apply in relation to both modes of voluntary winding up.

Application of sections

222. The following consequences shall ensue on the voluntary winding up of a company—

Consequences of voluntary winding up

- (a) the property of the company shall, subject to the provisions of section 255 and unless the articles otherwise provide, be distributed amongst the members according to their rights and interests in the company;
- (b) the liquidator may exercise the powers of the court under this Act of settling a list of contributories and making calls, and shall adjust the rights of the contributories among themselves;
- (c) the list of the contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories;
- (d) when several liquidators are appointed, every power hereby

given, may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two;
(e) if from any cause whatever there is no liquidator acting, the Master may, on the application of a contributory, or creditor, and subject to the provisions of section 240, appoint a provisional liquidator.

223. In a voluntary winding up, every transfer of shares, except transfers made to or with the sanction of the liquidator, and every alteration in the status of the members of the company, made after the commencement of the winding up, shall be void.

Avoidance of transfers after commencement of winding up

224. (1) Every person appointed liquidator, whether alone or jointly with any other person or persons, in a voluntary winding up shall, within seven days after his appointment, lodge with the Master a notice of his appointment in the prescribed form.

Notice by liquidator of his appointment

(2) If he fails to comply with the requirements of this section he shall be guilty of an offence and liable to a fine not exceeding P10 for every day during which the offence continues.

225. (1) In a voluntary winding up, all claims against the company shall be proved to the satisfaction of the liquidator, by affidavit, as nearly as may be in the form and containing the particulars prescribed by rules made under section 312.

Proof of claims

(2) If the claim is rejected by the liquidator, the claimant may apply to the court by motion to set aside the rejection.

(3) The liquidator may with the approval of the Master fix a time or times within which creditors of the company are to prove their claims or to be excluded from any distribution under any account lodged with the Master before those claims are proved.

226. (1) Any arrangement entered into between a company about to be, or being, wound up voluntarily and its creditors shall, subject to any right of review under this section, be binding on the company if sanctioned by a special resolution, and on the creditors if acceded to by three-fourths in value of the creditors present or represented at a meeting duly called by the liquidator for that purpose.

Arrangement when binding on company and creditors

(2) Any creditor or contributory may, within 28 days from the completion of the arrangement, bring it under review by the court, and the court may thereupon, as it thinks fit, amend, vary, set aside or confirm the arrangement.

227. In a voluntary winding up, meetings of creditors and contributories shall, unless otherwise in the Act specially provided, be convened and held in the manner prescribed by rules made under section 312.

Meeting of
creditors and
contributories

228. (1) Where a company is being wound up voluntarily, the liquidator or any contributory or creditor of the company may apply to the court to determine any question arising in the winding up, or to exercise as respects the enforcing of calls or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.

Power to apply
to court

(2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as the court thinks fit, or may make such other order on the application as the court thinks fit.

229. (1) Where a company is being wound up voluntarily, the liquidator may summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or for any other purposes he may think fit.

Duty of
liquidator to call
meetings of
company and
creditors

(2) In the event of the winding up continuing for more than six months, the liquidator shall summon a general meeting of the company and a meeting of creditors each to be held within 30 days after the expiration of the first six months from the commencement of the winding up and within 30 days after the expiration of each succeeding period of six months and shall lay before the meeting an account of his acts and dealings and of the progress of the winding up during the preceding period of six months.

(3) If the liquidator fails to comply with subsection (2), he shall be guilty of an offence and liable to a fine not exceeding P10 for every day during which the offence continues.

230. Immediately after the confirmation of the final account the Master shall give notice thereof in writing to the Registrar, who shall forthwith register it, and on the expiration of three months from the registration of the notice the company shall be deemed to be dissolved but without prejudice to the duties of the liquidator or the powers of the Master under sections 250 and 251:

Notice to
Registrar of
confirmation of
final account

Provided that—

- (i) the court may, on the application of the liquidator or any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit; and

- (ii) notwithstanding any dissolution as aforesaid, in the event of any property thereafter becoming available the Master shall give instructions for the realization thereof and the distribution of the proceeds, less the cost of realization and distribution, to such persons as would have been entitled thereto in the winding up; and the same shall apply to any moneys becoming so available.

231. The voluntary winding up of a company shall not bar the right of any creditor or contributory at any time before its dissolution to have it wound up by the court, but, in the case of an application by a contributory will be prejudiced by a voluntary winding up.

Saving of rights
of creditors and
contributories

Provisions Applicable to Every Mode of Winding Up a Company Unable to Pay its Debts

232. The provisions contained in sections 233 to 236, inclusive, shall apply in relation to a company being wound up and unable to pay its debts.

Application of
sections

233. (1) In every winding up of a company unable to pay its debts, all the directors of the company, including, if the Master so directs, any person who has been a director within a period of six months preceding the date on which the winding up commenced, shall, if required to do so by the Master in writing, attend the first and second meetings of creditors and every adjourned first and second such meetings.

Summoning
directors and
others to attend
meetings of
creditors

(2) The directors shall also attend any subsequent meeting of creditors if required to do so by written notice from the liquidator.

(3) The Master or other officer in the public service who is to preside or presides at any meeting of creditors may summon any person, who is known or, on reasonable grounds, believed to be in possession of any property which belongs or belonged to the company or to be indebted to the company or any person who in the opinion of the Master or such other officer may be able to give any material information concerning the company or its affairs, whether before or after the commencement of the winding up, to appear at such meeting or adjourned meeting for the purpose of being interrogated under section 234.

(4) The Master or such other officer may also summon any person, who is known or, upon reasonable grounds, believed to have in his possession, custody or under his control any book or document containing any such information as is mentioned in subsection (3), to produce that book or document or an extract therefrom at any such meeting of creditors.

(5) Any person summoned by the Master or other officer in terms of subsection (3) or (4) who fails without valid excuse—

(a) to attend any meeting to which he has been so summoned; or

(b) to produce any book or document or extract from any

book or document in his possession, custody or control, shall be guilty of contempt of court.

234. (1) At any meeting of creditors of a company being wound up and unable to pay its debts, the Master or other officer in the public service presiding thereat may call and administer the oath to any director and any other person present at the meeting, who was or might have been summoned in terms of section 233(3), and the Master, such other officer, the liquidator and any creditor, who has proved a claim against the company or the agent of any of them, may interrogate a person so called and sworn concerning all matters relating to the company or its business or affairs, whether before or after the commencement of the winding up, and concerning any property belonging to the company:

Provided that the presiding officer shall disallow any question which is irrelevant and may disallow any question which would prolong the interrogation unnecessarily.

(2) In connexion with the production of any book or document in compliance with a summons issued under section 233(4) or at an interrogation of a person under subsection (1) of this section, the law relating to privilege as applicable to a witness summoned to produce a book or document or giving evidence in a court of law shall apply:

Provided that a banker at whose bank the company in question keeps or at any time kept an account, shall be obliged to produce, if summoned to do so under section 233(4), any cheque, promissory note or bill of exchange in his possession which was drawn or accepted by the company within one year before the commencement of the winding up, or if any cheque, promissory note or bill of exchange so drawn is not available, then any record of the payment, date of payment and amount of that cheque, promissory note or bill of exchange which may be available to him, or a copy of such a record and, if called upon to do so, to give any other information available to him in connexion with such cheque, promissory note or bill of exchange or the account of the company.

(3) The presiding officer shall reduce to writing or cause to be reduced to writing the statement of any person giving evidence under this section.

Examination of
directors and
others at
meeting of
creditors

(4) Any evidence given under this section shall be admissible in any proceedings instituted against the person who gave evidence.

(5) Any person called upon to give evidence under this section may be represented at his interrogation by an accountant or by an attorney with or without counsel.

(6) Any person summoned to attend a meeting of creditors for the purpose of being interrogated under this section (other than the directors or other officers of the company) shall be entitled to such witness fees, to be paid out of the funds of the company, as he would be entitled to if he were a witness in any civil proceedings in a magistrate's court.

(7) If any director or other officer of the company is called upon to attend any meeting of creditors, he shall, if the Master so approves and subject to a right of appeal to the court, be entitled to an allowance out of the funds of the company to defray his necessary expenses in connexion with such attendance.

(8) Any person interrogated under the provisions of this section who refuses, on any ground other than that the answer may tend to incriminate him, to answer any question (except any question which the presiding officer may see fit to allow) put to him, shall be guilty of contempt of the court.

235. (1) Every disposition of its property which, if made by an individual, could for any reason be set aside in the event of his insolvency, may, if made by a company, be set aside in the event of the company being wound up and unable to pay its debts, and the provisions of the law relating to insolvent estates shall *mutatis mutandis* apply to any such disposition.

Voidable and
undue
preferences

(2) For the purposes of this section the event which shall be deemed to correspond with the sequestration order in the case of an individual shall be—

- (a) in the case of a winding up by the court, the presentation of the petition, unless that winding up has superseded a voluntary winding up, when it shall be the passing of the resolution to wind up the company;
- (b) in the case of a voluntary winding up, the passing of the resolution to wind up.

(3) Any cession or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

236. In the case of every winding up of a company unable to pay its debts a secured creditor and the liquidator shall have the same right respectively to take over such creditor's security as a secured creditor and a trustee would have under the law relating to insolvent estates.

Application of
certain
provisions of the
Insolvency Act

Provisions Applicable to Every Mode of Winding Up

237. The provisions contained in sections 238 to 262, inclusive, shall apply in relation to every company being wound up by whatever mode.

Application of sections

238. (1) Each of the following persons shall be disqualified from being elected or appointed a liquidator of a company that is being wound up—

Persons disqualified for appointment as liquidator

- (a) an insolvent;
- (b) a minor;
- (c) any other person under legal disability;
- (d) a body corporate;
- (e) a person declared under section 239(2) to be incapacitated for appointment as liquidator while such incapacity lasts;
- (f) a person who is the subject of an order under this Act disqualifying him as a director of any company;
- (g) a person who has, by reason of misconduct, been removed by the court from an office of trust;
- (h) any person who, in order to obtain, or in return for the vote of any creditor or contributory, or in order to exercise any influence upon his election as liquidator has—of the company.
- (i) procured or allowed the wrongful insertion or omission of the name of any person in or from any list or schedule required by this Act, (ii) procured or allowed the wrongful or inaccurate statement of the claim of any creditor or contributory, (iii) directly or indirectly given or agreed to give any person any consideration,
- (iv) offered or agreed with any person to abstain from investigating any transactions of or relating to the company or of any of its officers, or
- (v) been guilty of or allowed the splitting of claims in such manner as to increase the number or value of votes of the person whose claim has been so split;
- (i) a person who has at any time been convicted (whether in Botswana or elsewhere) of theft, fraud, forgery or uttering a forged document or of perjury and has been sentenced therefore to serve a term of imprisonment without the option of a fine or to a fine exceeding P100; or
- (j) any person who resides outside Botswana:
 - Provided that, notwithstanding paragraph (j), any person resident outside Botswana may be elected or appointed as liquidator who—
 - (i) is an attorney entitled under the Legal Practitioners Act, to practice as such in the courts of Botswana,

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(ii) is a qualified accountant having a place of business in Botswana, or (iii) is a person who the Master has, in writing, certified to be a fit and proper person to be so appointed, if such person —

- (aa) is not disqualified for election or appointment on any other ground; and
- (bb) immediately after his election or appointment chooses for the purpose of the winding up of the company a *domicilium citandi et executandi* within Botswana, and notifies such in the next available issue of the Gazette.

(2) Any person who in order to obtain or in return for the vote of any creditor or contributory or in order to exercise any influence upon his election as a liquidator of a company does any of the acts mentioned in subsection (1)(h)(i), (ii), (iii), (iv) or (v) shall be guilty of an offence and liable to a fine not exceeding P400 or to imprisonment for a term not exceeding one year, or to both.

(3) Any person who procures or tries to procure the appointment as liquidator of any person, knowing that such person is disqualified for such appointment under the terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding P200 or to imprisonment for a term not exceeding six months, or to both.

(4) For the purposes of this section "qualified accountant" means an accountant holding such qualifications as the Minister may, by order published in the Gazette, prescribe.

239. (1) The court, on the application of the Master or any person having an interest in the winding up —

(a) may declare that any person proposed or appointed as liquidator is disqualified under the provisions of section 238 from holding the office and, if he has been appointed, may remove him therefrom; (b) may remove any liquidator from his office upon any of the following grounds —

- (i) ill-health or any other factor tending to interfere with the performance of his duties as liquidator,
- (ii) that he has accepted or offered or agreed to accept or has solicited from any auctioneer, agent or other person employed on behalf of the company any share of the commission or remuneration or of any other benefit whatever accruing to such auctioneer, agent or other person, (iii) misconduct, including any failure to satisfy a lawful

Power of court to declare person disqualified from being liquidator or to remove a liquidator

demand of the Master or of a commissioner appointed by the court, (iv) failure to perform any of the duties imposed on him by this Act, or (v) any other good cause.

- (2) The court may, in respect of any person removed by it—
- (a) under the provisions of subsection (1)(a) as a person disqualified for reasons set out in section 238(1) (A); or
 - (b) under the provisions of subsection (1)(b)(ii), (iii) or (iv),

declare such person to be incapable of being appointed a liquidator under this Act during his lifetime or any other period.

(3) The Master shall give notice in the Gazette of the removal of any liquidator from his office in terms of this section.

240. (1) In every winding up of a company, each liquidator, including a co-liquidator or a provisional liquidator, shall furnish security to the satisfaction of the Master for the due performance of his duties as such and shall choose some *domicilium citandi et executandi* within Botswana; and until he has complied with the foregoing conditions he shall not be capable of acting as liquidator, co-liquidator or provisional liquidator, as the case may be; and if these conditions are not complied with within a time to be fixed by the Master he shall be deemed to have resigned his office:

Liquidator to give security, and to choose a *domicilium* within Botswana

Provided that no such security will be required in the case of a members' voluntary winding up if the company so resolves.

(2) The cost of giving the aforesaid security, provided it is furnished in the prescribed form, if any, by a fidelity company or an association approved by the Master, shall be a cost in the winding up.

(3) When a liquidator has, in the course of winding up a company, accounted to the Master to his satisfaction for any property belonging to the company the Master may consent to a reduction of the security mentioned in subsection (1) if he is satisfied that the reduced security will suffice to indemnify the company, its creditors and contributories against any maladministration by the liquidator of the remaining property belonging to the company.

241. (1) The Master may, whenever he deems it desirable, appoint a co-liquidator to act jointly with any other liquidator.

Co-Liquidator

(2) When two or more liquidators have been appointed they shall act jointly in performing their functions as liquidators and each of them shall be jointly and severally liable for every act performed by them jointly.

242. (1) A liquidator shall be described by the style of the liquidator of the particular company in respect of which he is appointed and not by his individual name.

Title and acts of liquidators

(2) The liquidator shall proceed forthwith to recover and reduce into possession all the assets and property of the company, movable and immovable.

(3) Every liquidator shall give the Master such information and such access to the facilities for inspecting the books and documents of the company and generally such aid as may be requisite for enabling that officer to perform his duties under this Act.

(4) The acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

243. The liquidator shall, as soon as practicable, and, unless with the consent of the Master, not later than three months after the date of his appointment, submit to general meetings of creditors and contributories a report—

General meetings to hear liquidator's report

(a) as to the amount of capital issued, subscribed and paid up and the estimated amount of assets and liabilities;

(b) if the company has failed, as to the causes of the failure;

(c) whether in his opinion further enquiry is desirable as to any matter relating to the promotion, formation or failure of the company or the conduct of its business;

(d) whether the company has kept the books and accounts required by section 111, and, if not, in what respect such requirement has not been complied with;

(e) as to the progress and prospects of the liquidation; and (/) as to any other matter which he may think fit or in regard to which he may desire the directions of the creditors or the contributories.

244. (1) From the beginning of his appointment and during the whole period of his office the liquidator shall punctually keep proper books and records of all transactions of the liquidation.

Books to be kept by liquidator and inspection thereof

(2) The Master may at any time in writing order the liquidator to produce the said books or records for inspection.

(3) Any creditor or contributor may, at all reasonable times, personally or by his agent, but subject to the control of the Master, inspect such books or records.

Liquidator's Accounts

245. (1) Every liquidator shall, unless he receives an extension of time as hereinafter provided, frame and lay before the Master, not later than six months after his appointment, an account of his receipts and payments and a plan of distribution, or, if there is a liability among creditors to contribute towards the cost in the winding up, a plan of contribution apportioning their liability.

Liquidator to lodge with Master accounts in winding up

(2) If the account is not the final account, the liquidator shall from time to time, and as the Master may direct, but at least once in every six months (unless he receives an extension of time), frame and lay before the Master a further account and plan of distribution.

(3) The account shall be in the prescribed form, shall be made in duplicate, shall be fully supported by vouchers, including the liquidator's bank statement or a certified extract from his bank account, and shall be verified by an affidavit in the prescribed form.

(4) Where the office of the Master and the registered office of the company are not situated in the same district the liquidator shall forward a duplicate of the account to the District Commissioner of the district in which the registered office of the company is situated.

246. (1) The Master, at any time when he considers that the liquidator has funds in hand that ought to be distributed, and the Master or any person interested in the company when a full and true account has not been lodged within the periods prescribed for the lodging of such an account, may apply to the court for an order compelling the liquidator to lodge his account: Provided that—

Applications to court to compel liquidator to lodge accounts

(i) the Master or that other person shall, not later than 14 days before making the application, require the defaulting liquidator by notice in writing to lodge his account in accordance with this Act, (ii) any liquidator receiving such notice shall lay before the Master in writing his reasons for not having lodged his account and the grounds upon which he claims an extension of time within which to do so, and thereupon the Master may grant to the liquidator such extension of time as in the circumstances he may think necessary,

(iii) if the prescribed period for lodging an account has expired or, if it will expire within the time for which an extension is sought unless the liquidator has previously given, by advertisement

in the Gazette, not less than 14 days' notice of his intention to apply for an extension,

(iv) any liquidator who fails to satisfy the Master that he ought to receive an extension of time may, after notice to the Master and to the person referred to in proviso (i) to this subsection, apply by motion to the court for an order granting to him an extension of time within which to lodge his account.

(2) Upon an application by the Master under subsection (1), the court, although it may be of opinion that the reasons laid before the Master by the liquidator were such as would have justified the Master in granting an extension of time to lodge an account, shall order the liquidator to pay the costs of the Master if, before making his application, the Master allowed the liquidator sufficient time for an application to the court for an extension of the period for lodging his account.

247. (1) Every liquidator's account shall lie open for inspection by creditors contributories or other persons interested, for a period of not less than 14 days in the following manner—

- (a) if the office of the Master and registered office of the company are situated in the same magisterial district, then at the office of the Master;
- (b) otherwise, at the office of the Master and at the office of the District Commissioner of the district in which the registered office of the company is situated.

(2) The liquidator shall give due notice thereof by advertisement in the Gazette and shall state in that notice the period during which and the place or places at which the accounts will lie open for inspection, and shall post or deliver a similar notice to every creditor who has proved a claim against the company.

(3) The Assistant Master or magistrate shall cause to be affixed in a public place in or about his office a list of all such accounts as have been lodged in his office and the respective dates on which they will be transmitted to the Master and upon the expiry of the period of inspection so advertised, he shall endorse on each account his certificate that the account has been open in his office for inspection in terms of this section and shall transmit the account to the Master.

(4) No stamp duty shall be payable in respect of such certificate.

248. (1) Any person interested in the winding up of the company may, at any time before the confirmation of an account, lay before the Master in writing any objection, with the reasons therefor, to the account.

Inspection of
Accounts

Objections to
account by
interested
parties

(2) If the Master is of opinion that any such objection ought to be sustained, he shall direct the liquidator to amend the account or may give such other directions as he may think fit.

(3) Notwithstanding that an objection to the account has not been lodged, if the Master is of opinion that any improper charge has been made against the assets or that the account is in any respect incorrect, he may direct the liquidator to amend the account or may give such other directions as he may think fit.

(4) The liquidator or any person aggrieved by any such direction of the Master under this section, or by the refusal of the Master to sustain an objection lodged thereunder, may apply by motion to the court within 14 days after the date of the Master's direction, after notice to the liquidator, for an order to set aside the Master's decision, and the court may confirm the account or make such other order as it thinks fit.

(5) When any such direction affects the interests of a person who has not lodged an objection with the Master, the account so amended shall again lie open for inspection in the manner and with the notice hereinbefore prescribed, unless the person affected as aforesaid consents in writing to the immediate confirmation of the account.

249. When an account has been open to inspection as hereinbefore prescribed and—

- (a) no objection has been lodged;
- (b) an objection has been lodged and the account has been amended in accordance with the direction of the Master, and has again been open for inspection if necessary, as prescribed in section 248(5), and no application has been made to the court within the prescribed time to set aside the Master's decision; or
- (c) an objection has been lodged, but withdrawn or not sustained, and the objector has not applied to the court within the time prescribed in section 248,

the Master shall confirm the account, and his confirmation shall have the effect of a final sentence, except as against such persons as may be permitted by the court to re-open the account before any dividend has been paid thereunder.

Confirmation of
account

250. (1) Immediately after the confirmation of any account the liquidator shall proceed to distribute the assets in accordance therewith or to collect from the creditors liable to contribute thereunder the amounts for which they may be liable respectively.

(2) The liquidator shall give notice to the confirmation of the account in the Gazette, stating that a dividend is in course of payment, or, that a contribution is in course of collection and that every creditor liable to contribute is required to pay to the

Distribution of
estate

liquidator the amount for which he is so liable, and the address at which the payment of the contribution is to be made, as the case may be.

251. (1) The liquidator shall without delay lodge with the Master the receipts for dividends.

(2) If the dividend remains unpaid for a period of three months after the confirmation of the account, the liquidator shall immediately pay it into the Guardian's Fund for account of the creditor or contributory.

(3) If the liquidator, at the expiry of the said period of three months, has failed to furnish the Master with a proper receipt for any dividend which has not been paid as aforesaid, his failure shall be *prima facie* evidence that such dividend has been received and has not lawfully been disposed of by him, and the Master may institute proceedings against the liquidator to answer for his default.

(4) The court may order the liquidator to pay such dividend, and in addition, by way of penalty, such sum, not exceeding the amount of the dividend which has been unduly detained, as it may think fit and such penalty shall be paid into the general revenues of Botswana.

(5) If a liquidator delays payment of any dividend, any creditor or contributory entitled thereto may, after notice to the liquidator, apply to the court for an order compelling the liquidator to pay that dividend.

Liquidator to lodge receipts for dividends or pay dividends to guardian's Fund

Leave of Absence or Resignation of Liquidator

252. (1) At the request of any liquidator the Master may grant him leave of absence or may relieve him of his office, in either case upon such conditions as the Master may think fit to impose and subject to his giving such notice thereto as the Master may direct.

(2) Every liquidator who is granted leave of absence or who is relieved of his office by the Master shall give notice thereof in the Gazette.

Leave of absence or resignation of liquidator

Miscellaneous Provisions in Winding Up

253. (1) In every winding up of a company every creditor shall be entitled to vote at any meeting of creditors of the company as soon as his claim has been proved: Provided that—

- (a) he may not vote in respect of a claim that is dependent upon the fulfillment of a condition until he proves that the condition has been fulfilled or, in an application by

Voting at meetings of creditors and contributories

the creditor to the court, the court otherwise orders; and
 (b) he may not vote in respect of any claim acquired by him by cession or purchase from any person after— (i) the passing of the resolution to wind up the company in the case of a voluntary winding up or of a voluntary winding up that is superseded by a winding up by the court, or (ii) the filing of the petition for winding up by the company in the case of any other winding up by the court.

(2) The vote of a creditor shall be reckoned according to the value of his claim.

(3) Any creditor holding any security, other than a general notarial bond, shall put a value on his security when proving his claim and, except in the election of a liquidator and upon any question affecting his security, his vote shall be reckoned according to the value of the balance, if any, of his claim remaining after deduction therefrom of the said value of his security.

(4) At every meeting of contributories in the winding up of a company the votes of each contributory shall be those to which he is entitled according to the articles of the company in force at the commencement of the winding up.

254. Where a company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters therein recorded.

Books of
company to be
evidence

255. (1) In every winding up of a company the assets shall be applied in payment of the costs, charges and expenses incurred in the winding up and of the claims of creditors as nearly as possible as they would be applied in payment of the costs of sequestration and the claims of creditors under the law relating to insolvent estates, and the provisions of the said law relating to contributions by creditors shall apply.

Application of
assets, and costs
of winding up

(2) All costs and charges incurred, and all advances made by the Master on account of the company shall, subject to the order of the court, be costs in the winding up.

256. Any person claiming to be entitled to any money paid to the Master by a liquidator under the provisions of this Act may apply to the Master for payment of the same, and the Master may, on a certificate by the liquidator or on other sufficient evidence that the person claiming is entitled thereto, pay to that person the sum due.

Payment of
money
deposited with
Master

257. When any company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators shall, unless the court otherwise directs, be delivered to the Master; and such books and papers shall not be destroyed for a period of five years from the date of dissolution of the company.

Disposal of books and papers of company

Miscellaneous Powers of the Court

258. (1) The court may, as to all matters relating to a winding up, take into account the proved wishes of the creditors or
(2) The court may, if it thinks fit, for the purpose of ascertaining those wishes, order meetings of the creditors and contributories to be called, held and conducted in such manner as it directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to it.

Meetings of ascertain wishes of creditors and contributories

259. When a company has been dissolved, the court may, at any time within two years of the date of the dissolution, on an application by the liquidator of the company, or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

Power of court to declare dissolution of company void

260. (1) Any person aggrieved by any decision, ruling, order, appointment or taxation of the Master under this Act may bring the same under review by the court, and to that end may apply to the court by motion after due notice has been given to the Master and to any person whose interests are affected:

Review of court

Provided that where the general body of creditors or contributories is affected notice to the liquidator shall be notice to them.

(2) Any person aggrieved by any decision, ruling or order of the officer presiding at any meeting of creditors or contributories may bring the same under review by the court in the same manner *mutatis mutandis* as is prescribed in subsection (1).

(3) Nothing in this section shall authorize the court to re-open any duly confirmed account or plan of distribution or of contribution otherwise than as is provided in section 249.

261. (1) All persons empowered to hold magistrates' courts and such other persons as the court may appoint shall be commissioners for the purpose of taking evidence or holding any inquiry under this Act in cases where a company is wound up in

Special commissioners for taking evidence

any part of Botswana, and the court may refer the whole or any part of the examination of any witnesses or of any inquiry under this Act to any person hereby appointed commissioner, although he is out of the jurisdiction of the court.

(2) The Master, the liquidator and any creditor or contributory may be represented at such inquiry by an attorney with or without counsel.

(3) Every commissioner within Botswana shall, in addition to any powers which he might lawfully exercise as magistrate, have in the matter so referred to him the same powers of summoning and examining witnesses, of requiring the production or delivery of documents, of punishing defaulting or recalcitrant witnesses, and of allowing costs and expenses to witnesses, as the court which made the winding-up order.

(4) The examination so taken shall be returned or reported to the court in such manner as the court directs.

262. Whenever under this Act any order is made by the court in connexion with the winding up, judicial management or dissolution of a company, a copy of such order certified by the Registrar of the court shall be transmitted by him to the Master and the Registrar.

Orders to be sent to Master and Registrar

Judicial Management Instead of Winding Up

263. In every case in which a company is placed under judicial management the provisions of sections 182, 184(2) and (3), 185, 201, 203, 204, 238, 239, 240, 241, 253, and 262 and where the court so orders, sections 233, 234, 236 and 261 or any of the said sections shall apply in a judicial management as they apply in a winding up by the court or in a winding up of a company which is unable to pay its debts, any reference to the liquidator being taken as a reference to the judicial manager and any reference to a winding-up order as a reference to a judicial management order and any reference to a contributory as a reference to a member of the company.

Application of certain provisions in winding up to judicial management

264. (1) Whenever application is made to the court for the liquidation of any company on the ground that such company is unable to pay its debts, or that, by reason of its mismanagement or of its probable inability to meet its obligations or become a successful concern or for some other cause, it is just and equitable that the company should be wound up, and the court, upon consideration of the facts, is of opinion that, notwithstanding any present inability of the company to meet its obligations, or the existence of any other fact or circumstance alleged in the application, there is a reasonable probability that if the company

Placing company under judicial management

be placed under judicial management as provided in this section it will be enabled to meet such obligations and to remove the occasion for liquidation or dissolution, and that it is otherwise just and equitable that the grant of an order of liquidation should be postponed, the court may, instead of granting a liquidation order, grant an order (hereinafter called "a judicial management order") in terms of this section, to be of force either for a period stated in the order or for an indefinite period.

(2) A judicial management order may also be granted by the court in respect of any company on the application of any member or creditor, if it appears to the court that, by reason of mismanagement or any other cause, it is desirable that the company should be placed under judicial management.

(3) On the presentation of a petition for the granting of a judicial management order, the provisions of section 175 shall apply in the same manner as if such petition were a petition for a winding up.

(4) Before granting a judicial management order in terms of this section the court may refer the case to the Master for a report on any circumstances, which appear to him to justify the court in withholding a judicial management order or postponing consideration of the making of such an order.

(5) For the purposes of the said report the Master, or any other person appointed by him for the purpose, may require the production of any books and documents of the company and any information regarding the affairs of the company from any person who is or was an officer of the company or who has presented the petition or made an affidavit in the proceedings.

(6) Any person, who is in control of books or documents or in possession of information required by the Master and refuses, on demand, to produce such books or documents or give such information, shall be guilty of an offence and liable to a fine not exceeding P100 or to imprisonment for a term not exceeding six months, or to both.

(7) Before granting an order placing a company under judicial management, the court may, in terms of section 128(a)(ii), declare that the affairs of the company ought to be investigated by an inspector appointed by the Minister.

(8) A copy of any report made under this section shall be furnished to the company and to the applicant for a judicial management order.

(9) The court may make any order it considers just for the payment of the costs of any investigation or inspection made under this section, including the costs of the report.

265. (1) A judicial management order shall contain—

- (a) directions that the company named therein shall, subject to the supervision of the court, be under the management of a judicial manager appointed in terms of section 185, but subject to the provisions of section 184(2) and (3), and that any person vested with the management of the company's affairs shall from the date of the making of the order be divested thereof;
- (b) directions that the judicial manager shall upon the date mentioned and upon completion of a bond of security in accordance with the provisions of section 240 proceed forthwith to take over the management of the company, and shall as soon as practicable and unless with the consent of the Master not later than one month and in any case not later than three months after the date of his assumption of management, and at intervals of three months thereafter, submit to a meeting of the company, to a meeting of the creditors of the company and to the Master, a report showing the assets and liabilities of the company, its debts and obligations, as verified by the auditors of the company, and all such other information as may be necessary to enable the Master and the members and the creditors to become fully acquainted with the company's position;
- (c) directions as to the rate of remuneration of the judicial manager; and
- (d) such other directions as the court may deem fit, as to the management of the company, or any matter incidental thereto, including power to the judicial manager to raise money on debentures or otherwise without the authority of members but subject to the rights of creditors,

and may direct that while the judicial management order is in force all actions and the execution of all writs, summonses, and other processes against the company be stayed and be not proceeded with without leave of the court first obtained.

(2) The court may at any time and in any manner vary the terms of the order.

266. (1) Notwithstanding the making of a judicial management order in respect of any company and for so long as the order is in force the provisions of this Act relating to the appointment and re-appointment of auditors and the rights and duties of auditors shall continue to apply as if any reference in the said provisions to the directors of the company were a reference to the judicial manager.

Judicial
Management
order

Position of
company's
auditor in
judicial
management

(2) The auditor of the company shall not be eligible for appointment as provisional manager or judicial manager.

267. It shall be the duty of a judicial manager, subject to the provisions of this Act, and to the provisions of the memorandum and articles of the company except where such last-mentioned provisions may be in conflict with any direction in the judicial management order or with any rules framed under section 312 and applicable under section 185(4)—

Duties of
judicial manager

- (a) so soon after his appointment as may be to recover and reduce into possession all the assets of the company, movable and immovable, and to undertake the management of the company;
- (b) to conduct such management, subject to the order of the court in such manner as he may deem most economic and most conducive to the interests of the members and creditors;
- (c) to comply with any direction of the court made in the judicial management order or any variation thereof;
- (d) within 14 days of his appointment to transmit to the Registrar in duplicate a copy of the Master's letter of appointment;
- (e) to transmit to the Registrar once in each calendar year during which the company is under judicial management a return containing all such information as is required in an annual return furnished under section 95 and complying *mutatis mutandis* with the provisions of that section:
Provided that this paragraph shall not apply to any calendar year in which the judicial management was ordered if in that calendar year returns have been furnished in respect of the company in terms of section 95;
- (f) to keep such books of account and to prepare a balance sheet and profit and loss account in all respects as would have been the duty of the directors if the company had not been placed under judicial management;
- (g) to convene, during the period the company is under judicial management, the annual general meeting of members and to furnish to the persons entitled thereto a report containing such information as is required by this Act in the report of directors together with all duly audited accounts of the company in such form and manner as would have been required from the directors if the company had not been placed under judicial management; and
- (h) if at any time he is of opinion that the continuance of the judicial management will not enable the company to meet its obligations and remove the occasion for judicial management or liquidation, to apply to the court, after not

less than 14 days' notice, by registered post to all members and creditors, for the cancellation of the order under section 270 and the issue of a winding up order.

268. (1) Every disposition of its property which, if made by an individual, could for any reason be set aside in the event of his insolvency, may, if made by a company, be set aside by the court at the suit of the judicial manager in the event of the company being placed, under judicial management and its being unable to pay its debts, and the provisions of the law relating to insolvent estates shall *mutatis mutandis* be applied to any such disposition.

Voidable and undue preferences in case of judicial management

(2) For the purposes of this section the event which shall be deemed to correspond with the sequestration order in the case of an individual shall be—

- (a) if the judicial management order was granted under section 264(1), the presentation of the petition for the liquidation of the company;
- (b) if the judicial management order was granted under section 264(2), the granting of that order.

269. (1) A judicial manager shall not without the leave of the court sell, or otherwise dispose of, any of the company's assets, except in the ordinary course of the company's business.

Application of assets during judicial management

(2) Any moneys of the company becoming available to the judicial manager shall be applied by him in paying the costs of the judicial management and in the conduct of the company's business in accordance with the judicial management order, and so far as the circumstances permit, in the payment of the claims of creditors which arose before the date of the order.

(3) The creditors of the company whose claims arose before the date of the judicial management order may at a meeting convened by the judicial manager for the purposes of this subsection resolve that all liabilities incurred or to be incurred by the judicial manager in the conduct of the company's business shall be paid on preference to all other liabilities exclusive of the costs of the judicial management and thereupon all claims based upon such first-mentioned liabilities shall have preference in the order in which they were incurred over all unsecured claims against the company except claims arising out of the costs of the judicial management.

(4) Subject to the provisions of subsection (3) the costs of the judicial management and the claims of creditors of the company shall be paid *mutatis mutandis* in accordance with the law relating to insolvent estates, as if those costs were costs of the sequestration of an estate and those claims were claims against an insolvent estate.

(5) The law relating to insolvent estates shall, subject to section 253, apply *mutatis mutandis* in connexion with the convening of a meeting of creditors mentioned in subsection (3) and the conduct of that meeting as if such meeting were a meeting of creditors of an insolvent estate.

270. (1) If at any time, on the application of the judicial manager or of any person interested, it appears to the court that the purpose of such order has been fulfilled, or that for any reason it is undesirable that such order should remain in force, the court may cancel such order and thereupon the judicial manager shall be divested of such management.

Cancellation of
judicial
management
order

(2) In cancelling the said order the court shall give such directions as may be necessary for the resumption of the management and control of the company by the directors thereof; and such directions may include directions for the summoning of a general meeting of members for the election of directors.

*Offences Antecedent to or in Course of Winding Up or Judicial
Management*

271. (1) Where in the course of winding up or judicial management of a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present officer, liquidator or judicial manager of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misconduct or breach of trust in relation to the company, the court may, on the application of the Master or of the liquidator or judicial manager or of any creditor or contributory, examine into the conduct of the promoter, officer, liquidator or judicial manager, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retention, misconduct or breach of trust as the court may think just.

Power of court
to assess
damages against
delinquent
promoters,
directors etc

(2) This section shall apply notwithstanding that the offence is one for which the offender may be criminally responsible.

272. Every person shall be guilty of an offence and liable to a fine not exceeding P200 or to imprisonment for a term not exceeding six months, or to both, who, being or having been a director of a company unable to pay its debts, has been required in writing—

Penalty for
failure by
directors and
others to attend
meetings

(a) by the Master to attend the first and second meetings of

creditors in the winding up or judicial management of the company; or

- (b) by the liquidator or judicial manager to attend any subsequent meeting of creditors of the company, and absents himself without valid excuse therefrom without the written permission of the Master or the presiding officer.

273. (1) Where a company is being or has been wound up or is or has been under judicial management and is a company unable to pay its debts, every person shall be guilty of an offence and liable to imprisonment for a term not exceeding three years who, at any time within the six months next preceding the commencement of the winding up or of the judicial management of the company and while being an officer of the company, does any of the following acts, unless he satisfies the court, in each case, that he had no intention to defraud, namely, every person who—

- (a) conceals, destroys, mutilates or falsifies or is privy to the concealment, destruction, mutilation or falsification, of any book or document relating to the property or affairs of the company, or makes or is privy to the making of any false entry in any such book or document;
- (b) conceals any part of the property of the company to the value of P20 or upwards which ought by law to be divided amongst the creditors of the company;
- (c) causes or permits any property of the company, which it has obtained on credit and has not paid for, to be pledged, mortgaged or disposed of otherwise than in the ordinary course of the company's business.

(2) Every person shall be guilty of an offence and liable to imprisonment for a term not exceeding three years who, while being an officer of a company and with intent to defraud the creditors of the company in the event of its being wound up or being placed under judicial management and being a company unable to pay its debts—

- (a) does any act specified in subsection (1);
- (b) removes or disposes of any part of the property of the company to the value of P20 or upwards;
- (c) parts with or is privy to the removal or disappearance of any books or documents relating to the property or affairs of the company.

(3) Where a company is being or has been wound up or is or has been under judicial management and is a company unable to pay its debts, every person shall be guilty of an offence and liable to imprisonment for a term not exceeding three years who within the 12 months next preceding the commencement of the winding up or of the judicial management of the company and

Offences
consequent
upon a winding
up or judicial
management

while being an officer of the company, acts as follows, unless he satisfies the court that he had no intention to defraud, namely, every such person who when making any statement either verbally or in writing in regard to the business or affairs of the company, and for the information of its creditors or of any person who became its creditor on the faith of such a statement, conceals any liability, present or future, certain or contingent, which the company may then have contracted, or mentions, as if it were an asset of the company, any right or property which, at the time, is not an asset, or in any way conceals or disguises, or attempts to conceal or disguise, any loss which the company has sustained, or gives any incorrect account thereof, unless he satisfies the court that he had no intention to defraud; and for the purposes of this subsection an auditor of the company shall be deemed to be an officer of the company.

(4) Every person shall be guilty of an offence and liable to imprisonment for a term not exceeding one year who, being an officer of a company—

- (a) causes or knowingly permits an undue preference as defined by the Insolvency Act to be given by the company;
- (b) causes or knowingly permits any debt or debts to the aggregate amount of PI00 or upwards to be contracted by the company without any reasonable expectation that the company will be able to discharge the same and the company thereafter, being still a debtor for the said debt or debts, is wound up or placed under judicial management and is a company unable to pay its debts.

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(5) Every person shall be guilty of an offence and liable to imprisonment for a term not exceeding two years who, while being a director, secretary or manager of a company and at any time during the winding up or judicial management of the company—

- (a) knowing or suspecting that a false debt has been or is about to be proved against the company, fails for a period of seven days to inform the Master, or the liquidator or the judicial manager thereof in writing;
- (b) fails to disclose to the liquidator or judicial manager to the best of his knowledge all the property of the company of any kind, and the manner in which, the person to whom, the consideration for which, and the time when, any part thereof was disposed of unless he satisfies the court that he had some lawful excuse for such failure;
- (c) fails to deliver to the Master or liquidator or judicial manager as any one of them may direct, all books, documents, papers and writings in his custody or under his control relating to the property or affairs of the company, unless he satisfies the court that he had some lawful excuse for such failure;

(d) prevents the production or delivery to the Master or liquidator or judicial manager of any books, documents or papers relating to the property or affairs of the company.

(6) Every person shall be guilty of an offence and liable to imprisonment for a term not exceeding one year who, while being a director, manager or secretary of a company, and at any time during the winding up or judicial management of the company, grants, promises or offers any consideration in order to induce any person to refrain from the investigation of the affairs of the company or from the prosecution on a criminal charge of any officer of the company or of any person with whom the company may have had business relations.

(7) Where a company is being or has been wound up or is or has been under judicial management and is a company unable to pay its debts, every person shall be guilty of an offence and liable to imprisonment for a term not exceeding six months who, while being a director, manager or secretary of the company, and being under examination at a meeting and being thereto required by the presiding officer, the liquidator, judicial manager or any creditor or contributory or their respective agents, fails to account for or to disclose what has become of any of the property of the company which is proved to have been in his possession or, to his knowledge, in the possession of the company so recently before the commencement of the winding up or of the judicial management that in the ordinary course he ought to be able to account for same.

(8) For the purposes of subsections (1)(a) and (2)(a), an auditor of a company shall be deemed to be an officer of the company.

(9) For the purposes of subsections (5), (6) and (7) a person who is a director a manager or secretary of a company at the commencement of the winding up or judicial management thereof shall be deemed to be a director, manager or secretary during the winding up or judicial management thereof notwithstanding that his duties may have ceased or that he is no longer gainfully employed by the company or by its liquidator or judicial manager on its behalf.

274. (1) If in the course of a winding up or the judicial management of a company or otherwise it appears that any business of the company was or is being carried on recklessly or with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the court, on the application of the Master, or the liquidator or judicial manager or any creditor of or contributory to the company, may, if it thinks proper to do so, declare that any person who was knowingly a party to the carrying on of the business in the

Responsibility
of directors and
other persons
for fraudulent
conduct of
business

manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the court may direct.

(2) Where the court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to the declaration, and in particular may, make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or in any company or person on his behalf, or in any person claiming as assignee from or through the person liable or any company or person acting on his behalf and may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under this subsection.

(3) For the purposes of subsection (2) the expression "assignee" includes any person to whom, or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge or interest therein was created, issued or transferred but does not include an assignee for valuable consideration given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(4) Without prejudice to any other criminal liability incurred, where any business of a company is carried on recklessly or with such intent or for such purpose as is mentioned in subsection (1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid, shall be guilty of an offence and liable to a fine not exceeding P1000 or to imprisonment for a term not exceeding two years, or to both.

(5) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is made.

275. If it appears in the course of the winding up or judicial management of a company that any past or present officer or member of the company has been guilty of an offence for which he is criminally responsible under this Act or in relation to the company or the creditors of the company under some other law, the liquidator or judicial manager shall cause all the facts known to him which appear to constitute the offence to be laid before the Attorney-General.

Prosecution of
delinquent
directors and
others

Removal of Defunct Companies from Register

276. (1) When the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he shall send to the company by registered post a letter inquiring whether it is carrying on business or in operation.

Registrar may
strike defunct
company off
register

(2) If the Registrar does not within one month of sending the letter receive any answer thereto, he shall, within 14 days after the expiration of the month, send to the company by post a registered letter referring to the first letter and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Gazette with a view to striking the name of the company off the register.

(3) If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation or does not within one month after sending the second letter receive any answer, he may publish in the Gazette and send to the company by registered post a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will thereby be dissolved.

(4) From time to time and at least once in every year the Master shall send to the Registrar a return in duplicate of every company which is in course of being wound up and in regard to which—

(a) the Master has reason to believe that no liquidator is acting; or
(b) the liquidator has failed to lay before the Master the accounts required under section 245, but the Master has reason to believe that its affairs are fully wound up, and thereupon the Registrar may publish in the Gazette and send by registered post to every company specified in the return a like notice as is provided in subsection (3).

(5) If a company makes default for a period of more than two years in rendering the returns required by section 95, and the Registrar has reasonable cause to believe that the company is not carrying on business or in operation, the Registrar may publish in the Gazette and send to the company by registered post such a notice as is mentioned in subsection (3).

(6) At the expiration of the period mentioned in any such notice as is described or referred to in subsection (3), (4) or (5) unless cause to the contrary is previously shown, or upon receipt from any company of a written statement signed by every director, that the company has ceased to carry on business and has no assets or liabilities, the Registrar may strike its name off

the register and shall publish notice thereof in the Gazette, and on the publication of this notice the company shall thereby be dissolved:

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

(7) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the court, on the application of the company or member or creditor, may, if satisfied that the company was at the time of the striking off carrying on business or was in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if its name had not been struck off; and the court may, by the order, give such directions and make such provision as seem just for placing the company and all other persons in the same position, as nearly as may be, as if the company had not been struck off.

(8) A letter or notice under this section shall be addressed to the company at its registered office, or, if no office has been registered, to the care of an officer of the company, or if there is no officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the memorandum addressed to him at the address mentioned in the memorandum.

PART VI *Winding Up of Unregistered Associations*

277. An unregistered association shall mean any company, syndicate, association or partnership having a place of business in Botswana which consists of more than seven members and is not a company to which Parts II, III and IV or VII apply.

Unregistered
association
defined

278. An unregistered association may, subject to the provisions of this Part, be wound up under this Act, and the provisions of section 111, and all the provisions of Part V except the provisions of sections 263 to 270, inclusive, and section 276 and of the winding-up rules made under section 312 shall *mutatis mutandis* apply to such an association, and to its directors, officers or members with the following exceptions and additions—

Winding up of
unregistered
association

- (a) the head office or principal place of business in Botswana shall for all the purposes of the winding up be deemed to be the registered office of the association;
- (b) no unregistered association shall be wound up under this Act voluntarily;

- (c) the circumstances in which an unregistered association may be wound up are as follows—
 - (i) if the association is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs,
 - (ii) if the association is unable to pay its debts, or (iii) if the court is of opinion that it is just and equitable that the association should be wound up;
- (d) an unregistered association shall, for the purposes of this Act, be deemed to be unable to pay its debts—
 - (i) if a creditor to whom the association is indebted in a sum exceeding PI00 then due, has served on the association a demand requiring the association to pay the sum so due, by leaving it at the association's principal place of business, or by delivering it to the secretary or director, manager or other principal officer of the association, or by serving it in such other manner as the court may allow, and if the association has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor,
 - (ii) if in respect of any action or other proceeding instituted against any member of the association for any debt or demand due, or claimed to be due, from the association or from him in his capacity as a member thereof, notice in writing of the institution of such action or proceeding has been served on the association by leaving such notice at its principal place of business, or by delivering it to the secretary, or a director, manager or other principal officer of the association, or by serving the same in such other manner as the court may allow and if the association has for 10 days thereafter neglected to pay, secure or compound for the debt or demand, or to procure a stay of the action or proceeding, or to indemnify the defendant member to his reasonable satisfaction against the action or proceeding, and against all costs, damages and expenses incurred or to be incurred by him by reason of or in defending the same at the instance of the association, (iii) if execution or other process issued on a judgment decree or order obtained in any court in favour of a creditor against the association, or any member thereof as such, or any person authorized to be sued as nominal defendant on behalf of the association, is returned unsatisfied by the sheriff or messenger with the endorsement that no asset could be found to satisfy

the debt or that the assets found were insufficient to do so, or
 (iv) if it is proved to the satisfaction of the court that the association is unable to pay its debts; and in determining whether an association is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the association;

(e) a member of an unregistered association being wound up under this section shall be deemed to be an officer of the association for the purposes of sections 271 to 275, inclusive.

279. (1) In the event of an unregistered association being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of—

(a) any debt or liability of the association;

(b) any sum for the adjustment of the rights of the members amongst themselves; or

(c) the costs and expenses of winding up the association, and every contributory shall be liable to contribute to the assets of the association all sums due by him in respect of such liability as aforesaid.

(2) In the event of the death or insolvency of any contributory or the assignment of his estate under the law relating to insolvent estates, then section 170 shall, *mutatis mutandis*, apply.

Contributories

280. The provisions of section 175 with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order shall, in the case of an unregistered association, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the association.

Power of court to stay or restrain proceedings

281. Where an order has been made for Winding up an unregistered association, no action or proceeding shall be proceeded with or commenced against any contributory of the association in respect of any debt of the association, except by leave of the court, and subject to such terms as the court may impose.

Actions stayed on winding up order

282. If an unregistered association has no power to sue and be sued in a common name, or if for any reason it appears expedient, the court may by the winding up order, or by any subsequent order, direct that all or any part of the property belonging to the association, or to trustees on its behalf, is to vest in the liquidator by his official name, and thereupon the property or the part thereof specified in the order shall vest

Directions as to property in certain cases

accordingly; and the liquidator may, after giving such indemnity, if any, as the court may direct, bring or defend in his official name any action or other legal proceedings relating to that property or necessary to be brought or defended for the purpose of effectually winding up the association and recovering its property.

283. The provisions of this Part with respect to unregistered associations shall be deemed to be in addition to and not in restriction of any provisions hereinbefore in this Act contained with respect to winding up companies by the court, and the court or liquidator may exercise any powers or do any act in the case of unregistered associations which might be exercised or done by it or him in winding up companies registered under this Act but an unregistered association shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part.

Provisions of
this Part
cumulative

PART VII *External Companies*

284. For the purposes of this Part—
"banking company" means a company which carries on a business of which a substantial part consists of the acceptance of deposits of money withdrawable by cheque;
"insurance company" means a company which carries on insurance business.

Interpretation

285. (1) Every external company, which establishes a place of business in Botswana, shall within one month after the establishment of its place of business in Botswana deliver to the Registrar for registration—

Requirements as
to external
companies

- (a) a copy, certified by a director residing in Botswana or by a notary public, of its charter, statutes or memorandum and articles or other instrument constituting or defining its constitution, and, if the instrument is in a foreign language, a certified translation thereof;
- (b) a list of its directors, and of a person responsible for the management of its business in Botswana being a person who shall accept on its behalf service of process and any notices required to be served on it and who hereafter (in this Act is referred to as the "chief agent");
- (c) the address of its principal place of business in Botswana. (2)
The list referred to in subsection (1)(b) shall contain the following particulars—

- (a) with respect to each individual, his forenames, and surname, his nationality, his usual residential address, his

business occupation, if any, and, in the case of a director, particulars of any other directorships held by him; and (b) in the case of a corporation, its corporate name, registered or principal office:

Provided that, where all the partners in a firm are jointly appointed the chief agents of the external company, the name and principal office of the firm and the full names of its partners may be stated instead of the particulars mentioned in paragraph (a), regarding the chief agent.

(3) If any alteration is made in—

(a) the charter, statutes or memorandum and articles of an external company or other instruments as aforesaid;

(b) the directors or chief agent of an external company or the particulars contained in the said list; or

(c) the address of the said principal place of business, the external company shall, within six weeks of such alteration, lodge with the Registrar for registration a return containing particulars of the alteration, and if the alteration is in any instrument referred to in paragraph (a), also a certified copy and certified translation, if need be, of the instrument showing the alteration.

(4) Every external company, other than a private company, shall in every year make out a balance sheet and profit and loss account and, if the external company is a holding company, group accounts, in such form, and containing such particulars and including such documents as under the provisions of this Act it would, had it been a company within the meaning of this Act, have been required to make out and lay before the company in general meeting, and lodge a copy of such balance sheet, profit and loss account and group accounts, if any, with the Registrar; and if such balance sheet and other documents are in a foreign language there shall be annexed a certified translation thereof.

(5) Every external company shall—

(a) conspicuously exhibit outside all its places of business in Botswana its name and the country in which it is incorporated;

(b) have its name and the name of the country in which it is incorporated mentioned in legible characters in all its business letters, notices and other official publications;

(c) if the liability of the members of the external company is limited, cause notice of that fact to be stated in legible characters in every prospectus and in all the documents referred to in paragraph (b), and to be affixed on every place where it carries on its business; and the use of the word "Limited" as the last word in

its name shall be a sufficient compliance with the requirements of this paragraph;

- (d) in all trade catalogues, trade circulars, and business letters on or in which the company's name appears and which are issued or sent by the company to any person in any part of the Commonwealth, state in legible characters with respect to every director and the chief agent, his present forenames or the initials thereof and present surname;
- (e) in respect of all its transactions within Botswana comply with the provisions of section 111.

(6) If any external company ceases to have a place of business within Botswana, it shall within 28 days of such cessation, give written notice of the fact to the Registrar, and as from the date on which the notice is so given the obligation of the external company to deliver to the Registrar any document, except any document which should have been delivered prior to such cessation, shall cease.

(7) If any external company fails to comply with any of the requirements of this section, the external company, and every officer or agent of the external company in Botswana who is in default, shall be guilty of an offence and liable to a fine not exceeding P400 and, in the case of a continuing offence, to a further fine not exceeding P10 for every day during which the offence continues.

(8) The Minister may, on application to him in writing, exempt an external company from such of the requirements imposed by this section as he considers reasonable.

286. Any process or notice required to be served on an external company shall be sufficiently served if delivered at the address of the chief agent:

Provided that—

- (i) where the external company is a banking company or insurance company,
- (ii) where the external company has made default in filing with the Registrar the name and address of its chief agent in terms of section 285, and
- (iii) if at any time the chief agent is dead or has ceased to reside in Botswana or for any other reason cannot be served,

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

287. Notwithstanding anything contained in any law whenever an external company satisfies the court that—

- (a) it carries on its principal business within Botswana;

Service of
process on
external
companies

Exemption in
respect of
transfer duty

- (b) the company is about to be or is being wound up voluntarily in its country of incorporation for the purpose of transferring the whole of its business and property wherever situate to a company which will be or has been registered under this Act (hereinafter referred to as "the new company") for the purpose of acquiring such business and property;
- (c) the sole consideration for such transfer is the issue to the members of the external company of shares in the new company in proportion to their shareholdings in the external company; and
- (d) no shares in the new company will be available for issue to any persons other than the members of the external company, the court may, subject to the certificate of the Registrar that—
- (i) the external company is being wound up voluntarily for the said purpose, (ii) a company has been registered under this Act for the said purpose, and
 - (iii) the members of the external company have had issued to them the shares in the new company to which they are entitled,
- order that no transfer duty shall be payable in respect of the transfer of immovable property from the external company to the company so registered.

288. Except as may be expressly provided in any other written law, an external company to which section 285(1) applies and which has lodged with the Registrar the documents and particulars therein mentioned shall have the same power to own immovable property in Botswana as if it were a company incorporated in Botswana.

Power of external company to own land in Botswana

Prospectuses

- 289.** (1) No person shall—
- (a) issue, circulate or distribute in Botswana any prospectus offering for subscription shares in or debentures of an external company, whether the external company has or has not been established or when formed will or will not establish, a place of business in Botswana unless—
 - (i) before the issue, circulation or distribution of the prospectus in Botswana a copy thereof, certified by the chairman and two other directors of the external company or by all directors of the company if the number is certified to be less than three as having

Provisions with respect to prospectus of external company

- been approved by resolution of the managing body,
has been delivered for registration to the Registrar,
- (ii) the prospectus states on the face of it that the copy has been so delivered,
the prospectus is dated, and
the prospectus otherwise complies with this section and section 290; or
 - (b) issue to any person in Botswana a form of application for shares in or debentures of such an external company or intended external company as aforesaid, unless the form is attached to a prospectus which complies with the provisions of this section and section 290:

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

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

(3) Where any document by which any shares in or debentures of an external company are offered for sale to the public would, if the external company had been a company within the meaning of this Act, have been deemed by virtue of section 46 to be a prospectus issued by the external company, that document shall be deemed to be, for the purposes of this section, a prospectus issued by the external company.

(4) An offer of shares or debentures for subscription or sale to any person whose ordinary business or part of whose ordinary business it is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this section.

(5) Section 43 shall *mutatis mutandis* extend to every prospectus to which this section applies.

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

(7) Any person who is knowingly responsible for the issue, circulation or distribution of any prospectus or for the issue of a form of application for shares or debentures, in contravention of any of the provisions of this section, shall be guilty of an offence and liable to a fine not exceeding P1000 or to imprisonment for a term not exceeding two years, or to both.

- 290.** (1) A prospectus issued, circulated or distributed under section 289 shall—
- (a) contain particulars with respect to the following matters—
 - (i) the instrument constituting or denning the constitution of the external company,
 - (ii) the enactments or provisions having the force of an enactment, by or under which the incorporation of the external company was effected,
 - (iii) an address in Botswana where the said instrument, enactments or provisions, or copies thereof, and if the same are in a foreign language a certified translation thereof can be inspected,
 - (iv) the date on which and the country in which the external company was incorporated, and (v) whether the external company has established a place of business in Botswana, and, if so, the address of its principal office in Botswana:

Provided that the provisions of subparagraphs (i), (ii) and (iii) shall not apply in the case of a prospectus issued more than two years after the date at which the external company commenced business in Botswana;

- (b) subject to the provisions of this section state the matters specified in Part I and set out the reports specified in Part II subject always to the provisions of Part III of the Third Schedule:

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

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

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

- (a) as regards any matter not disclosed, he proves that he was not cognizant thereof;
- (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or
- (c) the non-compliance or contravention was in respect of matters which, in the opinion of the court dealing with the case, were immaterial or were otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters contained in paragraph 15 of the Third Schedule, no director or other person shall incur any liability in respect of the failure unless it is proved that he had knowledge of the matters not disclosed.

(4) Nothing in this or section 289 shall limit or diminish any liability which any person may incur under the Penal Code or this Act, apart from this section.

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291. (1) A prospectus shall be deemed not to comply with Sections 289 and 290 -

- (a) if, where it includes or refers to a statement purporting to be made, by an expert, he has not given or has before delivery of a copy of the prospectus for registration withdrawn his written consent to the issue of the prospectus with the statement or reference in the form and context in which it is included and there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as aforesaid; or
- (b) if it does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by the provisions of section 54 so far as applicable.

Provisions as to expert's consent and allotment

(2) The requirements of section 289(1) for delivery of a copy of the prospectus to the Registrar before the prospectus is issued, circulated or distributed in Botswana shall be deemed not to be satisfied unless there is endorsed on or attached to the copy so delivered—

- (a) any consent required by subsection (1) to the issue of the prospectus;
- (b) the written consent so to act of any person named in the prospectus as the attorney, auditor, banker or broker of the company;
- (c) a copy of any contract required by section 290(1) (b) and paragraph 14 of the Third Schedule to be stated in the prospectus, or, in the case of a contract not reduced to writing, a memorandum giving full particulars thereof; and
- (d) where the person making any report required by section 290(1) (b) to be set out in the prospectus has made in the report, or has without giving the reasons indicated in the report any such adjustments as are mentioned in the provisions of this Act relating to such reports, a written statement signed by that person setting out the adjustments and giving the reasons therefor.

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

292. (1) The provisions of sections 160, 161, and 171 shall be deemed to apply within Botswana to an external company as they apply to a company.

Winding up an external company

(2) Any external company to which this Part applies may within Botswana be wound up in all respects as if it were an unregistered association and the provisions of sections 278 to 283, inclusive, shall apply, *mutatis mutandis*, to any such external company:

Provided that the provisions of section 171 shall apply to any such external company in place of the provisions of section 278(d).

PART VIII *General*

Form of Registers, Books, Inspection and Production

293. (1) Any register, index, minute book or book of account required by this Act to be kept by a company or external company may be kept either by making entries in bound books or by recording the matters in question in any other manner.

Form of registers and other documents

(2) Where any such register, index, minute book or book of account is not kept by making entries in a bound book, but by some other means, adequate precautions shall be taken for guarding against falsification and for facilitating its discovery.

(3) Any such register, index, minute book or book of account and every other book or document required by this Act to be kept by a company or external company and every document required by this Act or by a company's memorandum or articles to be issued or circulated by a company or external company shall be legibly printed in the English language.

(4) Where default is made in complying with subsection (2) or (3) the company or external company and every officer of the company or external company who is in default shall be guilty of an offence and liable to a fine not exceeding P200 and to a further fine not exceeding P10 for every day during which the offence continues.

294. If on an application by the Minister or by the Attorney-General, as the case may be, to a judge of the High Court in respect of a company or external company there is shown to be reasonable cause to believe that any person has, while an officer of a company or external company, committed an offence in connexion with the management of the affairs of the company or external company and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company or external company, an order may be made—

Production and inspection of books where offence suspected

(a) authorizing any person named therein to inspect the said

books or papers or any of them for the purpose of investigating and obtaining evidence of the offence; or (b) requiring the secretary of the company or external company or such other officer thereof as may be named in the order to produce the said books or papers or any of them to a person named in the order at a place so named.

Offences

295. (1) For the purposes of any provision in this Act which provides that an officer of a company or external company who is in default shall be liable to a fine or penalty, the expression "officer who is in default" means any officer of the company or external company who knowingly authorizes or permits the default, refusal or contravention mentioned therein.

Meaning of "officer in default" and non-application of section 332 (1) of Cap. 08:02

Cap.08:02

(2) Section 332(1) of the Criminal Procedure and Evidence Act (which concerns the criminal liability of certain officers of a company charged with an offence) shall not apply to criminal proceedings under any of the provisions of this Act.

296. (1) If any person in any statement, return, report, certificate, balance sheet or other document required by or for the purpose of any of the provisions of this Act makes a statement false in any material particular, knowing it to be false, he shall be guilty of an offence and liable to a fine not exceeding P400 or to imprisonment for a term not exceeding 12 months.

Penalties for false statements and oaths

(2) If any person, on examination on oath authorized under this Act, or in any affidavit or deposition in or about any matter arising under this Act, wilfully and corruptly gives false evidence he shall be guilty of an offence and liable to the penalties prescribed by law for perjury.

297. If any person trades or carries on business under any name or title of which "Limited" or any contraction or imitation of that word is the last word, he shall, unless duly incorporated with limited liability in that name, be guilty of an offence and liable to a fine not exceeding P10 for every day on which that name or title has been used.

Penalty for improper use of word "Limited"

298. (1) Every officer of a company or external company or any other person employed generally or engaged for some special work or service by the company or external company who makes, circulates or publishes or concurs in making, circulating or publishing any certificate, written statement, report or account in relation to any property or affair of the company or external company which is false in any material particular, shall, subject to the provisions of subsection (2), be guilty of an offence and

False statements by directors and others

liable to a fine not exceeding PI000 or to imprisonment for a term not exceeding two years, or to both.

(2) In any prosecution under this section it shall be a defense if it is proved that the person charged had, after reasonable investigation, reasonable ground to believe and did believe that the statement, report or account was true, and that there was no omission to state any material fact necessary to make the statement as set out not misleading.

299. (1) Where—

(a) a person is convicted before the High Court of any persons from offence in connexion with the promotion, formation or management of a company; or

(b) in the course of the winding up or judicial management of a company it appears that a person— (i) has been guilty of an offence for which he is liable (whether he has been convicted or not) under section 274, or

(ii) has otherwise been guilty, while an officer of the company, of any fraud in relation to the company or of any breach of his duty to the company, the court may make an order that that person shall not, without the leave of the court, be a director of or in any way, whether directly or indirectly, be concerned or take part in the management of any company or any external company for such period as may be specified in the order.

(2) A person intending to apply for the making of an order under this section shall give not less than 10 days' notice of his intention to the person against whom the order is sought, and on the hearing of the application the last-named person may appear and himself give evidence or call witnesses.

(3) An application for the making of an order under this section may be made by the Master or by the liquidator or judicial manager of the company or by any person who is or has been a member or creditor of the company; and on the hearing of any application for an order under this section by the Master or the liquidator or judicial manager, or of any application for leave under this section by a person against whom an order has been made on the application of the Master or the liquidator or judicial manager, the Master, or liquidator or judicial manager, as the case may be, may appear and call the attention of the court to any matters which seem to him to be relevant, and shall do so if summoned by the court and may himself give evidence and call witnesses.

(4) An order may be made by virtue of subsection (1)(b)(ii) notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order

Power to
restrain
fraudulent
persons from
managing
companies

is to be made, and for the purposes of the said sub-paragraph (ii) the expression "officer" shall include any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

(5) If any person contravenes an order made under this section, he shall, in respect of each offence, be liable to a fine not exceeding PI000 or to imprisonment for a term not exceeding two years, or to both.

300. Any person who conceals, destroys, mutilates, falsifies or makes or is privy to the making of any false entry in, or with intent to defraud or deceive, makes or is privy to the making of any erasure in any register, book (including any minute book), security, account or document of any company or external company shall, unless he satisfies the court in each case that he had no intention to defraud or deceive, be guilty of an offence and shall be liable to a fine not exceeding PI000 or to imprisonment for a term not exceeding three years, or to both.

Penalty for
falsification of
books

Legal Proceedings, Service of Documents, etc.

301. (1) If a company or external company, 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 document, or to give notice to him of any matter, fails to make good the default within 14 days after the service of a notice on the company or external company requiring it to do so, the court may, on an application made to the court by any member or creditor of the company or external company, or by the Registrar, make an order directing the company or external company and any officer thereof to make good the default within such time as may be specified in the order.

Enforcement of
duty of
company to
make returns to
Registrar

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

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or external company or on its officers in respect of any such default as aforesaid.

302. Whenever by this Act a time is prescribed for filing with or delivering or sending to the Registrar any return, account or other document or for giving notice to him of any matter, the Registrar may, on application to him before the expiry of the prescribed time, extend such time for so long as may seem to

Extensions of
time for lodging
returns etc

him to be reasonable; and if any prescribed time is extended by the Registrar under this section and the provisions of section 301 shall be read as applying to a default in respect of the time as so extended.

303. (1) Where any company is in default in filing, delivering or sending any return, account or other document required to be filed, delivered or sent to the Registrar under this Act, or is in any other respect in breach of any of the provisions of this Act, and where the Minister can satisfy the High Court that the provisions for enforcement contained in this Act (otherwise than as provided in this section) are impracticable of enforcement by reason of the fact that no officer of the company is resident in Botswana or for any other sufficient reason, the court may, on the application of the Minister, appoint a receiver to assume control of the company's assets located or situated in Botswana with full power to conduct the affairs of the said company in Botswana as if he were a judicial manager of a company under judicial management.

Additional powers of enforcement

(2) The said receivership may be discharged by the court, on application made by—

(a) the receiver; or

(b) the company, when the court is satisfied that all of the following conditions are met, namely— (i) there has been full compliance with all the provisions of this Act, including the filing, delivery or sending of all returns, accounts and documents required to be so filed, delivered or sent,

(ii) the payment by the company of all expenses and costs of the said receivership, including any remuneration due to or paid to the receiver and including any costs incurred by the Minister in obtaining the appointment of the receiver or in the discharge of the receivership, and

(iii) the payment by the company of such sum by way of penalty as the court may deem appropriate in the circumstances:

Provided that no such penalty shall be in excess of the fine or fines which might be imposed by the court on conviction of the company, or any of its directors or officers individually, in accordance with the provisions of this Act, in respect of the default or defaults in question.

304. (1) If in any proceeding for negligence, default, breach of duty or breach of trust against a person to whom this section applies it appears to the court that that person is or may be

Power to court to grant relief in certain cases

liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, the court may relieve him, either wholly or partly, from his liability, on such terms as the court may think fit.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the court for relief, and the court on any such application shall have the same power to relieve him as under this section it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

(3) The persons to whom this section applies are—

- (a) officers of a company as by this Act defined;
- (b) directors, managers and other officers of an external company.

305. Where a company or external company is plaintiff or applicant in any legal proceedings, the court may at any stage, on sufficient proof that there is reason to believe that the company or external company or the liquidator or judicial manager thereof will be unable to pay the costs of the defendant or respondent if successful in his defense, require sufficient security to be given for those costs, and may stay all proceedings till the security is given.

Security for costs

306. Every person or company aggrieved by any decision, ruling or order of the Registrar may bring the same under review by the court.

Review of Registrar's decision

307. Any notice, order or other document which by this Act may be or is required to be served upon a company, external company or unregistered association may, if it cannot be served as in this Act is otherwise expressly prescribed or unless the court shall otherwise direct, be served by leaving the same at, or sending it by prepaid registered post to—

Service of documents

- (a) the registered office, in the case of a company;
- (b) any place of business established in Botswana in the case of an external company;
- (c) the head office or principal place of business in Botswana, in the case of an unregistered association.

Rules of Procedure, etc.

308. (1) Subject to the provisions of section 314, the forms and tables set forth in First, Second, Fourth and Fifth Schedules, or forms and tables as near thereto as the circumstances admit, shall be used in all matters to which those forms and tables refer.

Forms and Tables and application of seventh schedule, etc

(2) Subject to the provisions of section 314 and to the discretion by this Act conferred on the Master, there shall be paid in respect of the several matters or services mentioned in the Seventh Schedule the several fees specified therein.

309. (1) Without derogation from the penal provisions of this Act, a company which has failed within the time prescribed in the appropriate provision to furnish a document or give notice required in section 31(1), 55(2), 84(2), 87(3), 95(1), 96(5), 107(1) or 157(2) shall thereafter be liable on furnishing such document or giving such notice, in addition to the prescribed fee, to the payment of a penalty, which shall be an amount equivalent to the prescribed fee for lodging such document or notice; for each month or part thereof which has elapsed since the last date on which the document or notice was due, with a minimum penalty of three times such prescribed fees.

Additional fees in respect of late submission of documents or notices

(2) For the purposes of subsection (1) the decision of the Registrar as to the time within which a document or notice referred to in that subsection was required to be furnished or given shall be final.

(3) Any penalty payable under this section shall be a debt due to the Government and may be recovered by the Registrar by action in any competent court.

310. (1) Any person may, on payment of the prescribed fees, inspect the documents kept under this Act by the Registrar; and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or part of any other document, to be certified by the Registrar, on payment of the prescribed fee for the certificate, certified copy or extract.

Inspection and copies of documents in Registrar's office and production of documents in evidence

(2) A copy or extract from any document kept under this Act by the Registrar, certified to be a true copy under the hand of the Registrar, shall in all legal proceedings be admissible in evidence as of equal validity with the original document.

(3) Certified copies or extracts may be handed into court by the party who desires to avail himself of them.

(4) It shall not be necessary in any legal proceedings for the Registrar himself, or for any officer under him, to produce any original document kept under this Act by the Registrar, but it

shall be deemed sufficient if such document is produced by some person authorized by him to do so.

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

Additional
copies of returns
or documents

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

312. (1) The Chief Justice may make rules concerning the procedure to be followed with respect to any matter in connexion with the winding up of companies, external companies or unregistered associations and generally as to all matters in which the court is empowered under this Act to exercise jurisdiction, and all matters which are required by this Act to be prescribed by rules.

Rules of
procedure

(2) Every rule aforesaid shall be published in the Gazette and thereupon shall take effect and have the force of law.

313. The Minister may make—

- (a) regulations providing for anything required by this Act to be prescribed by regulations; and
- (b) such other regulations as he may deem expedient or necessary for the carrying out of the purposes of this Act.

Regulations

314. (1) The Minister, by order published in the Gazette, may—

- (a) alter or add to the tables in the Seventh Schedule;
- (b) alter or add to the matters required by the Sixth Schedule to be stated in a company's balance sheet, profit and loss account and group accounts;
- (c) alter Table A or Table C in the First Schedule or any of the forms in the Second, Fourth and Fifth Schedules.

Alteration of
fees, tables and
forms

(2) No alteration or addition made in terms of subsection (1)(b) shall apply to an external company which is a banking company as defined in section 284

Acts or Omissions of Government Officers

315. No act or omission whatever of the Registrar or of any officer, clerk or other person in the employment of the Government, having duties to perform under this Act, shall render the Government or the Registrar or any such officer, clerk or person liable in respect of any loss or damage sustained by any person in consequence of any such act or omission unless such act or omission was *mala fide* or was due to want of reasonable care or diligence.

Exemption from liability for acts or omissions of government officers

FIRST SCHEDULE

(sections 2, 14, 308 and 314)

TABLE A

PART I *Regulations for Management of a Company Limited by Shares not being a Private Company**Interpretation*

1. In these regulations— "the seal" means the seal of the company;
"secretary" means any person appointed to perform the duties of the secretary of the company;
"the office" means the registered office of the company;
"the Act" means the Companies Act (Chapter 42:01).

Unless the context otherwise requires, words or expressions, contained in these regulations shall bear the same meaning as in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company.

Share Capital and Variation of Rights

2. Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, any share in the company may be issued with such preferred, deferred or other special rights or such restrictions, whether in regard to dividend, voting, return of capital or otherwise as the company may from time to time by special resolution determine.

3. Subject to the provisions of section 59 of the Act, any preference shares may, with the sanction of an ordinary resolution, be issued on the terms that they are, or at the option of the company are liable, to be redeemed on such terms and in such manner as the company before the issue of the shares may by special resolution determine.

4. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the company is being wound up, be varied with the consent in writing of

the holders of three-fourths of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.

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

6. The company may exercise the powers of paying commissions conferred by section 56 of the Act, provided that the rate per cent or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the said section and the rate of the commission shall not exceed the rate of five per cent of the price at which the shares in respect whereof the same is paid are issued or an amount equal to five per cent of such price as the case may be. Such commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in one way and partly in the other. The company may also on any issue of shares pay such brokerage as may be lawful.

7. (1) The company may in its discretion enter in its register the fact that any share is held in trust.

(2) There shall be no obligation on the company —

- (a) to verify the legal status of any trust or of any trustee who is registered as a member;
- (b) to see to the due and proper carrying out of any trust, whether express, implied, or constructive, in respect of any share.

8. Every person whose name is entered as a member in the register of members shall be entitled without payment to receive within two months after allotment or lodgment or transfer (or within such other period as the conditions of issue shall provide) one certificate for all his shares or several certificates each for one or more of his shares upon payment of 25 thebe for every certificate after the first or such less sum as the directors shall from time to time determine. Every certificate shall be under the seal, if any, and shall specify the shares to which it relates and the amount paid upon thereon:

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

9. If a share certificate is defaced, lost or destroyed, it may be renewed on payment of a fee of 25 thebe or such less sum and on such terms, if any, as to evidence and indemnity and the payment of out-of-pocket expenses of the company of investigating evidence as the directors think fit.

10. The company shall not give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise any financial assistance for the purpose of or in connexion with a purchase or subscription made or to be made by any person of or for any shares in the company or in its holding company nor shall the company make a loan for any purpose whatsoever on the security of its shares or those of its holding company, but nothing in this regulation shall prohibit transactions mentioned in the proviso to section 57(1) of the Act.

Lien

11. The company shall have a first and paramount lien on every share (not being a fully paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a first and paramount lien on all shares (other than fully paid shares) standing registered in the name of a single person for all moneys presently payable by him or his estate to the company; but the company in general meeting may at any time declare any share to be wholly or in part exempt from the provisions of this regulation. The company's lien, if any, on a share shall extend to all dividends payable thereon.

12. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless a sum in respect of which the lien exists is presently payable, nor until the expiration of 14 days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death or insolvency.

13. To give effect to any such sale the directors may authorize some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

14. The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue, if any, shall (subject to a like lien for sums not presently payable as existed upon the share before the sale) be paid to the person entitled to the shares at the date of the sale.

Calls on Shares

15. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment thereof made payable at fixed times, provided that no call shall exceed one-fourth of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last preceding call, and each member shall (subject to receiving at least 14 days' notice specifying the time or times and place of payment) pay to the company at the time or times and place so specified the amount called on his shares. A call may be revoked or postponed as the directors may determine.

16. A call shall be deemed to have been made at the time when the resolution of the directors authorizing the call was passed and may be required to be paid by installments.

17. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

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

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

20. The directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

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

Transfer of Shares

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

23. Subject to such of the restrictions of these regulations as may be applicable, any member may transfer all or any of his shares by instrument in writing in any usual or common form or any other form which the directors may approve.

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

25. The directors may also decline to recognize any instrument of transfer unless—

- (a) a fee of 25 thebe or such lesser sum as the directors may from time to time require is paid to the company in respect thereof;
- (b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer; and
- (c) the instrument of transfer is in respect of only one class of share.

26. If the directors refuse to register a transfer they shall within two months after the date on which the transfer was lodged with the company send to the transferee notice of the refusal.

27. The registration of transfers may be suspended at such times and for such periods as the directors may from time to time determine:

Provided always that such registration shall not be suspended for more than 30 days in any year.

28. The company shall be entitled to charge a fee not exceeding 25 thebe on the registration of every probate, letters of administration, certificate of death or marriage, power of attorney, deed of settlement, or other instrument.

Transmission of Shares

29. In the case of the death of a member the survivor or survivors where the deceased was a joint holder, and the executor of the deceased where he was a sole holder, shall be the only persons recognized by the company as having any title to his interest in the shares; but nothing herein contained shall release the estate of the deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.

30. Any person becoming entitled to a share in consequence of the death or insolvency of a member may, upon such evidence being produced as may from time to time properly be required by the directors and subject as hereinafter provided, elect either to be registered himself as holder of the share or to have some person nominated by him registered as the transferee thereof, but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by that member before his death or insolvency, as the case may be.

31. If the person so becoming entitled shall elect to be registered himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects. If he shall elect to have another person registered he shall testify his election by executing to that person a transfer of the share. All the limitations, restrictions and provisions of these regulations relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death or insolvency of the member had not occurred and the notice or transfer were a transfer signed by that member.

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

Provided always that the directors may at any time give notice requiring any such person to elect either to be registered himself or to transfer the share, and if the notice is not complied with within 90 days the directors may thereafter withhold payment of all dividends, bonuses, or other moneys payable in respect of the share until the requirements of the notice have been complied with.

Forfeiture of Shares

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

34. The notice shall name a further day (not earlier than the expiration of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

35. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given

may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

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

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

38. An affidavit that the deponent is a director or the secretary of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall, unless fraud or mistake be proved, be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share. The company may receive the consideration, if any, given for the share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

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

Conversion of Shares into Stock

40. The company may by ordinary resolution convert any paid-up shares into stock, and reconvert any stock into paid-up shares of any denomination.

41. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as and subject to which the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; and the directors may from time to time fix the minimum amount of stock transferable but so that such minimum shall not exceed the nominal amount of the shares from which the stock arose.

42. The holders of stock shall according to the amount of stock held by them, have the same rights, privileges and advantages as regards dividends, voting and meetings of the company and other matters as if

they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company and in the assets of winding up) shall be conferred by an amount of stock which would not, if existing in shares, have conferred that privilege or advantage.

43. Such of the regulations of the company as are applicable to paid-up shares shall apply to stock, and the words "share" and "member" therein shall include "stock" and "stockholder".

Alteration of Capital

44. The company may from time to time by special resolution increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

- 45.** The company may by special resolution—
- (a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
 - (b) subdivide its existing shares, or any of them, into shares of smaller amount than is fixed by the memorandum of association;
 - (c) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

46. The company may by special resolution reduce its share capital, any capital redemption reserve fund or any share premium account in any manner and with, and subject to, any incident authorized, and consent required, by law.

General Meetings

47. The company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than 15 months shall elapse between the date of one annual general meeting of the company and that of the next:

Provided that so long as the company holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year. The annual general meeting shall be held at such time and place as the directors shall appoint.

48. All general meetings other than annual general meetings shall be called extraordinary general meetings.

49. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section 98 of the Act. If at any time there are not within Botswana sufficient directors capable of acting

to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Notice of General Meetings

50. An annual general meeting and a meeting called for the passing of a special resolution shall be called by 21 days' notice in writing at the least, and a meeting of the company other than an annual general meeting or a meeting for the passing of a special resolution shall be called by 14 days' notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of meeting, and in case of special business, the general nature of that business, and shall be given, in the manner hereinafter mentioned or in such other manner, if any, as may be described by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the Provided that a meeting of the company shall, notwithstanding that it is called by shorter notice than that specified in this regulation, be deemed to have been duly called if it is so agreed—

- (i) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat, and (ii) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than 95 per cent in nominal value of the shares giving that right.

51. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting, by any person entitled to receive notice shall not invalidate the proceedings at that meeting.

Proceedings at General Meetings

52. All business shall be deemed special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the accounts, balance sheets, and the reports of the directors and auditors, the election of directors in the place of those retiring and the appointment of, and the fixing of the remuneration of, the auditors.

53. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; except as herein otherwise provided, three members present in person shall be a quorum.

54. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned

to the same day in the next week, at the same time and place or to such other day and at any such other time and place as the directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum

55. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he shall not be present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, the directors present shall elect one of their number to be chairman of the meeting.

56. If at any time no director is willing to act as chairman or if no director is present within 15 minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

57. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Except as aforesaid it shall not be necessary to give any notice of adjournment or of the business to be transacted at an adjourned meeting.

58. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded —

- (a) by the chairman;
- (b) by at least three members present in person or by proxy;
- (c) by any member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or
- (d) by a member or members holding shares in the company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

Unless a poll be so demanded a declaration by the chairman that a resolution has on a show of hands been carried unanimously, or by a particular majority, or lost and an entry to that effect in the book containing the minutes of the proceedings of the company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour or against such resolution. The demand for a poll may be withdrawn.

59. Except as provided in regulation 61, if a poll is duly demanded it shall be taken in such manner as the chairman directs, and the results of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

60. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

61. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of a poll.

Votes of Members

62. Subject to any rights or restrictions for the time being attached to any class or classes of shares, on a show of hands every member present in person shall have one vote and on a poll every member shall have one vote for each share of which he is the holder.

63. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

64. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote whether on a show of hands or on a poll, by his *curator bonis* or other person appointed by that court, and any such *curator bonis* or other person may, on a poll, vote by proxy.

65. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

66. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

67. On a poll votes may be given either personally or by proxy.

68. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorized in writing, or, if the appointer is a corporation, either under seal, or under the hand of

an officer or attorney duly authorized. A proxy need not be a member of the company.

69. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company or at such other place within Botswana as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.

70. An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit—

"..... Limited.
I/We of
being a member/members of the above-named company, hereby
appoint of
or failing him, of
as my/our proxy to vote for me/us on my/our behalf at the (annual or
extraordinary, as the case may be) general meeting of the company to
be held on the day of 19....
and at any adjournment thereof.
Signed this day of 19

71. Where it is desired to afford members an opportunity of voting for or against a resolution the instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit—

"..... Limited.
I/We of
being a member/members of the above-named company, hereby
appoint of
or failing him, of
as my/our proxy to vote for me/us on my/our behalf at the (annual or
extraordinary, as the case may be) general meeting of the
company, to be held on the day of 19.. ,
and at any adjournment thereof.
Signed this day of 19.....
This form is to be used in favour of/against resolution No.
Unless otherwise instructed, the proxy will vote as he thinks fit.
Strike out whichever is not desired."

72. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

73. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death, insolvency or insanity of the principal or revocation of the proxy or of the authority

under which the proxy was executed, or the transfer of the share in respect of which the proxy is given, provided that no intimation in writing of such death, insolvency, insanity, revocation or transfer as aforesaid shall have been received by the company at its office before the commencement of the meeting or adjourned meeting at which the proxy is used.

Directors

74. The number of the directors and the names of the first directors shall be appointed in writing by the subscribers of the memorandum of association or a majority of them and shall be set out in the list to be filed with the Registrar in terms of section 141 of the Act and the persons so named shall hold office only until directors are appointed by the company in general meeting.

75. The remuneration of the directors shall from time to time be determined by the company in general meeting. Such remuneration shall be deemed to accrue from day to day. The directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings of the company or in connexion with the business of the company.

76. The shareholding qualification for directors may be fixed by the company in general meeting, and unless so fixed no qualification shall be required.

77. A director of the company may be or become a director or other officer, of, or otherwise interested in, any company promoted by the company or in which the company may be interested as shareholder or otherwise, and no such director shall be accountable to the company for any remuneration or other benefits received by him as a director or officer of, or from his interest in, such other company unless the company otherwise directs.

Borrowing Powers

78. The directors may exercise all the powers of the company to borrow money, and to mortgage or charge its undertaking, property and uncalled capital, or any part thereof, and to issue debentures, debenture stock, and other securities whether outright or as security for any debt, liability or obligation of the company or of any third party:

Provided that the amount for the time remaining undischarged of moneys borrowed or secured by the directors as aforesaid (apart from temporary loans obtained from the company's bankers in the ordinary course of business) shall not at any time, without the previous sanction of the company in general meeting, exceed the nominal amount of the share capital of the company for the time being issued, but nevertheless no lender or other person dealing with the company shall be concerned to see or inquire whether this limit is observed. No debt incurred or security given in excess of such limit shall be invalid or ineffectual

except in the case of express notice to the lender or the recipient of the security at the time when the debt was incurred or security given that the limit hereby imposed had been or was thereby exceeded.

Powers and Duties of Directors

79. The business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and registering the company, and may exercise all such powers of the company as are not, by the Act or by these regulations, required to be exercised by the company in general meeting, subject, nevertheless, to any of these regulations, to the provisions of the Act and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

80. The directors may from time to time and at any time by power of attorney appoint any company, firm or person or body of persons, whether nominated directly or indirectly by the directors, to be the agent or agents of the company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under these regulations) and for such period and subject to such conditions as they may think fit, and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such agent as the directors may think fit, and may also authorize any such agent to delegate all or any of the powers, authorities and discretions vested in him.

81. The company may exercise the powers conferred by section 36 of the Act with regard to having an official seal abroad, and such powers shall be vested in the directors.

82. The company may exercise the powers conferred upon the company by sections 93 and 94 of the Act with regard to the keeping of a branch register, and the directors may (subject to the provisions of those sections) make and vary such regulations as they may think fit respecting the keeping of any such register.

83. (1) A director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company shall declare the nature of his interest at a meeting of the directors in accordance with section 156 of the Act.

(2) A director shall not vote in respect of any contract or arrangement in which he is interested, and if he shall do so his vote shall not be counted, nor shall he be counted in the quorum present at the meeting, but neither of these prohibitions shall apply to—

- (a) any arrangement for giving any director any security or indemnity in respect of money lent by him to or obligations undertaken by him for the benefit of the company;

- (b) any arrangement for the giving by the company of any security to a third party in respect of a debt or obligation of the company for which the director himself has assumed responsibility in whole or in part under a guarantee or indemnity or by the deposit of a security;
- (c) any contract by a director to subscribe for or underwrite shares or debentures of the company; or
- (d) any contract or arrangement with any other company or association in which he is interested only as an officer of the company or as holder of shares or other securities,

and these prohibitions may at any time be suspended or relaxed to any extent, and either generally or in respect of any particular contract, arrangement or transaction, by the company in general meeting.

(3) A director may hold any other office or place of profit under the company (other than the office of auditor) in conjunction with his office of director for such period and on such terms (as to remuneration and otherwise) as the directors may determine and no director or intending director shall be disqualified by his office from contracting with the company either with regard to his tenure of any such other office or place of profit or as vendor, purchaser or otherwise, nor shall any such contract, or any contract or arrangement entered into by or on behalf of the company in which any director is in any way interested, be liable to be avoided, nor shall any director so contracting or being so interested be liable to account to the company for any profit realized by any such contract or arrangement by reason of such director holding that office or of the fiduciary relation thereby established.

(4) A director, notwithstanding his interest, may be counted in the quorum present at any meeting whereat he or any other director is appointed to hold any such office or place of profit under the company or whereat the terms of any such appointment are arranged, and he may vote on any such appointment or arrangement other than his own appointment or the arrangement of the terms thereof.

(5) Any director may act by himself or his firm in a professional capacity for the company, and he or his firm shall be entitled to remuneration for professional services as if he were not a director:

Provided that nothing herein contained shall authorize a director or his firm to act as auditor to the company.

84. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for moneys paid to the company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as the directors shall from time to time by resolution determine.

85. The directors shall cause minutes to be made in books provided for the purpose—

- (a) of all appointments of officers made by the directors;
- (b) of the names of the directors present at each meeting of the directors and of any committee of the directors;
- (c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors,

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

86. The directors on behalf of the company may pay a gratuity or pension or allowance on retirement to any director who has held any other salaried office or place of profit with the company or to his widow or dependants and may make contributions to any fund and pay premiums for the purchase or provision of any such gratuity, pension or allowance.

Disqualification of Directors

- 87.** The office of director shall be vacated if the director—
- (a) ceases to be a director by virtue of section 142 of the Act;
 - (b) becomes insolvent or makes any arrangement or composition with his creditors generally;
 - (c) becomes prohibited from being a director by the terms of section 143 of the Act or by reason of any order made under section 299 of the Act;
 - (d) becomes of unsound mind;
 - (e) resigns his office by notice in writing to the company; or
 - (f) shall for more than six months have been absent without permission of the directors from meetings of the directors held during that period.

Rotation of Directors

88. At the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

89. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

90. A retiring director shall be eligible for re-election.

91. The company at the meeting at which a director retires in the manner aforesaid may fill the vacated office by electing a person thereto, and in default the retiring director shall if offering himself for re-election be deemed to have been re-elected, unless at such meeting it is expressly resolved not to fill such vacated office or unless a resolution for the re-election of such director shall have been put to the meeting and lost.

92. No person other than a director retiring at the meeting shall be eligible for election to the office of director at any general meeting unless not less than three nor more than 21 days before the date appointed for the meeting there shall have been left at the registered

office of the company notice in writing, signed by a member duly qualified to attend and vote at the meeting for which such notice is given, of his intention to propose such person for election, and also notice in writing signed by that person of his willingness to be elected.

93. The company may from time to time by ordinary resolution increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

94. The directors shall have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these regulations. Any director so appointed shall hold office only until the next following annual general meeting, and shall then be eligible for re-election but shall not be taken into account in determining the directors who are to retire by rotation at such meeting.

95. The company may by ordinary resolution, of which special notice has been given in accordance with section 106 of the Act, remove any director before the expiration of his period of office notwithstanding anything in these regulations or in any agreement between the company and such director. Such removal shall be without prejudice to any claim such director may have for damages for breach of any contract of service between him and the company.

96. The company may by ordinary resolution appoint another person in place of a director removed from office under regulation 95. and without prejudice to the powers of the directors under regulation 94 the company in general meeting may appoint any person to be a director either to fill a casual vacancy or as an additional director. A person appointed in place of a director so removed or to fill such a vacancy shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of Directors

97. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings as they think fit. Questions, arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes, the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors. It shall not be necessary to give notice of a meeting of directors to any director for the time being absent from Botswana.

98. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be two.

99. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

100. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

101. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.

102. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

103. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chairman shall have a second or casting vote.

104. All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

105. A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

Managing Director

106. The directors may from time to time appoint one or more of their body to the office of managing director for such period and on such terms as they think fit, and, subject to the terms of any agreement entered into in any particular case, may revoke such appointment. A director so appointed shall not, whilst holding that office, be subject to retirement by rotation or be taken into account in determining the

rotation of retirement of directors, but his appointment shall be automatically determined if he cease from any cause to be a director.

107. A managing director shall receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the directors may determine.

108. The directors may entrust to and confer upon a managing director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and either collaterally with or to the exclusion of their own powers and may from time to time revoke, withdraw, alter or vary all or any of such powers.

Secretary

109. The secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.

110. No person shall be appointed or hold office as secretary who is—
(a) the sole director of the company; or
(b) a corporation the sole director of which is the sole director of the company.

111. A provision of the Act or these regulations requiring or authorizing a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the secretary.

The Seal

112. The company shall have a seal and the directors shall provide for its safe custody. Subject to the provisions of section 78 of the Act, it shall only be used by the authority of the directors or of a committee of the directors authorized by the directors in that behalf, and every instrument to which the seal shall be affixed shall be signed by a director and shall be countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.

Dividends and Reserve

113. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

114. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

115. No dividend shall be paid otherwise than out of profits.

116. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserve which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit. The directors may also without placing the same to reserve carry forward any profits which they may think prudent not to divide.

117. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but no amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this regulation as paid on the share. All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it shall rank for dividend as from a particular date such share shall rank for dividend accordingly.

118. The directors may deduct from any dividend payable to any member all sums of money, if any, presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.

119. Any general meeting declaring a dividend or bonus may direct payment of such dividend or bonus wholly or partly by the distribution of specific assets and in particular of paid-up shares, debentures or debenture stock of any other company or in any one or more of such ways, and the directors shall give effect to such resolution and where any difficulty arises in regard to such distribution, the directors may settle the same as they think expedient, and in particular may issue fractional certificates and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any members upon the footing of the value so fixed in order to adjust the rights of all parties and may vest any such specific assets in trustees as may seem expedient to the directors.

120. Any dividend, interest or other moneys payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any dividends, bonuses or other moneys payable in respect of the shares held by them as joint holders.

121. No dividend shall bear interest against the company.

Accounts

122. The directors shall cause proper books of account to be kept with respect to—

- (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
- (b) all sales and purchases of goods by the company; and
- (c) the assets and liabilities of the company.

Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.

123. The books of account shall be kept at the registered office of the company, or, subject to section 111 of the Act, at such other place or places as the directors think fit, and always be open to the inspection of the directors.

124. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorized by the directors or by the company in general meeting.

125. The directors shall from time to time, in accordance with sections 112, 113 and 115 to 118 inclusive of the Act, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, 'balance sheets, group accounts, if any, and reports as are referred to in those sections.

126. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting, together with a copy of the auditor's report, shall not less than 21 days before the date of the meeting be sent to every member of, and every holder of debentures of, the company and to every person registered under regulation 31:

Provided that this regulation shall not require a copy of those documents to be sent to any person of whose address the company is not aware or to more than one of the joint holders of any shares or debentures.

Capitalization of Profits

127. The company in general meeting may upon the recommendation of the directors resolve that it is desirable to capitalize any part of the amount for the time being standing to the credit of, any of the company's reserve accounts or to the credit of the profit and loss

account or otherwise available for distribution, and accordingly that such sum be set free for distribution amongst the members who would have been entitled thereto if distributed by way of dividend and in the same proportions on condition that the same be not paid in cash but be applied either in or towards paying up any amounts for the time being unpaid on any shares held by such members respectively or paying up in full unissued shares or debentures of the company to be allotted and distributed credited as fully paid up to and amongst such members in the proportion aforesaid, or partly in the one way and partly in the other, and the directors shall give effect to such resolution:

Provided that a share premium account and a capital redemption reserve fund for the purposes of this regulation, only be applied in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares.

128. Whenever such a resolution as aforesaid has been passed the directors shall make all appropriations and applications of the undivided profits resolved to be capitalized thereby, and all allotments and issues of fully-paid shares or debentures, if any, and generally shall do all acts and things required to give effect thereto, with full power to the directors to make such provision by the issue of fractional certificates or by payment in cash or otherwise as they think fit for the case of shares or debentures becoming distributable in fractions, and also to authorize any person to enter on behalf of all the members entitled thereto into an agreement with the company providing for the allotment to them respectively, credited as fully paid up, of any further shares or debentures to which they may be entitled upon such capitalization, or (as the case may require) for the payment up by the company on their behalf, by the application thereto of their respective proportions of the profits resolved to be capitalized, of the amounts or any part of the amounts remaining unpaid on their existing shares, and any agreement made under such authority shall be effective and binding on all such members.

Notices

129. A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within Botswana) to the address, if any, within Botswana supplied by him to the company for the giving of notice to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of 48 hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

130. A notice may be given by the company to joint holders of a share by giving the notice to the joint holder first named in the register of members in respect of the share.

131. A notice may be given by the company to the persons entitled to a share in consequence of the death or insolvency of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the insolvent, or by any like description, at the address, if any, within Botswana supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or insolvency had not occurred.

132. Notice of every general meeting shall be given in any manner hereinbefore authorized to—

- (a) every member except those members who (having no registered address within Botswana) have not supplied to the company an address within Botswana for the giving of notices to them;
- (b) every person upon whom the ownership of a share devolves by reason of his being the executor, trustee or assignee of a member where the member but for his death or insolvency would be entitled to receive notice of the meeting; and
- (c) the auditor for the time being of the company. No other person shall be entitled to receive notices of general meetings.

Winding Up

133. If the company is wound up the liquidator may, with the sanction of a special resolution of the company and any other sanction required by the Act, divide amongst the members in specie or kind the whole or any part of the assets of the company (whether they shall consist of property of the same kind or not) and may for such purposes set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members. The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the contributories as the liquidator, with the like sanction, shall think fit, but so that no member shall be compelled to accept any shares or other securities whereon there is any liability.

Indemnity

134. Every director, managing director, agent, auditor, secretary and other officer for the time being of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connexion with any application under section 304 of the Act in which relief is granted to him by the court.

PART II *Regulations for the Management of a Private Company Limited by Shares*

1. The regulations contained in Part I of Table A (with the exception of regulations 24, 53 and 74) shall apply.

2. The company is a private company and accordingly—

- (a) the right to transfer shares is restricted in the manner hereinafter prescribed;
- (b) the number of the members of the company (exclusive of persons who are in the employment of the company and 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) is limited to 50:

Provided that where two or more persons hold one or more shares in the company jointly they shall for the purposes of this regulation be treated as a single member;

- (c) any invitation to the public to subscribe for any shares or debentures of the company is prohibited.

3. The directors may, in their absolute discretion and without assigning any reason therefor, decline to register any transfer of any share, whether or not it is a fully paid share.

4. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; except as herein otherwise provided, two members present in person or by proxy shall be a quorum.

5. Subject to the provisions of the Act, a resolution in writing signed by all the members for the time being entitled to receive notice of and to attend and vote at general meetings (or being corporations by their duly authorized representatives) shall be as valid and effective as if the same had been passed at a general meeting of the company duly convened and held.

6. The subscribers to the memorandum of association shall be the directors of the company and shall hold office until directors are appointed by the company in general meeting.

7. The directors may at any time require any person whose name is entered in the register of members of the company to furnish them with any information, supported (if the directors so require) by a statutory declaration, which they may consider necessary for the purpose of determining whether or not the certificate required by section 95(4) of the Act may properly be given.

NOTE—Regulations 3 and 4 of this Part are alternative to regulations 24 and 53 respectively of Part I.

TABLE B

FORM OF MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES

1st. The name of the company is "The Botswana 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 P400 000 divided into 1000 shares of P400 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.

<i>Names, Addresses and Descriptions of Subscribers</i>	<i>Number of Shares taken by each Subscriber</i>
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Total Shares taken

Dated the day of 19.

Witness to the above Signatures	Address
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TABLE C

FORM OF ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE

Interpretation

1. In these articles—

"Act" means the Companies Act (*Chapter 42:01*);

"secretary" means any person appointed to perform the duties of the secretary of the company.

Expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form.

Unless the context otherwise requires, words or expressions contained in these articles shall bear the same meaning as in the Act or any statutory modification thereof in force at the date at which these articles become binding on the company.

Members

2. The number of members with which the company proposes to be registered is 500, but the directors may from time to time register an increase of members.

3. The subscribers to the memorandum of association and such other persons as the directors shall admit to membership shall be members of the company.

General Meetings

4. The company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than 15 months shall elapse between the date of one annual general meeting of the company and that of the next:

Provided that so long as the company holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year. The annual general meeting shall be held at such time and place as the directors shall appoint.

5. All general meetings other than annual general meetings shall be called extraordinary general meetings.

6. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall be convened on such requisition, or, in default, may be convened by such requisitions, as provided by section 98 of the Act. If at any time there are not within Botswana sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Notice of General Meeting

7. An annual general meeting and a meeting called for the passing of a special resolution shall be called by 21 days' notice in writing at the least, and a meeting of the company other than an annual general meeting or a meeting for the passing of a special resolution shall be called by 14 days' notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of meeting and, in case of special business, the general nature of that business and shall be given, in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the articles of the company, entitled to receive such notices from the company:

Provided that a meeting of the company shall, notwithstanding that it is called by shorter notice than that specified in this article be deemed to have been duly called if it is so agreed—

(i) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and (ii) in the case of any other meeting, by a majority of the members having a right to attend and vote at the meeting, being a majority together representing not less than 95 per cent of the total voting rights at that meeting of all the members.

8. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

Proceedings at General Meetings

9. All business shall be deemed special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the accounts, balance sheets, and the reports of the directors and auditors, the election of directors in the place of those retiring and the appointment of, and the fixing of the remuneration, if any, of the auditors.

10. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; except as herein otherwise provided three members present in person shall be a quorum.

11. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case, it shall stand adjourned to the same day in the next week, at the same time and place, or to such other time and place as the directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum.

12. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he shall not be present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act the directors present shall elect one of their number to be chairman of the meeting.

13. If at any meeting no director is willing to act as chairman or if no director is present within 15 minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

14. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Except as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

15. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded—

- (a) by the chairman;
- (b) by at least three members present in person or by proxy; or
- (c) by any member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting.

Unless a poll be so demanded a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost and an entry to that effect in the book containing the minutes of proceedings of the company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

The demand for a poll may be withdrawn.

16. Except as provided in article 18, if a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

17. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

18. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

19. Subject to the provisions of the Act a resolution in writing signed by all the members for the time being entitled to receive notice of and to attend and vote at general meetings (or being corporations by their duly authorized representatives) shall be as valid and effective as if the same had been passed at a general meeting of the company duly convened and held.

Votes of Members

20. Every member shall have one vote.

21. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in insanity, may vote, whether on a show of hands or on a poll, by his *curator bonis* or any other person appointed by that court and any such *curator bonis* or other person may, on a poll, vote by proxy.

22. No member shall be entitled to vote at any general meeting unless all moneys presently payable by him to the company have been paid.

23. On a poll votes may be given either personally or by proxy.

24. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorized in writing, or, if the appointer is a corporation, either under seal or under the hand of an officer or attorney duly authorized. A proxy need not be a member of the company.

25. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company or at such other place within Botswana as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.

26. An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit—

"I/We of..... being a member/members of the above named company, hereby appoint ... of or failing him of as my/our proxy to vote for me/us on my/our behalf at the (annual or extraordinary, as the case may be) general meeting of the company to be held on the day of..... 19..... and at any adjournment thereof. Signed this day of..... 19....."

27. Where it is desired to afford members an opportunity of voting for or against a resolution the instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit—

"I/We of..... being a member/members of the above named company, hereby appoint of or failing him

..... of as my/our proxy to vote for me/us on my/our behalf at the (annual or extraordinary, as the case may be) general meeting of the company to be held on the..... day of..... 19..... and at any adjournment thereof. Signed this day of..... 19.....

^{in favour of}
This form to be used _____ the resolution,
^{against}

Unless otherwise instructed the proxy will vote as he thinks fit.

*Strike out whichever is not desired".

28. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

29. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, provided that no intimation in writing of such death, insanity or revocation as aforesaid shall have been received by the company at the office before the commencement of the meeting or adjourned meeting at which the proxy is used.

Corporations Acting by Representatives at Meetings

30. Any corporation which is a member of the company may by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of the company, and the person so authorized shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

Directors

31. The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum of association or a majority of them.

32. The remuneration of the directors, if any, shall from time to time be determined by the company in general meeting. Such remuneration shall be deemed to accrue from day to day. The directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings of the company or in connexion with the business of the company.

Borrowing Powers

33. The directors may exercise all the powers of the company to borrow money, and to mortgage or charge its undertaking and property, or any part thereof, and to issue debentures, debenture stock and other

securities, whether outright or as security for any debt, liability or obligation of the company or of any third party.

Powers and Duties of Directors

34. The business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and registering the company, and may exercise all such powers of the company as are not, by the Act or by these articles, required to be exercised by the company in general meeting, subject nevertheless to the provisions of the Act or these articles and to such regulations, being not inconsistent with the aforesaid provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

35. The directors may from time to time and at any time by power of attorney appoint any company, firm or person or body of persons, whether nominated directly or indirectly by the directors, to be the attorney or attorneys of the company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under these articles) and for such period and subject to such conditions as they may think fit, and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors may think fit and may also authorize any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

36. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for moneys paid to the company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as the directors shall from time to time by resolution determine.

37. The directors shall cause minutes to be made in books provided for the purpose—

- (a) of all appointments of officers made by the directors;
- (b) of the names of the directors present at each meeting of the directors and of any committee of the directors;
- (c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors, and every

director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

Disqualification of Directors

38. The office of director shall be vacated if the director—

- (a) without the consent of the company in general meeting holds any other office of profit under the company;
- (b) becomes insolvent or makes any arrangement, assignment or composition with his creditors generally;
- (c) becomes prohibited from being a director by the terms of

section 143 of the Act or by reason of an order made under section 299 of the Act;

(d) becomes of unsound mind;

(e) resigns his office by notice in writing to the company; (f) ceases to be a director by virtue of section 142 of the Act; (g) is directly or indirectly interested in any contract with the company and fails to declare the nature of his interest in the manner required by section 156 of the Act; or (h) is removed in terms of section 145 of the Act. A director shall not vote in respect of any contract in which he is interested or any matter arising thereout, and if he does so vote his vote shall not be counted.

Rotation of Directors

39. At the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

40. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

41. A retiring director shall be eligible for re-election.

42. The company at the meeting at which a director retires in the manner aforesaid may fill the vacated office by electing a person thereto, and in default the retiring director shall, if offering himself for re-election, be deemed to have been re-elected, unless at such meeting it is expressly resolved not to fill such vacated office or unless a resolution for the re-election of such director shall have been put to the meeting and lost.

43. No person other than a director retiring at the meeting shall, unless recommended by the directors, be eligible for election to the office of director at any general meeting unless, not less than three or more than 21 days before the date appointed for the meeting, there shall have been left at the registered office of the company notice in writing, signed by a member fully qualified to attend and vote at the meeting for which such notice is given, of his intention to propose such person for election, and also notice in writing signed by that person of his willingness to be elected.

44. The company may from time to time by ordinary resolution increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

45. The directors shall have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these articles. Any director so appointed shall hold office only until the next following annual general meeting, and shall then be eligible for re-election, but shall not be taken into account in determining the directors who are to retire by rotation at such meeting.

46. The company may by ordinary resolution, of which special notice has been given in accordance with section 106 of the Act, remove any director before the expiration of his period of office notwithstanding anything in these articles or in any agreement between the company and such director. Such removal shall be without prejudice to any claim such director may have for damages for breach of any contract of service between him and the company.

47. The company may by ordinary resolution appoint another person in place of a director removed from office under article 46. Without prejudice to the powers of the directors under article 45 the company in general meeting may appoint any person to be a director either to fill a casual vacancy or as an additional director. The person appointed to fill such a vacancy shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of Directors

48. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors. It shall not be necessary to give notice of a meeting of directors to any director for the time being absent from Botswana.

49. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be two.

50. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the articles of the company as the necessary quorum of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

51. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but, if no such

chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

52. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.

53. A committee may elect a chairman of its meeting; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

54. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chairman shall have a second or casting vote.

55. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

56. A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

Secretary

57. The secretary shall be appointed by the directors for such term, at such remuneration, if any, and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.

58. A provision of the Act or these articles requiring or authorizing a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the secretary.

The Seal

59. The directors shall provide for the safe custody of the seal, which shall only be used by the authority of the directors or of a committee of the directors authorized by the directors in that behalf, and every instrument to which the seal shall be affixed shall be signed by a director and shall be countersigned by the secretary or by a second

director or by some other person appointed by the directors for that purpose.

Accounts

60. The directors shall cause proper books of account to be kept with respect to—

- (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
- (b) all sales and purchases of goods by the company; and
- (c) the assets and liabilities of the company.

Proper books shall not be deemed to be kept if there are not kept such books of accounts as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.

61. The books of account shall be kept at the registered office of the company, or, subject to section 111(3) of the Act, at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

62. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorized by the directors or by the company in general meeting.

63. The directors shall from time to time in accordance with sections 112, 113, and sections 115 to 118 of the Act, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets, group accounts (if any) and reports as are referred to in those sections.

64. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting, together with a copy of the auditor's report, shall not less than 21 days before the date of the meeting be sent to every member of, and every holder of debentures, of the company:

Provided that this article shall not require a copy of those documents to be sent to any person of whose address the company is not aware or to more than one of the joint holders of any debentures.

Audit

65. Auditors shall be appointed and their duties regulated in accordance with sections 121 to 123 of the Act.

Notices

66. A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within Botswana) to the address, if any, within Botswana supplied by him to the company for the giving of notice to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of 48 hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

67. Notice of every general meeting shall be given in any manner hereinbefore authorized to—

- (a) every member except those members who (having no registered address within Botswana) have not supplied to the company an address within Botswana for the giving of notices to them;
- (b) every person being a legal personal representative or a trustee in insolvency of a member where the member but for his death or insolvency would be entitled to receive notice of the meeting; and
- (c) the auditor for the time being of the company. No other person shall be entitled to receive notices of general meetings.

Signatures, Full Names, Addresses and Occupations of Subscribers Dated

the day of..... 19.....

Witness to the above signatures

Full residential or business address

Occupation

TABLE D

FORM OF MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE

Memorandum of Association

1st. The name of the company is "The Ghanzi School Association, Limited".

2nd. The objects for which the company is established are the carrying on of a school for boys in the district of Ghanzi 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. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company, contracted before

he ceases to be a member, and of the costs, charges and expenses of winding up the same and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding P20.

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.

Signatures, Full Names, Addresses and Occupation of Subscribers Dated the day of..... 19.....

Witness to the above signatures

Full residential or business address

Occupation

SECOND SCHEDULE

(sections 31, 308 and 314)

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

PART I Form of Statement and Particulars to be Contained Therein

THE COMPANIES ACT (Chapter 42:01) Statement in lieu of Prospectus delivered for registration by

(Insert the name of the Company)

Pursuant to section 31 of the Companies Act (Chapter 42:01)

Delivered for registration by

- 1. Names, description and addresses of directors or proposed directors.
2. (a) the nominal share capital of the company; Divided into P Shares of P each.
(b) amount, if any, of above capital which consists of redeemable preference shares; Shares of P each.
(c) the earliest date on which the company has power to redeem these shares.
3. (a) Amount of shares issued Shares Divided into Shares of P each. Shares of P each.

<p>(b) amount of commissions paid in connexion therewith.</p> <p>4. Unless more than one year has elapsed since the date on which the company was entitled to commence business—</p> <p>(a) amount of preliminary expenses by whom those expenses have been paid or are payable;</p> <p>(b) amount paid to any promoter</p> <p>(c) consideration for the payment;</p> <p>(d) any other benefit given to any promoter;</p> <p>(e) consideration for giving of benefit.</p> <p>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.</p> <p>6. Number and amount of shares and debentures issued within the two years preceding the date of this statement as fully or partly paid-up otherwise than for cash or agreed to be so issued at the date of this statement. Consideration for the issue of those shares or debentures.</p> <p>7. 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—</p> <p>(a) the period during which it is exercisable</p>	<p>Shares of P</p> <p>each.</p> <p>Name of promoter: Amount, P Consideration: Name of promoter: Nature and value of benefit: Consideration:</p> <p>1. shares of P fully paid.</p> <p>2. shares upon which P per share is credited as paid.</p> <p>3. debenture P</p> <p>4. Consideration:</p> <p>1.</p> <p>2. Shares of P and Debentures of P</p> <p>3. Until</p>
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- (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 persons 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 circumstance relevant to the grant of such option or right. 7.
8. (a) Names and addresses of vendors of property (1) purchased or acquired by the company within the two years preceding the date of this statement, or (2) agreed 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 business and there is no connexion between the contract and the company ceasing to be a private company or where the amount of the purchase money is not material;
- (b) amount (in cash, shares or debentures) paid or payable to each separate vendor;
 - (c) amount paid or payable in cash, shares or debentures for any such property, specifying the amount paid or payable for goodwill;
- | | |
|----------------------|----------|
| Total purchase price | P. |
| Cash | P. |
| Shares | P. |
| Debentures | P. |
| Goodwill | |
- (d) 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.

9. (a) Dates of, parties to, and general nature of every material contract (other than contracts entered into in the ordinary course of business 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.
10. Name and addresses of the auditors of the company.
11. 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 to it in cash or shares or otherwise by any person either to induce him to become, or to qualify him as a director or otherwise for services rendered by him or by it in connexion with the promotion or formation of the company.

12. (a) Rates of the dividends, if any, paid by the company in respect of each class of shares in the company in each of the five financial years immediately preceding the date of this statement or since the incorporation of the company, whichever period is the shorter;
- (b) particulars of the cases in which no dividends have been paid in respect of any class of shares in any of those years.

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

Date

PART II *Reports to be Set Out*

1. If unissued shares or debentures of the company are to be applied in the purchase of 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) If unissued shares or debentures of the company are to be applied directly or indirectly in any manner resulting in the acquisition of shares in a body corporate which by reason of the acquisition or anything to be done in consequence thereof or in connexion 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 for holders of other shares, what adjustment would have fallen to be made, in relation to assets and liabilities so dealt with, 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 the foregoing subparagraph shall —

- (a) so far as regards profits and losses, deal with the profits or losses of the body corporate in respect of the five financial years immediately preceding the delivery of the statement to the Registrar; and

- (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 account of the body corporate were made up.
- (3) If the other body corporate has subsidiaries the report referred to in sub-paragraph (1) shall—
- (a) so far as regards profits and losses, deal separately with the other body corporate's profits and losses as provided by the last foregoing sub-paragraph, 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; and
- (b) so far as regards assets and liabilities, deal separately with the other body corporate's assets and liabilities as provided by the last foregoing sub-paragraph 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 Third Schedule to this Act, 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 to the persons making the report appear 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.

THIRD SCHEDULE

(sections 39, 41, 47, 50, 290 and 291)

MATTERS TO BE SPECIFIED IN PROSPECTUS AND REPORTS TO BE SET OUT
THEREIN

PART I *Matters to be Specified*

1. Except where the prospectus is issued prior to the incorporation of the company, the date of incorporation of the company and the address of its registered office.

2. The number of shares, if any, fixed by the articles as the qualification of a director, and any provisions as to the remuneration of the directors whether for their services to the company as directors, managing directors, or otherwise, whether under the articles or under contract or otherwise.

3. (1) The names, occupations and addresses of the directors, or proposed directors.

(2) The name and address of the auditor, if any.

(3) The term for which any present director and managing director hold office and the manner in and term for which any future director and managing director will be appointed, including information as to any exclusive or special right held in respect of the appointment of any director and managing director.

4. Where shares are offered to the public for subscription, particulars as to—

(a) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner the balance of the sums, required to be provided in respect of each of the following matters—

(i) the purchase price of any property (including goodwill, if any) purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue, (ii) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company, (iii) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters,

- (iv) working capital, (v) any other expenditure, stating the nature and purpose thereof and the estimated amount in each case; and
- (b) the amount to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

5. The time of the opening of the subscription lists.

6. (1) The amount payable on application and allotment on each share, and in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, the amount actually allotted and the amount, if any, paid on the shares so allotted.

(2) The amount payable by way of premium, if any, on each share which has been or is to be issued stating the dates of issue, the reasons for any such premium, and, where some shares have been or are to be issued at a premium and other shares at par or at a lower premium, also the reasons for the differentiation, and how any premium has been or is to be disposed of.

7. 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; 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;
- (b) the price to be paid for shares or debentures subscribed for under it;
- (c) the consideration, if any, given or to be given for it or for the right to it;
- (d) the names and addresses of the persons to whom it or the right to it was given if given to existing members or debenture holders as such, the relevant shares or debentures;
- (e) any other material fact or circumstances relevant to the grant of such option or right.

Subscribing for shares or debentures shall, for the purposes of this paragraph, include acquiring them from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.

8. The number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.

- 9.** (1) As respects any property to which this paragraph applies—(a) the names and addresses of the vendors;

- (b) the amount payable in cash, shares or debentures to the vendor and, where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor;
- (c) short particulars of any transaction relating to the property completed within the preceding two years in which any vendors of the property to the company, or any person who is or was, at the time of the transaction, a promoter or a director or proposed director of the company, had any interest, direct or indirect. When the vendors, or any of them, are a partnership, the members of the partnership shall not be treated as separate vendors.

(2) The property to which this paragraph applies is property purchased or acquired by the company or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus or the purchase or acquisition of which has not been completed at the date of the issue of the prospectus, other than property—

- (a) the contract for the purchase or acquisition whereof was entered into in the ordinary course of the company's business, the contract not being made in contemplation of the issue nor the issue in consequence of the contract; or
- (b) as respects which the amount of the purchase money is not material.

10. The amount, if any, paid or payable as purchase money in cash, shares or debentures for any property to which the last foregoing paragraph applies, specifying the amount, if any, payable for goodwill.

11. The amount, if any, and the nature and extent of any consideration, paid within the two preceding years, or payable as commission to any person (including commission so paid or payable to any sub-underwriter, who is a promoter or director or other officer of the company but excluding commission so paid or payable to any other sub-underwriter) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions for any shares in, or debentures of the company, the name, occupation and address of each person, particulars of the amounts which each has underwritten or sub-underwritten, of the rate of the commission payable to such underwriting or sub-underwriting, and any other material term or condition of the underwriting or sub-underwriting contract with such person; and when such person is a company, the name of the directors of such company, and the nature and extent of any interest, direct or indirect, in such company of any promoter, director or other officer of the company in respect of which the prospectus is issued.

12. The amount or estimated amount of preliminary expenses and the persons by whom any of those expenses have been paid or are payable, and the amount or estimated amount of the expenses of the issue and the persons by whom any of those expenses have been paid or are payable.

13. Any amount or benefit paid or given within the two preceding years or intended to be paid or given to any promoter, with his name and address, or to any partnership, syndicate or other association of which he is or was at any material time a member, and the consideration for such payment or the giving of such benefit.

14. The dates of, parties to and general nature of every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than two years before the date of issue of the prospectus and a reasonable time and place at which any such contract or a copy thereof may be inspected.

15. 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 to it in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director or otherwise for services rendered by him or by it in connexion with the promotion or formation of the company.

16. (1) The number of founders' and management or deferred shares, if any, and any special rights attaching thereto, and the nature and extent of the interest of the holders in the property and profits of the company.

(2) Particulars of the share capital, nominal, issued, paid up and held in reserve; the number and classes of shares and the nominal value thereof, and if the prospectus invites the public to subscribe for shares in the company, a description of the respective voting rights, preference, conversion and exchange rights, rights to dividends, profits or capital of each class, including redemption rights and rights on liquidation or distribution of capital assets.

17. In the case of a company which has been carrying on business, or of a business which has been carried on for less than five years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.

PART II Reports to be Set Out

- 18.** (1) A report by the auditors of the company with respect to—
- (a) profits and losses and assets and liabilities, in accordance with subparagraph (2) or (3), as the case requires; and
 - (b) the rates of the dividends, if any, paid by the company in respect of each class of shares in the company in respect of

each of the five financial years immediately preceding the issue of the prospectus, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years; and, if no accounts have been made up in respect of any part of the period of five years ending on a date three months before the issue of the prospectus, containing a statement of that fact.

- (2) If the company has no subsidiaries, the report shall—
- (a) so far as regards profits and losses, deal with the profits or losses of the company in respect of each of the five financial years immediately preceding the issue of the prospectus; and
 - (b) so far as regards assets and liabilities, deal with the assets and liabilities of the company at the last date to which the accounts of the company were made up.
- (3) If the company has subsidiaries, the report shall—
- (a) so far as regards profits and losses, deal separately with the company'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 company, or (ii) individually with the profits or losses of each subsidiary,
so far as they concern members of the company, or, instead of dealing separately with the company's profits or losses, deal as a whole with the profits or losses of the company and, so far as they concern members of the company, with the combined profits or losses of its subsidiaries; and
 - (b) so far as regards assets and liabilities, deal separately with the company'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 company'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 adjustment to be made for persons other than members of the company.

19. If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made by accountants (who shall be named in the prospectus) upon—

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

20. (1) If—

- (a) the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in any manner resulting in the acquisition by the company of shares in any other body corporate; and
- (b) by reason of that acquisition or anything to be done in consequence thereof or in connexion therewith that body corporate will become a subsidiary of the company, a report made by accountants (who shall be named in the prospectus) upon—
 - (i) the profits or losses of the other body corporate in respect of each of the five financial years immediately preceding the issue of the prospectus, and (ii) the assets and liabilities of the other body corporate at the last date to which the accounts of the body corporate were made up. (2)

The said report shall—

- (a) indicate 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, for holders of other shares, what allowances would have fallen to be made, in relation to assets and liabilities so dealt with, if the company had at all material times held the shares to be acquired; and
- (b) where the other body corporate has subsidiaries, deal with the profits or losses and the assets and liabilities of the body corporate and its subsidiaries in the manner provided by subparagraph (3) of paragraph 18 of this Schedule in relation to the company and its subsidiaries.

PART III *Provisions Applying to Parts I and II of Schedule*

21. Paragraph 2 and paragraph 12 (so far as it relates to preliminary expenses) and paragraph 15 of this Schedule shall not apply in the case of a prospectus issued more than three years after the date at which the company is entitled to commence business.

22. Every person shall, for the purposes of this Schedule, be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or of any option of purchase, of any property to be acquired by the company, in any case where—

- (a) the purchase money is not fully paid at the date of the issue of the prospectus;
- (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or
- (c) the contract depends for its validity or fulfillment on the result of that issue.

23. Where any property to be acquired by the company is to be taken on lease, this Schedule shall have effect as if the expression "vendor" included the lessor, and the expression "purchase money"

included the consideration for the lease and the expression "sub-purchaser" included a sub-lessee.

24. If in the case of a company which has been carrying on business, or of a business which has been carried on for less than five years, the accounts of the company or business 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.

25. The expression "financial year" in Part II of this Schedule means the year in respect of which the accounts of the company or of the business, as the case may be, are made up, and where by reason of any alteration of the date on which the financial year of the company or business terminates the accounts of the company or business have been made up for a period greater or less than a year, that greater or lesser period shall for the purposes of that Part of this Schedule be deemed to be a financial year.

26. 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 persons making the report necessary or shall make those adjustments and indicate that adjustments have been made.

27. 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

(sections 51, 308 and 314)

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*

THE COMPANIES ACT (*Chapter 42:01*) Statement in lieu of
Prospectus delivered for registration by

(Insert the name of the Company) Pursuant to
section 51 of the Companies Act (*Chapter 42:01*)

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

.....	P		
	Shares of P		each,
(b) amount, if any, of above capital which consists of redeemable preference shares;	Shares of P		each,
	Shares of P		each.
(c) the earliest date on which the company has power to redeem these shares.	Shares of P		each.
3. 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.
4. (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 P..... fully paid.
 2. shares upon which P..... per share is credited as paid.
 3. debenture P
4. Consideration:
 - 1.
 2. Shares of P..... and Debentures of P.
5. 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;
 - (b) the price to be paid for shares or
 3. Until:
 - 4.

- debentures subscribed for under option;
 - (c) the consideration, if any, given or to be given for it or for the right to it;
 - (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;
 - (e) any other material fact or circumstances relevant to the grant of such option or right.
- 6.** (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;
- (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
- 5. Consideration:
 - 6. Names and addresses:
 - 7.
- Total purchase price P.
 Cash P.
 Shares P.
 Debentures P.
 Goodwill P.

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.

- 7. (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; Amount paid
Amount payable
- (b) rate of commission; Rate per cent.
- (c) the number of shares, if any, which persons have agreed for a commission to subscribe absolutely.
- 8. (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
Consideration for the payment ... Name of promoter:
Amount P.....
- (d) any other benefit given or intended to be given to any promoter
Consideration for giving of benefit
.....
Consideration: Name of promoter: Nature and value of benefit:
- 9. (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.

10. Names and addresses of the auditors of the company, if any.
11. 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 to it in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director or otherwise for services rendered by him or by it in connexion with the promotion or formation of the company.

(Signature of the persons above-named as directors or proposed directors or of their agents authorized 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 connexion 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 sub-paragraph (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 the last foregoing sub-paragraph 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; and
- (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 sub-paragraph (1) shall—

- (a) so far as regards profits and losses, deal separately with the other body corporate's profits or losses as provided by the last foregoing sub-paragraph, 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; and
- (b) so far as regards assets and liabilities, deal separately with the other body corporate's assets and liabilities as provided by the last foregoing sub-paragraph 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 Third Schedule to this Act, 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 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 assets and liabilities dealt with by the report which appear to the persons 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.

FIFTH SCHEDULE

(sections 95, 308 and 314)

THE COMPANIES ACT (Chapter 42:01)

FORM OF ANNUAL RETURN OF A COMPANY HAVING A SHARE CAPITAL Annual Return

of the Company,
 Limited, made up to the day of 19.....
 (being the date of the first or only ordinary meeting in 19.....).
 The address of the registered office of the company is—

Summary of Share Capital and Shares

1. Nominal Capital P I 1 j
 divided into (a) P shares of each,
2. Total number of shares taken up (a) to the ... day of 19
 (date of return) P
3. Number of shares issued subject to payment
 wholly in cash (a)
4. (i) Number of shares issued as fully paid up
 otherwise than in cash (a)

- (ii) The nature of the consideration given for such shares
- 5. (i) Number of shares issued as partly paid up to the extent of per share otherwise than in cash (*b*)
- (ii) The nature of the consideration given for such shares
- 6. Amount called up on each of shares(*b*)
- 7. Total amount of calls received, including payment on application and allotment and on shares forfeited P

- 8. Total amount (if any) agreed to be considered as paid on shares issued as fully paid up otherwise than in cash (*b*) P
- 9. Total amount (if any) agreed to be considered as paid on shares issued as fully paid up to the extent of..... per share otherwise than in cash (*b*) P
- 10. Total amount of calls unpaid P
- 11. Total amount (if any) of sums paid by way of commission in respect of any shares or debentures or allowed by way of discount in respect of any debentures since date of last return P
- 12. The total number of shares forfeited (1) P.....
- 13. Total amount (if any) paid on shares forfeited P
- (a) if the shares are of different classes, state them separately;
- (b) where various amounts have been called, or there are shares of different classes, state them separately.

Particulars of Indebtedness

Total amount of debt due from the company secured otherwise than by operation of law P

The return must be signed *at the end* by a director and the secretary of the company.

Presented for filing by

List of persons holding shares not fully paid up in the Company, Limited, on the day of 19..... and of persons who have held shares therein not fully paid up at any time since the date of the last return, or in the case of the first return, of the incorporation of the company.

Names and Addresses					Account of Shares not fully paid-up				
Folio in register ledger containing particulars	Surname	Forename	Address	of shares held by existing members	Particulars of shares transferred during the preceding year by persons who are still members (c)		Particulars of shares transferred during the preceding year by persons who have ceased to be members (c)		Names and addresses of transferees
				of return (h)	Number (h)	Date of registration of transfer	Number (h)	Date of registration of transfer	

Secretary

Director

- (a) The aggregate number of shares held and not the distinctive numbers must be stated, and the aggregate must be added up throughout so as to make one total to agree with that stated in the summary to have been taken up.
- (b) When the shares are of different classes these columns should be subdivided so that the number of each class held or transferred may be shown separately.
- (c) The date of registration of each transfer should be given as well as the number of shares transferred on each date. The particulars should be placed opposite the name of the transferor and not opposite that of the transferee, but the name of the transferee shall be inserted in the column provided therefor.

NOTE—Where the names of the members are entered in alphabetical order on the Register no folio number need be given.

Names and addresses of the directors, auditors and secretaries of the
..... Limited, on the day of..... 19.....

Directors

Names	Addresses
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Auditors

Names	Addresses
-------	-----------

Secretaries

Names	Addresses
-------	-----------

Director

Secretary

Copy of last audited balance sheet and accounts of the company (not required in the case of a private company, unless one or more shareholders of such private company is a company which is not a private company).

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.

~~CERTIFICATE TO BE GIVEN BY A PRIVATE COMPANY~~

A.—We certify that the company has not since the date of the incorporation of the company/the last Annual Return* issued any invitation to the public to subscribe for any shares or debentures of the company.

Director

Secretary

Delete whichever is inappropriate

B.—Should the number of members of the company exceed 50, the following certificate is required—

We certify that the excess of members of the company above 50 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

Secretary

SIXTH SCHEDULE

(sections 58, 113, 116, 118, 124 and 314)

THE COMPANIES ACT (*Chapter 42:01*)

ACCOUNTS *Preliminary*

1. Part I of this Schedule applies to the balance sheet and profit and loss accounts and is subject to the exceptions and modifications provided for by Part II in the case of a holding company; and by Part III in the case of companies of the classes there mentioned. This Schedule has effect in addition to the provisions of sections 154 and 155, dealing with directors' salaries, pensions and other emoluments and with loans to directors and other officers respectively. It incorporates sundry provisions in the Act dealing with special matters to be shown in the balance sheet.

PART I *General Provisions as to Balance Sheet and Profit and Loss Account*

Balance Sheet

2. The authorized share capital, issued share capital, liabilities and assets shall be summarized with such particulars as are necessary to disclose the general nature of the assets and liabilities, and there shall be specified—

- (a) the classes of shares into which the authorized capital is divided and the amount of capital included in each class;
- (b) the amount of the issued capital in respect of each class of share;
- (c) any part of the issued capital which consists of redeemable preference shares and the earliest date on which the company has power to redeem such shares;
- (d) the amount of the share premium account;
- (e) particulars of any redeemed debentures which the company has power to re-issue.

3. There shall be stated under separate headings so far as they are not written off—

- (a) the preliminary expenses;
- (b) any expenses incurred in connexion with any issue of share capital or debentures;
- (c) any sums paid by way of commission in respect of any shares or debentures;
- (d) any sums allowed by way of discount in respect of any debentures.

4. (1) The reserves, provisions, liabilities and fixed and current assets shall be classified under headings appropriate to the company's business:

Provided that— (i) where the amount of any class is not material, it may be

included under the same heading as some other class, and (ii) where any assets of one class are not separable from assets of another class, those assets may be included under the same heading.

(2) Fixed assets shall be distinguished from current assets, provided that an asset need not be distinguishable as fixed or current if to do so would result in failure to give a true and fair view of its nature. Where an asset is not distinguished as fixed or current, the asset shall be specifically described.

(3) The method or methods used to arrive at the amount of the fixed assets under each heading shall be stated.

5. (1) The method of arriving at the amount of any fixed asset shall be, subject to sub-paragraph (2), to take the difference between—

- (a) its cost, or, if it stands in the company's books at a valuation, the amount of the valuation; and
- (b) the aggregate amount provided or written off since the date of acquisition or valuation, as the case may be, for depreciation or diminution in value,

and for the purposes of this paragraph the net amount at which any assets stand in the company's books at the date of the coming into force of this Schedule (after deduction of the amounts previously provided or written off for depreciation or diminution in value) shall, if the figures relating to the period before that date cannot be obtained without unreasonable expense or delay, be treated as if it were the amount of a valuation of those assets at that date and, where any of those assets are sold, the said net amount less the amount of the sales shall be treated as if it were the amount of a valuation so made of the remaining assets.

(2) The foregoing sub-paragraph shall not apply —

- (a) to assets the replacement of which is provided for wholly or partly— (i) by making provision for renewals and charging the cost of replacement against the provision so made, or (ii) by charging the cost of replacement direct to revenue;
- (b) to any investment of which the market value (or, in the case of investments not having a market value, their value (as estimated by the directors) is shown either as the amount of the investments or by way of note; or
- (c) to goodwill, patents or trade marks.

(3) For the assets under each heading whose amount is arrived at in accordance with sub-paragraph (1), there shall be shown —

- (a) the aggregate of the amounts referred to in paragraph (a) of that sub-paragraph; and
- (b) the aggregate of the amounts referred to in paragraph (b) thereof.

(4) As respects the assets under each heading whose amount is not arrived at in accordance with the said sub-paragraph (1) because their replacement is provided for as mentioned in sub-paragraph (2) (a) of this paragraph, there shall be stated—

- (a) the means by which their replacement is provided for; and
- (b) the aggregate amount of the provision, if any, made for renewals and not used.

6. The aggregate amounts respectively of capital reserves, revenue reserves and provisions (other than provisions for depreciation, renewals or diminution in value of assets) shall be stated under separate headings:

Provided that—

- (i) this paragraph shall not require a separate statement of any of the said three amounts which is not material, and (ii) the Minister may direct that there shall not be required a separate statement of the amount of provisions where he is satisfied that that is not required in the public interest and would prejudice the company, but subject to the condition that any heading stating an amount arrived at after taking into account a provision (other than as aforesaid) shall be so framed or marked as to indicate that fact.

7. (1) There shall also be shown (unless it is shown in the profit and loss account or a statement or report annexed thereto, or the amount involved is not material)—

(a) where the amount of the capital reserves, of the revenue reserves or of the provisions (other than provisions for depreciation, renewals or diminution in value of assets) shows an increase as compared with the amount at the end of the immediately preceding financial year, the source from which the amount of the increase has been derived; and

(b) where—

(i) the amount of the capital reserves or of the revenue reserves shows a decrease as compared with the amount at the end of the immediately preceding financial year, or (ii) the amount, at the end of the immediately preceding financial year, of the provisions (other than provisions for depreciation, renewals or diminution in value of assets) exceeded the aggregate of the sums since applied and amounts still retained for the purposes thereof,

the application of the amounts derived from the difference. (2) Where the heading showing any of the reserves or provisions aforesaid is divided into sub-headings, this paragraph shall apply to each of the separate amounts shown in the sub-headings instead of applying to the aggregate amount thereof.

8. (1) There shall be shown under separate headings—

(a) the aggregate amounts respectively of the company's trade investments, quoted investments other than trade investments and unquoted investments other than trade investments; (b) if the amount of the goodwill and of any patents and trade marks or part of that amount is shown as a separate item in, or is otherwise ascertainable from the books of the company, or from any contract for the sale or purchase of any property to be acquired by the company, or from any documents in the possession of the company relating to the stamp duty payable in respect of any such contract or conveyance of any such property, the said amount so shown or ascertained so far as not written off, or, as the case may be, the said amount so far as it is so shown or ascertainable and as so shown or ascertained, as the case may be;

(c) the aggregate amounts of any outstanding loans made under the authority of provisos (ii) and (iii) of subsection (1) of section 57 of the Act;

(d) the aggregate amount of bank loans and overdrafts;

(e) the aggregate amount which is recommended for distribution by way of dividend.

(2) Nothing in sub-paragraph (1)(£) shall be taken as requiring the amount of the goodwill, patents and trade marks to be stated otherwise than as a single item.

(3) The heading showing the amount of the quoted investments other than trade investments shall be subdivided, where necessary, to distinguish the investments as respects which there has, and those as

respects which there has not, been granted a quotation or permission to deal on a recognized stock exchange.

9. Where any liability of the company is secured otherwise than by operation of law on any assets of the company, the fact shall be stated, specifying the liability and the assets on which it is secured.

10. Where any of the company's debentures are held by a nominee of or trustee for the company, the nominal amount of the debentures and the amount at which they are stated in the books of the company shall be stated.

11. (1) The matters referred to in the following sub-paragraphs shall be stated by way of note, or in a statement or report annexed, if not otherwise shown.

(2) The number, description and amount of any shares in the company which any person has an option to subscribe for, or in respect of which any person has any preferential right of subscription, together with the following particulars—

- (a) the period during which the option or right is exercisable;
- (b) the price to be paid for shares subscribed for under it.

(3) The amount of any share capital which the members have either in the articles or by resolution authorized the directors to issue or to give an option to take up, the terms of such authority and the period for which it is granted.

(4) The amount of any arrears of fixed cumulative dividends on the company's shares and the period for which the dividends or, if there is more than one class, each class of them, are in arrear.

(5) Particulars of any charge on the assets of the company to secure the liabilities of any other person, including, where practicable, the amount secured.

(6) The general nature of any other contingent liabilities not provided for and, where practicable, the aggregate amount or estimated amount of those liabilities, if it is material.

(7) Where practicable, the aggregate amount or estimated amount if it is material, of contracts for capital expenditure so far as not provided for.

(8) If in the opinion of the directors any of the current assets have not a value, on realization in the ordinary course of the company's business, at least equal to the amount at which they are stated, the fact that the directors are of that opinion.

(9) The aggregate market value of the company's quoted investments, other than trade investments, where it differs from the amount of the investments as stated.

(10) The basis on which foreign currencies have been converted into Pula where the amount of the assets or liabilities affected is material.

(11) The balance sheet in respect of the amounts at the end of the immediately preceding financial year for all items shown in the balance sheet.

Profit and Loss Account

- 12.** (1) There shall be shown separately—
- (a) profits or losses on share transactions;
 - (b) the amount of income from investments, distinguishing between trade investments and other investments;
 - (c) the aggregate amount of the dividends paid or proposed;
 - (d) the amount charged against revenue by way of provision for depreciation, renewals or diminution in value of fixed assets;
 - (e) the amount of the interest on the company's debentures and other fixed loans;
 - (f) the amount provided for taxation in respect of the period covered by the account and the amount, if any, provided in respect of any other period (specifying the taxes); (g) the amounts respectively provided for redemption of share capital and for redemption of loans; (h) the amount, if material, set aside or proposed to be set aside to, or withdrawn from, revenue reserves;
 - (i) subject to sub-paragraph (2), the amount, if material, set aside to provisions other than provisions for depreciation, renewals or diminution in value of assets or, as the case may be, the amount, if material, withdrawn from such provisions and not applied for the purposes thereof;
 - (j) the aggregate amount paid or payable to any holding or subsidiary company of the company as remuneration for managerial, technical or secretarial services including buying or selling commissions, however described.
- (2) The Minister may direct that a company shall not be obliged to show an amount set aside to provisions in accordance with sub-paragraph (i)(i) of this paragraph, if he is satisfied that that is not required in the public interest and would prejudice the company, but subject to the condition that any heading stating an amount arrived at after taking into account the amount set aside as aforesaid shall be so framed or marked as to indicate that fact.

13. If the remuneration of the auditors is not fixed by the company in general meeting, the amount thereof shall be shown under a separate heading, and for the purposes of this paragraph, any sums paid by the company in respect of the auditor's expenses shall be deemed to be included in the expression "remuneration".

14. (1) The matters referred to in the following sub-paragraphs shall be stated by way of note if not otherwise shown.

(2) If depreciation or replacement of fixed assets is provided for by some method other than a depreciation charge or provision for renewals, or is not provided for, the method by which it is provided for or the fact that it is not provided for, as the case may be.

(3) The basis on which the charge for income tax is computed. If no provision for taxation has been made, a statement of that fact, the reason therefor, and the period in respect of which no provision has been made.

(4) Except in the case of the first profit and loss account laid before the company after the coming into force of this Act, the corresponding amounts for the immediately preceding financial year for all items shown in the profit and loss account.

(5) Any material respects in which any items shown in the profit and loss account are affected—

- (a) by transactions of a sort not usually undertaken by the company or otherwise by circumstances of an exceptional or non-recurrent nature, including the realization of non-trading and fixed and other capital assets;
- (b) by any change in the basis of accounting.

PART II *Special Provisions Where the Company is a Holding or Subsidiary Company*

A. MODIFICATIONS OF AND ADDITIONS TO REQUIREMENTS AS TO COMPANY'S OWN ACCOUNTS

15. (1) This paragraph shall apply where the company is a holding company, whether or not it is itself a subsidiary of another body corporate.

(2) The aggregate amount of assets consisting of shares in, or amounts owing (whether on account of loan or otherwise) from the company's subsidiaries, distinguishing shares from indebtedness, shall be set out in the balance sheet separately from all the other assets of the company, and the aggregate amount of indebtedness (whether on account of loan or otherwise) to the company's subsidiaries shall be so set out separately from all its other liabilities and—

- (a) the reference in Part I of this Schedule to the company's investments shall not include investments in its subsidiaries required by this paragraph to be separately set out; and
- (b) paragraph 5 of this Schedule, subparagraph (1)(d) of paragraph 12, and sub-paragraph (2) of paragraph 14 thereof shall not apply in relation to fixed assets consisting of interests in the company's subsidiaries.

(3) There shall be shown by way of note on the balance sheet or in a statement or report annexed thereto the number, description and amount of the shares in and debentures of the company held by its subsidiaries or their nominees, but excluding any of those shares or debentures in the case of which the subsidiary is concerned in a representative capacity or in the case of which it is concerned as trustee and neither the company nor any subsidiary thereof is beneficially interested under the trust, otherwise than by way of security only for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

(4) Where group accounts are not submitted, there shall be annexed to the balance sheet a statement showing—

- (a) the reasons why subsidiaries are not dealt with in group accounts;
- (b) the net aggregate amount, so far as it concerns members of the holding company and is not dealt with in the company's accounts, of the subsidiaries' profits after deducting the subsidiaries' losses (or vice versa)—

(i) for the respective financial years of the subsidiaries ending with or during the financial year of the company, and (ii) for their previous financial years since they respectively became the holding company's subsidiary;

(c) the net aggregate amount of the subsidiaries' profits after deducting the subsidiaries' losses (or vice versa)— (i) for the respective financial years of the subsidiaries, ending with or during the financial year of the company, and (ii) for their other financial years since they respectively became the holding company's subsidiary, so far as those profits are dealt with, or provision is made for those losses, in the company's accounts;

(d) any qualifications contained in the report of the auditors of the subsidiaries on their accounts, and any note or saving contained in those accounts to call attention to a matter which, apart from the note or saving, would properly have been referred to in such a qualification, in so far as the matter which is the subject of the qualification or note is not covered by the company's own accounts and is material from the point of view of its members,

or, in so far as the information required by this sub-paragraph is not obtainable, a statement that it is not obtainable:

Provided that the Minister may, on the application or with the consent of the company's directors, direct that in relation to any subsidiary this sub-paragraph shall not apply or shall apply only to such extent as may be provided by the direction.

(5) Paragraphs (b) and (c) of sub-paragraph (4) shall apply only to profits and losses of a subsidiary which may properly be treated in the holding company's accounts as revenue profits or losses, and the profits or losses attributable to any shares in a subsidiary for the time being held by the holding company or any other of its subsidiaries shall not (for that or any other purpose) be treated as aforesaid so far as they are profits or losses for the period before the date on or as from which the shares were acquired by the company or any of its subsidiaries except that they may in a proper case be so treated where —

(a) the company is itself the subsidiary of another body corporate; and

(b) the shares were acquired from the body corporate or a subsidiary of it,

and, for the purpose of determining whether any profits or losses are to be treated as profits or losses for the said period, the profit or loss for any financial year of the subsidiary may, if it is not practicable to apportion it with reasonable accuracy by reference to the facts, be treated as accruing from day to day during that year and be apportioned accordingly.

(6) Where group accounts are not submitted there shall be annexed to the balance sheet a statement showing, in relation to the subsidiaries, if any, whose financial years did not end with that of the company—

(a) the reasons why the company's directors consider that the subsidiaries' financial years should not end with that of the company; and

(b) the dates on which the subsidiaries' financial years ending last

before that of the company respectively ended or the earliest or latest of those dates.

16. (1) The balance sheet of a company which is a subsidiary of another body corporate, whether or not it is itself a holding company, shall show the aggregate amount of its indebtedness to all bodies corporate of which it is a subsidiary or a fellow subsidiary and the aggregate amount of the indebtedness of all such bodies corporate to it, distinguishing in each case between indebtedness in respect of debentures and otherwise.

(2) For the purposes of this paragraph, a company shall be deemed to be a "fellow subsidiary" of another body corporate if both are subsidiaries of the same body corporate but neither is the other's.

B. CONSOLIDATED ACCOUNTS OF HOLDING COMPANY AND SUBSIDIARIES

17. Subject to the following paragraphs of this Part of this Schedule, the consolidated balance sheet and profit and loss account shall combine the information contained in the separate balance sheets and profit and loss accounts of the holding company and of the subsidiaries dealt with by the consolidated accounts, but with such adjustments, if any, as the directors of the holding company think necessary.

18. Subject as aforesaid and to Part III of this Schedule, the consolidated accounts shall, in giving the said information, comply, so far as practicable, with the requirements of this Act as if they were the accounts of an actual company.

19. Sections 154 and 155 of the Act shall not, by virtue of paragraphs 17 and 18, apply for the purpose of the consolidated accounts.

20. Paragraph 7 of this Schedule shall not apply for the purpose of any consolidated accounts laid before a company with the first balance sheet so laid after the coming into force of the Act.

21. In relation to any subsidiaries of the holding company not dealt with by the consolidated accounts—

- (a) subparagraphs (2) and (3) of paragraph 15 of this Schedule shall apply for the purpose of those accounts as if those accounts were the accounts of an actual company of which they were subsidiaries; and
- (b) there shall be annexed the like statement as is required, by subparagraph (4) of that paragraph where there are no group accounts, but as if reference therein to the holding company's accounts were references to the consolidated accounts.

PART III *Exceptions for Special Classes of Company*

22. (1) A banking company as defined by section 284 of the Act shall not be subject to the requirements of Part I of this Schedule other than—

- (a) as respects its balance sheet, those of paragraphs 3, 8 (except

subparagraph (1)(d)), 9 (except in so far as it requires any liability and the assets on which it is secured to be specified), paragraph 10 and paragraph 11 (except subparagraph (9)); and (b) as respects its profit and loss accounts, those of paragraph 13 and

subparagraphs (1) and (4) of paragraph 14,

but, where in its balance sheet capital reserves, revenue reserves or provisions (other than provisions for depreciation, renewals or diminution in value of assets) are not stated separately, any heading stating an amount arrived at after taking into account such a reserve or provision shall be so framed or marked as to indicate that fact, and its profit and loss accounts shall indicate by appropriate words the manner in which the amount stated for the company's profit and loss has been arrived at.

(2) The accounts of a company described in subparagraph (1) hereof shall not be deemed, by reason only of the fact that they do not comply with any requirements of the said Part I from which the company is exempt by virtue of this paragraph, not to give the true and fair view required by the Act.

23. (1) Paragraph 22 of this Schedule shall apply with like effect to an insurance company as defined by section 284 of the Act (hereinafter referred to as "an insurance company"); and an insurance company shall also not be subject to the requirements of subparagraphs (1)(a) and (3) of paragraph 8 and subparagraphs (5) to (8) of paragraph 11 of this Schedule:

Provided that the Minister may direct that any insurance company whose business includes to a substantial extent business other than insurance business shall comply with all the requirements of the said Part I of this Schedule or such of them as may be specified in the direction in respect either of the whole of its business or such part thereof as may be so specified.

(2) Where an insurance company is entitled to the benefit of this paragraph, then any wholly owned subsidiary thereof shall also be so entitled if its business consists only of business which is complementary to insurance business of the classes carried on by the insurance company.

(3) For the purposes of this paragraph, a company shall be deemed to be the wholly owned subsidiary of an insurance company if it has no members except the insurance company and the insurance company's wholly owned subsidiaries and its or their nominees.

24. (1) A company to which this paragraph applies shall not be subject to the following requirements of Part I of this Schedule, that is to say—

(a) as respects its balance sheet, those of paragraph 4 (except so far as the said paragraph relates to fixed and current assets) and paragraphs 5, 6 and 7; and

(b) as respects its profit and loss account, those of subparagraph (1)(d), (h) and (i) of paragraph 12,

but a company taking advantage of this paragraph shall be subject, instead of the said requirements, to any prescribed conditions as respects matters to be stated in its accounts or by way of note thereto

and as respects information to be furnished to the Minister or a person authorized by him to require it.

(2) The accounts of a company shall not be deemed, by reason only of the fact that they do not comply with any requirements of the said Part I, from which the company is exempt by virtue of this paragraph, not to give the true and fair view required by this Act.

(3) This paragraph applies to companies of any class prescribed for the purposes thereof, and a class of companies may be so prescribed if it appears to the Minister desirable in the interest of Botswana:

Provided that, if the Minister is satisfied that any of the conditions prescribed for the purposes of this paragraph have not been complied with in the case of any company, he may direct that so long as the direction continues in force this paragraph shall not apply to the company.

25. Where a company entitled to the benefit of any provision contained in this Part of this Schedule is a holding company, the reference in Part II of this Schedule to consolidated accounts complying with the requirements of this Act shall, in relation to consolidated accounts of that company, be construed as referring to those requirements in so far as they apply to the separate accounts of that company.

PART IV *Interpretation of Schedule*

26.(1) For the purposes of this Schedule, unless the context otherwise requires—

- (a) the expression "provision" shall, subject to subparagraph (2) mean any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of providing for any known liability of which the amount cannot be determined with substantial accuracy;
- (b) the expression "reserve" shall not, subject as aforesaid, include any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of providing for any known liability;
- (c) the expression "capital reserve" shall not include any amount regarded as free for distribution through the profit and loss account; and
- (d) the expression "revenue reserve" shall mean any reserve other than a capital reserve,

and in this paragraph the expression "liability" shall include all liabilities in respect of expenditure contracted for and all disputed or contingent liabilities; and shall include further any amount referred to in subparagraph (f) of paragraph 12(1) of this Schedule. (2) Where—

- (a) any amount written off or retained by way of providing for depreciation, renewals or diminution on values of assets, not being an amount written off in relation to fixed assets before the coming into force of this Act; or

(b) any amount retained by way of providing for any known liability, is in excess of that which in the opinion of the directors is reasonably necessary for the purpose, the excess shall be treated for the purposes of this Schedule as a reserve and not as a provision.

27. For the purposes aforesaid the expression "trade investment" means an investment by a company in the shares or debentures of another company, not being its subsidiary, for the purpose of enhancing or facilitating the trade or business of the first company; and no investment shall be deemed to be a trade investment which does not constitute, and is not treated as, a fixed asset.

28. For the purposes aforesaid the expression "quoted investment" means an investment as respects which there has been granted a quotation or permission to deal on a recognized stock exchange, and the expression "unquoted investment" shall be construed accordingly.

SEVENTH SCHEDULE

(section 314)

COMPANIES ACT (Chapter 42:01)

FIRST TABLE

Table of fees to be paid by a company (other than an external company) under this Act, except in the case of a company in receipt of dispensation under section 22 where no fee shall be payable. 1. A. Company limited by shares

<i>Where nominated capital does not exceed</i>	<i>Registration fee</i>
P	P
(1) 3000	50
(Then an additional P2 for every P1000 or part thereof)	
4000	52
5000	54
6000	56
(Then an additional P1 for every P1000 or part thereof)	
7000	57
8000	58
9000	59
10 000	60
	20 000
	6
	5
	30 000
	7
	0
50 000	90
100 000	140
(Then an additional 50t for each P1000 or part thereof)	
101 000	140-160
200 000	190
500 000	350
525 000	465-480
1 000 000	500-600

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Companies

(2) For registration of any increase of capital made after the first registration of the company. Whenever a company increases its capital, the fee will be assessed by reference to the scale set out in paragraph (1) of this Table subject to a minimum fee of	50
(3) Certificate of Incorporation of any company	10
(4) Registration of altered memorandum of association and order of court confirming same	30
(5) For registration of change of name and issue of certificate thereof	20
(6) For registration of any prospectus pursuant to section 41 or prospectus pursuant to section 51	35
(7) For application for licence for the Minister to dispense with the term "Limited" in the name of a company	10
1. B. Company not having a share capital	

Where the number of members is stated in the articles of association to be:

	<i>Registration fee</i>
	<i>P t</i>
(1) Not exceeding 25 (minimum fee)	35,00
A further P5 for each additional or fraction of 25 members subject to a maximum fee for 600 or more	150,00
Unrestricted	150,00
(2) For registration of any increase of capital made after the first registration of the company. Whenever a company increases its capital, the fee will be as assessed by reference to the scale set out in paragraph (1) of this Table subject to a minimum fee of P10.	
(3) Certificate of Incorporation of any company	3,00
(4) Registration of altered memorandum of association and order of court confirming same	25,00
(5) For registration of change of name and issue of certificate thereof	15,00
(6) For registration of any prospectus pursuant to section 41 or prospectus pursuant to section 51	30,00
(7) For the delivery to the Registrar of any annual return (with annexures) pursuant to section 95	50,00
(8) For the registration of any document or the recording of any fact authorized or required to be registered or recorded or required to be delivered, sent or forwarded to the Registrar, and not previously specified	3,00
(9) For application for licence for the Minister to dispense with the term "Limited" in the name of a company	1,00
(10) For reservation of name pursuant to section 20	3,00

SECOND TABLE

Table of fees to be paid by an external company under this Act.

- (1) For the registration of the Charter, Statutes or Memorandum and Articles of the company, or other instrument constituting or defining the constitution of the company 1 000,00
 - (2) For registration of any alteration in such instrument 200,00
 - (3) For registration of any document or making a record of any fact authorized or required to be delivered, sent or forwarded to the Registrar and not previously specified... 20,00
 - (4) For any certificate issued by the Registrar of Deeds 20,00
 - (5) For inspection of any documents relating to any company filed with the Registrar—
 - (a) in the case of a private company 5,00
 - (b) in the case of a public company 10,00
 - (6) For inspection of the entries in the registers kept by the Registrar or the Registrar of Deeds relating to any one company 5,00
 - 0
 - (7) Copies of any deed or other document—
 - (a) when prepared by an official, per 100 words, 75 thebe with a minimum of 7,50
 - (b) when prepared by an applicant, per 100 words, 50 thebe with a minimum of 5,00
 - (8) For collating document for certification, for every 100 words or part thereof 50
- Provided that any person engaged in research work of an historical character or of general public interest may be permitted, subject to such conditions as the Registrar may stipulate, to inspect the records and registers or to make copies of any deed or other document free of the payment of any fee.

THIRD TABLE

MISCELLANEOUS FEES

Table of fees to be paid in respect of any company other than an external company under this Act.

- | | <i>P t</i> |
|--|------------|
| (1) For any certificate issued by the Registrar or Registrar of Deeds | 3,00 |
| (2) For inspection of any documents relating to any company filed with the Registrar— | |
| (a) in the case of a private company | 1,00 |
| (b) in the case of a public company | 2,00 |
| (3) For inspection of the entries in the registers kept by the Registrar or the Registrar of Deeds relating to any one company | 1,00 |
| 0 | |
| (4) Copies of any deed or other document— | |
| (a) when prepared by an official, per 100 words, 50 thebe with a minimum of | 3,00 |
| (b) when prepared by an applicant, per 100 words, 20 thebe with a minimum of | 2,00 |
| (5) For collating documents for certification, for every 100 words or part thereof | 25 |
- Provided that any person engaged in research work of an

historical character or of general public interest may be permitted, subject to such conditions as the Registrar may stipulate, to inspect the records and registers or to make copies of any deed or other document free of the payment of any fee.

FOURTH TABLE

Table of fees to be paid to the Master in connexion with winding-up or judicial management of any company.

(1) For every certificate under the hand of the Master	50
(2) For every report prepared by the Master, in the discretion of the Master	From P1 to P20
(3) (a) Searching for any entry or for any document or for the inspection of any one record or document whether by an official or a member of the public (but excluding the liquidator) for each search or inspection	10
(b) When the result of search or inspection as above is conveyed by letter an additional fee in the discretion of the Master, not exceeding	50
(4) For taxing liquidator's remuneration or bill of costs, on every P2 or fraction of P2 of the amount taxed	10
(5) For binding documents in each winding up according to the number and volume of the documents in the discretion of the Master	From P1 to P4
(6) Making copy of any document, per 100 words, 10 thebe with a minimum of	50
Photostatic copy, foolscap or smaller size page, each	30
Photostatic copy, larger than foolscap size page, each	50
(7) On the assets available for distribution (before deducting this fee) among creditors and contributories, of any company in liquidation, including any security taken over by a creditor, an inventory fee to be affixed to the liquidation account: for each P200 or portion of P200 of the gross value of the assets dealt with in such liquidation account	15
NOTE: In the case of a company which has been placed under judicial management and is thereafter wound up, this fee shall not be payable.	
(8) In respect of companies which have been placed under judicial management there shall be paid a stamp fee on the gross value of the assets owned by the company as disclosed by the reports or other information which the judicial manager is required to submit to the Master in terms of section 265(1)(b) for each P200 or portion of P200 of the gross value of the assets	15

FIFTH TABLE Table of fees

payable to liquidator

- (1) Where the appointment is provisional and—
- (a) the petition is withdrawn or dismissed; or
- (b) the winding-up order is made, but the provisional liquidator is not continued as a liquidator, a fee to be taxed by the Master, with due regard to the special circumstances of the case.
- (2) Where a liquidator is appointed to liquidate the company, he shall be entitled—
- (a) to remuneration at the following tariffs—
- On the proceeds of the movable property (other than shares or similar securities) sold, or upon the amount collected under promissory notes or book debts, or as rent, interest or other income5 per cent
- On the proceeds of immovable property, shares and similar securities sold, life insurance policies and mortgage bonds recovered—
- On the first P10 00021/2percent
- On any amount in excess of the first P10 000 11/2per cent
- On cash included in the assets1 percent
- If the total remuneration of a liquidator under this tariff is less than P80 in all, he shall be entitled, up to that amount, to remuneration at the rate of 5 per cent on the value of all the assets of the company, with a minimum of P10,50;
- (b) to travelling expenses, in the discretion of the Master.
- (3) Where the liquidator is appointed for the purpose of carrying out a reconstruction or other scheme by which the affairs of the company are wound up otherwise than by the realization and distribution of the assets— On the value of the company's property as estimated in the statement of affairs— On the first P10 000 or fraction thereof1 percent
- On the next P40 000 or fraction thereof1/2 per cent
- On the next P50 000 or fraction thereof1/4 per cent
- On the next P100 000 or fraction thereof1/8 per cent
- Thereafter 1/16 per cent
- cent

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S.I.

COMPANIES (FORMS) REGULATIONS

(under section 313)

(15th December, 1967)

S.I.69 1968

S.I.69 1967

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Prescribed forms
Schedule

1. These Regulations may be cited as the Companies (Forms) Regulations.

2. (1) The list required to be lodged with the Registrar in accordance with the provisions of section 141(4) of the Act shall be in Form 1 as set out in the Schedule hereto.

(2) A return for the purposes of section 157(2) of the Act shall be in Form 2 as set out in the Schedule.

(3) A certificate of incorporation in accordance with the provisions of section 19(1) of the Act shall be in Form 3 as set out in the Schedule.

(4) A return for the purposes of section 55(2) of the Act shall be in Form 4 as set out in the Schedule.

(5) A notice for the purposes of section 84(2) of the Act shall be in Form 5 as set out in the Schedule.

(6) A notice for the purposes of section 87(3) of the Act shall be in Form 6 as set out in the Schedule.

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Companies

Companies (Forms) Regulations

SCHEDULE

Form 1

COMPANIES ACT

(section 141(4))

List of the persons who have consented to be Directors of the

..... Limited
to be delivered to the Registrar pursuant to section 141(4) of the
Companies Act.

To: The Registrar of Companies

I/We, the undersigned, hereby give you notice, pursuant to section
141(4) of the Companies Act, that the following persons have consented to
be directors of the above-mentioned Company.

SURNAME OTHER NAMES ADDRESS OCCUPATION

Signature, Address and
Description of Applicant for
Registration

This day of 19.

Presented for filing by

COMPANIES ACT

(section 157(2))

Name of Company Limited

COPY (a) OF THE COMPANY'S REGISTER OR DIRECTORS AND SECRETARIES

1. Date of Appointment (b)	2. Present Forename or Names & Surname	3. Nationality (h) or Surname	4. Any former Forenames	5. Usual Residence Address	6. Particulars of other Directorships (d)	7. Business Occupation	8. Nature of Change (c)	9. Date of Change (f)	10. Date Company Notified of Change (g)
DIRECTORS (a)									
SECRETARIES (c)									

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Companies

Companies (Forms) Regulations

Notes:

- (a) A complete list of the existing Directors should always be given.
- (b) This date should always be shown whether or not it is in respect of an old or a new appointment.
- (c) In the case of the Secretary being a corporate body, its name and the situation of its registered office must be shown.
- (d) In the case of an individual, if he is a director of any other company, the name and registered office of every such company must be entered.

This applies only in the case of new appointees.

- (e) State "Resigned", "Retired", "Died", or as the case may be. In the case of a new appointment since the last list was filed, it must be stated here in whose place or whether additional.
- (f) Give the date of the occurrence referred to in the previous column. Both columns 9 and 10 must be completed in the event of a change.
- (g) This is regarded as the effective date of the entry in the register.
- (h) In the case of any change of name the place where and the date when such change took place should be stated.

(Signed) Director/Secretary

This day of 19.....

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S.I.

Companies (Forms) Regulations

Form 3

REPUBLIC OF BOTSWANA

COMPANIES ACT

(Cap. 42:01)

CERTIFICATE OF INCORPORATION

(Pursuant to section 19(1))

I Hereby Certify that

is this day incorporated under the Companies Act, and that the liability of the members is limited.

Given under my hand at

this day of 19.

Registrar of Companies

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Companies

Companies (Forms) Regulations

Form 4

REPUBLIC OF BOTSWANA

No. of Company

Stamp

COMPANIES ACT

(Cap. 42:01)

..... Limited

Return of allotments from 19 ... to 19.....

(Pursuant to section 55(2))

To be lodged with the Registrar within one month after the first allotment referred to

1. Nominal Capital P.....
 (.....) (P.....)
 divided into (.....) shares of (P.....)each.
 (.....) (P.....)
2. (a) Total number of shares previously issued P.....
 (b) Nominal amount thereof P.....
3. (a) Number of shares now allotted payable in
 cash P.....
 (b) Nominal amount thereof P.....
 (c) Amount payable *on allotment in respect of
 each share P.....
4. (a) Number of shares now allotted for a consideration
 other than cash P.....
 (b) Nominal amount thereof P.....
 (c) Amount to be treated as paid on each share . P.....
 (d) The consideration for which such shares have
 been allotted is as follows:
5. (a) Total number of shares allotted (including those
 previously issued) P.
 (b) Nominal amount thereof P.
 (Signed)
 Director/Secretary

Date 19.

Presented for filing by

If the full amount is not paid on allotment, details regarding the calling up of the balance must be given below.

A duplicate, original or notarially certified copy of the contract in writing or particulars of the contract not reduced to writing, must accompany this return.

Companies (Forms) Regulations

NAMES AND ADDRESSES OF THE ALLOTTEES AND DATE OF ALLOTMENT

1. Date of Allotment	2. Surname	3. Christian Name	4. Address (not box numbers)	5. Number of Shares Alloted	
				Preference	Ordinary
				Total	

S.I.

CAP. 42:01]

Companies

Companies (Forms) Regulations

Form 5

REPUBLIC OF BOTSWANA

No. of Company

Stamp

COMPANIES ACT

(Cap. 42:01)

NOTICE OF SITUATION OF THE COMPANY'S REGISTERED
OFFICE AND OF ANY CHANGE IN THAT PLACE
(Pursuant to section 84(2))

Name of Company:
..... Limited.

To the Registrar of Companies,

The above-mentioned company hereby gives you notice that the
situation of the Registered Office of the Company— (a) is at
.....

(b) which was at

will be changed to with

effect from

(Signed) Director/Secretary

Date 19.....

Presented for filing by

*To be completed only in the event of a change of address.

Companies

[CAP. 42:01

S.I.

Companies (Forms) Regulations

Form 6

REPUBLIC OF BOTSWANA

No. of Company

Stamp

COMPANIES ACT

(Cap. 42:01)

NOTICE OF PLACE WHERE REGISTER OF MEMBERS IS KEPT

(Pursuant to section 87(3))

Name of Company:
..... Limited.

To the Registrar of Companies,

..... Limited
hereby gives you notice, in accordance with section 87(3) of the
Companies Act, that the register of members of the company is kept at

(Signed) Director/Secretary This

..... day of 19

Presented for filing by

S.I. **CAP. 42:01]** *Companies*

S1 33 1985

**AUDITOR OF COMPANY (QUALIFICATION FOR
APPOINTMENT) ORDER**
(under section 123(1)(a)(ii))
(23rd December, 1982)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Citation
2. Qualification for appointment as auditor of company

Citation

1. This Order may be cited as the Auditor of Company (Qualification for Appointment) Order.
2. Any person shall be qualified to be appointed as an auditor of a company if he is a member of a body of accountants established in the Republic or South Africa

COMPANIES WINDING-UP RULES

(under section 312)

(5th September, 1969)

S.I. 861969,
s.i. 40, 1970.

ARRANGEMENT OF RULES

RULE

1. Citation and application
2. Interpretation
3. Presentation of petition
4. Service of petition
5. Costs
6. Registration of order-
7. Application 19 Master
8. Appointment of liquidator
9. Master's report
10. Notice of order
11. Failure to attend
12. Appointment of shorthand writer
13. Report to court
14. Report of offence
15. Record of examination
16. Misapplication, etc.
17. Application of rules
18. List of contributories
19. Holder of fully paid shares
20. Notice by liquidator
21. Advertisement
22. List open for inspection
23. Settlement of list
24. Application of Companies Act
25. Rules for meetings
26. First meeting
27. Method of convening meeting
28. Validity of proceedings
29. Place of meeting
30. Conduct of meeting
31. Costs of meeting
32. Presiding over meeting
33. Resolutions
34. Minutes
35. Report
36. Vote
37. Liquidator's application
38. Dispute of claim
39. Remuneration of liquidator
40. Carrying on of business by liquidator
41. Purchase by liquidator
42. Resignation of liquidator
43. Objection to liquidation account
44. Address for notice
45. Destruction, etc. of books and papers
46. Moneys collected by agent
47. Formal defects
48. Application by motion
49. Reference to the Master
50. Taxation

S.I. **CAP. 42:01]** *Companies*

Companies Winding-up Rules

- 1.** These Rules may be cited as the Companies Winding-Up Rules and shall, so far as applicable, apply to all proceedings in every winding-up and judicial management under the Companies Act. Citation and application
- 2.** In these Rules, unless the context or subject matter otherwise requires—
"counsel" means an advocate or an attorney; "the court" means the High Court;
"creditor" includes a corporation and a firm of creditors in partnership; "Master" means the Master of the High Court. Interpretation
- 3.** (1) The presentation of a petition in terms of section 173, or section 264(2) of the Act, shall be effected by filing the petition at the office of the registrar of the court, accompanied by proof of the lodging with the Master, or the officer designated by him, of a copy of the petition and of every affidavit confirming the facts stated therein, and in the case of a petition in terms of the first-mentioned section by a certificate of the Master, or of a magistrate or of a district officer that security has been found as required by that section. Presentation of petition
(2) The setting down of the petition for hearing shall be effected in accordance with the rules and practice of the court.
- 4.** Every petition shall, unless presented by the company, be served at the registered office, if any, of the company, and if there is no registered office, then at the principal or last known principal place of business of the company, if any such can be found, by leaving a copy with any member, officer or servant of the company there, or in case no such member, officer or servant can be found there, then by leaving a copy at such registered office or principal place of business, or by serving it on such member, officer or servant of the company as the court may direct; and where the company is being wound up voluntarily, the petition shall also be served upon the liquidator (if any), appointed for the purpose of winding up the affairs of the company. Service of petition
- 5.** All costs and charges incurred, and all advances made by the Master on account of the company, and all costs and charges incurred by the Master in connexion with a company under judicial management, shall, subject to any order of the court, be costs in the winding-up or judicial management, as the case may be. cost
- 6.** (1) Every officer receiving a copy of an order transmitted to him in terms of section 180 of the Act shall register the order and note thereon the day and hour when it was received. Registration of order
(2) The deputy sheriff, if the Master so directs, shall proceed forthwith to attach the movable assets of the company and, in doing so, shall follow as far as may be the procedure laid down by section 19 of the Insolvency Act.
(3) The deputy sheriff shall transmit to the Master without delay an inventory of all property attached by him and known to belong to the company. Cap:42:02

Companies Winding-up Rules

(4) Where a liquidator is in office, the Master shall not direct the deputy sheriff to attach the property of the company except, upon the application of the liquidator, or if for some special reason, he thinks fit.

(5) The charges and expenses of the deputy sheriff in effecting the attachment shall be in accordance with the scale of charges and expenses for the time being in force in insolvency and shall be entitled to the like preference as the sheriff's costs under section 83 of the Insolvency Act.

7. (1) Every person who, under section 181 of the Act, is required to submit and verify a statement as to the affairs of the company, shall apply to the Master for instructions for the preparation of such statement.

Application to Master

(2) It shall be the duty of every such person to attend on the Master either before or after the statement of affairs has been submitted at such times and places as the Master may appoint, and to give the Master all information that he may require.

(3) No such person shall incur any costs or expenses in or about the preparation or making of the statement without first submitting to the Master an estimate of the costs and expenses which it is intended to incur.

(4) Any such costs and expenses incurred without the previous sanctions of the Master may be disallowed by the Master.

8. As soon as possible after the meetings mentioned in section 185 of the Act (hereinafter called "the first meetings"), all creditors and contributories have been held, the Master shall proceed to appoint a liquidator or liquidators in terms of subsections (2) and (3) of the said section.

Appointment liquidator

9. (1) The Master's report pursuant to section 182 of the Act may be presented by counsel, or, if the Master thinks fit, may be submitted through the registrar of the court under cover of a letter.

Master's report

(2) The court may in every case refer the report back to the Master and require that it shall be presented through counsel.

10. (1) Where the court has made an order under section 204 of the Act directing any person to attend for public examination, notice of the order and of the time and place appointed for the holding of the examination shall be served through a deputy sheriff.

Notice of order

(2) The Master shall give public notice of the time and place appointed for the holding of a public examination by advertisement in the Gazette and such newspapers, if any, as the court may direct.

11. If any person who has been directed by the court to attend for public examination fails to attend at the time and place appointed for the holding of the same, and no good cause is shown for such failure, and it has been proved to the satisfaction of the court that notice of the order and of the time and place so appointed has been duly given to such person, or if before the day appointed for the examination the court is satisfied that such person has absconded, or that there is

Failure to attend

Companies Winding-up Rules

reason to believe that he is about to abscond with the intention of avoiding examination, it shall be lawful for the court, without any further notice, to issue a warrant for the arrest of the person required to attend, or to make such other order as the court shall think just.

12. (1) If the court or the person before whom any examination shorthand under the Act and these Rules is directed to be held shall in any case, and at any stage of the proceedings, be of the opinion that it would be desirable that a person (other than the person before whom the examination was taken) should be appointed to take down the evidence of any person examined, in shorthand or otherwise, it shall be competent for the court or person before whom the examination is taken to make such appointment.

Appointment of shorthand writer

(2) Every person so appointed shall be paid a sum not exceeding P5,00 a day, and a sum not exceeding 10 thebe per folio of 90 words for any transcript of the evidence or copy of such transcript that may be required, and such sums shall be part of the costs in the winding-up.

13. (1) If a person examined before the Master or other person who has no power to commit for contempt of court, refuses to answer to the satisfaction of the Master or such other person any questions which may lawfully be put to him, the Master or such other person shall report such refusal to the court, and upon such report being made the person in default shall be in the same position, and be dealt with in the same manner, as if he had made default in answering before the court.

Report to court

(2) The report shall be in writing but without affidavit, and shall set forth the question put, and the answer, if any, given by the person examined.

(3) The Master or such other person shall furnish a copy of such report to the person examined.

14. When in the course of an examination before a commissioner for the purpose of taking evidence under the Act, or in the course of an examination before an officer, it shall appear that any person has been guilty of an offence, the commissioner or such officer, when forwarding to the Master a record of the examination, shall make mention in writing of the facts in evidence which appear to him to constitute such offence, and thereupon the Master shall submit the record to the Attorney-General.

Report of offence

15. (1) The record of every examination of witnesses under the Act and these Rules shall be filed in the office of the Master and (except for the record of a public examination) shall not be opened to the inspection of any person other than the liquidator or his attorney unless the court shall so direct.

Record of examination

(2) The court may from time to time give general or special directions to the Master as to the custody and inspection of any such record and the furnishing of copies or extracts therefrom.

(3) Any person divulging any information obtained from any such record to any person for whose inspection the record was not open shall be guilty of contempt of court.

Companies Winding-up Rules

16. Where an order has been made for the public examination of persons named in the order, pursuant to section 204 of the Act, or where an examination takes place before the Master or an officer, and it appears from the examination that the persons examined or some of them have misapplied or retained or become liable or accountable for moneys or property of the company, or been guilty of misfeasance or breach of trust in relation to the company, or any creditor of the company, then in any proceedings subsequently instituted under section 271 of the Act, for the purpose of examining into the conduct of the said persons, or any of them, and compelling repayment or restitution to the company of any moneys or property or contribution by way of compensation to the associates of the company by such person or any of them, the record of the examination of each person who was examined shall, subject as hereinafter mentioned, and to any order or directions of the court, as to the manner and extent in and of each record shall be used, and subject to all just exception to the admissibility in evidence against any particular person or persons of any of the statements contained in the record, be admissible in evidence against any of the persons against whom the application is made, who has or had the opportunity of being present at and taking part in the examination:

Misapplication
etc

Provided that before any such record of an examination shall be used on any such application, the person intending to use the same shall, not less than 15 days before the day appointed for hearing the application, give notice of such intention to each person against whom it is intended to use such record or any part thereof, specifying the part which it is intended to read against him, and furnish him with copies thereof (except the record of the persons under depositions), and provided also that every person against whom the application is made shall be at liberty to cross-examine or re-examine (as the case may be) any person, the record of whose examination is read.

17. The rules as to lists of contributories and calls as hereinafter set out shall apply only in a winding-up by the court.

Application of
rules

18. (1) The liquidator shall, with all convenient speed, prepare a list in alphabetical order of the contributories of the company and shall set opposite the name of each contributory, his address and the number of snares (with their distinctive numbers) for which he has placed him on the list, and, if a call is to be made, the name of each contributory to be included in the call, the amount of the call to be made upon him, and the number of the shares (with their distinctive numbers) in respect of which it is proposed to make the call.

List of
contributories

(2) In the preparation of the list, the liquidator shall observe the requirements of section 194(2) of the Act as regards representative contributories.

(3) He shall further distinguish between contributories who are present members of the company, including present members in a list to be styled the "A" list which shall be prepared forthwith, and past members in a list to be styled the "B" list, which shall be prepared when it is ascertained that there is an unsatisfied debt or liability for

Companies Winding-up Rules

which under the Act those past members are liable and that the present members are unable to satisfy the contributions required to be made by them in pursuance of the Act.

19. It shall not be necessary to include a holder of fully paid up shares in the list of contributories mentioned in the last preceding rule unless there is or likely to be a surplus for distribution among shareholders.

Holder of fully
paid shares

20. (1) The liquidator shall forthwith give notice to every person whom he has placed on the list of contributories stating—

Notice by
liquidator

(a) (i) in what character, that is whether as a past or present member, and whether in his own right or as the representative of, or as being liable for the debts of, some other person, and
(ii) for what number of shares (with their distinctive numbers) he has been placed on the list;

(b) if he is to be included in a call, the amount of the call to be made upon him, and the number of the shares (with their distinctive numbers) in respect of which it is proposed to make the call upon him;

(c) the date upon which application will be made to the court to settle the list of contributories of call; and

(d) the period during which the lists will be lying open for inspection with the Master and the time within which objection thereto may be lodged with the Master as provided in rule 21.

(2) If the contributory has supplied to the company an address within Botswana for the sending of notices to him (hereinafter referred to as "the registered address"), notice to that address shall be sufficient.

(3) Before giving the said notice, or the notice mentioned in rule 21, the liquidator shall consult the Master in regard to the date of the application to settle the list.

21. The liquidator shall give notice by advertisement in the Gazette that the list will lie open in the office of the Master for inspection by alleged contributories for a period of 21 days from the date of publication of the notice, or for such longer period as the Master shall have directed; and that during the said period objections to the list may be lodged with the Master in writing, in triplicate, and thereafter the list will be submitted for settlement upon the date mentioned in the notice.

Advertisement

22. (1) Every list of contributories and calls shall lie open in the office of the Master for inspection of the alleged contributories for a period of 21 days, or for such longer period as the Master shall direct, not being less, if any alleged contributory is resident outside Botswana, than 11 weeks; and during the advertised period objections may be lodged with the Master in writing.

List open for
inspection

(2) Thereafter, upon the date approved by the Master, the liquidator shall make application to the court for settlement of the list, and the court, upon considering the same, and, upon the report from the Master, and the objections thereto, shall settle the list or direct the

Companies Winding-up Rules

liquidator to proceed by way of summons or make such other order as the court shall deem just.

(3) Objections lodged with the Master under this rule shall be lodged in triplicate.

23. A list of contributories so settled shall be the list of contributories of the company, but without prejudice to any power possessed by the court to re-settle the list as justice may require.

Settlement of list

24. The provisions of section 199 of the Act shall apply to a list of calls settled as aforesaid as though a list so settled were an order made by the court on the contributories mentioned therein; and shall be enforceable at the option of the liquidator by writ of execution taken out in the court or in the magistrate's court for the district in which the contributory resides, or partly in one way and partly in the other.

Application of companies Act

25. Except where the context otherwise requires, the rules as to for meetings hereinafter set out shall apply under Parts V and VI of the meetings Act, but shall take effect as to meetings held by direction of the court, subject to any express directions of the court.

Rules for meeting

26. The first meetings of creditors and contributories shall be held as soon as may be after the final winding-up order.

First meeting

27. (1) Meetings of creditors shall be convened—

- (a) in winding-up by the court as nearly as may be in the manner provided by the law relating to insolvent estates;
- (b) in a voluntary winding-up, whether by members or creditors, by giving at least 10 days' notice of the meeting of the creditors by advertisement once in the Gazette and once at least in two newspapers circulating in the district where the registered office or principal place of business of the company is situate;
- (c) in a judicial management in such manner as the court, or, failing the court, the Master, shall direct.

Method of convening meeting

(2) Meetings of contributories shall be convened—

- (a) in a winding-up by the court as follows—
 - (i) the first meeting shall be convened by the Master, other meetings by the liquidator,
 - (ii) meetings shall be convened upon the same notice as is required by this rule, in the case of meetings of creditors in a winding-up by the court provided that the Master may direct that the same notice is given to contributories as is required by this rule in the case of meetings of contributories in a voluntary winding-up;
- (b) in a voluntary winding-up by the liquidator by giving not less than 10 days' notice of the time and place of the meeting by advertisement in the Gazette, and by sending, not less than 10 days' before the day appointed for the meeting, notice of the time and place of the meeting to every person

Companies Winding-up Rules

appearing by the company's books or otherwise to be a contributory of the company.

(3) The notice to any such person shall be sent to his registered address, or, failing a registered address, to such other address within Botswana or elsewhere as may be known to the liquidator.

(4) Meetings of a company under judicial management shall be convened in such manner as the court, or, failing the court, the Master, may direct.

28. Where a meeting of creditors or contributories was summoned by a personal notice, the proceedings and resolutions at the meeting shall, unless the court otherwise orders, be valid notwithstanding that some creditors or contributories may not have received the notice sent to them.

Validity of proceedings

29. (1) Meetings of creditors, of contributories, and of a company under judicial management, shall be held at such place as is, in the case of a winding-up by the court or judicial management, in the opinion of the Master, or, in the case of a voluntary winding-up, in the opinion of the liquidator, most convenient for the majority of the creditors or contributories or both.

Place of meeting

(2) Different times or places or both may, if thought expedient, be named for the meeting of creditors and for the meeting of contributories.

30. The liquidator may, and if thereto required by creditors having in value one-fourth of the votes of all creditors who have proved their claims, or by contributories holding one-fourth of the voting power of the contributories, or, in the case of a winding-up by the court, if thereto required by the Master, shall, subject to the provisions of rules 31 and 32, from time to time, summon, hold, and conduct general meetings (hereinafter called "liquidator's meetings") of creditors and contributories for the purpose of ascertaining their wishes in all matters relating to the winding-up.

Conduct of meeting

31. (1) The costs of summoning any meeting of creditors or contributories, at the instance of any person other than the Master or the liquidator, shall be paid" by the person at whose instance it is summoned, who shall before the meeting is summoned deposit with the liquidator such sum as may be required by him as security for the payment of such costs.

Cost of meeting

(2) Where by the Act or these Rules notice of a meeting is required to be sent, whether to creditors or contributories, the costs of summoning the meeting, including all disbursements for printing, stationery, postage, and the hire of rooms, shall be calculated at the following rate for each creditor or contributory to whom notice is required to be sent, namely, 30 thebe per creditor or contributory for the first 20 creditors or contributories, 12 thebe per creditor or contributory for the next 30 creditors or contributories, 10 thebe per creditor or contributory for a number of creditors or contributories after the first 50.

(3) The costs of the meeting shall be repaid out of the assets of the company if the court shall by order, or if the creditors or contributories,

Companies Winding-up Rules

whichever is the body affected by the payment, shall by resolution so direct.

32. (1) Meetings of creditors or contributories in a winding-up by the court shall be presided over by the Master, a magistrate, a District Commissioner or an officer appointed by the Master in like manner as is provided by section 39 of the Insolvency Act, for the holding of meetings in respect of insolvent estates:

Presiding over
meeting

Provided that where meetings of creditors and contributories are not held at the same time or are not held in the same place, the liquidator shall be the chairman of the meetings of contributories.

Cap.42:02

(3) The chairman of a meeting held by direction of the court shall be such person as the court shall appoint:

Provided that the court may appoint a chairman merely for the purpose of receiving and scrutinizing the powers of attorney and proxies intended for use at the meeting with power to the meeting either to confirm the appointment of such chairman or to elect some other person in his place.

33. (1) At a meeting of creditors in any winding-up, resolutions shall be put and the votes thereon shall be taken and counted *mutatis mutandis* in like manner and with the like results as if the meeting were a meeting in respect of an insolvent estate convened for the transaction of similar business.

Resolution

(2) At a meeting of contributories in any winding-up, a resolution shall be deemed to be passed when a majority in value of contributories present personally or by proxy have voted in favour of the resolution, the value of the contributories being determined according to the number of votes conferred on each contributory by the articles.

(3) It shall be the duty of the provisional liquidator without notice, or, if there is no provisional liquidator, then of the secretary, any director, or other officer of the company, upon receiving 10 days' notice thereof from the Master, to attend at the first meeting with the books of the company, and to give the chairman all information he may require as to the shareholding of each contributory, and as to the votes conferred on each contributory by the articles. Failure to comply with the said notice shall be deemed to be contempt of court.

34. (1) Minutes shall be kept of the proceedings at every meeting of creditors and contributories, and shall be signed by the presiding officer or chairman.

Minutes

(2) The original minutes of all meetings in a winding-up by the court or in a voluntary winding-up or in a judicial management shall be filed in the Master's office. Where such meetings are not held before the Master, the minutes shall be transmitted to the Master by the presiding officer or chairman as soon as possible.

35. (1) The liquidator shall as soon as practicable and, unless with the consent of the Master, not later than three months after the date of his appointment, submit to a general meeting of creditors and contributories a report—

Report

Companies Winding-up Rules

- (a) as to the amount of capital issued, subscribed and paid up and the estimated amount of assets and liabilities;
- (b) if the company has failed, as to the causes of the failure;
- (c) whether in his opinion further enquiry is desirable as to any matter relating to the promotion, formation or failure of the company, or the conduct of its business;
- (d) whether the company has kept the books and accounts required by the Act, and, if not, in what respect such requirement has not been complied with;
- (e) as to the progress and prospects of the liquidation; and (/) as to any other matter which he may think fit or in regard to which he may desire the directions of the creditors or the contributories.

(2) The report of the liquidator shall be annexed to the minutes of the meeting at which it is presented; and the liquidator shall lodge with the report two copies thereof.

36. (1) At any meeting of creditors or contributories, a creditor or contributory may vote either personally or by an agent specially authorized thereto or acting under a general power of attorney.

Vote

(2) A power of attorney or proxy intended to be used at any meeting of contributories shall be lodged with the presiding officer or chairman not later than 24 hours before the advertised time of the meeting at which it is to be used, and, in default thereof, shall be deemed to be invalid for the purpose of voting at the meeting.

37. (1) A liquidator's application to court for directions under section 188 of the Act or for leave to exercise any of the powers mentioned in section 187(3) of the Act, may be made by petition *ex parte*.

Liquidator's application

(2) In his petition, in addition to other relevant matters, he shall state the steps, if any, taken by him to ascertain the wishes of creditors and contributories in regard to the matter of his application; and if the matter has been submitted to a meeting of creditors or contributories, he shall attach to his petition a copy of the minutes of the proceedings thereat or so much thereof as shall be relevant to the application.

(3) Applications for leave to do any act or to exercise any power conferred on him under section 187(4) of the Act shall not be made to the court.

(4) The registrar of the court shall forward every such application to the Master for his report before setting down the same for hearing.

38. (1) A liquidator, who under the provisions of section 44 of the Insolvency Act, as applied by section 236 of the Act, shall report to the Master his reasons for disputing a claim, shall at the same time—

Dispute of claim
Cap.42:02

- (a) forward to the creditor a copy of his reasons as submitted to the Master, and give notice to the creditor that he is to show cause to the Master within 14 days, or within such longer period as upon application to him the Master may allow, why his claim shall not be expunged or reduced; and
- (b) certify to the Master that he has done so

Companies Winding-up Rules

(2) If the creditor disputes the liquidator's contentions, he shall show cause to the Master in writing and, at the same time, shall forward to the liquidator copies of any documents submitted by him to the Master; and thereupon the liquidator shall submit his remarks in writing to the Master.

39. Except as provided by the Act or these Rules, a liquidator shall not under any circumstances ever make any arrangement for, or accept from any attorney, auctioneer, or any other person, whether connected with the company of which he is liquidator or not, or from any person who is employed in or in connexion with the winding-up of the company, any gift, remuneration or pecuniary or other consideration or benefit whatever in connexion with the liquidation of the company beyond the remuneration to which under the Act he is entitled as liquidator, nor shall he make any arrangement for giving up, or give up, any part of such remuneration to any such attorney, auctioneer, or other person.

Remuneration
of liquidator

40. Where the liquidator carries on the business of the company he on of shall not, without the express sanction of the court, purchase goods for business by the carrying on of such business from any person whose connexion with the liquidator is of such a nature as would result in the liquidator obtaining any portion of the profit (if any) arising out of the transaction.

Carrying on of
business by
liquidator

41. (1) Except by leave of the court, neither the liquidator, while by acting as liquidator, either directly or indirectly, by himself or any liquidator partner, clerk, agent or servant, nor the wife of the liquidator, shall become purchaser of any part of the company's assets.

Purchase by
liquidator

(2) Any purchase made contrary to the provisions of this rule may be set aside by the court on the application of the Master or any creditor or contributory, and the court may make such order as to costs as the court thinks fit.

42. (1) A liquidator in a winding-up by the court desiring to resign shall, when applying to the Master to be relieved of his office, account to the Master for his administration as nearly as may be up to the date of his intended resignation and shall, if the Master so require, summon separate meetings of the creditors or contributories of the company to decide whether they do or do not oppose the acceptance of his resignation.

Resignation of
liquidator

(2) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the creditors in a creditors' voluntary winding-up, the Master shall convene a meeting of creditors for the purpose of filling the vacancy.

43. (1) Any person objecting under section 248 of the Act to the confirmation of an account shall, when laying before the Master his liquidation objection in writing, at the same time forward to the liquidator a copy thereof, and, if not already in the liquidator's possession, copies of any documents submitted to the Master in support of the objection.

Objection to
liquidation
account

Companies Winding-up Rules

(2) Thereupon the liquidator shall submit to the Master his remarks in writing in duplicate, and the Master may refer them to the person objecting or require, if he thinks it advisable, the attendance of the liquidator or the person objecting.

(3) The person objecting may attend personally or by an agent; the liquidator may attend by agent unless the Master requires his attendance in person.

44. (1) Whenever, under these Rules, notice is to be sent to a contributory or alleged contributory, it shall be sent to his registered address.

Address for
notice

(2) If he has no registered address, notice shall be sent to such other address within Botswana or elsewhere as may be known to the liquidator.

(3) If he has no registered address and no other address known to the liquidator, it shall not be necessary to send him any notice other than that mentioned in rule 20.

(4) Notice to any person may be sent to such address as may be known to the liquidator.

(5) Notice sent to an address recognized by this rule by prepaid registered post shall be sufficient.

(6) An affidavit by the liquidator or his clerk, or the judicial manager or his clerk, that a notice has been duly sent shall be sufficient evidence of the sending of a notice by the liquidator or the judicial manager, as the case may be.

45. In a winding-up by the court, the Master may at any time during the progress of the liquidation, on the application of the liquidator, direct that such of the books, papers and documents of the company, or of the liquidator, as are no longer required, may be sold, destroyed or otherwise disposed of.

Destruction, etc
of books and
papers

46. (1) Where a liquidator employs an agent for any purpose, the gross moneys received on the liquidator's behalf by the agent in the course of such employment shall be paid over by the agent to the liquidator without deduction, and the charges and expenses of such agent shall be paid over to him by the liquidator after submitting the same, if he thinks necessary, to the Master.

Moneys
collected by
agent

(2) The Master shall have power to disallow all charges and expenses, which appear to him to be excessive.

(3) The liquidator shall be personally responsible for all payments made by him to an agent without the sanction of the Master, if and insofar as the same are disallowed.

47. No proceedings under the Act or under these Rules shall be invalidated by any formal defect or irregularity under these Rules unless the court before which objection is made to the proceedings is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the court.

Formal defects

Companies Winding-up Rules

48. Any application made by the Master to the court under the Act or these Rules shall be by motion; any report or statement by the Master may be in writing without affidavit.

Application by motion

49. Whenever application is made to the court to bring under review any decision, ruling, order, appointment or taxation of the Master, the registrar of the court, before setting down the application, shall refer the same to the Master for his report.

Reference to the master

50. (1) No bill of legal costs or charges arising out of liquidation under a winding-up by the court, or under a creditors' voluntary winding-up, shall be paid by the liquidator unless the same has been taxed.

Taxation

(2) All costs, which are not the subject of taxation by the taxing officer of the court, shall be taxed by the Master according to the tariff framed under section 69(3) of the Insolvency Act.

Cap. 42:02

COMPANIES (AMENDMENT) ACT, 1995

COMPANIES (AMENDMENT) ACT, 1995



No. 7

of 1995

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of section 5 of Cap. 42:01
3. Insertion of section 5A in the Act
4. Insertion of section 5B in the Act
5. Amendment of section 8 of the Act
6. Amendment of section 66 of the Act
7. Insertion of section 79A in the Act
8. Amendment of section 95 of the Act
9. Amendment of section 97 of the Act
10. Amendment of section 111 of the Act
11. Insertion of section 112A in the Act
12. Amendment of section 112 of the Act
13. Insertion of section 121A in the Act
14. Amendment of section 139 of the Act
15. Amendment of section 182 of the Act
16. Insertion of section 243A of the Act
17. Amendment of section 276 of the Act
18. Amendment of section 309 of the Act
19. Amendment of fifth Schedule to the Act
20. Amendment of Sixth Schedule to the Act

*An Act to amend the Companies Act**Date of Assent:* 13.04.95*Date of Commencement:* 21. 04 95

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Companies (Amendment) Act, 1995.

2. Section 5 of the Companies Act (hereinafter referred to as "the Act") is amended by substituting, therefore, the following new section-

5. (1) There shall be a Registrar of Companies (referred to in this Act as "the Registrar") who shall be a public officer, and who shall subject to the control of the Minister, be responsible for the administration of this Act and who shall perform such functions and exercise such powers as may be conferred on him by this Act or any other enactment.

(2) The Registrar shall be appointed in accordance with the provisions of the Public Services Act.

(3) There shall also be a Deputy Registrar of Companies who shall be a public officer and who shall, likewise, be appointed in accordance with the provisions of the Public Service Act, and who shall have the power to do any act or thing which may be lawfully done under this Act or any other enactment by the Registrar."

3. The Act is amended by inserting, immediately after section 5 thereof, the following new section-, 5A. Without derogating from the generality of the provisions of section 5, the Registrar shall have the following powers and functions, namely to_

Short title
Amendment of
section 5 of
Cap. 42:01

" Registrar and
Deputy
Registrar of
Companies

Insertion of
section 5A in
the Act

- (a) take charge of, and be responsible for the safe custody of, all documents lodged with him under this Act;
- (b) examine and register all returns and other documents lodge with him;
- © register any alteration in the share capital of a company provided that such alteration is in accordance with the provision of this Act.
- (d) register amendments to the memorandum and articles of association of any company provided that such amendments are in accordance with the provisions of this Act;
- (e) register the changes in the name of any company provided that such changes are in accordance with the provisions of this Act;
- (f) register all transfer of shares in respect of any company registered in Botswana; and
- (g) exercise any other powers, which the Minister may, by regulations, prescribe."

"Powers and functions of Registrar

Insertion of section 5B in the Act

- 4.**The Act is amended by inserting, immediately after section 5A thereof, the following new section-5B. (1) The Registrar shall have a seal of office, which shall be affixed to every memorandum and articles of association and certificate of incorporation lodged with or registered by him, and to any copy of a document issued by him in lieu of the original document.
- (2) The seal of the Registrar and the impression thereof shall be judicially noticed in evidence".

"Seal of office

5. Section 8 of the Act is amended by substituting, for subsection (1)(a) thereof the following new subsection-

Amendment of section 8 of the Act

"8. (1) In the case of a company limited-

- (a) by shares, the memorandum shall be in the English language and shall specify-
- (i) the name of the company and, unless a license has been granted under section 22, with the word "Limited" as last word in its name, and if the company is a private company, with the word "Limited",
- (ii) the full name, sex, age, nationality, address and occupation of each individual who is a beneficial shareholder of the company,
- (iii) where the beneficial shareholder is a company, the name of that company, the place of registration of that company, the registration number of that company, and the full name, sex, age, nationality and occupation of the principal representative of that company resident in Botswana,
- (iv) the objectives of the company,
- (v) that the ability of the members is limited,
- (vi) the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount";

6.Section 66 of the Act is amended by substituting, therefore, the following new section-

Amendment of section 66 of the Act

66. (1) Subject to the provisions of the section, a company may, by special resolution, if so authorized by its articles, reduce its share capital and, in particular, without prejudice to the generality of this power, may-

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

or

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

and may, if and so far as is necessary, alter its share capital and of its shares accordingly.

(2) Where a company wishes to reduce its share capital, it shall deliver, to the Registrar, a special resolution for reducing share capital, accompanied by a certificate certifying either that the company has no creditors, or that all creditors of the company have consented, in writing, to such reduction.

(3) The Registrar shall, within 14 days of the resolution being delivered to him, publish, at the company's expense, a notice of such resolution and of such certification in two separate issues of the Gazette. Any person being a creditor of the company who wishes to object to the reduction of the company's share capital shall, within 14 days of the last publication of the notice, give notice, in writing, of his objection thereto, and the grounds thereof to both the Registrar and the company

(4) Where a notice of a resolution for reducing share capital has been published in accordance with subsection.

(5) Where any creditor of the company makes an objection to such reduction, the Registrar shall not register the resolution save in compliance with an order of the court to so register it.

Special resolution for reduction of share capital

(6) Where the Registrar receives no objections to the reduction of a company's shares capital, he shall, within 21 days of the publication of the notice, register the resolution.

7. The Act is amended by inserting, immediately after section 79 thereof, the following new section-

Insertion of section 79A in the Act

79A. (1) Every private company registered in Botswana shall, within 21 days of the sale, transfer or disposal of any of its shares, file, with the Registrar, a return in the form contained in the Fifth Schedule specifying-

Return in respect of sale, etc, of shares

- (a) the full name, sex, age, nationality, address and occupation of the person to whom the shares are being sold, transferred, or disposed of;
- (b) the number of shares being sold, transferred or disposed of;
- (c) the price of such shares; and
- (d) the date of the sale, transfer or disposal of such shares.

(2) Where the person, to whom the shares are sold, transferred or disposed of is not the beneficial shareholder of is not the beneficial shareholder of those shares, the return referred to in subsection (1) shall specify -

- (a) the full name, sex, age, nationality, address and occupation of the beneficial shareholder;
- (b) the number of shares allotted to him;
- (c) the date on which the shares were so allotted to him;
- (d) the value of the shares.

(3) Every company, which files a return in accordance with subsection (1), shall pay, to the Registrar, such filing fees as may be prescribed.

(4) Any company which fails to comply with the provisions of this section commits an offence and shall be liable to the penalty specified in section 309".

8. Section 95 of the Act is amended-

(a) by substituting, for subsection (7) thereof, the following new subsection_

"(7) The Registrar may from time to time require a company to transmit to him a list of the persons who have ceased to be members of that company since the date of the last return or, if no return has been made, since the date of the incorporation of the company." and

Amendment of section 95 of the Act

(b) by inserting, immediately after subsection (7) thereof, the following new subsections-

"(7A) There shall be annexed to the annual return filed with the Registrar in terms of subsection (1), a declaration of beneficial shareholders in the form contained in the Fifth Schedule specifying-

- (a) the full name, sex, age, nationality, address and occupation of each individual who is a beneficial shareholder of the company; and
- (b) where the beneficial shareholder is a company, the name of that company, and the full name, sex, age, nationality, and occupation of the principal representative of that company resident in Botswana.
- (a) the ownership of any company registered or sought to be registered in Botswana; or
- (b) the identity of the ultimate beneficiaries of any shares of the company."

9. Section 97 of the Act is amended-

"(2A) A company which makes application to the Registrar in terms of subsection (2) shall pay, to the Registrar, such penalty fee as may be prescribed from time to time by the Minister."

Amendment of section 97 of the Act

10. Section 111 of the Act is amended by substituting, thereof, the following new section_

111. (1) Every company shall cause to be kept in the English language, proper books of account with respect to_

Amendment of section 111 of the Act

- (a) all sums of money received and expected by the company and the matters in respect of which the receipt and expenditure takes place;
- (b) all sales and purchases of goods by the company; and
- (c) the assets and liabilities of the company.

(2) For the purpose of subsection (1), proper books of account shall not be deemed to be kept with respect to the matters referred to in that subsection if there are not kept in such books as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.

"Keeping of books of account

(3) The books of account shall be kept at the registered office of the company and shall at all times be open to inspection by the directors.

11. The Act is amended by inserting, immediately after section 112 thereof, the following new section-
112A. (1) There shall be annexed to every balance sheet and every profit and loss account laid before a company in general meeting as required in terms of section 112, a statement setting out the source of, and the uses to which, the funds of the company will be applied.

Insertion of section 112A in the Act

(2) The statement shall comply with the requirements of the Sixth Schedule."

12. Section 121 of the Act is amended-

(a) by substituting, for subsection (8) thereof, the following new subsection_

"(8) Notwithstanding anything to the contrary contained in this section, a private company shall not be required to appoint an auditor if_

(a) the number of shareholders in such company does not exceed 10;

(b) the equity investment in the company does not exceed P50 000. 00;and

(c) none of the shareholders in such company." and

(d) by inserting, immediately after subsection (8) thereof, the following new subsection-

"(9) Every company, which is required to appoint an auditor under the provisions of this Act shall appoint one who is resident in Botswana."

13. The Act is amended by inserting, immediately after section 121 thereof, the following new section-

14.Section 139 of the Act is amended by substituting, therefore, the following section-

139. (1) Every company not being a private company shall have at least two directors, one of whom shall be resident in Botswana.

(2) Every company shall have a secretary who shall also be resident in Botswana.

(3) The sole director of a company shall not also be secretary, nor shall any company have a secretary to the company a corporation the sole director of which is a sole director of the company.

(5) Any provision requiring or authorizing a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as or in place of the secretary."

15. (1) Section 182 of the Act is amended by substituting, therefore, the following new section-

(a) that an offence has been, may be or its being committed by any person in the promotion, formation, management or conduct of the business of the company being wound-up; or

(b) that the company has not caused, to be kept, any books of account as required by section 111; Make a report, in writing, to the Attorney General.

(2) The Attorney General shall, upon receipt of the report of the Master made under subsection (1), take such action, as he may deem appropriate."

16. The Act is amended by inserting, immediately after section 243 thereof, the following new section-

17. Section 276 of the Act is amended-

(a) by substituting, for subsection (1) thereof, the following new subsection-

"(1)Where the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he shall send to the company by registering post a letter-

(a) inquiring whether it is carrying on business or is in operation; and

(b) demanding such information as he may deem necessary to prove that the company is carrying on business or is in operation"; and

(b) by inserting, immediately after subsection (8) thereof, the following new subsections-

"(9) Notwithstanding the provisions of subsection (1), a registered company which is no longer carrying on business or is no longer in operation may, for the purpose of ensuring that no other company is registered by a name, title, description or style which is identical or similar to that by which it is registered under this Act, make application to the Registrar to retain its name on the register, and shall pay, to the Registrar, the annual fee prescribed in the Third Table of the Seventh Schedule for such retention.

(10) The Registrar shall retain, or cause to be retained, on the register, the name of any company which makes application to him under subsection (9) and pays, to him, the requisite fee therefore."

18. Section 309 of the Act is amended by inserting, immediately after the words "55 (2) ", the words " 79 (1), 79 (2), ".

19. The fifth Schedule is amended-

(a) by inserting, immediately after the forms which appear therein, the following new forms -

Amendment of section 121 of the Act

Insertion of section 121A in the Act

"Notice of appointment to Registrar

"Directors and secretary to be resident

Amendment of section 182 of the Act

Insertion of section 243A in the Act

"Master to see liquidator's report

Amendment of section 276 of the Act

Amendment of section 309 of the Act

"THE COMPANIES ACT

(Chapter 42:01)

RETURN OF TRANSFER OF SHARES of the.....
Company Limited

A. Information relating to transferee who is to be the beneficial holder of the shares transferred

- 1.Name
Surname
First name (s)
2.Sex F/M
3.Age...
4.Nationality.....
5. Postal Address
6. Occupation.....
7. Number of shares transferred.....
8. Mode of transfer (i.e. whether by sale, assignment, etc).....
9. Price of shares transfer.....
10. Date of transfer.....

B.Information relating to the person who is the beneficial holder of the shares transferred

- 1. Name
Surname.....
First name (s)
2.Sex F/M
3. Nationality
4.Postal Address
5. Occupation
6. Number of shares allotted
7. Date of allotment of shares
8. Value of shares allotted
Secretary Director

DECLARATION OF BENEFICIAL SHAREHOLDERS OF THE
Company Limited made on the day of 19.....

A. Particulars of beneficial shareholder not being a corporate shareholder

- 1. Name.....
Surname.....
First name (s).....
2.Sex F/M.....
3.Age
4. Nationality.....
5. Occupation
6. Postal Address

B.Particulars of corporate beneficial shareholder

- 1. Name of company
2. Particulars relating to principal representative of the company in Botswana
(a) Surname.....
First name (s)
(b) Sex F/M
© Age

- (d) Nationality
- (e) Occupation.....

Secretary

Director"

20. The Sixth Schedule to the Act is amended-

(a) by inserting, immediately after paragraph 11 thereof, the following new paragraph- 11A. The statement of source and application of funds to be annexed to the balance sheet in terms of section 112A shall disclose the following-

Amendme
nt of Sixth
Schedule
to the Act

A. SOURCE FROMWHICH THE FUNDS OF A COMPANY MAY BE DERIVED:

- (a) the gross income of the company
- (b) the disposal of fixed assets and current assets;
- (c) the proceeds of shares issued;
- (d) the proceeds of loans raised;
- (e) the proceeds of debentures raised; and
- (f) repayments received on loans and advances made

B. PURPOSES TO WHICH THE FUNDS OF THE COMPANY MAY BE APPLIED

- (a) the meeting of any loss the company might make;
- (b) the acquisition of fixed and other assets;
- (c) the redemption of any loans;
- (d) the redemption of any debentures;
- (e) the payment of taxes due and payable by the company;
- (f) the payment of dividends; and
- (g) any increase in the net working capital being current assets less current liabilities; and
- (h) by inserting, immediately after paragraph 12 thereof, the following new paragraph_ 12A. The statement of source and application of funds to be annexed to the profit and loss account in terms of section 112A shall disclose the information specified in paragraph11A of this Schedule.

21. The Seventh Schedule to the Act is amended in the Third Table thereof by inserting, immediately after paragraph (5) thereof, the following new paragraph_

"(6) For retaining the name of a company on the register for purposes of protecting its name under section 276276.....50,00"

Amendment
of Seventh
Schedule to
the Act

PASSED by the National Assembly this 6th day of April, 1995.

C.T. MOMPEL,

*Deputy Clerk of the National
Assembly.*