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[PRINCIPAL LEGISLATION]

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CHAPTER 212

THE COMPANIES ACT

An Act to repeal and replace a law relating to companies and other associations, to provide for more comprehensive provisions for regulation and control of companies, associations and related matters.

[1st March, 2002]
[GN. No. 23 of 2006]

Acts Nos. 12 of 2002, 3 of 2012, 2 of 2016, 9 of 2019, 8 of 2020, 3 of 2021, 5 of 2021, 5 of 2022

GN. No. 72 of 2008

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PART I
PRELIMINARY PROVISIONS

Short title

1.–(1) This Act may be cited as the Companies Act.

(2) [Omitted].

Interpretation
Acts Nos. 9 of 2019 s. 4, 8 of 2020 s. 7, 5 of 2022 s. 17
Cap. 332

2. In this Act, unless the context otherwise requires-

"arrangement" has the meaning ascribed to it under the Income Tax Act;

"articles" means the articles of association of a company, as originally framed or as altered by special resolution, including so far as they apply to the company, the regulations contained in Table A in the First Schedule to either of the repealed Ordinances or in Table A in the Schedule to this Act;

"bank" means a bank as defined in the Banking and Financial Institutions Act;

Cap. 342

"beneficial owner" has the meaning ascribed to it under the Anti-Money Laundering Act;

Cap. 423

"book and paper" and "book or paper" include accounts, deeds, writings and documents;

"Capital Markets and Securities Authority" means the Authority established by section 6 of the Capital Markets and Securities Act;

Cap. 79

"certified" means certified in the prescribed manner to be a true copy or a correct translation;

"certified public accountant" means Certified Public Accountant as defined in the Accountants and Auditors (Registration) Act;

Cap. 286

"commercial activities" means all activities of industry and trade, including, but not limited to buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling;

"company" means a company formed and registered under this Act or an existing company established for investment, trade or commercial activities and any other activity as the Minister may, by notice published in the *Gazette*, prescribe;

"the court" used in relation to a company, means the court having jurisdiction to wind up a company;

"dealer or investment adviser" means a dealer or investment adviser as defined in the Capital Markets and Securities Act;

Cap. 79

"debenture" includes debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of the company or not;

"Director" includes any person occupying the position of the director by whatever name called;

"document" includes summons, notice, order, other legal process, and registers;

"existing company" means a company formed and registered under either of the repealed ordinances;

"generally accepted principles of accounting" means such practices, principles, guidelines or accounting and

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auditing standards, taking into account international practices, principles and standards, as shall be issued by the National Board of Accountants and Auditors;

"group" means a parent or holding company and its subsidiaries;

"insolvency practitioner" means-

(a) Certified Public Accountant certified by the National Board of Accountants and Auditors or other regulatory body of the profession as having the requisite experience of insolvency;

(b) a qualified Advocate of the High Court having the requisite experience of insolvency; and

(c) such other persons as may be specified by the Minister in the regulations;

"insurance company" means a company which is an insurance broker, insurance agent or an insurer as those expressions are defined in the Insurance Act; Cap. 394

"investment activities" means transactions involving sale or purchase of equipment plants, properties, securities, capital, stocks, debentures or other assets generally not held for immediate re-sale and any other activity as the Minister may, by notice published in the *Gazette*, prescribe;

"limited company" means a company limited by shares or a company limited by guarantee;

"memorandum" means the memorandum of association of a company, as originally framed or as altered from time to time;

"Minister" means the Minister responsible for trade;

"offer document" means any document, prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase of any shares or debentures of a company or the interest therein, or any right to acquire any shares or debentures or any interest therein;

"officer", in relation to a body corporate, includes a director, manager or secretary;

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"open-ended investment company" means a body corporate-

(a) which has as its purpose the investment of its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of those funds by or on behalf of that body; and

(b) the members in which have rights represented by shares of securities of that body which-

(i) those members are entitled to have redeemed or purchased from them by or out of funds provided by that body; or

(ii) the shares of the body can be sold by the members on an investment exchange at a price related to the value of the property to which they relate;

"personal representative" means-

(a) in the case of a deceased person to whom the Indian Succession Act, 1865 applies either wholly or in part, his executor or administrator; and

(b) in case of any other deceased person any person who under law or custom, is responsible for administering the estate of such deceased person;

"politically exposed person" has the meaning ascribed to it under the Anti-Money Laundering Act; Cap. 423

"printed" means reproduced by original letter press or by laser or other form of printer or by such other means as may be prescribed;

"Registrar" means the Registrar of companies or any Deputy or Assistant Registrar or other officer performing under this Act the duty of registration of companies;

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

"statutory corporation" has the meaning given in the Public Corporations Act; Cap. 257

"Table A" means Table A in the Schedule to this Act;

"Tanzania" means Mainland Tanzania and does not include Tanzania Zanzibar;

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"the repealed Companies Act" means the Companies Act, (Ordinance No. 46 of 1931 of the laws of Tanganyika);

"the repealed Ordinances" means the Indian Company Act, 1882 (as applied to Tanzania);

"trade" means the transfer of goods or services from one person to another;

"undertaking" means a body corporate or partnership or an incorporated association carrying on a trade or business with or without a view to profit; and

"wholly-owned subsidiary" a body corporate 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 or its nominees.

PART II
INCORPORATION OF COMPANIES AND MATTERS INCIDENTAL THERETO

CHAPTER 1
THE COMPANY'S MEMORANDUM AND ARTICLES

Memorandum of Association

Mode of forming incorporated company
Acts Nos.
3 of 2012 s. 18
9 of 2019 s. 5
5 of 2021 s. 30

3.–(1) Any two or more persons, 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, with or without limited liability save for a limited liability single shareholder company formed by an individual.

(2) An incorporated company may be 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 termed "a company limited by shares"; or

(b) a company having the liability of its members limited by the memorandum to such amount as the members

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may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up, in this Act termed "a company limited by guarantee"; or

(c) a company not having any limit on the liability of its members, in this Act termed "an unlimited company".

(3) A company which is limited by guarantee which intends to promote commerce, investment, trade or any other activity as the Minister may, by notice published in the *Gazette*, prescribe, shall be incorporated or registered under this Act.

(4) A person who intends to incorporate a company under subsection (1) shall, in the prescribed manner, provide the following particulars-

(a) date of birth or date of incorporation or registration;
(b) nationality or nationalities;
(c) country of residence or country of incorporation or registration;
(d) residential address or an address of registered office;
(e) national identity number, registration or incorporation number;
(f) Tax Payer Identification Number, where applicable; and
(g) any other information as may be prescribed in the regulations.

(5) A "public company" is a company limited by shares or limited by guarantee and having a share capital, being a company the memorandum of which states that it is to be a public company and a "private company" is a company as defined in section 29.

Compliance with Act
Act No. 9 of 2019 s. 6

4.–(1) A company referred to under section 3(3) which was incorporated or registered prior to the coming into operation of this section shall, within two months from the date of coming into operation of this section, be required to comply with the provisions of this Act.

(2) A company limited by guarantee not having share capital, incorporated or registered under this Act and obtained

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Cap. 56

a certificate of compliance under the provisions of the Non-Governmental Organisations Act, shall, within two months from the date of coming into operation of this section be deemed to have been registered under the Non-Governmental Organisations Act and struck off from the register.

(3) Notwithstanding the provisions of this section, the Minister may, upon application, extend the time within which the company has to shift to its appropriate registry.

(4) The Minister shall, when extending time applied for under subsection (3), transmit the information for such extension to the Minister under whom the registry in which the company required to register belongs.

[s. 3A]

Requirements with respect to memorandum Act No. 3 of 2012 s. 19

5.–(1) The memorandum of every company shall be printed in the English or Kiswahili language and shall state-

(a) the name of the company, with "public limited company" as the last words of the name in the case of a public company or with "limited" as the last word of the name in case of a company limited by shares or by guarantee, not being a public company; and

(b) the objects of the company.

(2) The memorandum of a company limited by shares or by guarantee shall also state that the liability of its members is limited.

(3) The memorandum of a company limited by guarantee shall also state 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 debts and liabilities of the company contracted before he ceases to be a member, and of the cost, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(4) In the case of a company having a share capital-

(a) the memorandum shall also, unless the company is an unlimited company, state the amount of share capital

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with which the company proposes to be registered and the division thereof into shares of a fixed amount;

(b) no subscriber of the memorandum may take less than one share; and

(c) there must be shown in the memorandum against the name of each subscriber the number of shares he takes.

[s. 4]

Signature of memorandum

6.–(1) The memorandum shall be dated and shall be signed by each subscriber in the presence of at least one attesting witness.

(2) Opposite the signature of every subscriber and attesting witness there shall be written in legible characters his full names, his occupation and postal address.

[s. 5]

Restriction on alteration of memorandum

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

[s. 6]

Statement of company's objects: general commercial company

8. Where the company's memorandum states that the object of the company is to carry on business as a general commercial company-

(a) the object of the company is to carry on any trade or business whatsoever, and

(b) the company has powers to do all such things as are incidental or conducive to the carrying on of any trade or business by it.

[s. 7]

Mode in which and extent to which memorandum may be altered

9.–(1) A company may, by special resolution-

(a) alter the provisions of its memorandum with respect to the objects of the company; and

(b) in the case of a private company seeking to become a public company, or a public company seeking to become a private company, alter the company's memorandum including by way of the inclusion or, as applicable, the

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deletion of a statement that the company is to be a public company:

Provided that, if an application is made to the court in accordance with this section for the respective alteration to the memorandum to be cancelled, it shall not have effect except in so far as it is confirmed by the court.

(2) An application under this section may be made by-

(a) the holders of not less in the aggregate than ten percent in nominal value of the company's issued share capital or any class thereof or, if the company is not limited by shares, not less than ten percent of the company's members; or

(b) the holders of not less than fifteen percent of the company's debentures entitling the holders to object to alterations of its memorandum:

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 this section shall be made within thirty days after the date on which the resolution altering the company's memorandum 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 an application under this section, the court may make an order cancelling the alteration or confirming the alteration either wholly or in part and on such terms and conditions as it thinks fit, and may-

(a) adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissenting members; and

(b) give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangements:

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

(5) The court's order may, if the court thinks fit, provide for the purchase by the company of any shares of the members of

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the company, and for the reduction accordingly of its capital, and may make such alterations in the company's memorandum and articles as may be required in consequence.

(6) An alteration in the memorandum or articles of a company made by virtue of an order under this section is of the same effect as if duly made by resolution, and this Act shall apply accordingly to the memorandum or articles so altered.

(7) The debentures entitling the holders to object to alterations of a company's memorandum shall be any debentures secured by a floating charge which were issued or first issued before the appointed day, or form part of the same series as any debentures so issued, and a special resolution altering a company's memorandum shall require the same notice to the holders of any such debentures as to members of the company:

Provided that, in default of any provisions regulating the giving of notice to any such debenture holders, the provisions of the company's articles regulating the giving of notice to members shall apply.

(8) In the case of a company which is, by virtue of a licence from the Registrar, exempted from the obligation to use the word "limited" as part of its name, a resolution altering the company's objects shall also require the same notice to the Registrar as to members of the company.

(9) Where a company passes a resolution altering its memorandum-

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

(b) where such an application is made it shall-

(i) immediately give notice of that fact to the Registrar; and

(ii) within fourteen days from the date of any order cancelling or confirming the alteration wholly or in part, deliver to the Registrar a certified copy of the order and, in the case of an order confirming

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the alteration wholly or in part, a printed copy of the memorandum as altered:

Provided that, the court may by order at any time, extend the time for the delivery of documents to the Registrar under subsection (9)(b) for such period as the court may think proper.

(10) Where a company makes default in giving notice or delivering any document to the Registrar as required by subsection (9), the company and every officer of the company who is in default shall be liable to a default fine.

(11) The validity of an alteration of a company's memorandum under this section shall not be questioned on the ground that it was not authorised by subsection (1) except in proceedings taken for the purpose (whether under this section or otherwise) before the expiration of twenty one days after the date of the resolution in that behalf; and where any such proceedings are taken otherwise than under this section, subsections (9) and (10) 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.

(12) In relation to a resolution for altering the provisions of a company's memorandum with respect to the objects of the company passed before the appointed day, this section shall have effect as if, in lieu of the proviso to subsection (1) and subsections (2) to (11), there had been enacted herein the provisions of subsections (2) to (8) of section 8 of the repealed Companies Act.

[s. 8]

Memorandum and Articles of Association

Articles prescribing regulations for companies Act No. 3 of 2012 s. 20

10.–(1) There may in the case of a company limited by shares, and there shall in the case of a company limited by guarantee or unlimited, be registered with the memorandum and articles of association, which shall be signed by the subscribers to

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the memorandum and shall contain the regulations for the company.

(2) Articles shall be-

(a) in the English or Kiswahili language;

(b) printed;

(c) divided into paragraphs numbered consecutively; and

(d) signed by each subscriber to the memorandum of association in the presence of at least one witness, who shall attest the signature and add his occupation and postal address.

[s. 9]

Regulations required in case of unlimited company or company limited by guarantee

11.–(1) In the case of an unlimited company, the articles must state the number of members with which the company proposes to be registered and, if the company has a share capital, the amount of share capital with which the company proposes to be registered.

(2) 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.

(3) Where an unlimited company or a company limited by guarantee has increased the number of its members beyond the registered number, it shall, within fourteen days after the increase was resolved on or took place, give to the Registrar notice of the increase, and the Registrar shall record the increase:

Provided that, where default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

[s. 10]

Adoption and application of Table A

12.–(1) A public or private company may, as applicable, for its articles, adopt all or any of the regulations contained in Table A, and in any case, where a company adopts all or any of the regulations in Table A, a printed copy of Table A shall be annexed to or incorporated in each copy of its articles.

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(2) In the case of a company limited by shares and registered after the commencement of this Act, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations contained in Table A, Table A shall, so far as applicable, constitute the articles of the company in the same manner and to the same extent as if articles in the form of Table A had been duly registered.

[s. 11]

Statutory forms of memorandum and articles Act No. 9 of 2019 s. 7

13.–(1) The form of-

(a) a memorandum of association of a company limited by shares;

(b) subject to section 3(3), a memorandum and articles of association of a company limited by guarantee and not having a share capital;

(c) a memorandum and articles of association of a company limited by guarantee and having a share capital; and

(d) a memorandum and articles of association of an unlimited company having a share capital,

shall respectively be in accordance with the forms set out in Tables B, C, D and E in the Schedule to this Act, or as near thereto as circumstances admit.

(2) In any case where a company adopts all or any of the regulations in Table C, a printed copy of Tables A and C shall be annexed to or incorporated in each copy of its articles.

[s. 12]

Alteration of articles

14.–(1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter its articles.

(2) Any alteration so made in the articles shall, subject to the provisions of this Act, be as valid as if originally contained therein, and be subject in like manner to alteration by special resolution.

[s. 13]

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Registration of memorandum and articles
Acts Nos. 3 of 2012 s. 21 9 of 2019 s. 8 8 of 2020 s. 8 5 of 2021 s. 31

15.–(1) The memorandum and the articles, if any, shall be delivered to the Registrar for registration.

(2) With the memorandum, there shall be delivered a statement in the prescribed form containing-

(a) National Identification Number, Tax Identification Number (in the case of Tanzania national), email, address, telephone, passport (in the case of foreigners) and certificate of incorporation (in the case of a company incorporated outside Tanzania) and registered office, of-

(i) the person or persons being the first director or directors of the company;

(ii) the person or persons being the first secretary or joint secretaries of the company,

and in the case of a first director or directors, particulars of any other directorships held during the five years preceding the date on which the statement is delivered to the Registrar;

(b) accurate and up to date records of beneficial owners of such company which shall include-

(i) full name, including any former or other name;

(ii) date and place of birth;

(iii) telephone number;

(iv) nationality, national identity number, passport number or other appropriate identification;

(v) residential, postal and email address, if any;

(vi) place of work and position held;

(vii) nature of the interest including the details of the legal, financial, security, debenture or informal arrangement giving rise to the beneficial ownership; and

(viii) oath or affirmation as to whether the beneficial owner is a politically exposed person or not.

(3) There shall, in the statement, be specified the intended address of the company's registered office on incorporation.

(4) The Registrar shall not register a company's memorandum delivered under this section unless he is satisfied that all the requirements of this Act have been complied with.

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(5) The Registrar shall not register the memorandum of an open-ended investment company delivered under this section unless he is satisfied that the memorandum and the articles of association delivered with it have previously been approved by the Capital Markets and Securities Authority.

(6) The Registrar shall not register or maintain in the register a company limited by guarantee which does not fall under section 3(3).

[s. 14]

Effect of registration

16.–(1) On the registration of the memorandum of a company, the Registrar shall certify under his hand that the company is incorporated and, in the case of a limited company, that the company is limited, and, in the case of a public company, that the company is a public company.

(2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers to the memorandum, together with such other persons as may from time to time 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, 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 provided for in this Act.

[s. 15]

Conclusiveness of certificate of incorporation Act No. 8 of 2020 s. 9

17. 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 authorised to be registered and duly registered under this Act.

[s. 16]

Registration of unlimited company as limited

18.–(1) Subject to the provisions of this section, a company registered as unlimited may register under this Act as limited, but the registration of an unlimited company as a limited

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company shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of the company before the registration.

(2) On registration in pursuance of this section, the Registrar shall close the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company, and save as provided under subsection (1), the registration shall take place in the same manner and shall have effect as if it were the first registration of the company under this Act.

[s. 17]

Effect of memorandum and articles

19.–(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 and sealed by each member, and contained covenants on the part of each member to observe all the provisions of the memorandum and of the articles.

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

[s. 18]

Memorandum and articles of company limited by guarantee

20.–(1) In the case of a company limited by guarantee and not having a share capital and being registered after 1st October, 1932, every provision in the memorandum or articles, or any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

(2) For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of a company limited by guarantee and registered on or after the date aforesaid, purporting to divide the undertaking of the company into shares or interests shall

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be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

[s. 19]

Effect of alteration on company's members

21. Notwithstanding anything in the memorandum or articles of a company, a member of the company shall not be bound by an alteration made in the memorandum or articles after the date on which he became a member, if and so far as the alteration-

(a) requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made; or

(b) in any way increases his liability as at that date to contribute to the share capital of, or otherwise to pay money to, the company:

Provided that, this section shall not apply in a case where the member agrees in writing, either before or after the alteration is made, to be bound by the alteration.

[s. 20]

Power to alter conditions in memorandum which could have been contained in articles

22.–(1) Subject to the provisions of section 21 and section 236, any condition contained in a company's memorandum which could lawfully have been contained in articles of association instead of in the memorandum may, subject to the provisions of this section, be altered by the company by special resolution:

Provided that, if an application is made to the court for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.

(2) This section shall not apply where the memorandum itself provides for, or prohibits the alteration of all or any of the said conditions, and shall not authorise any variation or abrogation of the special rights of any class of members.

(3) Subsections (2) to (8) of section 9 (except subsection (2)(b)) shall apply in relation to any alteration and to any application made under this section as they apply in relation to alterations and to applications made under that section.

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(4) This section shall apply to a company's memorandum whether registered before or after the commencement of this Act.

[s. 21]

Copies of memorandum and articles to be given to members

23.–(1) A company shall, on being so required by any member, send to him a copy of the memorandum and of the articles, if any, and a copy of any Act or Ordinance which alters the memorandum, subject to payment, in the case of a copy of the memorandum and of the articles of such fee as the Minister may prescribe in the regulations, and in the case of a copy of an Act, of such sum not exceeding the published price thereof.

(2) Where company makes default in complying with this section, the company and every officer of the company who is in default shall be liable for each offence to a fine.

[s. 22]

Issued copies of memorandum to embody alterations

24.–(1) Where an alteration is made in the memorandum of a company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration.

(2) Where, any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum which are not in accordance with the alteration, it shall be liable to a fine for each copy so issued, and every officer of the company who is in default shall also be liable to a fine.

[s. 23]

Membership of Company

Definition of member

25.–(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.

(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.

[s. 24]

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Membership of holding company

26.–(1) Except as mentioned in this section, 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.

(2) Nothing in this section shall apply where the subsidiary is concerned as personal representative, or 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 business which includes the lending of money.

(3) This section shall not prevent a subsidiary which is, at the appointed day, a member of its holding company, from continuing to be a member but, subject to subsection (2), the subsidiary shall have no right to vote at meetings of the holding company or any class of members thereof.

(4) The provisions of this section shall apply to a nominee acting on behalf of a subsidiary as to the subsidiary itself.

(5) In relation to a company, other than a company limited by shares, the references in this section to shares shall be construed as references to the interests of its members as such, whatever the form of that interest.

[s. 25]

Members severally liable for debts where business carried on with fewer than two members Act No. 3 of 2012 s. 22

27.–(1) Where at any time the number of members of a company is reduced below two, 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 knows that it is carrying on business with fewer than two members, shall be liable, jointly and severally with the company, for the payment of the whole debt of the company contracted during that time, save for limited liability single shareholder company.

(2) The single shareholder shall, where he contravenes the provisions of this Act, be sued personally and in his own name.

[s. 26]

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Single shareholder Act No. 3 of 2012 s. 23

28.–(1) A limited liability single shareholder company shall be formed by one member.

(2) The company's list of members shall contain-

(a) the name and address of the sole member; and

(b) identification and a statement that the company contains only one member.

(3) Where the membership of a limited liability single shareholder company increases from one to two or more, the occurrence of that event shall be entered into the company's register of members with-

(a) the name and address of the person who was formerly the sole member;

(b) a statement that the company ceased to have one member; and

(c) the date on which that event occurred.

(4) A company or any officer of the company who contravenes the provisions of this section commits an offence and shall on conviction, be liable to a fine of five million shillings or to imprisonment for a term of two years or to both.

(5) The Minister may make regulations and rules for carrying out the provisions of this section.

[s. 26A]

Private Companies

Meaning of "private company"

29.–(1) A "private company" means a company which by its articles-

(a) restricts the right to transfer its shares;

(b) limits the number of its members to fifty, 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.

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(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.

[s. 27]

Consequences of default in complying with conditions constituting private company

30. Where the articles of a company include the provisions which, under section 29 are required to be included in the 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 any privilege or exemption conferred on private companies under any of the provisions of this Act, and thereupon, the provisions of this Act shall apply to the company as if it were a public 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 person interested and on such terms and conditions as seem to the court just and expedient, order that the company be relieved from such consequences as aforesaid.

[s. 28]

Company ceasing to be private company

31.–(1) Where a private company alters its articles such that they no longer include the provisions required under section 29, the company shall, as on the date of the alteration, cease to be a private company and shall amend its memorandum so as to state that it is a public company within a period of fourteen days, it shall send notification to the Registrar in the prescribed form along with a copy of the memorandum as altered, and the Registrar shall then issue a certificate to the effect that the company is a public company.

(2) Where default is made in complying with subsection (1), the company and every officer of the company who is in default shall be liable to a default fine.

[s. 29]

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CHAPTER II
COMPANY NAMES

Reservation of name and prohibition of undesirable name

32.–(1) The Registrar may, on written application, reserve a name pending registration of a company or a change of name by a company, and any such reservation shall remain in force for a period of thirty days or such longer period not exceeding sixty days, as the Registrar may, for special reasons, allow, and during such period no other company shall be entitled to be registered with that name.

(2) A name shall not be reserved and a company shall not be registered by a name which, in the opinion of the Registrar, is the same as or too like a name appearing in the index of company names or is otherwise undesirable.

[s. 30]

Change of name

33.–(1) A company may by special resolution and, with the approval of the Registrar signified in writing, change its name, and where the Registrar refuses to give his approval, he shall give his reasons.

(2) Where, through inadvertence or otherwise, a company on its first registration or on its registration by a new name is registered by a name which, in the opinion of the Registrar, is too like the name by which a company in existence is registered, the first mentioned company may change its name with the sanction of the Registrar and, if he so directs within six months of its being registered by that name, shall change it within a period of six weeks from the date of the direction or such longer period as the Registrar may think fit to allow.

(3) Where a company changes its name under this section, it shall within fourteen days give to the Registrar notice thereof and the Registrar shall, subject to the provisions of section 32(2), enter the new name on the register in place of the former name, and shall issue to the company a certificate of change of name, and shall notify such change of name in the *Gazette*.

(4) A change of name by a company under this section shall not affect any rights or obligations of the company or render

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defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

[s. 31]

Power to dispense with "Limited" Act No. 9 of 2019 s. 9

34.–(1) Where it is proved to the satisfaction of the Registrar that an association about to be formed as a private company for promoting commerce 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, the Registrar may by licence, direct that the association may be registered as a private company with limited liability, without the addition of the word "limited" to its name, and the association may be registered accordingly and shall on registration, enjoy all the privileges and, subject to the provisions of this section, be subject to all the obligations of limited companies.

(2) Where it is proved to the satisfaction of the Registrar-

(a) that the objects of the company are restricted to those specified in subsection (1) and to objects incidental or conducive thereto;

(b) 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; and

(c) that by its constitution, the company is required on its winding up to transfer all the assets which would otherwise be generally available to the members either to another body with objects similar to its own or to another body the objects of which are the promotion of charity or anything incidental or conducive thereto,

the Registrar may by licence authorise the company to make by special resolution a change in its name including or consisting of the omission of the word "limited" and sections 33(3) and 33(4) shall apply to a change of name under this subsection as they apply to a change of name under that section.

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(3) A licence by the Registrar under this section may be granted on such conditions and subject to such regulations as the Registrar thinks fit, and those conditions and regulations shall be binding on the body to which the licence is granted, and where the grant is under subsection (1) shall, if the Registrar so directs, be inserted in the memorandum and articles, or in one of those documents.

(4) A company which is exempted from requirements relating to the use of the word "limited" and does not include that word as part of its name, is also exempted from the requirements of this Act relating to the publication of its name and the sending of lists of members to the Registrar of companies.

(5) The Registrar may revoke a licence under this section and upon revocation, the Registrar shall enter in the register the word "limited" at the end of the name of the body to which it was granted, and the body shall cease to enjoy the exemptions granted by this section:

Provided that, before any revocation is effected, the Registrar shall give to the body in writing, a statement of his intention, and shall afford it an opportunity of being heard in opposition to the revocation.

(6) A body in respect of which a licence under this section is in force may not alter the provisions of its memorandum or its articles with respect to those requirements referred to in subsection (2) without the consent of the Registrar and the Registrar, may unless he sees fit to revoke the licence vary the licence by making it subject to such conditions and regulations as he may think fit, in lieu of or in addition to the conditions and regulations, if any, to which the licence was formerly subject.

(7) Where the body makes default in complying with the requirements of this subsection, the body and every officer of the body who is in default shall be liable to a default fine.

[s. 32]

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Power to require company to abandon misleading name

35.–(1) Where in the Minister's opinion the name by which a company is registered gives so misleading an indication of the nature of its activities as to be likely to cause harm to the public, he may direct it to change its name.

(2) The direction shall, if not duly made the subject of an application to the court under subsection (3), be complied with within a period of six weeks from the date of the direction or such longer period as the Registrar may think fit to allow.

(3) The company may, within a period of three weeks from the date of the direction, apply to the court to set it aside; and the court may set the direction aside or confirm it and, if it confirms the direction, shall specify a period within which it must be complied with.

(4) Where a company makes default in complying with a direction under this section, it shall be liable to a fine and, for continued contravention, to a default fine.

(5) Where a company changes its name under 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; and the change of name has effect from the date on which the altered certificate is issued.

(6) A change of name by a company under this section does not affect any of the rights or obligations of the company, or render defective any legal proceedings by or against it; and any legal proceedings that might have been continued or commenced against it under its former name may be continued or commenced against it under its new name.

[s. 33]

Penalty for improper use of "limited" or "public limited company" etc

36.–(1) Where any person trades or carries on any business or profession under a name or title of which "limited", or any contractions or imitation of that word, is the last word, that person, unless duly incorporated with limited liability, commits an offence.

(2) A person who is not a public company commits an offence if he carries out any trade, profession or business

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under a name which includes, as its last part, the words "public limited company" or any contractions thereof.

(3) A public limited company commits an offence if in circumstances in which the fact that it is a public company is likely to be material to any person, it uses a name which may reasonably be expected to give the impression that it is a private company.

(4) A person who commits an offence under subsections (1), (2) or (3) and, if that person is a company, any officer of the company who is in default, shall be liable to a fine and, for continued contravention, to a default fine.

[s. 34]

CHAPTER III
A COMPANY'S CAPACITY; FORMALITIES OF CARRYING ON BUSINESS

company's capacity not limited by its memorandum

37.–(1) The validity of an act done by a company shall not be called into question on the ground of lack of capacity by reason of anything in the company's memorandum.

(2) A member of a company may bring proceedings to restrain the doing of an act which but for subsection (1) would be beyond the company's capacity and no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company.

[s. 35]

Power of directors to bind company

38.–(1) Subject to subsection (5), in favour of a person dealing with a company in good faith, the power of the board of directors to bind the company or authorise others to do so, shall be deemed to be free of any limitation under the company's constitution.

(2) For the purpose of subsection (1)-

(a) a person "deals with" a company if he is a party to any transaction or other act to which the company is a party;

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(b) a person shall not be regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the directors under the company's constitution; and

(c) a person shall be presumed to have acted in good faith unless the contrary is proved.

(3) The references under the preceding subsections to limitations on the directors' power under the company's constitution include limitations deriving-

(a) from a resolution of the company in general meeting or a meeting of any class of shareholders; or

(b) from any agreement between the members of the company or of any class of shareholders.

(4) Subsection (1) does not affect any right of a member of the company to bring proceedings to restrain the doing of an act which is beyond the powers of the directors and no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company, nor does that subsection affect any liability incurred by the director or any other person, by reason of the directors' exceeding their powers.

(5) This section shall not apply in relation to any transaction or other act to which the company is a party where the person dealing with the company is a director of that company or its holding company or a connected person as defined in section 203(4).

[s. 36]

No duty to enquire as to capacity of company or authority of directors

39. A party to a transaction with a company is not bound to enquire as to whether it is permitted by the company's memorandum or as to any limitation on the powers of the board of directors to bind the company or authorise others to do so.

[s. 37]

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Company contracts

40. A contract may be made-

(a) by a company, by writing under its common seal; or

(b) on behalf of a company, by any person acting under its authority, express or implied, and any formalities required by law in the case of a contract made by an individual also apply, unless a contrary intention appears, to a contract made by or on behalf of a company.

[s. 38]

Execution of documents

41.–(1) A document is executed by a company by the affixing of its common seal, and company need not have a common seal, however, the following subsections apply whether it does or not.

(2) A document signed by a director and the secretary of a company, or by two directors of a company, and expressed, in whatever form of words, to be executed by the company has the same effect as if executed under the common seal of the company.

(3) A document executed by a company which makes it clear on its face that it is intended by the person or persons making it to be a deed has effect, upon delivery, as a deed; and it shall be presumed, unless a contrary intention is proved, to be delivered upon its being so executed.

(4) In favour of a purchaser, a document shall be deemed to have been duly executed by a company if it purports to be signed by a director and the secretary of the company or by two directors of the company, and where it makes it clear on its face that it is intended by the person or persons making it to be a deed, shall be deemed to have been delivered upon its being executed.

(5) A "purchaser" for the purpose of this section, means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property.

(6) For purposes of any enactment providing for a document to be executed by a company by affixing its common seal, or referring in whatever terms to a document so executed, a

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document signed or subscribed by or on behalf of the company in accordance with the provisions of this Act shall have effect as if so executed.

[s. 39]

Pre-incorporation contracts, deeds and obligations

42.–(1) A contract which purports to be made by or on behalf of a company at a time when the company has not been formed has effect, subject to any agreement to the contrary, as one made with the person purporting to act for the company or as agent for it, and he is personally liable on the contract accordingly.

(2) Subsection (1) applies to the making of a deed as it applies to the making of a contract.

[s. 40]

Bills of exchange and promissory notes

43. 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 or on account of, the company by any person acting under its authority, expressly or impliedly.

[s. 41]

Execution of deeds abroad

44.–(1) A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place outside Tanzania.

(2) A deed signed by such an attorney on behalf of the company and under his seal shall bind the company and have the same effect as if it were under its common seal.

[s. 42]

Power for company to have official seal for use abroad

45.–(1) A company which has a common seal whose objects require or comprise the transaction of business outside Tanzania may, if authorised by its articles, have for use in any place outside Tanzania, an official seal, which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every place where it is to be used.

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(2) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

(3) A company having an official seal for use in any such place may, by writing under its common seal, authorise any person appointed for the purpose in that place, to affix the official seal to any deed or other document to which the company is party in that place.

(4) 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 mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

(5) The person affixing any such official seal shall, by writing under his hand, certify on the deed or other instrument to which the seal is affixed, the date on which and the place at which it is affixed.

[s. 43]

Authentication of documents

46. A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorised officer of the company, and need not be under its common seal.

[s. 44]

PART III
SHARE CAPITAL AND DEBENTURES

Public and private companies

47.–(1) In this part, sections 48 to 56 and 60 shall apply to public companies only.

(2) A private company, other than a company limited by guarantee and not having a share capital, commits an offence if it-

(a) offers to the public, whether for cash or otherwise, any shares in or debentures of the company; or

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(b) allots or agrees to allot whether for cash or otherwise, 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.

(3) A company which commits an offence under subsection (2), and any officer of the company who is in default, shall be liable to a fine.

(4) Nothing in this section affects the validity of any allotment or sale of shares or debentures, or of any agreement to allot or sell shares or debentures.

[s. 45]

Offer documents

Dating of offer document

48. An offer document 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 offer document.

[s. 46]

Matters to be stated and reports to be set out in offer document

49.–(1) Every offer document issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, shall state the matters specified and contain the reports required to be included in regulations made by the Minister responsible for finance, the Capital Markets and Securities Authority or such other authority as may be designated by that Minister for the purpose.

(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 offer document, shall be void.

(3) It shall not be lawful to issue any form of application for shares in or debentures of a company unless the form is issued with an offer document which complies with the requirements of this section.

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(4) 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 offer document 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 had no knowledge 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.

(5) This section shall apply to an offer document or a form of application whether issued on or with reference to the formation of a company or subsequently.

(6) This section shall not limit or diminish any liability which any person may incur under the general law or this Act.

(7) A person who acts in contravention of the provisions of this section, shall be liable to a fine.

[s. 47]

Expert's consent to issue of offer document containing statement by him

50.–(1) An offer document inviting persons to subscribe for shares in or debentures of a company 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 offer document 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 appearing in the offer document.

(2) Where any offer document is issued in contravention of this section the company and every person who is knowingly a party to the issue thereof shall be liable to a fine.

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(3) In this Part, the expression "expert" includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him.

[s. 48]

Registration of offer document

51.–(1) An offer document shall not 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, there has been delivered to the Registrar for registration, a copy thereof approved by the Capital Markets and Securities Authority and signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing, and having endorsed thereon or attached thereto-

(a) any consent to the issue of the offer document required by section 50 from any person as an expert; and

(b) a copy of any contract, statement or other document required pursuant to section 49.

(2) An offer document shall-

(a) state that a copy has been delivered for registration as required by this section; and

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

(3) The Registrar shall not register an offer document unless it is dated, approved by the Capital Markets and Securities Authority, and the copy thereof signed as required by this section, and unless it has endorsed thereon or attached thereto the documents if any, specified in this section.

(4) Where an offer document is issued without a copy thereof being delivered in accordance with this section to the Registrar or without the copy so delivered having attached thereto the required documents, the company, and every person who is knowingly a party to the issue of the offer document, shall be liable to a fine for every day from the date of the issue of the

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offer document until a copy thereof is so delivered with the required documents attached thereto.

[s. 49]

Civil liability for misstatements in offer document

52.–(1) Subject to the provisions of this section, where an offer document invites persons to acquire shares in or debentures of a company, the following persons shall be liable to pay compensation to all persons who acquire any shares or debentures in reliance on the offer document for the loss or damage they may have sustained by reason of any untrue statement included therein-

(a) the company or, where the company does not offer the shares or debentures, the offeror thereof;

(b) a person who is a director of the company or, as the case may be, the offeror at the time of the issue of the offer document;

(c) a person who has authorised himself to be named and is named in the offer document as a director of the company, or as the case may be, the offeror or as having agreed to become such a director whether immediately or after an interval of time;

(d) a person being a promoter of the company; and

(e) a person who has authorised the issue of the offer document or any part thereof:

Provided that, where under section 50, the consent of a person is required to the issue of an offer document 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 authorised the issue of the offer document except in respect of an untrue statement purporting to be made by him as an expert.

(2) A person shall not incur any liability under this section if at the time when the offer document was delivered for registration, he reasonably believed, having made such enquiries (if any) as were reasonable, that the untrue statement was true and not misleading or that the matter whose omission caused the loss was properly omitted and-

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(a) he continued in that belief until the time when the shares or debentures were acquired;
(b) they were acquired before it was reasonably practicable to bring a correction to the attention of persons likely to acquire the shares or debentures in question;
(c) before the same were acquired he had taken all such steps as it was reasonable for him to have taken to secure that a correction was immediately brought to the attention of those persons; or
(d) the shares or debentures were acquired after such a lapse of time that he ought in the circumstances to be reasonably excused and, if the same are dealt in on a stock exchange, that he continued in that belief until after the commencement of dealings therein on that exchange.

(3) A person shall not incur any liability under this section for any loss caused by a statement purporting to be made by or on the authority of another person as an expert which is, and is stated to be, included in the offer document with that other person's consent if at the time when the offer document was delivered for registration he believed on reasonable grounds that the other person was competent to make or authorise the statement and had consented to its inclusion in the form and context in which it was included and-

(a) he continued in that belief until the time when the shares or debentures were acquired;
(b) they were acquired before it was reasonably practicable to bring the fact that the expert was not competent or had not consented to the attention of persons likely to acquire the shares or debentures in question;
(c) before the same were acquired he had taken all such steps as it was reasonable for him to have taken to secure that the fact was immediately brought to the attention of those persons;
(d) the shares or debentures were acquired after such a lapse of time that he ought in the circumstances to be reasonably excused and, if the same are dealt in

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on a stock exchange, he continued in that belief until after the commencement of dealings therein on that exchange.

(4) A person shall not incur any liability under this section for any loss caused by any such statement or omission if-

(a) before the shares or debentures were acquired, a correction or, where the statement was such as is mentioned in subsection (3), the fact that the expert was not competent or had not consented had been published in a manner calculated to bring it to the attention of persons likely to acquire the shares or debentures in question; or

(b) he took all such steps as it was reasonable for him to take to secure such publication and reasonably believed that it had taken place before the shares or debentures were acquired.

(5) A person shall not incur any liability under this section for any loss resulting from a statement made by a public official or contained in a public official document which is included in the offer document if the statement was accurately and fairly reproduced.

(6) A person shall not incur any liability under this section if the person suffering the loss acquired the shares or debentures in question with knowledge that the statement was untrue.

(7) For purposes of subsection (1), the expression "promoter" means a promoter who was a party to the preparation of the offer document, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company.

[s. 50]

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Criminal liability for misstatements in offer document

53.–(1) Where an offer document issued after the commencement of this Act includes any untrue statement, any person who authorised the issue of the offer document shall be liable on conviction to imprisonment, or to a fine, or to both, unless he proves either that the statement was immaterial or

that he had reasonable ground to believe and did, up to the time of the issue of the offer document, that the statement was true.

(2) A person shall not be deemed for the purpose of this section to have authorised the issue of an offer document by reason only of his having given the consent required by section 50 to the inclusion therein of a statement purporting to be made by him as an expert.

[s. 51]

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

54.–(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 an offer document issued by the company, and the provisions of this Part and all or any rules of law as to the contents of offer documents and to liability in respect of statements in and omissions from offer documents, or otherwise relating to offer documents, 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 misstatements contained in the document or otherwise in respect thereof.

(2) For the purpose 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.

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(3) Section 49 as applied by this section shall have effect as if it is required by an offer document to state in addition to the matters required by or pursuant to that section to be stated in an offer document-

(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 which the said shares or debentures have been or are to be allotted may be inspected,

and section 51 as applied by this section shall have effect as though the persons making the offer were persons named in an offer document as directors of a company.

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

[s. 52]

Interpretation of provisions relating to offer documents

55. For the purposes of the foregoing provisions of this Part-

(a) a statement included in an offer document shall be deemed to be untrue if it is misleading in the form and context in which it is included; and

(b) a statement shall be deemed to be included in an offer document if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

[s. 53]

Allotment

Requirements as to allotments

56. Requirements as to allotments of shares or debentures pursuant to the issue of an offer document, the effect of irregular allotments and other related matters shall be as prescribed in regulations made by the Minister responsible for

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finance, the Capital Markets and Securities Authority or such other authority designated for the purpose.

[s. 54]

Return as to allotments

57.–(1) Whenever a company limited by shares or a company limited by guarantee and having a share capital makes any allotment of its shares, the company shall within sixty days thereafter deliver to the Registrar for registration-

(a) return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses and descriptions 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 constituting the title of the allottees to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, 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.

(2) Where a contract referred to under subsection (1) is not reduced in writing, the company shall, within sixty days after the allotment, deliver to the Registrar for registration the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced in writing, and those particulars shall be deemed to be an instrument within the meaning of the Stamp Duty Act, and the registrar may as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section 40 of that Act.

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(3) Where default is made in complying with this section, every officer of the company who is in default shall be liable to a default fine.

[s. 55]

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Commissions, Discounts and Financial Assistance

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

58.–(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 authorised by the articles;

(b) the commission paid or agreed to be paid does not exceed ten per cent of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is the less;

(c) the amount or rate per cent of the commission paid or agreed to be paid is in the case of shares offered to the public for subscription, disclosed in the offer document; and

(d) the number of shares which persons have agreed for a commission to subscribe absolutely is disclosed in the manner aforesaid.

(2) Save as aforesaid, a company shall not 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 be paid out of the nominal purchase money or contract price, or otherwise.

(3) This section shall not affect the power of any company to pay such brokerage as it has prior to the appointed day been lawful for a company to pay.

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

[s. 56]

Prohibition of provision of financial assistance

59.–(1) Save as provided in this section, 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 connection with a purchase or subscription 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:

Provided that, this section shall not be taken to prohibit-

(a) 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;

(b) 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 or any subsidiary of it or its holding company, being a purchase or subscription by trustees of or for shares to be held by or for the benefit of employees or former employees or the dependants of any of them of the company or any such other company, including any director holding a salaried employment or office in the company or any such other company;

(c) 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; or

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(d) the lawful distribution by a company of any of its assets by way of dividends or otherwise.

(2) Where a company acts in contravention of this section, the company and every officer of the company who is in default shall be liable to a fine.

(3) The Capital Markets and Securities Authority may certify that the provisions of subsection (1) shall not apply to a company in respect of any particular transaction.

(4) This section shall not apply to private companies.

[s. 57]

Construction of References to Offering Shares or Debentures to the Public

Construction of references to offering shares or debentures to the public

60.–(1) Any reference in this Act to offering shares or debentures to the public shall, subject to any provision to the contrary contained therein, be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the offer document or in any other manner, and references in this Act or in a company's articles to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be similarly construed.

(2) Subsection (1) shall not be taken as requiring any offer or invitation to be treated as made to the public if it can properly be regarded, in all the circumstances, as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or otherwise as being a domestic concern of the persons making and receiving it, and in particular a provision in a company's articles prohibiting invitations to the public to subscribe for shares or debentures shall not be taken as prohibiting the making to members or debenture holders of an invitation which can properly be so regarded.

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

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

[s. 58]

Issue of Shares at Premium, Discount and Redeemable Shares

Application of premiums received on issue of shares

61.–(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 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 in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares, in writing off-

(a) the preliminary expenses of the company; or

(b) the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company, or in providing for the premium payable on redemption of any redeemable shares or of any debentures of the company.

(3) Where a company has before the appointed day issued any shares at a premium, this section shall apply as if the shares had been issued after the appointed day:

Provided that, any part of the premiums which has been so applied that it does not at the appointed day form an identifiable part of the company's reserves shall be disregarded in determining the sum to be included in the share premium account.

[s. 59]

Power to issue shares at discount

62.–(1) Save as provided in this section, it shall be lawful for a company to issue at a discount shares in the company of a class already issued:

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Provided that-

(a) the issue of the shares at a discount must be authorised by resolution passed in general meeting of the company, and must be sanctioned by the court;

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

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

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

(2) Where a company has passed a resolution authorising the issue of shares at a discount, it may apply to the court for an order sanctioning the issue, and on any such application the court may make an order sanctioning the issue on such terms and conditions as it thinks fit.

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

(4) Where default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

[s. 60]

Power to issue redeemable shares

63.–(1) Subject to the provisions of this section, a company limited by shares may, if so authorised by its articles, issue shares which are, or at the option of the company are to be liable, to be redeemed:

Provided that-

(a) such shares shall not 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;

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(b) such shares shall not be redeemed unless they are fully paid;

(c) 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; and

(d) 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 reduction 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 shares may be effected on such terms and in such manner as may be provided by the articles of the company.

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

(4) Where in pursuance of this section a company has redeemed or is about to redeem any 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 purpose of any enactments relating to tax on nominal capital 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 old shares, the new shares shall not, so far as relates to tax on nominal capital, 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.

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(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.

[s. 61]

Miscellaneous Provisions as to Share Capital

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

64. A company, if so authorised by its articles, may do any one or more of the following-

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

(b) accept from any member 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; or

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

[s. 62]

Reserve liability of limited company

65. A limited 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 purpose of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purpose aforesaid.

[s. 63]

Power of company to alter its share capital

66.–(1) A company limited by shares or a company limited by guarantee and having a share capital, if so authorised by its articles, may alter the conditions of its memorandum by-

(a) increasing its share capital by new shares of such amount as it thinks expedient;

(b) consolidating and divide all or any of its share capital into shares of larger amount than its existing shares;

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(c) converting all or any of its paid up shares into stock, and reconvert that stock into paid up shares of any denomination;

(d) subdividing 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 it was in the case of the share from which the reduced share is derived; or

(e) cancelling shares which, at the date 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.

[s. 64]

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

67.–(1) Where a company having a share capital has-

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

(b) converted any shares into stock;

(c) re-converted stock into shares;

(d) subdivided its shares or any of them;

(e) redeemed any redeemable shares; or

(f) cancelled any shares, otherwise than in connection with a reduction of share capital under section 71,

it shall, within thirty days 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 re-converted.

(2) Where default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

[s. 65]

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Notice of increase of share capital

68.–(1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, it shall, within thirty days after the passing of the resolution authorising the increase, give to the Registrar notice of the increase.

(2) The notice to be given shall include such particulars as may be prescribed with respect to the classes of shares affected and the conditions subject to which the new shares have been or are to be issued, together with details of the amount of issued share capital of each class at the date of the notice, and there shall be forwarded to the Registrar together with the notice, a printed copy of the resolution authorising the increase.

(3) Where default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

[s. 66]

Power of unlimited company to provide for reserve share capital on re-registration

69. An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of this Act, do either or both of the following things, namely-

(a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purpose of the company being wound up;

(b) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

[s. 67]

Reduction of Share Capital

Disapplication reopen-ended investment companies Cap. 79

70. Sections 71, 72, 73 and 74 inclusive shall not apply to a reopen-ended investment company whose establishment has been duly authorised under the Capital Markets and Securities Act.

[s. 68]

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Special resolution for reduction of share capital Act No. 3 of 2012 s. 24

71.–(1) A company limited by shares or a company limited by guarantee and having a share capital may, if so authorised by its articles and as provided herein, by special resolution, reduce its share capital in any way, and in particular, 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 requirements 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.

(2) The notice given of the intention to propose the special resolution to reduce the company's share capital shall be accompanied by a directors' certificate of solvency given in accordance with section 72 and, where appropriate, the auditors' report thereon prepared in accordance with section 72.

(3) Subject to section 73, a special resolution passed reducing the share capital of a company shall not take effect until after the resolution has been filed with the Registrar and the resolution shall not, in any event, be filed with the Registrar until after thirty five days from the date that it was passed.

(4) A special resolution reducing the share capital of a company shall be advertised in the *Gazette* and, in the case of a public company, one national newspaper, in each case within fourteen working days of the resolution having been passed, and where the company fails to comply with this subsection, the directors shall be liable to a fine.

[s. 69]

Directors' certificate of solvency

72.–(1) Where it is proposed to pass a resolution reducing the share capital of a company, the directors or a majority of them shall certify that they have made a full inquiry into the affairs of the company, and that, having so done, they have formed

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the opinion that the company will be able to pay its debts in full within twelve months from the date of the certificate or, if the company is wound up within that period, the date of the commencement of the winding up.

(2) Where the company has auditors, the directors' certificate shall be accompanied by a report from the auditors to the effect that they have enquired into the state of the company's affairs and are not aware of anything to indicate that the directors' certificate of solvency is unreasonable.

(3) A director of a company giving a certificate under this section without having reasonable grounds for his opinion shall be liable to imprisonment or to a fine or to both:

Provided that, if the company is wound up in pursuance of a resolution passed within the period of twelve months after the giving of the certificate, but its debts are not paid or provided for in full within the period stated in the certificate, it shall be presumed unless the contrary is shown, that the director did not have reasonable grounds for his opinion.

[s. 70]

Application to court by creditors objecting to the reduction

73.–(1) In the case of a reduction in the share capital of the company other than for the purpose specified in section 71(1)(b), any creditor of the company may apply to the court to object to the proposed reduction on the grounds that his position as a creditor would be materially prejudiced by the reduction.

(2) An application under this section shall be made-

(a) within twenty eight days of the advertisement of the special resolution in the *Gazette* or, where appropriate, national newspaper; or

(b) in the case of a failure to advertise the special resolution as required by section 71(4), within such further period as the court may think just.

(3) On an application under this section the court may make an order prohibiting the reduction or confirming the reduction either wholly or in part and on such terms and conditions as it thinks fit.

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(4) An alteration in the memorandum of a company made by virtue of an order under this section is of the same effect as if duly made by resolution, and this Act shall apply accordingly to the memorandum so altered.

[s. 71]

Liability of members and directors in respect of reduced shares

74.–(1) In the case of a reduction in capital that is not effected in accordance with sections 71, 72 and 73, including the case where a certificate is given by directors under section 72 where the directors did not have reasonable grounds to believe in its truth, any creditor of the company that would have been entitled to object to the proposed reduction under section 73 may apply to the court to object to the reduction on the grounds that his position as a creditor has been materially prejudiced by the reduction.

(2) On an application under this section, the court may make such order as it thinks fit, including an order that every member of the company at the date of the passing of the special resolution reducing the share capital having knowledge of the failure to comply with sections 71, 72 and 73 and, where appropriate, every director giving a directors' certificate under section 72, shall be liable to-

(a) contribute to the payment of the debt or claim of the creditor, save that in the case of a member, this shall be in 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 date of the passing of the special resolution; or

(b) contribute to the repayment of the sum by which the share capital of the company was reduced as a result of the passing of the special resolution.

(3) This section shall not affect the rights of the contributories among themselves.

[s. 72]

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Variation of Shareholders' Rights

Rights of holders of special classes of shares

75.–(1) Where 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 authorising the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than ten percent of the issued shares of that class, being persons who did not 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 and until it is confirmed by the court.

(2) An application under this section shall be made by petition within thirty 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 shareholders 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 shareholders 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 thirty days after the making of an order by the court on any such application, forward a certified 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 liable to a default fine.

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

[s. 73]

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

Nature of shares

76. The shares or other interest of any member in a company shall be movable property transferable in a manner provided by the articles of the company.

[s. 74]

Share depositories

77.–(1) An approved stock exchange may establish a depository in which issued securities may be maintained, provided that the Authority or other ruling body of such exchange shall prescribe rules relating to safe custody, transfer and reports to be filed with the Registrar relating to transactions concerning the deposited securities.

(2) The rules prescribed under subsection (1) shall be satisfactory to the Registrar.

(3) Transfer of securities deposited in a depository maintained by an approved stock exchange shall be effected in accordance with transfer procedures prescribed under the rules of such exchange.

[s. 75]

Numbering of shares

78. Each share in a company having a share capital 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 shares of the same class for the time being issued and fully paid up.

[s. 76]

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

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

Provided that, this section shall not prejudice any power of the company to register as shareholder 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.

[s. 77]

Transfer by personal representative

80. A transfer of the share or other interest of a deceased member of a company made by his personal representative shall, although the personal representative is not himself a member of the company, be as valid as if he had been such a member at the time of the execution of the instrument of transfer.

[s. 78]

Registration of transfer at request of transferor

81. 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 the entry were made by the transferee.

[s. 79]

Notice of refusal to register transfer

82.–(1) Where a company refuses to register a transfer of any shares or debentures, the company shall, within sixty days after the date on which the transfer was lodged with the company, send to the transferee notice of the refusal.

(2) Where default is made in compliance with this section, the company and every officer of the company who is in default shall be liable to a default fine.

[s. 80]

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Certification of transfers

83.–(1) The certification by a company of any instrument of transfer of shares in or debentures of the company shall be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show a *prima facie* title to the shares or debentures in the transferor named in the instrument of transfer, but not as a representation that the transferor has any title to the shares or debentures.

(2) Where any person acts on the faith of false certification by a company made negligently, the company shall be under the same liability to him as if the certification had been made fraudulently.

(3) For purposes of this section-

(a) an instrument of transfer shall be deemed to be certificated if it bears the words "certificate lodged" or words to the like effect;

(b) the certification of an instrument of transfer shall be deemed to be made by a company if-

(i) the person issuing the instrument is a person authorised to issue certificated instruments of transfer on the company's behalf; and

(ii) the certification is signed by a person authorised to certificate transfers on the company's behalf or by any officer or servant either of the company or of a body corporate so authorised;

(c) a certification shall be deemed to be signed by any person if-

(i) it purports to be authenticated by his signature or initials whether handwritten or not; and

(ii) it is not shown that the signature or initials was or were placed there neither by himself nor by any person authorised to use the signature or initials for the purpose of certificating transfers on the company's behalf.

[s. 81]

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Duties of company with respect to issue of certificates

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

(2) The expression "transfer" for the purpose of this subsection 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) Where default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

(4) Where 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 ten 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.

[s. 82]

Evidence of title

85.–(1) 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.

(2) A depository receipt issued by a depository established under section 77(1) shall be *prima facie* evidence of the title to the interest represented by the receipt.

[s. 83]

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Notification of transfer and transmission of shares to Registrar
Act No. 5 of 2021 s. 32

86.–(1) A company which has transferred or transmitted its shares shall, within twenty-eight days from the date of transfer or transmission, notify the Registrar in such a manner as may be prescribed in the regulations.

(2) The notification referred to under subsection (1) shall be attached with a copy of tax clearance certificate.

[s. 83A]

Evidence of grant of probate

87. The production to a company of any document which is by law sufficient evidence of-

(a) probate of the will, or letters of administration of the estate, of a deceased person having been granted to some person; or

(b) the Administrator-General having undertaken administration of an estate under the Administrator-General (Powers and Functions) Act, Cap. 27

shall be accepted by the company, notwithstanding anything in its articles, as sufficient evidence of such grant or undertaking.

[s. 84]

Non issuance of share warrant
Act No. 8 of 2020 s. 10
3 of 2021 s. 4

88.–(1) Notwithstanding anything contained in its memorandum and articles of association, a company shall not, with effect from the effective date, issue share warrant in respect of any shares.

(2) A bearer of a share warrant shall, within twelve months from the effective date, surrender to the company the issued share warrant for cancellation.

(3) Upon surrender of the share warrant under subsection (2), the company shall-

(a) cancel the share warrant;

(b) enter in its register of members and beneficial owners, the names of persons whose share warrants have been cancelled; and

(c) notify the Registrar of any changes in the register of members and beneficial owners effected pursuant to this section.

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(4) A share warrant which is not surrendered after the expiry of a period of twelve months from the effective date shall be deemed to be cancelled.

(5) Notwithstanding subsection (4), the Registrar may allow surrender of share warrant after the expiry of the period of twelve months from the effective date upon adducing reasonable grounds of delay.

(6) For purposes of this section-

"bearer of share warrant" means a person who held a share warrant on or before the effective date; and

"effective date" means 1st July, 2021.

[s. 85]

Penalty for impersonation of share holder Act No. 3 of 2021 s. 5

89. Where any person falsely and deceitfully impersonates any owner of any share or interest in any company, or of any coupon, issued in pursuance of this Act, and thereby obtains or endeavours to obtain any such share or interest or coupon, or receives or endeavours to receive any money due to any such owner, as if the offender were the true and lawful owner, commits an offence and on conviction, shall be liable to imprisonment or to a fine or to both.

[s. 86]

Offences in connection with share warrants

90.–(1) A person who-

(a) with intent to defraud, forges or alters, or offers, or disposes of, knowing the same to be forged or altered, any share warrant or coupon, or any document purporting to be a share warrant or coupon; or

(b) by means of any such forged or altered share warrant, coupon or document, demands or endeavours to obtain or receive any share or interest in any company under this Act, or to receive any dividend or money payable in respect thereof, knowing the warrant, coupon or document to be forged or altered,

commits an offence and on conviction, shall be liable to imprisonment or to a fine or to both.

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(2) A person who-

(a) engraves, prints or makes any share warrant or coupon purporting to be-

(i) a share warrant or coupon issued or made by any particular company in pursuance of this Act;

(ii) a blank share warrant or coupon so issued or made;

(iii) a part of such a share warrant or coupon; or

(b) uses any material for the making or printing of any such share warrant or coupon, or of any such blank share warrant or coupon, or any part thereof respectively; or

(c) knowingly has in his custody or possession any material or equipment for the making thereof,

commits an offence and on conviction, shall be liable to imprisonment or to a fine or to both.

[s. 87]

Special Provisions as to Debentures

Provisions as to register of debenture holders

91.–(1) A company which, after the appointed day, issues a series of debentures shall keep at the registered office of the company a register of holders of such debentures:

Provided that-

(a) where the work of making up such register is done at some office of the company other than the registered office, such register may be kept at such office;

(b) where the work of making up such register is by arrangement by the company undertaken by some person on behalf of the company, such register may be kept at the office of that person at which the work is done.

(2) Every company shall give notice to the Registrar of the place where the register is kept and of any change in that place:

Provided that, a company shall not be bound to give notice under this subsection if the register has, at all times since it came into existence, been kept at the registered office of the company.

[s. 88]

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Rights of debenture holders and shareholders to inspect register of debenture holders and to have copies of trust deed

92.–(1) Every register of holders of debentures of a company shall, except when duly closed, be open during business hours to the inspection of the registered holder of any such debentures or any holder of shares in the company without fee, and of any other person, on payment of a fee not exceeding the amount prescribed by the Minister in the regulations.

(2) Every registered holder of debentures and every holder of shares in a company may require a copy of the register of the holders of debentures of the company or any part thereof on payment of a fee not exceeding the amount prescribed by the Minister in the regulations.

(3) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment of a fee not exceeding the amount prescribed by the Minister in the regulations.

(4) Where inspection is refused, or a copy is refused or not forwarded, the company and every officer of the company who is in default shall be liable to a fine, and further shall be liable to a default fine.

(5) Where a company is in default, the court may by order compel an immediate inspection of the register or direct that the copies required shall be sent to the person requiring them.

(6) For the purpose of this section, a register shall be deemed to be duly closed if closed in accordance with provisions contained in the articles or in the debentures or, in the case of debenture stock, in the stock certificates, or in the trust deed or other document securing the debentures or debenture stock, during such period or periods, not exceeding in the whole thirty days in any year, as may be therein specified.

[s. 89]

Liability of trustees for debenture holders

93.–(1) Subject to the provisions of this section, any provision contained in a trust deed for securing an issue of debenture, or in any contract with the holders of debentures secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from or indemnifying him against liability for breach of trust where he fails to show the degree of

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care and diligence required of him as trustee, having regard to the provisions of the trust deed conferring on him any powers, authorities or discretions.

(2) Subsection (1) shall not invalidate-

(a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or

(b) any provision enabling such a release to be given-

(i) on the agreement thereto of a majority of not less than three-fourths in value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose; and

(ii) either with respect to specific acts or omissions or on the trustee dying or ceasing to act.

(3) Subsection (1) shall not operate-

(a) to invalidate any provision in force at the appointed day so long as any person then entitled to the benefit of that provision or afterwards given the benefit thereof under subsection (4) remains a trustee of the deed in question; or

(b) 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.

(4) While any trustee of a trust deed remains entitled to the benefit of a provision saved by subsection (3), the benefit of that provision may be given either-

(a) to all trustees of the deed, present and future; or

(b) to any named trustees or proposed trustees thereof,

by a resolution passed by a majority of not less than three-fourths in value of the debenture holders present in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose in accordance with the provisions of the deed or, if the deed makes no provision for summoning meetings, a meeting summoned for the purpose in any manner approved by the court.

[s. 90]

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Perpetual debentures

94. A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the appointed day, shall not be invalid by reason only that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.

[s. 91]

Power to re-issue redeemed debentures in certain cases

95.–(1) Where either before or after the appointed day, a company has redeemed any debentures previously issued, then-

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

(b) unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled,

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) Subject to the provisions of section 96 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 either before or after the appointed day deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(4) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the re-issue or issue was made before or after the appointed day, shall be treated as the issue of a new debenture for the purpose of stamp duty, but

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it shall not be so treated for 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.

[s. 92]

Saving, in case of re-issued debentures of rights of certain mortgagees

96. Where any debentures which were redeemed before 1st October 1932, have been re-issued after that day and before the appointed day or are re-issued after the appointed day, the re-issue of the debentures shall not prejudice and shall be deemed not to have prejudiced any right or priority which any person would have had under or by virtue of any mortgage or charge created before such date.

[s. 93]

Specific performance of contracts to subscribe for debentures

97. 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.

[s. 94]

Payment of debts out of assets subject to floating charge

98.–(1) The following applies in the case of a company where debentures of the company are secured by a charge which, as created, was a floating charge.

(2) Where either a receiver is appointed on behalf of the holders of any debentures of a company secured by a floating charge, or possession is taken by or on behalf of the holders of any of the debentures of any property comprised in or subject to the charge, and the company is not at that time in course of being wound up, the company's preferential debts shall be paid out of assets coming to the hands of the person taking possession in priority to any claims for principal or interest in respect of the debentures.

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(3) "Preferential debts" means the categories of debts listed in section 370, and for the purpose of that section "the relevant date" is the date of possession being taken as mentioned in subsection (2).

(4) Payments made under this section shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors.

[s. 95]

PART IV
REGISTRATION OF CHARGES

Registration of Charges by the Registrar

Registration of charges

99.–(1) Subject to the provisions of this Part, every charge created by a company registered in Tanzania and being a charge to which this section applies shall, so far as any security on the company's property or undertaking is conferred thereby, be void against the liquidator or administrator and any creditor of the company, unless the prescribed particulars of the charge, together with the instrument, if any, by which the charge is created or evidenced are delivered to or received by the Registrar for registration in the manner required by this Part within forty-two days after the date of its creation.

(2) Subsection (1) is without prejudice to any contract or obligation for repayment of the money thereby secured, and when a charge becomes void under this section the money secured thereby shall immediately become payable.

[s. 96]

Charges which have to be registered

100.–(1) Section 99 applies to the following charges:

(a) a charge for the purpose of securing any issue of debentures;

(b) a charge on uncalled share capital of the company;

(c) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale;

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(d) a charge on land, wherever situated, or any interest therein;
(e) a charge on book debts of the company;
(f) a floating charge on the undertaking or property of the company;
(g) a charge on calls made but not paid;
(h) a charge on a ship, or aircraft, or any share in a ship; and
(i) a charge on goodwill, or on any intellectual property.

(2) The Minister may by regulations amend subsection (1) to add any description of charge to, or remove any description of charge from, the charges which may be registered under section 99.

(3) Where a negotiable instrument has been given to secure the payment of any book debts of a company the deposit of the instrument for the purpose of securing an advance to the company shall not for purposes of this section be treated as a charge on those book debts.

(4) The holding of debentures entitling the holder to a charge on land shall, not for the purpose of this section be deemed to be an interest in land.

(5) In this Part-
(a) the expression "charge" includes mortgage;
(b) a charge shall be deemed to be created in the case of an instrument creating a charge on the date of the execution thereof by or on behalf of the company, and in the case of a charge created by deposit of title deeds, on the date of the deposit thereof;
(c) the following are intellectual property-
(i) any patent, trademark, registered design, copyright or design right; and
(ii) any licence under or in respect of such right.

[s. 97]

Formalities of registration of debentures

101.–(1) Where a series of debentures containing, or giving by reference to another instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it shall for purposes of this section be

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sufficient if there are delivered to or received by the Registrar within forty-two days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, with the following particulars-

(a) the total amount secured by the whole series;

(b) the date of the resolution authorising the issue of the series and the date of the covering deed, if any, by which the security is created or defined;

(c) a general description of the property charged; and

(d) the names of the trustees, if any, for the debenture holders,

together with the deed containing the charge or a copy thereof verified in the prescribed manner, or, if there is no such deed, one of the debentures of the series:

Provided that, where more than one issue is made of debentures in the series, there shall be delivered to the Registrar within forty-two days of each issue for entry in the register, particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

(2) Where any commission, allowance of discount has been paid or made either directly or indirectly by a company to any person in consideration of his-

(a) subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company; or

(b) procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be sent for registration under this section shall include particulars as to the amount or rate percent of the commission, discount or allowance so paid or made, but omission to do this shall not affect the validity of the debentures issued:

Provided that, the deposit of any debenture as security for any debt of the company shall not for the purpose of this subsection be treated as the issue of the debentures at a discount.

[s. 98]

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Charges created outside Tanzania

102.–(1) In the case of a charge created out of Tanzania comprising property situated outside Tanzania, the delivery to and the receipt by the Registrar of a copy verified in the prescribed manner of the instrument by which the charge is created or evidenced, shall have the same effect for the purpose of this section as the delivery and receipt of the instrument itself, and forty-two days after the date on which the instrument or copy could, in due course of post, and if dispatched with due diligence, have been received in Tanzania, shall be substituted for forty-two days after the date of the creation of the charge, as the time within which the particulars and instrument or copy are to be delivered to the Registrar.

(2) The instrument creating or purporting to create the charge may be sent for registration under this section notwithstanding that further proceedings may be necessary to make the charge valid or effectual.

[s. 99]

Duty of company to register charges created by company

103.–(1) It shall be the duty of a company to deliver to the Registrar for registration the particulars of every charge created by the company and of the issue of debentures of a series, requiring registration under this Part, but registration of any such charge may be effected on the application of any person interested therein.

(2) Where registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the Registrar on registration.

(3) Where a company fails for a period of forty-two days, or such extended period as the court may have ordered, to deliver to the Registrar for registration the particulars of any charge created by the company, or of the issue of debentures of a series requiring registration, then, unless the registration has been effected on the application of some other person, the company and every officer or other person who is a party to the default shall be liable to a default fine.

[s. 100]

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Duty of company to register charges existing on property acquired

104.–(1) Where after the appointed day a company acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Part, the company shall cause the prescribed particulars of the charge, together with a copy, certified in the prescribed manner to be a correct copy, of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the Registrar for registration within forty-two days after the date on which the acquisition is completed:

Provided that, if a property is situated and the charge was created outside Tanzania, forty-two days after the date on which the copy of the instrument could in due course of post, and if dispatched with due diligence, have been received in Tanzania, shall be substituted for forty-two days after the completion of the acquisition as the time within which the particulars and the copy of the instrument are to be delivered to the Registrar.

(2) Where default is made in complying with this section the company and every officer of the company who is in default shall be liable to a default fine.

[s. 101]

The companies charges register

105.–(1) The Registrar shall keep for each company a register in such form as he thinks fit of charges on property of the company and such register shall consist of a file containing with respect to each charge the following particulars:

(a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, the particulars specified in section 101(1);

(b) in the case of any other charge-

(i) if it is a charge created by the company, the date of its creation, and if it is a charge which was existing on property acquired by the company, the date of the acquisition;

(ii) the amount secured by the charge;

(iii) short particulars of the property charged; and

(iv) the persons entitled to the charge.

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(2) The register kept in pursuance of this section shall be open to any person, and any person may require the Registrar to provide a certificate stating the date on which any specified particulars or other information relating to a charge were delivered to him.

(3) The Registrar shall give to the company a certificate of the registration of any charge registered in pursuance of and within any period allowed under this Part, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this Part as to registration have been complied with.

[s. 102]

Endorsement of certificate of registration on debentures

106.–(1) The company shall cause a copy of every certificate of registration given under section 105(3) to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the charge so registered:

Provided that, this subsection shall not be construed as requiring a company to cause a certificate of registration of any charge so given to be endorsed on any debenture or certificate of debenture stock issued by the company before the charge was created.

(2) Where a person knowingly and willfully authorises or permits the delivery of any debenture or certificate of debenture stock which under the provisions of this section is required to have endorsed on it a copy of a certificate of registration without the copy being so endorsed upon it, he shall, without prejudice to any other liability, be liable to a fine.

[s. 103]

Registration of satisfaction and release of property from charge

107. The Registrar on evidence being given to his satisfaction with respect to any registered charge-

(a) that the debt for which the charge was given has been paid or satisfied in whole or in part; or

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(b) that part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking,

may enter on the register a memorandum of satisfaction in whole or in part, or the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be, and where he registers a memorandum of satisfaction in whole he shall, if required, furnish the company with a copy thereof.

[s. 104]

Extension of time to register charges or rectification

108. The court, on being satisfied that the omission to register a charge within the time required by this Act or that the omission or misstatement of any particular with respect to any such charge or in a memorandum of satisfaction was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the court just and expedient, order that the time for registration shall be extended, or, as the case may be, that the omission or misstatement shall be rectified.

[s. 105]

Registration of enforcement of security

109.–(1) Where a person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall, within seven days from the date of the order or of the appointment under the said powers, give notice of the fact to the Registrar, and the Registrar shall enter the fact in the register of charges.

(2) Where any person appointed as a receiver or manager of the property of a company under the powers contained in any instrument ceases to act as such receiver or manager, he shall,

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within seven days of so ceasing, give the Registrar notice to that effect, and the Registrar shall enter the fact in the register of charges.

(3) Where any person makes default in complying with the requirements of this section, he shall be liable to a fine for every day during which the default continues.

[s. 106]

Provisions as to Company's Register of Charges and as to Copies of Instruments Creating Charges

Copies of instruments creating charges to be kept by company

110.–(1) A company shall cause a copy of every instrument creating any charge requiring registration under this Part to be kept at the registered office of the company.

(2) In the case of a series of uniform debentures, a copy of one debenture of the series shall be sufficient.

[s. 107]

Company's register of charges

111.–(1) Every limited company shall keep at its registered office a register of charges and enter therein all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company, giving in each case a short description of the property charged, the amount of the charge, and, except in the case of securities to bearer, the names of the persons entitled thereto.

(2) Where an officer of the company knowingly and willfully authorises or permits the omission of any entry required to be made in pursuant of this section, he shall be liable to a fine.

[s. 108]

Right to inspect instruments creating charges

112.–(1) The copies of instruments creating any charge requiring registration under this Part with the Registrar, and the register of charges kept in pursuance of section 111, shall be open during business hours to the inspection of any creditor or member of the company without fee, and the register of charges shall also be open to the inspection of any other person

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on payment of such fee as may be prescribed by the Minister in the regulations.

(2) Where inspection of the said copies or register is refused–

(a) any officer of the company refusing inspection, and every director and manager of the company authorising or knowingly or willfully permitting the refusal, shall be liable to a fine and a further fine for every day during which the refusal continues; and

(b) the court may by order compel an immediate inspection of the copies or register.

[s. 109]

PART V
MANAGEMENT AND ADMINISTRATION

CHAPTER I
REGISTERED OFFICE AND NAME

Registered office of company

113.–(1) A company shall, at all times have a registered office to which all communications and notices may be addressed.

(2) Where default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

[s. 110]

Notification of situation of registered office and of change therein

114.–(1) On incorporation, the situation of the company's registered office is that specified in the statement sent to the Registrar under section 15.

(2) The company may change the situation of its registered office by giving notice in the prescribed form to the Registrar and such notice shall be given within fourteen days after the date of the change, and the Registrar shall record the same.

(3) The inclusion in the annual return of a company of a statement as to the situation of its registered office shall not be taken to satisfy the obligations imposed by this section.

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(4) Where default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

[s. 111]

Publication of name by company and form of seal

115.–(1) A company shall-

(a) paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in easily legible letters;

(b) in the case that it has a common seal, have its name engraved in legible letters on its seal; and

(c) have its name and its registered office mentioned in legible letters in all business letters of the company and in all 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 invoices, receipts and letters of credit of the company.

(2) Where a company does not paint or affix its name in a manner directed by this section, the company and every officer of the company who is in default shall be liable to a fine, and if a company does not keep its name painted or affixed in a manner so directed, the company and every officer of the company who is in default shall be liable to a default fine.

(3) Where a company fails to comply with subsections (1) (b) or (1)(c), the company shall be liable to a fine.

(4) Where an officer of a company or any person on its behalf-

(a) uses or authorises the use of any seal purporting to be a seal of the company without its name as required by subsection (1);

(b) issues or authorises the issue of any business letter of the company or any notice or other official publication of the company, or signs or authorises to be signed on behalf of the company any bill of exchange, promissory

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note, endorsement, cheque or order for money or goods wherein its name and registered office are not mentioned in a manner aforesaid; or

(c) issues or authorises the issue of any invoice, receipt or letter of credit of the company wherein its name and registered office is not mentioned in a manner aforesaid,

he shall be liable to a fine 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.

[s. 112]

Statement of Amount of Paid-Up Capital

Statement of amount of capital subscribed and amount paid up

116.–(1) Where any notice, advertisement or other official publication of a company contains a statement of the amount of the authorised capital of the company, such notice, advertisement, or other official publication shall also contain a statement in an equally prominent position and in equally conspicuous characters of the amount of the capital which has been subscribed and the amount paid up.

(2) Any company which makes default in complying with the requirements of this section and every officer who is in default shall be liable to a fine.

[s. 113]

Restriction on Commencement of Business

Restrictions on commencement of business

117.–(1) Where a public company having a share capital has issued an offer document inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers unless it has complied with the requirements as included in the regulations made by the Minister responsible for finance, or the Capital Markets and Securities Authority or such other authority as may be designated for the purpose.

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(2) Where any public company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a default fine. [s. 114]

CHAPTER II
REGISTER OF MEMBERS AND BENEFICIAL OWNERS

Register of members
Acts Nos. 8 of 2020 ss. 11 and 12
5 of 2022 s. 18

118.–(1) Every company shall keep a register of its members and beneficial owners and enter in it, 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-
  (i) the shares held by each member, distinguishing each share by its number (so long as the share has a number), and where appropriate by its class; and
  (ii) 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, 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) of this subsection.

(2) A company having a beneficial owner shall, in the register referred to under subsection (1), make entries of information as provided under section 15(2)(b).

(3) The register of members and beneficial owners shall be kept at the registered office of the company:

Provided that-

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

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(b) 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 at which the work is done,

although it shall not be kept at a place outside Tanzania.

(4) Where the register of members and beneficial owners is not kept at the registered office, the company shall send notice to the Registrar of the place where it is kept and of any change in that place.

(5) Where a company fails to comply with subsection (1), (2), (4) or (6), the company and every officer of the company who is in default shall be liable to a fine of not less than one hundred thousand shillings but not exceeding one million shillings.

(6) A company shall, where there are changes in the beneficial ownership of the company, give notice to the Registrar within thirty days of such changes.

[s. 115]

Index of members
Acts Nos.
8 of 2020 s. 11
5 of 2022 s. 19

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

(2) 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.

(3) The index shall be at all times kept at the same place as the register of members and beneficial owner.

(4) Where default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine of not less than one hundred thousand shillings but not exceeding one million shillings.

[s. 116]

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Repealed

120. [Repealed by Act No. 3 of 2021 s. 6.]

[s. 117]

Inspection of register and index Act No. 8 of 2020 s. 11

121.–(1) Except when the register of members and beneficial owners is closed under the provisions of this Act, the register, and index of the names of the members of a company shall during business hours be open to the inspection of any member without charge and of any other person on payment of such fee as the Minister may prescribe in the regulations.

(2) A member or other person may require a copy of the register, or of any part thereof, on payment of such fee as the Minister may prescribe in the regulations, and the company shall cause any copy so required by any person to be sent to that person within a period of ten days commencing on the day next after the day on which the requirement is received by the company.

(3) Where 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 liable in respect of each offence to a fine.

(4) In the case of any such refusal or default, the court may by order compel an immediate inspection of the register and index or direct that the copies required shall be sent to the person requiring them.

[s. 118]

Non-compliance with requirements as to register owing to agent's default Act No. 8 of 2020 s. 11

122. Where, by virtue of section 118(3)(b), the register of members and beneficial owners is kept at the office of some person other than the company, and by reason of any default of that person the company fails to comply with section 118(4), section 119(3), or section 121 or with any requirements of this Act as to the production of the register, that other person shall be liable to the same penalties as if he were an officer of the company who was in default, and the power of the court under section 121(4) shall extend to the making of orders against that other person and his officers and servants.

[s. 119]

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Power to close register
Act No. 8 of 2020 s. 11

123. A company may, on giving notice by advertisement in a newspaper circulating in the district of Tanzania in which the registered office of the company is situated, close the register of members and beneficial owners for any time or times not exceeding in the whole thirty days in each year.

[s. 120]

Power of court to rectify register
Act No. 8 of 2020 s. 11

124.–(1) Where-

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

(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; or

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

(2) 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) 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 be decided for rectification of the register.

(4) In the case of a company required by this Act to send a list of its members to the Registrar, the court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the Registrar.

[s. 121]

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Trusts not to be entered on register

125. A notice of any trust, expressed, implied or constructive, shall not be entered on the register, or be receivable by the Registrar.

[s. 122]

Register to be evidence
Act No. 8 of 2020 s. 11

126. The register of members and beneficial owners shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein.

[s. 123]

Branch Register

Power to keep branch register
Act No. 8 of 2020 s. 11

127.–(1) A company having a share capital may, if so authorised by its articles, cause to be kept in any country outside Tanzania a branch register of members and beneficial owners resident in that country (in this Act called a "branch register").

(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 its discontinuance, and any such notice shall be given within thirty days of the opening of the office or of the change or discontinuance, as the case may be.

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

[s. 124]

Regulations as to branch register
Act No. 8 of 2020 s. 11

128.–(1) A branch register shall be deemed to be part of the company's register of members and beneficial owners, in this section called "the principal register".

(2) A branch register shall be kept in the same manner in which the principal register is required to be kept by this Act, except that the advertisement before closing the register shall be inserted in some newspaper circulating in the district where the branch register is kept.

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(3) The company shall-

(a) transmit to its registered office a copy of every entry in its branch register as soon as may be after the entry is made;

(b) cause to be kept at the place where the company's principal register is kept a duplicate of its branch register duly entered up; and

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

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

(5) A company may discontinue to keep a branch register, and thereupon all entries in that register shall be transferred to the principal register.

(6) Subject to the provisions of this Act, any company may, by its articles, make such provisions as it may think fit respecting the keeping of branch registers.

(7) Where default is made in complying with subsection (3), the company and every officer of the company who is in default shall be liable to a fine; and where, by virtue of section 118(3)(b), the principal register is kept at the office of some person other than the company and by reason of any default of that person the company fails to comply with subsection (3)(b) of this section, he shall be liable to the same penalty as if he were an officer of the company who was in default.

[s. 125]

Stamp duties in case of shares registered in branch registers

129. An instrument of transfer of a share registered in a branch register, shall be deemed to be a transfer of property situated out of Tanzania, and, unless executed in any part of Tanzania, shall be exempt from stamp duty chargeable in Tanzania.

[s. 126]

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Branch registers of companies kept in Tanzania

130. Where, by virtue of the law in force in any country outside Tanzania, companies incorporated under that law have the power to keep in Tanzania branch registers of their members resident in Tanzania, the Minister may by order published in the *Gazette* direct that section 118(3) except the proviso thereto and sections 121 and 124 shall, subject to any modifications and adaptations specified in the order, apply to and in relation to any such branch registers kept in Tanzania as they apply to and in relation to the registers of companies within the meaning of this Act.

[s. 127]

CHAPTER III
ANNUAL RETURN

Duty to deliver annual returns

131.–(1) A company shall deliver to the Registrar, successive annual returns each of which is made up to a date not later than the "return date", that is-

(a) the anniversary of the company's incorporation; or

(b) if the company's last return delivered in accordance with this Chapter was made up to a different date, the anniversary of that date.

(2) Each return shall-

(a) be in the prescribed form;

(b) contain the information required under the provisions of this Chapter; and

(c) be signed by a Director or the Secretary of the company.

(3) Where a company fails to deliver an annual return in accordance with this Chapter within twenty eight days of the return date, the company and every officer of the company who is in default shall be liable to a fine and, in the case of a continued failure to deliver an annual return, to a default fine.

(4) For the purpose of this subsection, the expression "officer" shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

[s. 128]

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Contents of annual return: general
Acts Nos. 8 of 2020 s. 14 5 of 2021 s. 33

132.–(1) Every annual return shall state the date to which it is made up and shall contain the following information-

(a) the address of the company's registered office;

(b) the type of company whether it is public/ private/ open-ended investment company and its principal business activities;

(c) the name and address of the company secretary;

(d) the name and address of every director of the company;

(i) in the case of each individual director, his nationality, date of birth, business occupation and such particulars of other directorships as are required to be contained in the company's register of directors; and

(ii) in the case of a corporate director, such particulars of other directorships as would be required to be kept in the company's register in the case of an individual;

(e) if the register of members is not kept at the company's registered office, the address of the place where it is kept; and

(f) if any register of debenture holders (or a duplicate of any such register or part of it) is not kept at the company's registered office, the address of the place where it is kept.

[s. 129]

Contents of annual return: share capital and shareholders

133.–(1) The annual return of a company having a share capital shall contain the information specified under subsections (2), (3), (4) and (5) with respect to its share capital and members.

(2) The annual return shall state the total number of issued shares of the company at the date to which the return is made up and the aggregate nominal value of those shares.

(3) The annual return shall state with respect to each class of shares in the company-

(a) the nature of the class; and

(b) the total number and aggregate nominal value of issued shares of that class at the date to which the return is made up.

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(4) The annual return shall contain a list of the names and addresses of a person who-

(a) is a member of the company on the date to which the return is made up; or

(b) has ceased to be a member of the company since the date to which the last return was made up (or, in the case of the first return, since the incorporation of the company),

and if the names are not arranged in alphabetical order the return shall have annexed to it an index sufficient to enable the name of any person in the list to be easily found.

(5) The annual return shall also state-

(a) the number of shares of each class held by each member of the company at the date to which the return is made up; and

(b) the number of shares of each class transferred since the date to which the last return was made up (or, in the case of the first return, since the incorporation of the company) by each member or person who has ceased to be a member, and the dates of registration of the transfers.

(6) The annual return may, if either of the two immediately preceding returns has given the full particulars required by subsections (4) and (5), give only such particulars as relate to persons ceasing to be or becoming members since the date of the last return and to shares transferred since that date.

(7) Subsections (4) and (5) do not require the inclusion of particulars entered in a branch register if copies of those entries have not been received at the company's registered office by the date to which the return is made up and such particulars shall be included in the company's next annual return after they are received.

(8) Where the company has converted any of its shares into stock, the return shall give the corresponding information in relation to that stock, stating the amount of stock instead of the number or nominal value of shares.

[s. 130]

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Annual return to be made by company not having share capital

134. A company not having a share capital shall make an annual return containing the information specified in section 132 and there shall be annexed to the return a statement containing particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Registrar under this Act, or which would have been required so to be registered if created after 1st December 1920.

[s. 131]

Accounts and other documents to be annexed to annual return

135.–(1) There shall be annexed to the annual return-

(a) in the case of all companies other than private companies exempt from the obligation to appoint auditors under section 174 and unlimited companies exempt from the obligation to prepare accounts under section 172-

(i) a copy, certified both by a director and by the secretary of the company to be a true copy, of the accounts laid before the company in a general meeting during the period to which the return relates, including every document required by law to be annexed to the accounts; and

(ii) a copy, certified as above, of the report of the auditors on, and of the report of the directors accompanying, each such balance sheet; and where any such accounts or document required by law to be annexed thereto is in a foreign language, there shall be annexed thereto a certified translation;

(iii) if any such accounts or document required by law to be annexed thereto did not comply with the requirements of the law as in force at the date of the audit with respect to the form of accounts or documents aforesaid, as the case may be, there shall be made such additions to and corrections in the copy as would have been required to be made in the accounts or document in order to make the same comply with the said requirements, and

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the fact that the copy has been so amended shall be stated thereon;

(b) in the case of a private company, a certificate signed by a director of the company 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 or debentures of the company;

(c) in the case of a private company exempt from the obligation to appoint an auditor under section 174, a certificate signed by a director of the company that the qualifying conditions as to turnover and gross assets as provided for in that section have been satisfied-

(i) in the case of a company's first accounting period, in that period; and

(ii) in any other case, in the last completed accounting period and the preceding period.

(2) Where a company fails to comply with this section, the company and every officer of the company who is in default shall be liable to a fine.

(3) Where any certificate required to be given under this section is false in any particular, the company and every officer of the company who is in default shall be liable to a fine.

(4) For the purpose of this subsection, the expression "officer" shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

[s. 132]

CHAPTER IV
MEETINGS AND RESOLUTIONS

Annual general meeting

136.–(1) A 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. At the annual general meeting, the company shall,

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wherever practicable and subject to the provisions of this Act, transact the following business-

(a) to have laid before the members the annual accounts;
(b) to have laid before the members the directors' report;
(c) to have laid before the members the auditors' report;
(d) the appointment of auditors for the period up till the next general meeting at which accounts are laid;
(e) the re-election of any directors retiring and seeking re-election in accordance with any requirement in the company's articles of association;
(f) the election or confirmation of appointment of any directors in accordance with any requirement in the company's articles of association.

(2) So long as a company holds its first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

(3) Not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next.

(4) Where default is made in holding a meeting of the company in accordance with subsection (3), the Registrar 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 the Registrar 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 the directions that may be given under this subsection including a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(5) A general meeting held in pursuance of subsection (4) shall, subject to any directions of the Registrar, 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,

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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.

(6) Where a company resolves that a meeting shall be treated as the company's annual general meeting, a copy of the resolution shall, within fourteen days after the passing thereof, be forwarded to the Registrar for registration.

(7) Where default is made in holding a meeting of the company in accordance with subsection (1), or in complying with any directions of the Registrar under subsection (4), the company and every officer of the company who is in default shall be liable to a fine and if default is made in complying with subsection (6), the company and every officer of the company who is in default shall be liable to a default fine.

[s. 133]

Extraordinary general meeting on members' requisition

137. (1) The directors of a company, notwithstanding anything in its articles, shall, on a members' requisition, immediately proceed duly to convene an extraordinary general meeting of the company.

(2) A members' requisition is a requisition of-

(a) members of the company holding at the date of the deposit of the requisition not less than one-tenth 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

(b) in the case of a company not having a share capital, members of the company representing not less than one-tenth of the total voting rights of all the members having at the said date a right to vote at general meetings of the company.

(3) The requisition must state the objects of the meeting, and must 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.

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(4) Where the directors do not within twenty-one days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists, or any of them representing more than one-half of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of three months from the said date.

(5) A 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.

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

(7) For the purpose of this section, the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required by section 146.

(8) The directors are deemed not to have duly convened a meeting if they convene a meeting more than twenty-eight days after the date of the notice convening the meeting.

[s. 134]

Length of notice for calling meetings

138.–(1) A provision of a company's articles shall be void in so far as it provides for the calling of a meeting of the company other than an adjourned meeting by a shorter notice than twenty-one days; and every such notice shall be in writing.

(2) Save in so far as the articles of a company make other provision in that behalf, not being a provision avoided by subsection (1), a meeting of the company other than an adjourned meeting may be called by twenty-one days' notice in writing.

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(3) A meeting of a company shall, notwithstanding that it is called by shorter notice than that specified in subsection (2) 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 number of the members having a right to attend and vote at the meeting, being a majority together holding not less than ninety-five percent in nominal value of the shares giving a right to attend and vote at the meeting, or, in the case of a company not having a share capital, together representing not less than ninety-five percent of the total voting rights at that meeting of all members.

[s. 135]

General provisions as to meetings and votes

139. The following provisions shall have effect in so far as the articles of the company do not make other provisions in that behalf-

(a) notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by Table A, as for the time being in force;

(b) two or more members holding not less than one-tenth of the issued share capital or, if the company has no share capital, not less than five percent in number of the members of the company, may call a meeting;

(c) two members personally present shall be a quorum;

(d) any member elected by the members present at a meeting may be chairman thereof; and

(e) in the case of a company originally having a share capital, every member shall have one vote in respect of each share or each two hundred shillings of stock held by him, and in any other case every member shall have one vote.

[s. 136]

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Power of court to order meeting

140.–(1) Where 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 the manner prescribed by the articles or this Act, 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.

(2) Where any such order is made, the court may give such ancillary or consequential directions as it thinks expedient; and these 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 meeting called, held and conducted in accordance with an order under this section shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.

[s. 137]

Proxies

141.–(1) A member of a company 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 and vote instead of him, and the proxy appointed to attend and vote shall have the same right as the member to speak at the meeting:

Provided that, unless the articles otherwise provide-

(a) this subsection shall not apply in the case of a company not having a share capital;

(b) a member of a company shall not be entitled to appoint more than one proxy to attend on the same occasion; and

(c) a proxy shall not be entitled to vote except on a poll.

(2) In every notice calling a meeting of a company having a share capital there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled

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to appoint a proxy and that a proxy need not also be a member; and if default is made in complying with this subsection as respects any meeting, every officer of the company who is in default shall be liable to a fine.

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

(4) Where, 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 only some of the members entitled to be sent a notice of the meeting and to vote thereat by proxy, every officer of the company who knowingly and authorised or permits their issue as aforesaid shall be liable to a fine:

Provided that, an officer shall not be liable under this subsection by reason only of the issue to a member at his request in writing 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.

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

[s. 138]

Rights to demand poll

142.–(1) A 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

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(b) of making ineffective a demand for a poll on any such question which is made either-

(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 up on all shares conferring that right.

(2) The instrument appointing a proxy to vote at the meeting of a company shall be deemed also to confer authority to demand or join in demanding a poll, and for the purpose of subsection (1), a demand by a person as proxy for a member shall be the same as a demand by the member.

[s. 139]

Voting on poll

143. On a poll taken at a meeting of a company or a meeting of any class of members 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.

[s. 140]

Representation of corporations at meetings

144.–(1) A corporation, whether a company within the meaning of this Act or not, may-

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

(b) if it is a creditor, including a holder of debentures, of a company within the meaning of this Act, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in

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pursuance of this Act or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person authorised under subsection (1) 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 shareholder, creditor or holder of debentures of that other company.

[s. 141]

Circulation of members' resolutions, etc.

145.–(1) Subject to the following provisions of this section, it shall be the duty of a company, on the requisition in writing of such number of members as is hereinafter specified-

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

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

Provided that, the expense of circulating to members copies of any such resolution or statement shall be borne by the requisitionists unless such resolution or statement is received no less than six weeks from the date of the 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 members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or

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

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(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 or 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 one week before the meeting; and

(b) subject to subsection (1) 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, a 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 not be bound under this section to circulate any statement if, on the application either of the company or of any other person who claims to be aggrieved,

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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 the 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 is in default shall be liable to a fine.

[s. 142]

Special resolutions

146.–(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 as, being entitled so to do, vote in person or, where proxies are allowed, by proxy, at a general meeting of which notice specifying the intention to propose the resolution as a special resolution has been duly given:

Provided that, if it is so agreed by a majority in number of the members having the right to attend and vote at any such meeting, being a majority together holding not less than ninety-five percent in nominal value of the shares giving that right, or, in the case of a company not having a share capital, together representing not less than ninety-five percent 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 twenty-one days' notice has been given.

(2) 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

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of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(3) In computing the majority on a poll demanded on the question that a special resolution be passed, reference shall be had to the number of votes cast for and against the resolution.

(4) For the purpose of this section, notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in the manner provided by this Act or the company's articles.

[s. 143]

Resolutions requiring special notice

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

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

[s. 144]

Registration and copies of certain resolutions and agreements Act No. 5 of 2021 s. 34

148.–(1) A copy of every resolution or agreement to which this section applies shall, within thirty days after the passing or making thereof, be delivered to the Registrar for registration.

(2) Where articles have been registered, a printed copy of every such resolution or agreement for the time being in force shall be embodied in or annexed to every copy of the articles

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issued after the passing of the resolution or the making of the agreement.

(3) Where articles have not been registered, a printed copy of every such resolution or agreement shall be forwarded to any member at his request on payment of such fee as the Minister may prescribe in the regulations.

(4) This section shall apply to-

(a) special resolutions;

(b) resolutions or agreements which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;

(c) resolutions or agreements which have been agreed to by all the members of some class of shareholders but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members; and

(d) resolutions requiring a company to be wound up voluntarily, passed under paragraph (a) of section 336(1).

(5) Where a company fails to comply with subsection (1), the company and every officer of the company who is in default shall be liable to a default fine.

(6) Where a company fails to comply with subsection (2) or subsection (3), the company and every officer of the company who is in default shall be liable to a fine for each copy in respect of which default is made.

(7) For the purpose of subsections (5) and (6), a liquidator of the company shall be deemed to be an officer of the company.

[s. 145]

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Resolutions passed at adjourned meetings

149. Where a resolution is passed at an adjourned meeting of-

(a) a company;

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

(c) the directors of a company,

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

[s. 146]

Written resolutions

150.–(1) Anything which in the case of a company may be done-

(a) by resolution of the company in general meeting; or

(b) by resolution of a meeting of any class of members of the company,

may be done, without a meeting and without any previous notice being required, by resolution in writing signed by or on behalf of all the members of the company who at the date of the resolution would be entitled to attend and vote at such meeting:

Provided that, this section shall not apply to a resolution under section 196(1) removing a director before the expiry of his period of office or a resolution under section 173(7) removing an auditor before the expiry of his term of office.

(2) The signature need not be on a single document provided each is on a document which accurately states the terms of the resolution.

(3) "The date of the resolution" means when the resolution is signed by or on behalf of the last member to sign.

(4) A resolution agreed to in accordance with this section has effect as if passed-

(a) by the company in general meeting; or

(b) by a meeting of the relevant class of members of the company,

and any reference in any enactment to a meeting at which a resolution is passed or to members voting in favour of a resolution shall be construed accordingly.

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(5) A resolution may be agreed to in accordance with this section which would otherwise be required to be passed as a special resolution; and any reference in any enactment to a special resolution includes such a resolution.

[s. 147]

Minutes of proceedings of meetings of company and of directors

151.–(1) A company shall cause minutes of all proceedings of general meetings, and of all proceedings at meetings of its directors 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 held, or by the Chairman of the next succeeding general meeting or meeting of directors, as the case may be, shall be evidence of the proceedings.

(3) Where, in accordance with the provisions of this section, minutes have been made of the proceedings at any general meeting of the company or meeting of directors, then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings thereat to have been duly transacted, and all appointments of directors or liquidators shall be deemed to be valid.

(4) Where a company fails to comply with subsection (1), the company and every officer of the company who is in default shall be liable to a default fine.

[s. 148]

Recording of written resolutions

152.–(1) Where a written resolution is agreed to in accordance with section 150 which has effect as if agreed by the company in general meeting, the company shall cause a record of the resolution and of the signatures to be entered in a book in the same way as minutes of proceedings of a general meeting of the company.

(2) Any such record, if purporting to be signed by a director of the company or by the company secretary, is evidence of the proceedings in agreeing to the resolution and where a record is made in accordance with this section, then until the contrary

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is proved, the requirements of this Act with respect of those proceedings shall be deemed to be complied with.

(3) Section 151(4) applies in relation to a failure to comply with subsection (1) of this section; and section 153 relating to inspection of minute books apply in relation to a record made in accordance with this section as it applies in relation to the minutes of a general meeting.

[s. 149]

Inspection of minute books

153.–(1) The books 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, be open to the inspection of any member without charge.

(2) A member shall be entitled to be furnished within fourteen days after he has made a request in that behalf to the company with a copy of any such minutes at a charge not exceeding the fee prescribed by the Minister in the regulations for every page copied.

(3) Where 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 liable in respect of each offence to a fine and further to a default fine.

(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 be sent to the persons requiring them.

[s. 150]

CHAPTER V
ACCOUNTS AND AUDIT

Keeping of books of accounts

154.–(1) A company shall keep in English or Kiswahili proper books of accounts which are sufficient to show and explain the company's transactions and are such as to-

(a) disclose with reasonable accuracy at any time, the financial position of the company, at that time; and

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(b) enable the directors to ensure that any balance sheet, profit and loss accounts and cash flow statement prepared under this Chapter complies with the requirements of this Act.

(2) The books of accounts shall in particular contain-

(a) entries from day to day of 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.

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

(4) The books of accounts which a company is required to keep under this section shall be preserved by it for six years from the date on which they are made up.

(5) Where any person, being a director of a company, fails to take all reasonable steps to secure compliance by the company with the requirements of this section or section 156, or has by his own willful act been the cause of any default by the company thereunder, he shall, in respect of each offence, on conviction, shall be liable to imprisonment or to a fine or to both:

Provided that-

(a) in any proceedings, against a person in respect of an offence under this section, consisting of a failure to take reasonable steps to secure compliance by the company with the requirements of this section, it shall be a defence to provide that, he had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of seeing that those requirements were complied with and was in a position to discharge that duty; and

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(b) a person shall not be sentenced to imprisonment for such an offence unless, in the opinion of the court, the offence was committed willfuly.

[s. 151]

Accounting period

155. A company's first accounting period shall be the period of more than six months, but not more than eighteen months, beginning with the date of its incorporation, and its subsequent accounting periods shall be successive periods of twelve months beginning immediately after the end of the previous accounting period.

[s. 152]

Duty to prepare individual accounts

156. The directors of every company shall prepare individual accounts for each accounting period and lay before the company in general meeting in accordance with section 169, and such accounts shall indicate-

(a) a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account;

(b) a balance sheet as at the last day of the accounting period; and

(c) a cash flow statement.

[s. 153]

Requirements for accounts

157.–(1) The balance sheet shall give a true and fair view of the state of affairs of the company as at the end of its accounting period, the profit and loss account of a company shall give a true and fair view of the profit or loss of the company for the accounting period, and the cash flow statement of the company shall give a true and fair view of the sources and uses of funds during the accounting period.

(2) Subject to the provisions of this Act, a company's balance sheet, profit and loss account and cash flow statement shall comply with the requirements specified in the regulations prescribed by the Minister, or the National Board of Accountants and Auditors or such other body as the Minister may decide, having regard in either case to generally accepted

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principles of accounting, and the regulations referred to in this section may make special provision for the following types of company-

(a) open-ended investment companies;

(b) statutory corporations; and

(c) private companies exempt from audit under section 174.

(3) Where in special circumstances compliance with any requirements pursuant to subsection (2) is inconsistent with the requirement to give a true and fair view, the directors shall depart from such requirement to the extent necessary to give a true and fair view, particulars of any such departure, the reasons for it and its effect shall be given in a note to the accounts.

(4) Where any person, being a director of a company, fails to take all reasonable steps to secure compliance as respects any accounts laid before the company in general meeting with the provisions of this section and with the other requirements of this Act as to the matters to be stated in the accounts, he shall, in respect of each offence, on conviction, shall be liable to imprisonment or to a fine:

Provided that-

(a) in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the said provisions or the said other requirements, as the case may be, were complied with and was in a position to discharge that duty; and

(b) a person shall not be sentenced to imprisonment for any such offence unless, in the opinion of the court dealing with the case, the offence was committed willfully.

(5) For the purpose of this section and the following provisions of this Act, except where the context otherwise requires-

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(a) any reference to a balance sheet or profit and loss account or individual accounts shall include any notes 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 be taken, in the case of a company not trading for profit, as referring to its income and expenditure account, 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.

[s. 154]

Duty to prepare group accounts

158.–(1) Subject to section 159, where at the end of its accounting period a company is a parent company having subsidiaries, the directors shall as well as preparing individual accounts for the accounting period, prepare group accounts, which shall be laid before the company in general meeting when the parent company's individual accounts are so laid.

(2) The group accounts shall be consolidated accounts comprising of-

(a) a consolidated balance sheet dealing with the state of affairs of the parent company and all its subsidiaries to be dealt with in group accounts;

(b) a consolidated profit and loss account dealing with the profit or loss of the parent company and those subsidiaries; and

(c) a consolidated cash flow statement.

(3) The accounts shall give a true and fair view of the state of affairs as at the end of the accounting period, and the profit or loss and the cash flow for the accounting period, of the undertakings included in the group, so far as concerns members of the company.

(4) Where the accounting period of a subsidiary does not coincide with that of the parent company, the group accounts shall, unless the Registrar on the application or with the consent

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of the parent company's directors otherwise directs, deal with the subsidiary's state of affairs as at the end of its accounting period ending with or last before that of the holding company, and with the subsidiary's profit or loss for that accounting period.

(5) Without prejudice to subsection (2), the group accounts shall comply with the requirements specified in the regulations prescribed pursuant to section 157(2) as to the form and content of the consolidated balance sheet and consolidated profit and loss account and additional information to be provided by way of notes to the accounts, where compliance with such requirements, and the other provisions of this Act to the matters to be included in a company's group accounts or in notes to those accounts, would not be sufficient to give a true and fair view, the necessary additional information shall be given in the accounts or a note to them.

(6) Where in special circumstances, compliance with any requirement pursuant to subsection (5) is inconsistent with the requirement to give a true and fair view, the directors shall depart from such requirement to the extent necessary to give a true and fair view and the particulars of any such departure, the reasons for it and its effect shall be given in a note to the accounts.

[s. 155]

Exemption from requirement to prepare group accounts

159.–(1) A parent company is exempt from the requirement to prepare group accounts in respect of an accounting period if it is itself a subsidiary of another company that does prepare group accounts.

(2) A parent company need not prepare group accounts for an accounting period in relation to which the group headed by that company satisfies the qualifying conditions set out in section 174 and is not an ineligible group.

[s. 156]

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Registrar's power to extend accounting period

160. Where it appears to the Registrar desirable for a holding company or a subsidiary to extend its accounting period so that the subsidiary's accounting period may end with that of the holding company, and for that purpose to postpone the submission of the relevant accounts to a general meeting, the Registrar may on the application or with the consent of the directors of the company whose accounting period is to be extended, direct that, in the case of that company, the submission of accounts to a general meeting, the holding of an annual general meeting or the making of an annual return shall be so postponed.

[s. 157]

Approval and signing of accounts

161.–(1) A company's annual accounts shall be approved by the Board of Directors and signed on behalf of the Board by a director of the company.

(2) The signature shall be on the company's balance sheet.

(3) Every copy of the balance sheet which is laid before the company in general meeting, or which is otherwise circulated, published or issued, shall state the name of the person who signed the balance sheet on behalf of the Board.

(4) The copy of the company's balance sheet which is delivered to the Registrar shall be signed on behalf of the Board by a director of the company.

(5) Where annual accounts are approved which do not comply with the requirements of this Act, every director of the company who is party to their approval and who knows that they do not comply or is reckless as to whether they comply, commits an offence and liable to a fine, for this purpose, every director of the company at the time the accounts are approved, shall be taken to be a party to their approval unless he shows that he took all reasonable steps to prevent their being approved.

(6) Where a copy of the balance sheet-

(a) is laid before the company, or otherwise circulated, published or issued, without the balance sheet having

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been signed as required by this section or without the required statement of the signatory's name being included; or

(b) is delivered to the Registrar without being signed as required by this section,

the company and every officer of it who is in default, commits an offence and shall be liable to a fine.

(7) "Annual accounts" means the individual accounts required by section 156 and any group accounts required by section 158.

[s. 158]

Duty to prepare directors' report

162.–(1) The directors of a company, shall for each accounting period, prepare a report giving a fair review of the development of the business of the company and its subsidiaries during the accounting period and their position at the end of it and the amount, if any, which they recommend should be paid by way of dividend.

(2) The directors' report shall deal, so far as is material with any change during the accounting period 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) Where any person, being a director of a company, fails to take all reasonable steps to comply with the provisions of subsection (1), he shall, in respect of each offence, on conviction, shall be liable to imprisonment or to a fine:

Provided that-

(a) in any proceedings against a person in respect of an offence under subsection (1), it shall be a defence to prove that, he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the provisions of that subsection were complied with and was in a position to discharge that duty; and

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(b) a person shall not be liable to be sentenced to imprisonment for such an offence unless, in the opinion of the court, the offence was committed willful.

[s. 159]

Approval and signing of directors' report

163.–(1) The directors' report shall be approved by the Board of Directors and signed on behalf of the Board by a director.

(2) Every copy of the directors' report which is laid before the company in general meeting, or which is otherwise circulated, published or issued, shall state the name of the person who signed it on behalf of the Board.

(3) The copy of the directors' report which is delivered to the Registrar shall be signed on behalf of the Board by a director or the secretary of the company.

(4) Where a copy of the directors' report-

(a) is laid before the company, or otherwise circulated, published or issued, without the report having been signed as required by this section or without the required statement of the signatory's name being included; or

(b) is delivered to the Registrar without being signed as required by this section,

the company and every officer of it who is in default, commits an offence and shall be liable to a fine.

[s. 160]

Auditors' report

164.–(1) A company's auditors shall make a report to the company's members on all annual accounts of the company of which copies are to be laid before the company in general meeting during their tenure of office.

(2) The auditors' report shall state whether in the auditors' opinion the annual accounts have been properly prepared in accordance with this Act, and in particular whether a true and fair view is given-

(a) in the case of an individual balance sheet, of the state of affairs of the company as at the end of the accounting period;

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(b) in the case of an individual profit and loss account, of the profit or loss of the company for the accounting period;

(c) in the case of the cash flow statement, the cash flow of the company for the accounting period; and

(d) in the case of group accounts, of the state of affairs as at the end of the accounting period, and the profit or loss for the accounting period, of the undertakings included in the consolidation as a whole, so far as concerns, members of the company.

(3) The auditors shall consider whether the information given in the directors' report for the accounting period for which the annual accounts are prepared is consistent with those accounts; and if they are of opinion that it is not, they shall state that fact in their report.

(4) The auditors' report shall be read before the company in general meeting and shall be open to inspection by any member.

[s. 161]

Signature of auditors' report

165.–(1) The auditors' report shall state the names of the auditors and be signed by them.

(2) Every copy of the auditors' report which is laid before the company in general meeting or which is otherwise circulated, published or issued, shall state the names of the Auditors.

(3) The copy of the auditors' report which is delivered to the Registrar shall state the names of the auditors and be signed by them.

(4) Where a copy of the auditors' report is laid before the company or otherwise circulated, published or issued without the required statement of the names of the auditors, or is delivered to the Registrar without the required statement of the names of the auditors or without being signed by them as required by subsection (3), the company and every officer of it who is in default shall be liable to a fine.

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(5) References in this section to signature by the auditors are, where the office of auditor is held by a body corporate or partnership to signature in the name of the body corporate or partnership by a person authorised to sign on its behalf.

[s. 162]

Duties of auditors

166.–(1) A company's auditors shall, in preparing their report, carry out such investigations as will enable them to form an opinion as to-

(a) whether proper accounting records have been kept by the company and proper returns adequate for their audit have been received from branches not visited by them; and

(b) whether the company's individual accounts are in agreement with the accounting records and returns.

(2) Where the auditors are of opinion that proper accounting records have not been kept, or that proper returns adequate for their audit have not been received from branches not visited by them, or if the company's individual accounts are not in agreement with the accounting records and returns, the auditors shall state that fact in their report.

(3) Where the auditors fail to obtain all the information and explanations which, to the best of their knowledge and belief, are necessary for purposes of their audit, they shall state that fact in their report.

(4) Where the requirements of section 209 relating to disclosure of information emoluments and other benefits of directors and others are not complied with in the annual accounts, the auditors shall include in their report, so far as they are reasonably able to do so, a statement giving the required particulars.

[s. 163]

Persons entitled to receive copies of accounts and reports

167.–(1) A copy of the annual accounts, in respect of each accounting period, together with a copy of the directors' report and the auditors' report, shall, not less than twenty-one days before the date of the general meeting at which they are to be

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laid in accordance with section 169, be sent to every member of the company, whether he is or is not entitled to receive notices of general meetings of the company, every holder of debentures of the company, whether he is or is not so entitled, and all persons other than members or holders of debentures of the company, being persons so entitled:

Provided that:

(a) in the case of a company not having a share capital, this subsection shall not require the sending of a copy of the documents above to a member of the company who is not entitled to receive notices of general meetings of the company or to a holder of debentures of the company who is not so entitled;

(b) this subsection shall not require a copy of those documents to be sent-

(i) to a member of the company or a holder of debentures of the company, being in either case a person who is not entitled to receive notices of general meetings of the company and of whose address the company is unaware;

(ii) to more than one of the joint holders of any shares or debentures none of whom are entitled to receive notices; or

(iii) in the case of joint holders of any shares or debentures some of whom are and some of whom are not entitled to receive such notices, to those who are not so entitled; and

(c) where the copies of the documents above are sent less than twenty-one days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by all the members entitled to attend and vote at the meeting.

(2) Where default is made in complying with subsection (1), the company and every officer of the company who is in default shall be liable to a fine.

(3) Subsection (1) shall not have effect in relation to the accounts of a company laid before it before the appointed day,

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and the right of any person to be furnished with a copy of any such accounts and the liability of the company in respect of a failure to satisfy that right shall be the same as they would have been if this Act had not been passed.

[s. 164]

Right to demand copies and reports

168.–(1) A member of a company, whether he is or is not entitled to have sent to him copies of the company's accounts, and any holder of debentures of the company, whether he is or is not so entitled, shall be entitled to be furnished on demand without charge with a copy of the last annual accounts of the company, together with a copy of the directors' report and the auditors' report.

(2) Where, a person makes a demand for any document that he is entitled to receive pursuant to subsection (1), default is made in complying with the demand within seven days, the company and every officer of the company who is in default, shall be liable to a default fine, unless it is proved that, that person had already made a demand for and been furnished with a copy of the document.

[s. 165]

Accounts and copies of reports to be laid before the company in general meeting

169.–(1) The directors of a company shall in respect of each accounting period, lay before the company's general meeting copies of the company's annual accounts, the directors' report and the auditors' report on those accounts.

(2) The period allowed for laying and delivering accounts and reports shall be seven months from the completion of the accounting period in the case of a public company, and ten months from the completion of the accounting period in the case of a private company.

(3) Where the requirements of subsection (1) are not complied with before the end of the period allowed for laying and delivering accounts and reports as set out in subsection (2), every person who immediately before the end of that period was a director of the company, commits an offence and

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shall be liable to a fine and, for continued contravention, to a daily default fine.

(4) It is a defence for a person charged with such offence to prove that he took all reasonable steps for securing that those requirements would be complied with before the end of that period, it is not a defence to prove that the documents in question were not in fact prepared as required by this Part.

[s. 166]

Accounts and reports to be delivered to the Registrar

170.–(1) Subject to subsection (2), the directors of a company shall in respect of each accounting period deliver to the Registrar a copy of the company's annual accounts together with a copy of the directors' report for that accounting period and a copy of the auditors' report on those accounts.

(2) A private company exempt in relation to an accounting period from the requirement to appoint an auditor pursuant to section 174, shall also be exempt from the requirement to deliver copies of the accounts and directors' report to the Registrar under subsection (1) in respect of that accounting period.

(3) Where the requirements of subsection (1) are not complied with before the end of the period allowed for laying and delivering accounts and reports as set out in section 169(2), every person who immediately before the end of that period was a director of the company commits an offence and shall be liable to a fine and, for continued contravention, to a daily default fine.

(4) Where the directors of the company fail to make good the default within fourteen days after the service of a notice on them requiring compliance, the court may on the application of any member or creditor of the company or of the Registrar, make an order directing the directors, or any of them, to make good the default within such time as may be specified in the order; and the court's order may provide that all costs of and incidental to the application shall be borne by the directors.

(5) It is a defence for a person charged with an offence under this section to prove that he took all reasonable steps

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for securing that the requirements of subsection (1) would be complied with before the end of the period allowed for laying and delivering accounts and reports, it is not a defence in any proceedings under this section to prove that the documents in question were not in fact prepared as required by this Part.

[s. 167]

Minister's notice in respect of annual accounts

171.–(1) Where copies of a company's annual accounts have been sent out under section 167, or a copy of a company's annual accounts has been laid before the company in a general meeting or delivered to the Registrar, and it appears to the Minister that there is, or may be, a question whether the accounts comply with the requirements of this Act, he may give notice to the directors of the company indicating the respects in which it appears to him that such a question arises, or may arise.

(2) The notice shall specify a period of not less than one month for the directors to give him an explanation of the accounts or prepare revised accounts.

(3) Where at the end of the specified period, or such longer period as he may allow, it appears to the Minister that no satisfactory explanation of the accounts has been given and that the accounts have not been revised so as to comply with the requirements of the Act, he may if he thinks fit apply to the court for an order that the company prepare and have audited revised accounts.

[s. 168]

Exemption from requirement to deliver accounts and reports for unlimited companies

172.–(1) The directors of an unlimited company are not required to deliver accounts and reports to the Registrar in respect of an accounting period if the conditions set out under subsection (2) are met.

(2) The conditions are that, at no time during the relevant accounting period-

(a) has the company been, to its knowledge, a subsidiary undertaking of an undertaking which was then limited;

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(b) have there been, to its knowledge, exercisable by or on behalf of two or more undertakings which were then limited, rights which if exercisable by one of them would have made the company a subsidiary undertaking of it; or

(c) has the company been a parent company of an undertaking which was then limited:

Provided that, references above to an undertaking being limited at a particular time are to an undertaking under whatever law established the liability of whose members is at that time limited.

(3) The exemption conferred by this section shall not apply if the company is a banking or insurance company or the parent company of a banking or insurance group.

[s. 169]

Auditors

Appointment and remuneration of auditors

173.–(1) Subject to section 174, every company shall at each general meeting at which accounts are laid, appoint an auditor or auditors to hold office from the conclusion of that general meeting until the conclusion of the next general meeting at which accounts are laid.

(2) Notwithstanding the provisions of subsection (1), at any general meeting at which accounts are laid, a retiring auditor, however appointed, shall be deemed to be re-appointed without any resolution being passed unless-

(a) he is not qualified for re-appointment; or

(b) a resolution has been passed at that meeting appointing somebody instead of him or providing expressly that he shall not be re-appointed; or

(c) he has given the company notice in writing of his unwillingness to be re-appointed:

Provided that, where notice is given of an intended resolution to appoint some person or persons in place of a retiring auditor, and by reason of the death, incapacity or

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disqualification of that person or of all those persons, the resolution cannot be proceeded with, the retiring auditor shall not be deemed to be automatically re-appointed by virtue of this subsection.

(3) Where at a general meeting at which accounts are laid no auditors are appointed or re-appointed, the Registrar may appoint a person to fill the vacancy.

(4) The company shall, within seven days of the Registrar'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 liable to a default fine.

(5) Subject as hereinafter provided, the first auditors of a company may be appointed by the directors at any time before the first annual general meeting, and auditors so appointed shall hold office until the conclusion of that meeting:

Provided that-

(a) the company may at a general meeting remove any such auditors and appoint in their place any other persons who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than fourteen days before the date of the meeting; and

(b) where the directors fail to exercise their powers under this subsection, the company in general meeting may appoint the first auditors, and thereupon the said powers of the directors shall cease.

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

(7) A company may by ordinary resolution at any time remove an auditor from office, notwithstanding anything in any agreement between it and him:

Provided that, where such a resolution is passed, the company shall within fourteen days give notice of that fact in the prescribed form to the Registrar, failing which the

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company and every officer of it who is in default commits an offence and shall be liable to a fine and, in the case of continued contravention, to a default fine.

(8) The remuneration of the auditors of a company-

(a) in the case of an auditor appointed by the directors or by the Registrar may be fixed by the directors or by the Registrar, as the case may be;

(b) subject to the foregoing paragraph, shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine; and

(c) shall be stated in a note to the company's annual accounts.

(9) For the purpose of this subsection, any sums paid by the company in respect of the auditors' expenses shall be deemed to be included in the expression "remuneration".

[s. 170]

Exemption from audit for qualifying private companies

174.–(1) A private company shall be exempt from the requirement to appoint an auditor under section 173 in relation to an accounting period if the qualifying conditions set out in subsection (2) are met-

(a) in the case of the company's first accounting period, in that period; and

(b) in the case of any subsequent accounting period, in that period and the preceding period.

(2) The qualifying conditions shall be met in an accounting period in which the following requirements are satisfied-

(a) turnover; and

(b) gross assets,

as specified in either case in regulations prescribed by the Minister having regard to generally accepted principles of accounting.

(3) Where a company's accounting period is not a twelve months period, the maximum figures for turnover shall be proportionately adjusted.

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(4) This section shall not apply where-

(a) the company is, or was at any time within the accounting period to which the accounts relate-

(i) bank or insurance company; or

(ii) dealer or investment adviser; or

(b) the company is, or was at any time during the period, a member of an ineligible group.

(5) A group is ineligible if any of its members is–

(a) a public company or a body corporate which not being a company has power under its constitution to offer its shares or debentures to the public and may lawfully exercise that power;

(b) a bank;

(c) an insurance company; or

(d) a dealer or investment adviser.

(6) A company, which is a member of a group shall not be treated as satisfying the qualifying conditions set out under subsection (2) in relation to an accounting period unless the group is a qualifying group.

(7) A group is a qualifying group in relation to an accounting period if the qualifying conditions are met-

(a) in the case of the parent company's first accounting period, in that period; and

(b) in the case of any subsequent accounting period, in that period and the preceding period.

(8) The qualifying conditions are met by a qualifying group in an accounting period in which it satisfies the following requirements-

(a) aggregate turnover; and

(b) aggregate gross assets,

as specified in either case in the regulations prescribed by the Minister having regard to generally accepted principles of accounting.

[s. 171]

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Directors' statement and certificate

175.–(1) A company is not entitled to the exemption conferred by section 174(1) unless its balance sheet contains a statement by the directors that-

(a) for the accounting period in question, the company satisfied the qualifying conditions specified in section 174(2);

(b) no notice has been deposited under section 176 in relation to its accounts for the accounting period; and

(c) the directors acknowledged their responsibilities for-

(i) ensuring that the company keeps books of account which comply with section 154; and

(ii) preparing accounts which give a true and fair view of the state of affairs of the company, as at the end of the accounting period and of its profit and loss for the accounting period in accordance with the requirements of sections 156 and 157 and which otherwise comply with the requirements of this Act relating to accounts, so far as applicable to the company.

(2) A company satisfying the qualifying conditions set out under section 174(2) shall annex the appropriate certificate to its annual return as provided for under section 135.

(3) The directors' statement and certificate under this section shall be submitted for verification by auditors appointed by the company for that purpose no less than once in every five consecutive accounting periods.

(4) A director of a company making a statement or giving a certificate under this section that is false in a material way without reasonable grounds commits an offence and shall be liable to imprisonment or to a fine or to both.

[s. 172]

Right to require audit

176.–(1) A member or members holding not less in the aggregate than ten percent in nominal value of the issued share capital or any class of it of a private company qualifying as exempt under section 174 or, if such company does not

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have a share capital, not less than ten percent in number of the members of that company, may, by notice in writing deposited at the registered office of the company during an accounting period but not later than one month before the end of that accounting period, require the company to obtain an audit of its accounts for that accounting period.

(2) Where a notice has been deposited under subsection (1), the company shall be obliged to appoint an auditor in respect of the accounting period to which the notice relates.

[s. 173]

Resolutions appointing or removing auditors

177.–(1) Special notice shall be required for a resolution at a general meeting at which accounts are laid-

(a) appointing as auditor a person other than a retiring auditor;

(b) providing expressly that a retiring auditor shall not be re-appointed;

(c) filling a casual vacancy in the office of auditor; or

(d) removing an auditor before the expiration of his term of office.

(2) On receipt of notice of such an intended resolution as above, the company shall immediately send a copy thereof to the retiring auditor, if any, or, as the case may be, the auditor to be removed.

(3) Where notice is given of such an intended resolution as above and the retiring auditor or, as the case may be, the auditor to be removed 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

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by the company, and if a copy of the representations is not sent as above because it has been 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-

(a) to a resolution to remove the first auditors by virtue of section 173(5) as it applies in relation to a resolution that a retiring auditor shall not be re-appointed; and

(b) to an auditor who, of his own volition, deposits notice of his resignation at the company's registered office and submits therewith a statement of circumstances which he considers should be brought to the attention of members or creditors of the company.

[s. 174]

Disqualification from appointment as auditor

178.–(1) A person or firm shall not be qualified for appointment as auditor of a company unless he, or, in the case of a firm, every partner in the firm is a certified public accountant.

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

(a) an officer or employee of a company; or

(b) a person who is a partner of or in the employment of an officer or employee of the company:

Provided that, references in this subsection to an officer or employee shall be construed as not including references to an auditor.

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(3) A person shall not be qualified for appointment as auditor of a company if he is, by virtue of subsection (2), 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.

(4) Where any person who is not qualified so to act is appointed as auditor of a company, the company and every officer in default and every such person who acts as auditor shall be liable to a fine.

[s. 175]

Rights to information

179.–(1) An auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the officers of the company such information and explanation as he thinks necessary for the performance of the duties of the auditors.

(2) An officer of a company commits an offence if he, knowingly or recklessly, makes to the company's auditors a statement whether written or oral which conveys or purports to convey any information or explanation which the auditors require, or are entitled to require, as auditors of the company, and is misleading, false or deceptive in a material particular, a person who commits an offence under this subsection shall be liable to imprisonment or a fine or to both.

(3) The auditors 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 they attend on any part of the business of the meeting which concerns them as auditors.

[s. 176]

Resignation of auditors

180.–(1) An auditor of a company may resign his office by depositing a notice in writing to that effect at the company's registered office, the notice is not effective unless it is accompanied by the statement required by section 182.

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(2) An effective notice of resignation operates to bring the auditor's term of office to an end as of the date on which the notice is deposited or on such later date as may be specified in it.

(3) The company shall within fourteen days of the deposit of a notice of resignation send a copy of the notice to the Registrar of companies and if default is made in complying with this subsection, the company and every officer of it who is in default commits an offence and shall be liable to a fine and, for continued contravention, a default fine.

[s. 177]

Rights of resigning auditors

181.–(1) This section applies where an auditor's notice of resignation is accompanied by a statement of circumstances which he considers should be brought to the attention of members or creditors of the company.

(2) The auditor may deposit with the notice a signed requisition calling on the directors of the company immediately duly to convene an extraordinary general meeting of the company, for the purpose of receiving and considering such explanation of the circumstances connected with his resignation as he may wish to place before the meeting.

(3) The auditor may request the company to circulate to its members-

(a) before the meeting convened on his requisition; or

(b) before any general meeting at which his term of office would otherwise have expired or at which it is proposed to fill the vacancy caused by his resignation,

a statement in writing not exceeding a reasonable length, of the circumstances connected with his resignation.

(4) The company shall, unless the statement is received too late for it to comply-

(a) in any notice of the meeting given to members of the company, state the fact of the statement having been made; and

(b) send a copy of the statement to every member of the company to whom notice of the meeting is or has been sent.

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(5) Where the directors do not within twenty-one days from the date of the deposit of a requisition under this section proceed duly to convene a meeting for a day not more than twenty-eight days after the date on which the notice convening the meeting is given, every director who failed to take all reasonable steps to secure that a meeting was convened as mentioned above, commits an offence and shall be liable to a fine.

(6) Where a copy of the statement mentioned above is not sent out as required 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 statement be read out at a meeting.

(7) Copies of a statement need not be sent out and the statement 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 such an application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

(8) An auditor who has resigned has, notwithstanding his resignation, the rights conferred by section 179 in relation to any such general meeting of the company as is mentioned in subsections (3)(a) or (b), in such a case the references in that section to matters concerning the auditors as auditors shall be construed as references to matters concerning him as a former auditor.

[s. 178]

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Statement by person ceasing to hold office as auditor

182.–(1) Where an auditor ceases for any reason, to hold office, he shall deposit at the company's registered office a statement of any circumstances connected with his ceasing to hold office which he considers should be brought to the attention of the members or creditors of the company or, if he considers

that there are no such circumstances, a statement that there are none.

(2) In the case of resignation, the statement shall be deposited along with the notice of resignation, in the case of failure to seek re-appointment, the statement shall be deposited not less than fourteen days before the end of the time allowed for next appointing auditors, in any other case the statement shall be deposited not later than the end of the period of fourteen days beginning with the date on which he ceases to hold office.

(3) Where the statement is of circumstances which the auditor considers should be brought to the attention of the members or creditors of the company, the company shall within fourteen days of the deposit of the statement either-

(a) send a copy of it to every person who is entitled to be sent copies of the accounts; or

(b) apply to the court.

(4) The company shall, if it applies to the court, notify the auditor of the application.

(5) Unless the auditor receives notice of such an application before the end of the period of twenty-one days beginning with the day on which he deposited the statement, he shall within a further seven days send a copy of the statement to the Registrar.

(6) Where the court is satisfied that the auditor is using the statement to secure needless publicity for defamatory matter-

(a) it shall direct that copies of the statement need not be sent out; and

(b) it may further order the company's costs on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application, and the company shall within fourteen days of the court's decision send to the persons mentioned in subsection (3)(a) a statement setting out the effect of the order.

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(7) Where the court is not satisfied, the company shall within fourteen days of the court's decision-

(a) send copies of the statement to the persons mentioned in subsection (3)(a); and

(b) notify the auditor of the court's decision; and the auditor shall within seven days of receiving such notice send a copy of the statement to the Registrar.

[s. 179]

CHAPTER VI
DIVIDENDS

Dividends

183.–(1) Subject to this section, a company may, in general meeting, declare dividends in respect of any accounting period or other period.

(2) Where the recommendation of the directors of a company with respect to the declaration of a dividend is rejected or varied by the company in general meeting, a statement to that effect shall be included in the relevant directors' annual report and in the relevant annual return.

(3) A company may pay a dividend-

(a) out of its realised profits less its realised losses; or

(b) out of its realised revenue profits less its revenue losses, whether realised or unrealised:

Provided that, the directors reasonably believe that immediately after the dividend has been paid the company will be able to discharge its liabilities as they fall due, and the authorisable value of the company's assets will not be less than the amount of its liabilities.

(4) Notwithstanding anything in this section, an open ended investment company may pay such dividends as may be permitted in the regulations made by the Minister responsible for finance, or by the Capital Markets and Securities Authority or such other authority designated for the purpose.

[s. 180]

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CHAPTER VII
A COMPANY'S MANAGEMENT

Directors and Other Officers

Management of company

184. Subject to any modifications, exceptions, or limitations contained in this Act or in the company's articles, the directors of a company have all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of a company.

[s. 181]

Duty of directors to act in good faith and in best interests of company

185.–(1) Subject to this section, a director of a company, when exercising powers or performing duties, must act honestly and in good faith and in what the director believes to be the best interests of the company.

(2) A director of a company that is a wholly-owned subsidiary may, when exercising powers or performing duties as a director, if expressly permitted to do so by the articles of the company, act in a manner which he believes is in the best interests of that company's holding company even though it may not be in the best interests of the company.

(3) A director of a company that is a subsidiary, but not a wholly-owned subsidiary may, when exercising powers or performing duties as a director, if expressly permitted to do so by the articles of the company and with the prior agreement of the shareholders, other than its holding company, act in a manner which he believes is in the best interests of that company's holding company even though it may not be in the best interests of the company.

(4) A director of a company incorporated to carry out a joint venture between the shareholders may, when exercising powers or performing duties as director in connection with the carrying out of the joint venture, if expressly permitted to do so by the articles of the company, act in a manner which he

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believes is in the best interests of a shareholder or shareholders, even though it may not be in the best interests of the company.

[s. 182]

Directors to have regard to interests of employees

186.–(1) The matters to which the directors of the company are to have regard in the performance of their functions include, in addition to the interests of the members, the interests of the company's employees.

(2) The duty imposed by this section on the directors is owed by them to the company, and the company alone, and is enforceable in the same way as any other fiduciary duty owed to a company by its directors.

[s. 183]

Powers to be exercised for proper purpose

187. A director must exercise his powers for proper purposes.

[s. 184]

Directors' duty of care

188. A director owes the company a duty to exercise the care, skill and diligence which would be exercised in the same circumstances by a reasonable person having both-

(a) the knowledge and experience that may reasonably be expected of a person in the same position as the director; and

(b) any special knowledge and experience which the director has.

[s. 185]

Number of directors Act No. 3 of 2012 s. 25

189. A company shall have at least two directors, save for a limited single shareholder company which shall have one director.

[s. 186]

Secretary Acts Nos. 3 of 2012 s.26 5 of 2021 s. 35

190.–(1) A company shall have a secretary.

(2) It shall be the duty of the directors-

(a) in the case of a public company, to take all reasonable steps to secure a secretary, or each joint secretary of the company who is a person qualified as an advocate, certified public accountant, auditor or such other

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qualifications as the Minister may prescribe in the regulations; and

(b) in the case of a private company, to take all reasonable steps to secure a secretary, or each joint secretary of the company who appears to them to have the requisite knowledge and experience of discharging the functions of the secretary of a private company.

(3) Anything required or authorised to be done by or to the secretary, may, if the office is vacant or there is for any other reason no secretary capable of acting, be done by or to any assistant or deputy secretary, if there is no assistant or deputy secretary capable of acting, by or to any officer of the company authorised generally or specially in that behalf by a resolution of the board of directors.

(4) The requirement for a company to have a secretary as provided for under subsection (1) shall not be necessary for a limited liability single shareholder company.

[s. 187]

Avoidance of acts done by person in dual capacity

191. A provision requiring or authorising 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.

[s. 188]

Validity of acts of directors

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

[s. 189]

Restrictions on appointment of director

193. A person shall not be capable of being appointed as a director of a company by the articles unless, before the registration of the articles or the publication of the offer document, as the case may be, he has by himself or by his agent authorised in writing signed and delivered to the Registrar for registration a consent in writing to act as such director.

[s. 190]

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Share qualifications of directors Act No. 8 of 2020 s. 15

194.–(1) 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.

(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 ceases at any time to hold his qualification.

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

(4) Where after the expiration of the said period or shorter time any unqualified person acts as a director of the company, he shall be liable to a fine for every day that he has been in default.

[s. 191]

Appointment of directors of public companies to be voted on individually

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

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

Provided that-

(a) this subsection shall not be taken as excluding the operation of section 192; and

(b) 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 purpose 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.

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(4) This section shall not apply to a resolution altering the company's articles.

[s. 192]

Removal of directors

196.–(1) A company may by ordinary resolution remove a director before the expiration of his period of office, notwithstanding anything in its articles or in any agreement between it and him:

Provided that, this subsection shall not authorise the removal of a director holding office for life at the commencement of this Act, whether or not subject to retirement under an age-limit by virtue of the articles or otherwise.

(2) Special notice shall be required of any resolution to remove a director under this section or to appoint somebody instead of a director so removed at the meeting at which he is removed, and on receipt of notice of an intended resolution to remove a director under this section, the company shall immediately send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.

(3) Where notice is given of an intended resolution to remove a director under this section and the director concerned makes with respect thereto 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 above because it has been received too late or because of the company's default, the director

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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.

(4) 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.

(5) A person appointed as a director in place of a person removed under this section shall be treated, for the purpose 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.

(6) This section shall not be taken as depriving a person removed thereunder of compensation or damages payable to him in respect of the termination of his appointment as a director or of any appointment terminating with that as the director or as derogating from any power to remove a director which may exist apart from this section.

[s. 193]

Minimum age for appointment of directors
Act No. 5 of 2021 s. 36

197. Subject to the provisions of this section, a person shall not be capable of being appointed as a director of a company which is subject to this section if at the time of his appointment he had not attained the age of eighteen years.

[s. 194]

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Duty of directors to disclose age
Act No. 5 of 2021 s. 37

198.–(1) A person who is appointed or to his knowledge proposed to be appointed as a director of a company subject to section 197 at a time before he has attained the age of eighteen years applicable to him as the director either under this Act or under the company's articles shall give notice of his age to the company:

Provided that, this subsection shall not apply in relation to a person's re-appointment on the termination of a previous appointment as director of the company.

(2) A person who-

(a) fails to give notice of his age as required by this section; or

(b) acts as director under any appointment which is invalid or has terminated by reason of his age, shall be liable to a default fine.

(3) For purposes of subsection (2), a person who has acted as director under an appointment which is invalid or has terminated shall be deemed to have continued so to act throughout the period from the invalid appointment or the date on which the appointment terminated, as the case may be, until the last day on which he is shown to have acted thereunder.

[s. 195]

Provisions as to undischarged bankrupts acting as directors

199.–(1) Where any person who has been declared bankrupt or insolvent by a competent court in Tanzania or elsewhere and has not received his discharge acts as a director of, or directly or indirectly takes part in or is concerned in the management of, any body corporate except with the leave of the court, on conviction he shall be liable to imprisonment, or to a fine or to both.

(2) The leave of the court for the purpose of this section shall not be given unless notice of intention to apply has been served on the official receiver, and it shall be the duty of the official receiver, if he is of opinion that it is contrary to the public interest that any such application should be granted, to attend on the hearing of and oppose the granting of the application.

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(3) In this section the expression "body corporate" includes a body corporate incorporated outside Tanzania which has an established place of business within Tanzania, and the expression "official receiver" means the official receiver in bankruptcy.

[s. 196]

Disqualification orders

200.–(1) Where-

(a) a person is convicted of any offence in connection with the promotion, formation or management of a company;

(b) a person has been persistently in default in relation to provisions of this Act requiring any return, account or other document to be filed with, delivered or sent, or notice of any matter to be given, to the Registrar;

(c) in the course of winding up a company it appears that a person-

(i) has been guilty of any offence for which he is liable, whether he has been convicted or not, under section 386;

(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;

(d) the court has made a declaration under section 385, 386 or 387 that a person is liable to make a contribution to a company's assets; or

(e) the court is satisfied that a person is or has been a director of a company which has at any time become insolvent, whether while he was a director or subsequently, and that his conduct as a director of that company, either alone or taken together with his conduct as a director of any other company or companies makes him unfit to be involved in the management of companies,

the court may make a disqualification order against that person providing that he shall not, without the leave of the court, be a director of or in any way, whether directly or indirectly,

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be concerned or take part in the management of a company for such period not exceeding fifteen years with respect to paragraphs (a), (c), (d) and (e) and not exceeding five years with respect to paragraph (b) as may be specified in the order.

(2) In subsection (1) the expression "the court" includes the court before which he is convicted, as well as any court having jurisdiction to wind up the company, and in relation to the granting of leave means any court having jurisdiction to wind up the company as respects which leave is sought.

(3) A person intending to apply for the making of a disqualification order under this section by the court having jurisdiction to wind up a company shall give not less than ten days' notice of his intention to the person against whom the order is sought, and on the hearing of the application the last-mentioned person may appear and himself give evidence or call witnesses.

(4) An application for the making of a disqualification order under this section by the court having jurisdiction to wind up a company may be made by the official receiver, or by the liquidator or administrator of the company or by a 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 official receiver or the liquidator or administrator, or of any application for leave under this section by a person against whom an order has been made, the official receiver or liquidator or administrator shall appear and call the attention of the court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses.

(5) A disqualification order may be made by virtue of subsection (1)(c)(ii) notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground on which the order is to be made, and for the purposes of the said subsection the expression "officer" shall include any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

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(6) Where a person acts in contravention of an order made under this section, he shall, in respect of each offence, on conviction, shall be liable to imprisonment or to a fine or to both.

[s. 197]

Personal liability for company's debts where person acts while disqualified

201.–(1) A person is personally responsible for all the relevant debts of a company if at any time-

(a) in contravention of a disqualification order he is involved in the management of the company; or

(b) as a person who is involved in the management of the company, he acts or is willing to act on instructions given without the leave of the court by a person whom he knows at that time to be the subject of a disqualification order or to be an undischarged bankrupt.

(2) Where a person is personally responsible under this section for the relevant debts of a company, he is jointly and severally liable in respect of those debts with the company and any other person who, whether under this section or otherwise, is so liable and for the purpose of this section the relevant debts of a company are-

(a) in relation to a person who is personally responsible under subsection (1)(a), such debts and other liabilities of the company as are incurred at a time when that person was involved in the management of the company; and

(b) in relation to a person who is personally responsible under subsection (1)(b), such debts and other liabilities of the company as are incurred at a time when that person was acting or was willing to act on instructions given as mentioned in that subsection.

(3) For the purpose of this section, a person is involved in the management of a company if he is a director of the company or if he is concerned, whether directly or indirectly, or takes part, in the management of the company.

(4) For the purpose of this section a person who, as a person involved in the management of a company, has at any time

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acted on instructions given without the leave of the court by a person whom he knew at that time to be the subject of a disqualification order or to be an undischarged bankrupt is presumed, unless the contrary is shown, to have been willing at any time thereafter to act on any instructions given by that person.

[s. 198]

Prohibition of tax-free payments to directors

202.–(1) It shall not be lawful for a company to pay a director remuneration, whether as director or otherwise, free of any tax assessable on or otherwise by reference to his income, except under a contract which was in force two years before the appointed day and provides expressly and not by reference to the articles, for payment of remuneration as above.

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

(3) This section shall not apply to remuneration due before the appointed day or in respect of a period before the appointed day.

[s. 199]

Prohibition of loans to directors and connected persons

203.–(1) It shall not be lawful for a company to make a loan to a director of the company or a director of its holding company, or in either case a connected person, or to enter into any guarantee or provide any security in connection with a loan made to such a director or connected person as above by any other person:

Provided that, this section shall not apply either-

(a) to anything done by a subsidiary, where the director is its holding company;

(b) subject to subsection (2), to anything done to provide any such person as above with funds to meet expenditure incurred or to be incurred by him for purposes of the

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company or for the purpose of enabling him properly to perform his duties as an officer of the company; or

(c) in the case of a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, to anything done by the company in the ordinary course of that business.

(2) Proviso (b) to subsection (1) shall not authorise 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 above at or before the next following annual general meeting, the loan shall be repaid or the liability under the guarantee or security shall be discharged, as the case may be, within six months from the conclusion of that meeting.

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

(4) For the purpose of this Chapter, a connected person shall mean-

(a) a director's spouse, child or step-child, or a body corporate in which the director or any such other person has a direct or indirect interest of twenty percent or more in the share capital;

(b) a trustee, acting as such, of any trust of which the beneficiaries include any one of the persons mentioned in paragraph (a); and

(c) a partner, acting as such, of the director or any one of the persons mentioned in paragraphs (a) and (b).

[s. 200]

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Approval of company requisite for payment to director for loss of office, *etc.*

204. 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 connection with his retirement from office, without 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 a general meeting.

[s. 201]

Approval of company requisite for any payment, in connection with transfer of its property to director

205.–(1) It shall not be lawful in connection with the transfer of the whole or any part of the undertaking or property of a company for any payment to be made to any director of the company by way of compensation for loss of office, or as consideration for or in connection 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 a general meeting.

(2) Where a payment which is hereby declared to be unlawful 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.

[s. 202]

Duty of director to disclose payment for loss of office etc., made in connection with transfer of shares in company

206.–(1) This section applies where, in connection 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

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of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office.

(2) It shall be the duty of director, in relation to the circumstances provided under subsection (1), to secure that particulars of the proposed payments are included in or sent with any notice of the offer made to shares which are given to any shareholders.

(3) Where-

(a) the director fails to take reasonable steps on the requirements specified under subsection (2);

(b) a person who has been properly required by any such director to include the said particulars in or send them with any such notice as above fails so to do,

he shall be liable to a fine.

(4) Where-

(a) the requirements of subsection (2) are not complied with; or

(b) the making of the proposed payment is not, before the transfer of any shares in pursuance of the offer, approved by a meeting summoned for the purpose of the holders of the shares to which the offer relates and of other holders of shares of the same class as any of the said shares, any sum received by the director on account of the payment shall be deemed to have been received by him 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.

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

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modifications as the Registrar on the application of any person concerned may direct for the purpose of adapting them to the circumstances of the meeting.

(6) Where at a meeting summoned for the purpose of approving any payment as required by subsection (4)(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.

[s. 203]

Provisions supplementary to sections 204, 205 and 206

207.–(1) Where in proceedings for the recovery of any payment as having, by virtue of section 205(2) or section 206(4), been received by any person in trust, it is shown that-

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

(b) the company or any person to whom the transfer was made was privy to that arrangement,

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

(2) Where in connection with any such transfer as is mentioned in either of sections 205 or 206-

(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 purpose of that section, be deemed to have been a payment made to him by way of compensation for loss of office or as consideration for or in connection with his retirement from office.

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(3) References in sections 204, 205 and 206 to payments made to any director of a company by way of compensation for loss of office, or as consideration for or in connection with his 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 purpose of this subsection, the expression "pension" includes any superannuation allowance, superannuation gratuity or similar payment.

(4) With respect to sections 204, 205 and 206, when a vote is taken by the company in general meeting to approve payments of compensation or otherwise to a director, no votes shall be taken on shares held by the director, or a person connected with him as defined in section 203(4).

[s. 204]

Register of directors' share-holdings

208.–(1) A company shall keep a register showing as respects each director of the company, not being its holding company, the number, class 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.

(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 appointed day 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.

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(4) The company shall not, by virtue of anything done for the purpose 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 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.

(6) The Registrar may at any time require a copy of the register.

(7) The register shall also 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.

(8) Where a default is made in complying with subsection (7), the company and every officer of the company who is in default shall be liable to a fine; and if default is made in complying with subsections (1) or (2), or if any inspection required under this section is refused or any copy required thereunder is not sent within a reasonable time, the company and every officer of the company who is in default shall be liable to a fine and further to a default fine.

(9) In the case of any such refusal, the court may, by order, compel an immediate inspection of the register.

(10) For the purpose of this section-

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

(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

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(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.

[s. 205]

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

209.–(1) In any accounts of a company laid before it in general meeting, or in a statement annexed thereto, there shall be shown-

(a) the amount of each of the director's emoluments;

(b) the amount of each of the director's or past director's pensions; and

(c) the amount of any compensation payable to any director or past director in respect of loss of office.

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

(a) include any emoluments paid to or receivable by any person in respect of his services as director of the company or in respect of his services, while director of the company, as director of any subsidiary thereof or otherwise in connection with the management of the affairs of the company or any subsidiary thereof; and

(b) distinguish between emoluments in respect of services as director, whether of the company or its subsidiary, and other emoluments.

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

(a) not include any pension paid or receivable under a pension scheme if the scheme is such that the contributions thereunder are substantially adequate for the maintenance of the scheme, but save as above 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 connection with him, to or by any other person; and

(b) distinguish between pensions in respect of services as director, whether of the company or its subsidiary, and other pensions.

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

(a) include any sums paid to or receivable by a director or past director by way of compensation for the loss of office as a director of the company or for the loss, while the director of the company or on or in connection with his ceasing to be a director of the company, of any other office in connection with the management of the company's affairs or of any office as the director or otherwise in connection with the management of the affairs of any subsidiary thereof; and

(b) distinguish between compensation in respect of the office of the director, whether of the company or its subsidiary, and compensation in respect of other offices.

(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 206, 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 accounting period shall be the sums receivable in respect of that year, whenever paid, or, in the case of sums not receivable in respect of a period the sums paid during that year, so, however, where-

(a) any sums are not shown in the accounts for the relevant accounting period on the ground that the

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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 charged to income tax after the end of the relevant accounting period; those sums shall, to the extent to which the liability is released or not enforced or they are charged as above, 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 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) 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) of this subsection, include that body corporate, whether or not it is or was in fact the company's subsidiary; and

(b) shall for the purpose of subsections (2) and (3) be taken as referring to a subsidiary at the time the services were rendered, and for the purpose of subsection (4) be taken as referring to a subsidiary immediately before the loss of office as director of the company.

(9) For the purpose of this section the expression-

(a) "compensation for loss of office" shall include sums paid as consideration for or in connection with a person's retirement from office;

(b) "contribution" in relation to a pension scheme means any payment, including an insurance premium, paid for

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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;

(c) "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 charged to income tax, any contribution paid in respect of him under any pension scheme and the estimated money value of any other benefits recovered by him otherwise than in cash.

(d) "pension" includes any superannuation allowance, superannuation gratuity or similar payment; and

(e) "pension scheme" means a scheme for the provision of pensions in respect of services as a director or otherwise which is maintained in whole or in part by means of contributions.

[s. 206]

Particulars in accounts of loans to officers, etc.

210.–(1) The accounts which are to be laid before every company in general meeting shall contain particulars showing-

(a) the amount of any loans made during the company's accounting period to any-

(i) officer of the company; or

(ii) person who, after the making of the loan, became during that year an officer of the company,

by the company or a subsidiary thereof or by any other person under a guarantee from or on a security provided by the company or a subsidiary thereof, including any such loans which were repaid during that year; and

(b) the amount of any loans made in the manner aforesaid to any such officer or person as aforesaid at any time before the company's accounting period and outstanding at the expiration thereof.

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(2) Subsection (1) shall not require the inclusion in accounts of particulars of-

(a) a loan made in the ordinary course of its business by the company or a subsidiary thereof, where the ordinary business of the company or, as the case may be, the subsidiary, includes the lending of money; or

(b) a loan made by the company or a subsidiary thereof to an employee of the company or subsidiary, as the case may be, if the loan does not exceed forty thousand shillings and is certified by the directors of the company or subsidiary, as the case may be, to have been made in accordance with any practice adopted or about to be adopted by the company or subsidiary with respect to loans to its employees,

not being, in either case, a loan made by the company under a guarantee from or on a security provided by a subsidiary thereof or a loan made by a subsidiary of the company under a guarantee from or on a security provided by the company or any other subsidiary thereof.

(3) Where in the case of any such accounts as above 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 on the annual accounts of the company, so far as they are reasonably able to do so, a statement giving the required particulars.

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

[s. 207]

General duty to make disclosure for purposes of sections 208, 209 and 210

211.–(1) It shall be the duty of any director of a company to give notice to the company of such matters relating to himself as may be necessary for the purpose of sections 208, 209 and 210.

(2) Any such notice given for the purpose of section 208 shall be in writing and, if it is not given at a meeting of the

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directors, the director 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.

(3) Subsection (1) shall apply as it applies in relation to directors as follows:

(a) for the purpose of section 208, an interest in shares or debentures of a person connected with a director as defined in section 203(4) is to be treated as the director's interest;

(b) for the purpose of section 210, in relation to officers other than directors; and

(c) for the purpose of sections 209 and 210, in relation to persons who are or have at any time during the preceding five years been officers.

(4) A person who makes default in complying with the foregoing provisions of this section shall be liable to a fine.

[s. 208]

Disclosure by directors of interests in contracts

212.–(1) It shall be the duty of a director of a company where he or any connected person is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company to declare the nature of that interest at a meeting of the directors of the company.

(2) In the case of a proposed contract the declaration shall be made-

(a) at the meeting of the directors at which the question of entering into the contract is first taken into consideration; or

(b) where 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,

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 director becomes so interested.

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(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) a member of a specified company or firm or acts for the company in a specified capacity 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 or with himself in such specified capacity; or

(b) to be regarded as interested in any contract which may after the date of the notice be made with any connected person, shall be deemed to be a sufficient declaration of interest in relation to any contract so made:

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) A director who fails to comply with the provisions of this section shall be liable to a fine.

(5) This section shall not 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.

[s. 209]

Register of directors and secretaries

213.–(1) A company shall keep at its registered office a register of its directors and secretaries.

(2) The register shall contain the following particulars with respect to each director-

(a) in the case of an individual, his present name and surname, any former name or surname, his usual address, his nationality and, if that nationality is not his nationality of origin, his nationality of origin, his business occupation, if any, particulars of all other directorships held by him and the date of his birth; and

(b) in the case of a corporation, its corporate name and registered office:

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

(3) The said register shall contain the following particulars with respect to the secretary or, where there are joint secretaries, with respect to each of them-

(a) in the case of an individual, his present name and surname, any former name and surname and his usual address; and

(b) in the case of a corporation, its corporate name and registered office:

Provided that, where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated instead of the said particulars.

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

(5) The periods referred to in subsection (4) are the following:

(a) the period, within which the said return is to be delivered shall be a period of fourteen days from the appointment of the first directors of the company; and

(b) the period within which the said notification of a change is to be delivered shall be fourteen days from the happening thereof:

Provided that, in the case of a return containing particulars with respect to any person who is the company's secretary on

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the appointed day, the period shall be fourteen days from the appointed day.

(6) The register to be kept under this section shall during business hours be open to the inspection of any member of the company without charge and of any other person on payment of such fee as the Minister may prescribe in the regulations for each inspection.

(7) Where any inspection required under this section is refused or if default is made in complying with subsection (1), (2), (3) or (4), the company and every officer of the company who is in default shall be liable to a default fine.

(8) In the case of any such refusal, the court may by order compel an immediate inspection of the register.

(9) For the purpose of this section-

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

(b) references to a former name or surname do not include-

(i) in the case of any person, a former name or surname where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years or has been changed or disused for a period of not less than twenty years; or

(ii) in the case of a married woman, the name or surname by which she was known prior to the marriage.

[s. 210]

Directors' service contracts to be open to inspection

214.–(1) Subject to the following provisions, every company shall keep at an appropriate place-

(a) in the case of each director whose contract of service with the company is in writing, a copy of that contract;

(b) in the case of each director whose contract of service with the company is not in writing, a written memorandum setting out its terms; and

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(c) in the case of each director who is employed under a contract of service with a subsidiary of the company, a copy of that contract or, if it is not in writing, a written memorandum setting out its terms.

(2) All copies and memorandum kept by a company in pursuance of subsection (1), shall be kept at the same place.

(3) The following are appropriate places for the purpose of subsection (1)-

(a) the company's registered office; or

(b) the place where its register of members is kept, if other than its registered office.

(4) A company shall send notice in the prescribed form to the Registrar of companies of the place where copies and memorandum are kept in compliance with subsection (1), and of any change in that place, save in a case in which they have at all times been kept at the company's registered office.

(5) Every copy and memorandum required by subsection (1) to be kept, shall be open to inspection of any member of the company without charge.

(6) Where-

(a) default is made in complying with subsection (1);

(b) an inspection required under subsection (5) is refused; or

(c) default is made for fourteen days in complying with subsection (4),

the company and every officer of it who is in default is liable to a fine and, for continued contravention to a daily default fine.

(7) In the case of a refusal of an inspection of a copy or memorandum required under subsection (5), the court may by order compel an immediate inspection of it.

(8) Subsection (1) shall apply to a variation of a director's contract of service as it applies to the contract.

[s. 211]

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Director's contract of employment for more than five years

215.–(1) This section applies in respect of any term of an agreement whereby a director's employment with the company of which he is a director or, where he is the director of a holding company, his employment within the group is to continue, or may be continued, otherwise than at the instance of the company, whether under the original agreement or under a new agreement entered into in pursuance of it, for a period of more than three years during which the employment-

(a) cannot be terminated by the company by notice; or

(b) can be so terminated only in specified circumstances.

(2) In any case where-

(a) a person is or is to be employed with a company under an agreement which cannot be terminated by the company by notice or can be so terminated only in specified circumstances; and

(b) more than six months before the expiration of the period for which he is or is to be so employed, the company enters into a further agreement, otherwise than in pursuance of a right conferred by or under the original agreement on the other party to it, under which he is to be employed with the company or, where he is a director of a holding company within the group,

this section applies as if to the period for which he is to be employed under that further agreement there were added a further period equal to the unexpired period of the original agreement.

(3) A company shall not incorporate in an agreement such a term as is mentioned in subsection (1), unless the term is first approved by a resolution of the company in a general meeting and, in the case of a director of a holding company, by a resolution of that company in the general meeting.

(4) Approval is not required to be given under this section by any body corporate unless it is a company within the meaning of this Act, or if it is a wholly-owned subsidiary of any body corporate, wherever incorporated.

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(5) A resolution of a company approving such a term as is mentioned in subsection (1), shall not be passed at a general meeting of the company unless a written memorandum setting out the proposed agreement incorporating the term is available for inspection by members of the company both at the-

(a) company's registered office for not less than fifteen days ending with the date of the meeting; and

(b) meeting itself.

(6) A term incorporated in an agreement in contravention of this section is, to the extent that it contravenes this section, void and that agreement and, in a case where subsection (2) applies, the original agreement are deemed to contain a term entitling the company to terminate it at any time by giving reasonable notice.

[s. 212]

Particulars in business documentation

216.–(1) A company shall, in all business documentation on or in which the company's name appears and which is issued or sent by the company to any person in any part of the Territory, state in legible letters with respect to every director being a corporation, the corporate name, and with respect to every director being an individual, the following particulars-

(a) his present name or the initials thereof, and present surname; and

(b) any former names and surnames:

Provided that, if special circumstances exist which render it in the opinion of the Registrar expedient that such an exemption should be granted, the Registrar may by order grant, subject to such conditions as may be specified in the order, exemption from all or any of the obligations imposed by this subsection.

(2) Where a company makes default in complying with this section, every officer of the company who is in default on conviction shall be liable for each offence to a fine, and for the purpose of this subsection, where a corporation is an officer of the company, any officer of the corporation shall be deemed to be an officer of the company.

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(3) For the purpose of this section-

(a) the expression "director" includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act and the expression "officer" shall be construed accordingly;

(b) the expression "initials" includes recognised abbreviation of a name,

and paragraphs (b) and (c) of subsection (9) of section 213 shall apply as they apply for the purposes of that section.

[s. 213]

Avoidance of Provisions in Articles or Contracts Relieving Officers from Liability

Provisions as to liability of officers and auditors

217. 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 virtue of any rule of 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-

(a) this section shall not operate to prevent a company from purchasing and maintaining for any such officer or auditor insurance against any such liability; and

(b) notwithstanding anything in this section, a company may, in pursuance of any such provision as above, 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 connection with any application under section 491, in which relief is granted to him by the court.

[s. 214]

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CHAPTER VIII
INVESTIGATION AND INSPECTION

Investigation by the Registrar

Registrar's power to call for information

218. Where the Registrar believes and has reasonable cause to believe on perusal of any document which a company submits to him under the provisions of this Act, that the document does not disclose a full and fair statement of the matters to which it purports to relate, he may, by a written order, call on the company concerned to produce all or any of the books of the company or to furnish in writing such information or explanation as he may specify in his order and such books shall be produced and such information or explanation shall be furnished by the company within such time as may be specified in the order.

[s. 215]

Duty to furnish information

219.–(1) On receipt of an order under section 218, it shall be the duty of all persons who are or have been officers of the company to produce such books or to furnish such information or explanation so far as lies within their power.

(2) Where any such person refuses or neglects to produce such books or to furnish any such information or explanation he shall be liable to a fine in respect of each offence.

(3) Where, after examination of such books or consideration of such information or explanation, the Registrar is of the opinion that an unsatisfactory state of affairs is disclosed or that a full and fair statement has not been disclosed, the Registrar shall report the circumstances of the case in writing to the court.

[s. 216]

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Inspection

Investigation of company's affairs on application of members

220.–(1) The court may appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as the court directs-

(a) in the case of a company having a share capital, on the application either of not less than one hundred members or of members holding not less than one-tenth of the shares issued;

(b) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members; and

(c) in any case, on application by the company.

(2) The application shall be supported by such evidence as the court may require for the purpose of showing that the applicants have good reason for requiring the investigation, and the court may, before appointing an inspector, require the applicants to give security for payment of the costs of the investigation.

[s. 217]

Investigation of company's affairs in other cases

221. Without prejudice to its powers under section 220, the court-

(a) shall appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as the court directs, if the company by special resolution declares that its affairs ought to be investigated by an inspector appointed by the court;

(b) the court may appoint one or more competent inspectors to investigate the affairs of a company, if it appears to the court upon a report from the Minister that there are circumstances suggesting-

(i) that the company's 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

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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 connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members;

(iii) that its members have not been given all the information with respect to its affairs which they might reasonably expect; or

(iv) that it is desirable to do so; and

(c) the court may appoint one or more competent inspectors to investigate the affairs of a company on receipt of a report from the Registrar under section 219(3).

[s. 218]

Power of inspectors to carry out investigation into affairs of related companies

222. Where an inspector appointed under either of sections 220 or 221 to investigate the affairs of a company thinks it necessary for the purposes of his investigation to investigate also the affairs of any other body corporate which is or has at any relevant time been the company's subsidiary or parent company or a subsidiary of its parent company or a parent company of its subsidiary, he shall have power so to do, 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.

[s. 219]

Production of documents and evidence, on investigation

223.–(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 222 to produce to any 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, to attend before the inspector when required to do so and otherwise to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.

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(2) Where the inspector considers that an officer or agent of the company or other body corporate or any other person is or may be in possession of information relating to a matter which they believe to be relevant to the investigation, they may require him-

(a) to produce to the inspector any documents in his custody or power relating to that matter;

(b) to attend before the inspector; and

(c) otherwise to give to the inspector all assistance in connection with the investigation which he is reasonably able to give.

(3) An 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.

(4) Where any officer or agent of the company or other body corporate refuses to produce to an inspector any book or document which it is his duty under this section so to produce, or refuses to attend before the inspector when required to do so, or refuses to answer any question which is put to him by an 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 witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of court.

(5) Where 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-

(a) the inspector may take part therein either personally or by advocate;

(b) the court may put such questions to that person examined as the court thinks fit; and

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(c) the person examined shall answer all such questions as the court may put or allow to be put to him, but may at his own cost employ an advocate, 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, notwithstanding anything in paragraph (c) of this subsection, 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 expenses of the investigation.

(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.

(7) For the purpose of this section-

(a) "officers or agents shall include past, as well as present;

(b) "agents", in relation to a company or other body corporate shall include the bankers and advocates 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.

[s. 220]

Inspector's report

224.–(1) An inspector may, and, if so directed by the court, shall make interim reports to the court, and on the conclusion of the investigation shall make a final report to the court any such report shall be written or, if the court so directs, printed.

(2) The court shall order that a copy of any report be forwarded to the Minister and may, cause the report to be printed and published in its discretion and order that a copy of any report be forwarded-

(a) to the company;

(b) on request and on payment of the prescribed fee to any other person who is a member of the company or of any other body corporate dealt with in the report by virtue of section 222, or whose interests as a creditor of the company or any such other body corporate as above

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appear to the court to be affected, or whose conduct is referred to in the report;

(c) on request to the applicants for the investigation; and

(d) to the auditors of the company or body corporate as the case may be.

[s. 221]

Proceedings on inspectors' reports

225.–(1) Where from any report made under section 224, it appears to the court that any person has, in relation to the company or to any body corporate whose affairs have been investigated by virtue of section 222, been guilty of any offence for which he is criminally liable, the court shall forward a copy of the report to the Attorney General, and if the Attorney General considers that the case is one in which a prosecution ought to be instituted, he shall institute proceedings accordingly, and it shall be the duty of all officers and agents of the company, past and present, other than the defendant in the proceedings, to give him all assistance in connection with the prosecution which they are reasonably able to give.

(2) Where, in the case of anybody corporate that may be wound up under this Act, it appears to the Attorney General, from any such report as above that it is expedient so to do by reason of any such circumstances as are referred to in subparagraph (i) or (ii) of paragraph (b) of section 221, the Attorney General 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 just and equitable that it should be wound up or a petition for an order under section 236 or both.

(3) Where from any report made or information obtained under this Part it appears to the Attorney General that any civil proceedings ought in the public interest to be brought by anybody corporate, he may himself bring 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 in or in connection with any proceedings brought by virtue of subsection (3).

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(5) For the purpose of subsection (1), section 223(5), shall apply for the purposes of this subsection as it applies for the purposes of that section.

[s. 222]

Expense of investigation

226.–(1) The expenses of and incidental to an investigation by an inspector appointed by the court under this Chapter shall be defrayed in the first instance by the Minister, but the following persons shall, to the extent mentioned, be liable to repay the Minister-

(a) any person who is convicted on a prosecution instituted by the Attorney General as a result of the investigation or who is ordered to pay damages or restore any property in proceedings brought by virtue of section 225(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 above shall be liable to the amount or value of any sums or property recovered by it as a result of those proceedings and any amount for which a body corporate is liable by virtue of this paragraph shall be a first charge on the sums or property recovered; and

(c) unless as a result of the investigation a prosecution is instituted by the Attorney General-

(i) anybody corporate dealt with by the report, where the inspector was appointed otherwise than under section 221(b), shall be liable, except so far as the court otherwise directs; and

(ii) the applicants for the investigation, where the inspector was appointed under section 220, shall be liable to such extent, if any, as the court directs.

(2) The report of an inspector appointed otherwise than under section 221(b), may, if he thinks fit, and shall, if the court 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).

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(3) For the purpose of this section, any costs or expenses incurred by the Attorney General in or in connection with proceedings brought by virtue of section 225(3), including expenses incurred by the Minister by virtue of subsection (4) thereof, shall be treated as expenses of the investigation giving rise to the proceedings.

(4) Any liability to repay the Minister imposed by subsections (1)(a) and (1)(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 subsection (1)(a) shall, subject as aforesaid, be a liability under subsection (1)(c) and any person liable under subsection (1)(a) or (1)(b) or either subparagraph (i) or (ii) of subsection (1)(c) shall be entitled to contribution from any other person liable under the same subsection or subparagraph, as the case may be, according to the amount of their respective liabilities thereunder.

[s. 223]

Inspectors' report to be evidence

227. A copy of any report of an inspector appointed under sections 220 and 221 of 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.

[s. 224]

Powers to make regulations for investigation of ownership of company

228. Regulations may be made by the Minister responsible for finance, or by the Capital Markets and Securities Authority or such other authority designated for the purpose, for the investigation of the ownership of any company or any shares or debentures or 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 its policy.

[s. 225]

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Destroying, mutilating, etc., company documents

229.–(1) An officer of a company or an insurance company who destroys, mutilates, falsifies or is privy to the destruction, mutilation or falsification of a document affecting or relating to the company's property or affairs, or makes or is privy to the making of a false entry in such a document, is guilty of an offence, unless he proves that he had no intention to conceal the state of affairs of the company or defeat the law.

(2) Such a person as above mentioned who fraudulently either parts with, alters or makes an omission in any document or is privy to fraudulent parting with, fraudulent altering or fraudulent making of an omission in, any such document, commits an offence.

(3) A person who commits an offence under this section on conviction, shall be liable to imprisonment or to fine or to both.

(4) In this section, "document" includes information recorded in any form.

[s. 226]

Saving for advocates and bankers

230. The preceding provisions of this Chapter shall not require disclosure to the court or to the Registrar or to an inspector appointed by the court or the Registrar-

(a) by an advocate 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 of any information as to the affairs of any of their customers other than the company.

[s. 227]

Investigation of foreign companies

231.–(1) The provisions of this Chapter shall apply to foreign companies and bodies corporate incorporated outside Tanzania that have at any time carried on business in Tanzania, as they apply to companies incorporated under this Act, subject to the exceptions provided in subsection (2).

(2) The following provisions do not apply to foreign companies and bodies corporate mentioned in subsection (1)-

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(a) section 220(1)(a) and (c), inspections ordered on the application of the company or its members;
(b) section 225(3), power to bring civil proceedings on the companies' behalf.

(3) The Minister may make regulations applying any provisions of this Part to foreign companies or other bodies mentioned in subsection (1) subject to modifications as may be specified therein.

[s. 228]

CHAPTER IX
ARRANGEMENTS AND RECONSTRUCTIONS

Power to compromise with creditors and members

232.–(1) Where a compromise or arrangement is proposed between a company and its creditors, or any class of them, or between the company and its members or any class of them, the court may, on the application, in a summary way, 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 class of creditors, or of the members of the company or class of members, to be summoned in such manner as the court directs.

(2) Where a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement, if sanctioned by the court is binding on all creditors or the class of creditors or on the members or class of members, 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) The court's order under subsection (2) has no effect until an office copy of it has been delivered to the Registrar for registration and a copy of every such order shall be annexed to every copy of the company's memorandum issued after the order has been made or, in the case of a company not having

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a memorandum, of every copy so issued of the instrument constituting the company or defining its constitution.

(4) Where a company makes default in complying with subsection (3), the company and every officer of it who is in default shall be liable to a fine.

(5) For the purpose of this section and section 233-

(a) "company" means any company that may be wound up under this Act; and

(b) "arrangement" includes a recognisation on of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.

[s. 229]

Information as to compromise to be circulated

233.–(1) The following applies where a meeting of creditors or any class of creditors, or of members or any class of members, is summoned under section 232.

(2) With every notice summoning the meeting which is sent to a creditor or member, there shall 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 on those interests of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons.

(3) In every notice summoning the meeting which is given by advertisement, there shall be included either such a statement as above-mentioned or a notification of the place at which, and the manner in which, creditors or members entitled to attend the meeting may obtain copies of the statement.

(4) Where the compromise or arrangement affects the rights of debenture holders of the company, the 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.

(5) Where a notice given by advertisement includes a notification that copies of a statement explaining the effect of

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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.

(6) Where a company makes default in complying with any requirement of this section, the company and every officer of the company who is in default shall be liable to a fine, 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 interest.

(7) 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 purpose of this section, and any person who makes default in complying with this subsection shall be liable to a fine.

[s. 230]

Provisions for facilitating reconstruction and amalgamation of companies

234.–(1) Where an application is made to the court under section 232 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 connection 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

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compromise or arrangement or by any 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 provision to be made for any persons who, within such time and in such manner as the court directs, dissent from the compromise or arrangement; and

(f) such incidental, consequential and supplemental 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, vest freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(3) Where an order is made under this section, every company in relation to which the order is made shall cause a certified copy thereof to be delivered to the Registrar for registration within seven 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 liable to a default fine.

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(4) In this section the expression "property" includes property, rights and powers of every description, and the expression "liabilities" includes duties.

(5) Notwithstanding the provisions of section 232(5), the expression "company" in this section does not include any company other than a company within the meaning of this Act.

[s. 231]

Power to acquire shares of shareholders dissenting from scheme or contract approved by majority

235.–(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 shareholder 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 shareholder 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 shareholders are to be transferred to the transferee company:

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, 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

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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.

(3) Where a shareholder gives notice under subsection (2) 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 shareholders 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 shareholder thinks fit to order.

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(4) 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 shareholder, 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 shareholder 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 shareholder 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:

Provided that, an instrument of transfer shall not be required for any share for which a share warrant is for the time being outstanding.

(5) 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 on trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(6) In this section the expression "dissenting shareholder" includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

(7) In relation to an offer made by the transferee company to shareholders of the transferor company before the appointed day, this section shall have effect with the-

(a) substitution, in subsection (1), for the words "the shares whose transfer is involved, other than shares already held at the date of the offer by, or by a nominee for, the

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transferee company or its subsidiary", of the words "the shares affected" and with the omission of the proviso to that subsection;

(b) omission of subsections (2) and (3); and

(c) omission, in subsection (4), of the words "together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company" and of the proviso to that subsection.

[s. 232]

CHAPTER X
UNFAIR PREJUDICE AND DERIVATIVE ACTIONS

Order in cases of unfair prejudice

236.–(1) A member of a company may make an application to the court by petition for an order on the ground that the company's affairs are being or have been conducted in a manner which is unfairly prejudicial to the interests of its members generally or of some part of its members, including at least himself, or that any actual or proposed act or omission of the company, including an act or omission on its behalf, is or would be so prejudicial, if the court is satisfied that the petition is well founded, it may make such interim or final order as it sees fit for giving relief in respect of the matters complained of.

(2) This section shall apply to a person who is not a member of a company but to whom shares in the company have been transferred by operation of law, as those provisions apply to a member of a company and references to a member or members are to be construed accordingly.

(3) Without prejudice to the generality of subsection (1), the court's order may-

(a) regulate the conduct of the company's affairs in the future;

(b) require the company to refrain from doing or continuing an act complained of by the petitioner or to do an act which the petitioner has complained it has omitted to do;

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(c) authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the court may direct; and

(d) provide 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.

(4) Where an order under this section requires the company not to make any, or any specified, alteration in the memorandum or articles, the company does not then have power without leave of the court to make any such alteration in breach of that requirement.

(5) Where an order under this section makes any alteration in or addition to any company's memorandum or articles, then, notwithstanding anything in any other provision of 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 in 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 provisions of this Act shall apply to the memorandum or articles as so altered or added to accordingly.

(6) A certified 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 fourteen 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 liable to a default fine.

[s. 233]

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Derivative actions

237.–(1) Subject to subsection (2), an "applicant" may, for the purpose of prosecuting, defending or discontinuing an action on behalf of a company, apply to the court for leave to bring an action in the name and on behalf of the company or any of its subsidiaries, or intervene in an action to which any such company or any of its subsidiaries is a party.

(2) An action may not be brought, and intervention in an action may not be made under subsection (1), unless the court is satisfied that-

(a) the applicant has given reasonable notice to the directors of the company or its subsidiary of his intention to apply to the court under subsection (1), if the directors of the company or its subsidiary do not bring, diligently prosecute or defend, or discontinue, the action;

(b) the applicant is acting in good faith; and

(c) it appears to be in the interests of the company or its subsidiary that the action be brought, prosecuted, defended or discontinued.

(3) The court may, in connection with an action brought or intervened in under this section, make such order as it thinks fit, including an order-

(a) authorising the applicant, the Registrar or any other person to control the conduct of the action;

(b) giving directions for the conduct of the action;

(c) directing that any amount adjudged by a defendant in the action be paid, in whole or in part, directly to former and present shareholders or debentures holders of the company or its subsidiary, instead of to the company or its subsidiary; or

(d) requiring the company or its subsidiary to pay reasonable legal fees incurred by the applicant in connection with the action.

[s. 234]

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PART VI
MISCELLANEOUS PROVISIONS RELATING TO INSOLVENCY, ETC

Introduction to provisions on insolvency, etc.

238.–(1) Parts VII to VIII contain provisions relating to a situation of impending or actual insolvency of a company, or a situation where a company has not satisfied a debt or is unable to satisfy its debts, as follows:

(a) the adoption of a company voluntary arrangement, in Part VII, Chapter I, provides for the person conducting the proceedings in the voluntary arrangement is referred to as a "supervisor";

(b) the making by the court of an administration order, in Part VII, Chapter II, provides for the person conducting the proceedings in the administration is referred to as an "administrator";

(c) the winding up of a company by the court, in Part VIII, Chapter II, provides for the person conducting the proceedings in winding up a company is referred to as a "liquidator" and, where the court appoints the official receiver as liquidator, the "official receiver and liquidator";

(d) the voluntary winding up of a company by its members, especially under sections 342-349; in Part VIII, Chapter III, provides for the person conducting the proceedings in a members' voluntary winding up is referred to as a "liquidator";

(e) the voluntary winding up of a company by its creditors especially under sections 350 to 358; in Part VIII, Chapter III, provides for the person conducting the proceedings in a creditors' voluntary winding up is referred to as a "liquidator"; and

(f) the appointment of a "receiver" or "manager" under the powers contained in an instrument, Part IX, especially sections 409(a) and (b) and 410 to 419.

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(g) the appointment of an administrative receiver "under the Powers contained in an instrument (allowing the appointment of a receiver or Manager in respect of the whole or Substantially the whole of a company Property) (Part IX especially section 409 (c) and 420 to 427).

(2) Part X contains provisions relating to the winding up of unregistered companies.

[s. 235]

Holders of office to be insolvency practitioners

239.–(1) Wherein a company, voluntary arrangement is proposed, the nominee must be a person who is qualified to act as an insolvency practitioner in relation to the company where a company voluntary arrangement is approved, the supervisor shall be a person who is so qualified.

(2) Where an administration order is made in relation to a company, the administrator shall be a person who is qualified.

(3) Where a company goes into liquidation, the liquidator shall be a person who is qualified.

(4) Where a provisional liquidator is appointed, he shall be a person who is qualified.

(5) Subsections (3) and (4) are without prejudice to any enactment under which the official receiver is to be, or may be, a liquidator or provisional liquidator.

(6) Where an administrative receiver of a company is appointed, he shall be a person who is qualified.

[s. 236]

Appointment of office of two or more persons

240.–(1) This section applies where an appointment or nomination of an administrator, liquidator or provisional liquidator or administrative receiver-

(a) relates to more than one person; or

(b) has the effect that the office is to be held by more than one person.

(2) The appointment or nomination shall declare whether any act required or authorised under any enactment to be done by the administrator, liquidator or provisional liquidator,

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or administrative receiver is to be done by all or any one or more of the persons holding the office in question.

[s. 237]

Validity of office-holders' acts

241. The acts of an individual as supervisor, administrator, liquidator or provisional liquidator, or administrative receiver of a company are valid notwithstanding any defect in his appointment, nomination or qualifications.

[s. 238]

Supplies of gas, water, electricity, etc.

242.–(1) This section applies in the case of a company where-

(a) a voluntary arrangement under Part VII, Chapter I has taken effect;

(b) an administration order is made in relation to the company;

(c) the company goes into liquidation;

(d) a provisional liquidator is appointed; or

(e) an administrative receiver is appointed,

"the office-holder" means the supervisor of the voluntary arrangement, the administrator, the liquidator or the provisional liquidator, or the administrative receiver, as the case may be.

(2) Where a request is made by or with the concurrence of the office-holder for the giving, after the effective date, of any of the supplies mentioned in the next subsection, the supplier may make it a condition of the giving of the supply that the office-holder personally guarantees the payment of any charges in respect of the supply:

Provided that, shall not make it a condition of the giving of the supply, or do anything which has the effect of making it a condition of the giving of the supply, that any outstanding charges in respect of a supply given to the company before the effective date are paid.

(3) The supplies referred to in subsection (2) are-

(a) supply of gas by a gas supplier;

(b) supply of electricity by an electricity supplier;

(c) supply of water by a water supplier; and

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(d) supply of telecommunications by a telecommunications supplier.

(4) "The effective date" for the purposes of this section is whichever is applicable of the following dates-

(a) the date on which the voluntary arrangement was approved;

(b) the date on which the administration order was made;

(c) the date on which the company went into liquidation;

(d) the date on which the administrative receiver was appointed, or, if he was appointed in succession to another administrative receiver, the date on which the first of his predecessors was appointed.

[s. 239]

PART VII
ADMINISTRATION ORDERS AND COMPANY VOLUNTARY ARRANGEMENTS

CHAPTER I
COMPANY VOLUNTARY ARRANGEMENTS

The Proposal

Those who may propose an arrangement

243.–(1) The directors of a company, other than one for which an administration order is in force, or which is being wound up, may make a proposal under this Chapter to the company and to its creditors for a composition in satisfaction of its debts or a scheme of arrangement of its affairs, herein referred to as a "voluntary arrangement".

(2) A proposal under this Chapter is one which provides for some person "the nominee" to act in relation to the voluntary arrangement either as trustee or otherwise for the purpose of supervising its implementation and the nominee must be a person who is qualified to act as an insolvency practitioner in relation to the company.

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(3) Such a proposal may also be made-

(a) where an administration order is in force in relation to the company, by the administrator; and

(b) where the company is being wound up, by the liquidator.

[s. 240]

Procedure where nominee is not liquidator or administrator

244.–(1) This section applies where the nominee under section 243 is not the liquidator or administrator of the company.

(2) The nominee shall, within twenty eighty days, or such longer period as the court may allow, after he is given notice of the proposal for a voluntary arrangement, submit a report to the court stating-

(a) whether, in his opinion, meetings of the company and of its creditors should be summoned to consider the proposal; and

(b) where in his opinion, such meetings should be summoned, the date on which, and time and place at which, he proposes the meetings should be held.

(3) For the purposes of enabling the nominee to prepare his report, the person intending to make the proposal shall submit to the nominee-

(a) a document setting out the terms of the proposed voluntary arrangement; and

(b) a statement of the company's affairs containing-

(i) such particulars of its creditors and of its debts and other liabilities and of its assets as may be prescribed; and

(ii) such other information as may be prescribed.

(4) The court may, on an application made by the person intending to make the proposal, in a case where the nominee has failed to submit the report required by this section, direct that the nominee be replaced as such by another person qualified to act as an insolvency practitioner in relation to the company.

[s. 241]

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Summoning of meetings

245.–(1) Where the nominee under section 243 is not the liquidator or administrator, and it has been reported to the court that such meetings as are mentioned in section 244(2) should be summoned, the person making the report shall, unless the court otherwise directs, summon those meetings for the time, date and place proposed in the report.

(2) Where the nominee is the liquidator or administrator, he shall summon meetings of the company and of its creditors to consider the proposal for such a time, date and place as he thinks fit.

(3) The persons to be summoned to a creditors' meeting under this section are every creditor of the company of whose claim and address the person summoning the meeting is aware.

[s. 242]

Consideration and Implementation of Proposal

Decisions of meetings

246.–(1) The meetings summoned under section 245 shall decide whether to approve the proposed voluntary arrangement, with or without modifications.

(2) The modifications may include one conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner in relation to the company, but they shall not include any modification by virtue of which the proposal ceases to be a proposal such as is mentioned in section 243.

(3) Where the company is being wound up or an administration order is in force, the court may do one or both of the following, namely-

(a) by order stay all proceedings in the winding up or discharge the administration order; or

(b) give such directions with respect to the conduct of the winding up or the administration as it thinks appropriate for facilitating the implementation of the approved voluntary arrangement.

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(4) The court shall not make an order under subsection (3)(a)-

(a) at any time before the end of the period of twenty eighty days beginning with the first day on which each of the reports required by subsection (8) has been made to the court; or

(b) at any time when an application under section 248 or an appeal in respect of such an application is pending, or at any time in the period within which such an appeal may be brought.

(5) A meeting summoned under section 245 shall not approve any proposal or modification which affects the right of a secured creditor of the company to enforce his security, except with the concurrence of the creditor concerned.

(6) A meeting summoned under section 245 shall not approve any proposal or modification under which-

(a) any preferential debt of the company is to be paid otherwise than in priority to such of its debts as are not preferential debts; or

(b) a preferential creditor of the company is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt,

however, the meeting may approve such a proposal or modification with the concurrence of the preferential creditor concerned.

(7) Subject to this section, each of the meetings shall be conducted in accordance with the relevant rules.

(8) After the conclusion of either meeting in accordance with the rules, the chairman of the meeting shall report the result of the meeting to the court, and, immediately after reporting to the court, shall give notice of the result of the meeting to such persons as may be prescribed.

(9) References in this section to "preferential debts" and "preferential creditors" are to be read in accordance with section 370.

[s. 243]

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Effect of approval

247.–(1) This section has effect where each of the meetings summoned under section 245 approves the proposed voluntary arrangement either with the same modifications or without modifications.

(2) The approved voluntary arrangement-

(a) takes effect as if made by the company at the creditors' meeting; and

(b) binds every person who in accordance with the rules had notice of, and was entitled to vote at, that meeting, whether or not he was present, or represented at the meeting as if he were a party to the voluntary arrangement.

[s. 244]

Challenge of decisions

248.–(1) Subject to this section, an application to the court may be made, by any of the persons specified below, on one or both of the following grounds-

(a) that a voluntary arrangement approved at the meetings summoned under section 245 unfairly prejudices the interests of a creditor, member or contributory of the company; or

(b) that there has been some material irregularity at or in relation to either of the meetings.

(2) The persons who may apply under this section are-

(a) a person entitled, in accordance with the rules, to vote at either of the meetings;

(b) the nominee or any person who has replaced him under section 244 or 246; and

(c) where the company is being wound up or an administration order is in force, the liquidator or administrator.

(3) An application under this section shall not be made after the end of the period of twenty eighty days beginning with the first day on which each of the reports required by section 246 has been made to the court.

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(4) Where on such an application the court is satisfied as to either of the grounds mentioned in subsection (1), it may do one or both of the following-

(a) revoke or suspend the approvals given by the meetings or, in a case falling within subsection (1)(b), any approval given by the meeting in question;

(b) give a direction to any person for the summoning of further meetings to consider any revised proposal the person who made the original proposal may make or, in a case falling within subsection (1)(b), a further company or creditors' meeting to reconsider the original proposal.

(5) Where at any time after giving a direction under subsection (4)(b), for the summoning of meetings to consider a revised proposal the court is satisfied that the person who made the original proposal does not intend to submit a revised proposal, the court shall revoke the direction and revoke or suspend any approval given at the previous meetings.

(6) In a case where the court, on an application under this section with respect to any meeting-

(a) gives a direction under subsection (4)(b); or

(b) revokes or suspends an approval under subsection (4)(a) or (5), the court may give such supplemental directions as it thinks fit and, in particular directions with respect to things done since the meeting under any voluntary arrangement approved by the meeting.

(7) Except in pursuance of the preceding provisions of this section, an approval given at a meeting summoned under section 245 is not invalidated by any irregularity at or in relation to the meeting.

[s. 245]

Implementation of proposal

249.–(1) This section applies where a voluntary arrangement approved by the meetings summoned under section 245 has taken effect.

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(2) The person who is for the time being carrying out in relation to the voluntary arrangement the functions conferred-

(a) by virtue of the approval on the nominee; or

(b) by virtue of section 243 or 245 on a person other than the nominee, shall be known as the supervisor of the voluntary arrangement.

(3) Where any of the company's creditors or any other person is dissatisfied by the act, omission or decision of the supervisor, he may apply to the court and on the application the court may-

(a) confirm, reverse or modify any act or decision of the supervisor;

(b) give him directions; or

(c) make such other order as it thinks fit.

(4) The supervisor-

(a) may apply to the court for directions in relation to any particular matter arising under the voluntary arrangement; and

(b) shall be included among the persons who may apply to the court for the winding up of the company or for an administration order to be made in relation to it.

(5) The court may, whenever it is expedient-

(a) to appoint a person to carry out the functions of the supervisor; and

(b) difficult or impracticable for an appointment to be made without the assistance of the court,

make an order appointing a person who is qualified to act as an insolvency practitioner in relation to the company, either in substitution for the existing supervisor or to fill a vacancy.

(6) The power conferred by subsection (5) is exercisable so as to increase the number of persons exercising the functions of supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.

[s. 246]

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CHAPTER II
ADMINISTRATION ORDERS

Making of Administration Order

Power of court to make order

250.–(1) Subject to this section, where the court

(a) is satisfied that a company is or is likely to become unable to pay its debts, within the meaning given to that expression by section 283; and

(b) considers that the making of an order under this section would be likely to achieve one or more of the purposes mentioned below,

the court may make an administration order in relation to the company.

(2) An administration order is an order directing that, during the period for which the order is in force, the affairs, business and property of the company shall be managed by a person, "the administrator" appointed for the purpose by the court.

(3) The purposes for whose achievement an administration order may be made are-

(a) the survival of the company, and the whole or any part of its undertaking, as a going concern;

(b) the sanctioning under section 232 of a compromise or arrangement between the company and any such persons as are mentioned in that section; and

(c) a more advantageous realisation of the company's assets than would be effected on a winding up,

and the order shall specify the purpose or purposes for which it is made.

(4) An administration order shall not be made in relation to a company after it has gone into liquidation, nor where it is-

Cap. 394

(a) an insurer as defined in the Insurance Act; or

(b) a bank.

[s. 247]

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Application for order

251.–(1) An application to the court for an administration order shall be by petition presented either by the company or the directors, or by a creditor or creditors, including any contingent or prospective creditor or creditors, or by all or any of those parties, together or separately.

(2) Where a petition is presented to the court-

(a) notice of the petition shall be given immediately to any person who has appointed, or is or may be entitled to appoint, an administrative receiver of the company, and to such other persons as may be prescribed; and

(b) the petition shall not be withdrawn except with the leave of the court.

(3) Where the court is satisfied that there is an administrative receiver of the company, the court shall dismiss the petition unless it is also satisfied either-

(a) that the person by whom or on whose behalf the receiver was appointed has consented to the making of the order; or

(b) that, where an administration order were made, any security by virtue of which the receiver was appointed would-

(i) be void against the administrator to any extent by virtue of section 99, registration of company charges; or

(ii) be liable to be released or discharged under section 371 or section 372, transactions at an undervalue and preferences; and

(iii) be avoided under section 375, avoidance of floating charges.

(4) Subject to subsection (3), on hearing a petition, the court may dismiss it, adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit.

(5) Without prejudice to the generality of subsection (4), an interim order under that subsection may restrict the exercise of any powers of the directors or of the company, whether

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by reference to the consent of the court or of an insolvency practitioner.

(6) In this Part, "administrative receiver" shall have the meaning set out in section 409(c).

[s. 248]

Effect of application

252.–(1) During the period beginning with the presentation of a petition for an administration order and ending with the making of such an order or the dismissal of the petition-

(a) a resolution may not be passed or order made for the winding up of the company;

(b) steps may not be taken to enforce any security over the company's property or to repossess goods in the company's possession under any hire-purchase agreement, except with the leave of the court and subject to such terms as the court may impose; and

(c) other proceedings, execution or other legal process may not be commenced or continued, and no distress may be levied, against the company or its property except with the leave of the court and subject to such terms as aforesaid.

(2) Nothing in subsection (1) requires the leave of the court-

(a) for the presentation of a petition for the winding up of the company;

(b) for the appointment of an administrative receiver of the company; or

(c) for the carrying out by such a receiver, whenever appointed of any of his functions.

(3) Where-

(a) a petition for an administration order is presented at a time when there is an administrative receiver of the company; and

(b) the person by or on whose behalf the receiver was appointed has not consented to the making of the order,

the period mentioned in subsection (1) is deemed not to begin unless and until that person so consents.

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(4) References in this section and the next to hire-purchase agreements include conditional sale agreements, chattel leasing agreements and retention of title agreements.

[s. 249]

Effect of administration order

253.–(1) On the making of an administration order-

(a) any petition for the winding up of the company shall be dismissed; and

(b) any administrative receiver of the company shall vacate office.

(2) Where an administration order has been made, any receiver of part of the company's property shall vacate office on being required to do so by the administrator.

(3) During the period for which an administration order is in force no-

(a) resolution may be passed or order made for the winding up of the company;

(b) administrative receiver of the company may be appointed;

(c) other steps may be taken to enforce any security over the company's property, or to repossess goods in the company's possession under any hire-purchase agreement, except with the consent of the administrator or the leave of the court and subject, where the court gives leave, to such terms as the court may impose; and

(d) other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the consent of the administrator or the leave of the court and subject, where the court gives leave, to such terms as aforesaid.

(4) Where at any time an administrative receiver of the company has vacated office under subsection (1)(b), or a receiver of part of the company's property has vacated office under subsection (2)-

(a) his remuneration and any expenses properly incurred by him; and

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(b) any indemnity to which he is entitled out of the assets of the company,

shall be charged on and, subject to subsection (3), paid out of any property of the company which was in his custody or under his control at that time in priority to any security held by the person by or on whose behalf he was appointed.

(5) Neither an administrative receiver who vacates office under subsection (1)(b) nor a receiver who vacates office under subsection (2) is required on or after so vacating office to take any steps for the purpose of complying with any duty imposed on him by section 370, duty to pay preferential creditors.

[s. 250]

Notification of order

254.–(1) An invoice, order for goods or business letter which, at a time when an administration order is in force in relation to a company, is issued by or on behalf of the company or the administrator, being a document on or in which the company's name appears, shall also contain the administrator's name and a statement that the affairs, business and property of the company are being managed by the administrator.

(2) Where default is made in complying with this section, the company and any of the following persons who without reasonable excuse authorised or permits the default, namely, the administrator and any officer of the company, shall be liable to a fine.

[s. 251]

Administrators

Appointment of administrator

255.–(1) The administrator of a company shall be appointed either by the administration order or by an order under subsection (2).

(2) Where a vacancy occurs by death, resignation or otherwise in the office of the administrator, the court may by order fill the vacancy.

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(3) An application for an order under subsection (2) may be made-

(a) by any continuing administrator of the company; or

(b) where there is no such administrator, by creditors' committee established under section 267; or

(c) where there is no such administrator and no such committee, by the company or the directors or by any creditor or creditors of the company.

[s. 252]

General powers

256.–(1) The administrator of a company may do all such things as may be necessary for the management of the affairs, business and property of the company, and in particular shall have the following powers to-

(a) take possession of, collect and get in the property of the company and, for that purpose, to take such proceedings as may seem to him expedient;

(b) sell or otherwise dispose of the property of the company by public auction or private contract;

(c) raise or borrow money and grant security therefor over the property of the company;

(d) appoint a solicitor or accountant or other professionally qualified person to assist him in the performance of his functions;

(e) bring or defend any action or other legal proceedings in the name and on behalf of the company;

(f) bring or defend any arbitration on any question affecting the company;

(g) effect and maintain insurances in respect of the business and property of the company;

(h) use the company's seal;

(i) do all acts and to execute in the name and on behalf of the company any deed, receipt or other document;

(j) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company;

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(k) appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent and power to employ and dismiss employees;

(l) do all such things, including the carrying out of works, as may be necessary for the realisation of the property of the company;

(m) make any payment which is necessary or incidental to the performance of his functions;

(n) carry on the business of the company;

(o) establish subsidiaries of the company;

(p) transfer to subsidiaries of the company the whole or any part of the business and property of the company;

(q) grant or accept a surrender of a lease or tenancy of any of the property of the company, and to take a lease or tenancy of any property required or convenient for the business of the company;

(r) make any arrangements or compromise on behalf of the company;

(s) call up any uncalled capital of the company;

(t) rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the company and to receive dividends, and to accede to trust deeds for the creditors of any such person;

(u) present or defend a petition for the winding up of the company;

(v) change the situation of the company's registered office; and

(w) do all other things incidental to the exercise of the foregoing powers.

(2) The administrator also has power to-

(a) remove any director of the company and to appoint any person to be a director of it, whether to fill a vacancy or otherwise; and

(b) call any meeting of the members or creditors of the company.

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(3) The administrator may apply to the court for directions in relation to any particular matter arising in connection with the carrying out of his functions.

(4) Any power conferred on the company or its officers by this Act or by the memorandum or articles of association, which could be exercised in such a way as to interfere with the exercise by the administrator of his powers is not exercisable except with the consent of the administrator, which may be given either generally or in relation to particular cases.

(5) In exercising his powers the administrator is deemed to act as the company's agent.

(6) A person dealing with the administrator in good faith and for value is not concerned to inquire whether the administrator is acting within his powers.

[s. 253]

Power to deal with charged property, etc

257.–(1) The administrator of a company may dispose of or otherwise exercise his powers in relation to any property of the company which is subject to a security to which this subsection applies as if the property were not subject to the security.

(2) Where, on an application by the administrator, the court is satisfied that the disposal, with or without other assets, of-

(a) any property of the company subject to a security to which this subsection applies; or

(b) any goods in the possession of the company under a hire-purchase agreement,

would be likely to promote the purpose or one or more of the purposes specified in the administration order, the court may by order authorise the administrator to dispose of the property as if it were not subject to the security or to dispose of the goods as if all rights of the owner under the hire-purchase agreement were vested in the company.

(3) Subsection (1) applies to any security which, as created, was a floating charge, and subsection (2) applies to any other security.

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(4) Where property is disposed of under subsection (1), the holder of the security has the same priority in respect of any property of the company directly or indirectly representing the property disposed of as he would have had in respect of the property subject to the security.

(5) It shall be a condition of an order under subsection (2) that-

(a) the net proceeds of the disposal; and

(b) where those proceeds are less than such amount as may be determined by the court to be the net amount which would be realised on a sale of the property or goods in the open market by a willing vendor, such sums as may be required to make good the deficiency,

shall be applied towards discharging the sums secured by the security or payable under the hire-purchase agreement.

(6) Where a condition imposed in pursuance of subsection (5) relates to two or more securities, that condition requires the net proceeds of the disposal and, where paragraph (b) of that subsection applies, the sums mentioned in that paragraph to be applied towards discharging the sums secured by those securities in the order of their priorities.

(7) An office copy of an order under subsection (2) shall, within fourteen days after the making of the order, be sent by the administrator to the Registrar.

(8) Where the administrator without reasonable excuse fails to comply with subsection (7), he shall be liable to a fine and, for continued contravention, to a default fine.

(9) References in this section to hire-purchase agreements include conditional sale agreements, chattel leasing agreements and retention of title agreements.

[s. 254]

General duties

258.–(1) The administrator of a company shall, on his appointment, take into his custody or under his control all the property to which the company is or appears to be entitled.

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(2) The administrator shall manage the affairs, business and property of the company-

(a) at any time before proposals have been approved, with or without modifications, under section 265, in accordance with any directions given by the court; and

(b) at any time after proposals have been so approved, in accordance with those proposals as revised, whether by him or a predecessor of his.

(3) The administrator shall summon a meeting of the company's creditors if-

(a) he is requested, in accordance with rules prescribed by the Minister in regulations, in this Part, the "rules", to do so by one-tenth, in value, of the company's creditors; or

(b) he is directed to do so by the court.

[s. 255]

Discharge or variation of administration order

259.–(1) The administrator of a company may at any time apply to the court for the administration order to be discharged, or to be varied so as to specify an additional purpose.

(2) The administrator shall make an application under this section if-

(a) it appears to him that the purpose or each of the purposes specified in the order either has been achieved or is incapable of achievement; or

(b) he is required to do so by a meeting of the company's creditors summoned for the purpose in accordance with the rules.

(3) On the hearing of an application under this section, the court may by order, discharge or vary the administration order and make such consequential provision, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order as it thinks fit.

(4) Where the administration order is discharged or varied the administrator shall, within fourteen days after the making of the order effecting the discharge or variation, send an office copy of that order to the Registrar.

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(5) Where the administrator without reasonable excuse fails to comply with subsection (4), he shall be liable to a fine and, for continued contravention, to a default fine.

[s. 256]

Vacation of office

260.–(1) The administrator of a company may at any time be removed from office by order of the court and may, in the circumstances prescribed in the rules, resign his office giving notice of his resignation to the court.

(2) The administrator shall vacate office if-

(a) he ceases to be qualified to act as an insolvency practitioner in relation to the company; or

(b) the administration order is discharged.

(3) Where at any time a person ceases to be administrator, the following paragraphs apply-

(a) the administrator's remuneration and any expenses properly incurred by him shall be charged on and paid out of any property of the company which is in his custody or under his control at that time in priority to any security to which section 257(1) then applies.

(b) any sums payable in respect of debts or liabilities incurred, while he was administrator, under contracts entered into by him or a predecessor of his in the carrying out of his or the predecessor's functions shall be charged on and paid out of any such property as is mentioned in subsection 3(a) in priority to any charge arising under that subsection.

(c) any sums payable in respect of liabilities incurred, while he was administrator, under contracts of employment adopted by him or a predecessor of his in the carrying out of his or the predecessor's functions shall, to the extent that the liabilities are qualifying liabilities, be charged on and paid out of any such property as it is mentioned in subsection 3(a) and enjoy the same priority as any sums to which subsection 3(b) applies:

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Provided that, for this purpose, the administrator is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within fourteen days after his appointment.

(4) For the purpose of subsection 3(c), a liability under a contract of employment is a qualifying liability if-

(a) it is a liability to pay a sum by way of wages or salary or contribution to an occupational pension scheme; and

(b) it is in respect of services rendered wholly or partly after the adoption of the contract.

(5) There shall be disregarded for the purposes of subsection 3(c) so much of any qualifying liability as represents payment in respect of services rendered before the adoption of the contract.

[s. 257]

Release of administrator

261.–(1) A person who has ceased to be the administrator of a company has his release with effect from the following time-

(a) in the case of a person who has died, the time at which notice is given to the court in accordance with the rules that he has ceased to hold office; or

(b) in any other case, such time as the court may determine.

(2) Where a person has his release under this section, he is, with effect from the time specified above, discharged from all liability both in respect of acts or omissions of his in the administration and otherwise in relation to his conduct as administrator.

(3) This section shall not prevent the exercise, in relation to a person who has had his release as above, of the court's powers under section 385.

[s. 258]

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Ascertainment and Investigation of Company's Affairs

Information to be given by administrator

262.–(1) Where an administration order has been made, the administrator shall-

(a) immediately send to the company and publish in the *Gazette* or newspaper widely circulating in Tanzania, a notice of the order; and

(b) within twenty eighty days after the making of the order, unless the court otherwise directs, send such a notice to all creditors of the company, so far as he is aware of their addresses.

(2) Where an administration order has been made, the administrator shall also, within fourteen days after the making of the order, send an office copy of the order to the Registrar and to such other persons as may be prescribed in the rules.

(3) Where the administrator without reasonable excuse fails to comply with this section, he shall be liable to a fine and, for continued contravention, to a default fine.

[s. 259]

Statement of affairs

263.–(1) Where an administration order has been made, the administrator shall at once require some or all of the persons mentioned below to make out and submit to him a statement in the prescribed form as to the affairs of the company.

(2) The statement shall be verified by affidavit by the persons required to submit it and shall show-

(a) particulars of the company's assets, debts and liabilities;

(b) the names and addresses of its creditors;

(c) the securities held by them respectively;

(d) the dates when the securities were respectively given; and

(e) such further or other information as may be prescribed.

(3) The persons referred to in subsection (1) are those-

(a) who are or have been officers of the company;

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(b) who have taken part in the company's formation at any time within one year before the date of the administration order;

(c) who are in the company's employment or have been in its employment within that year, and are in the administrator's opinion capable of giving the information required; and

(d) who are or have been within that year officers of or in the employment of a company which is, or within that year was, an officer of the company.

(4) Where any persons are required under this section to submit a statement of affairs to the administrator, they shall do so, subject to subsection (5) before the end of the period of twenty one days beginning with the day after that on which the prescribed notice of the requirement is given to them by the administrator.

(5) The administrator, where he thinks fit, may-

(a) at any time release a person from an obligation imposed on him under subsection (1) or (2); or

(b) either when giving notice under subsection (4) or subsequently, extend the period so mentioned,

where the administrator has refused to exercise a power conferred by this subsection, the court, where it thinks fit, may exercise it.

(6) Where a person without reasonable excuse fails to comply with any obligation imposed under this section, he is liable to a fine and, for continued contravention, to a default fine.

(7) For the purpose of subsection (3) "employment" includes employment under a contract for services.

[s. 260]

Statement of proposals

264.–(1) Where an administration order has been made, the administrator shall, within three months, or such longer period as the court may allow, after the making of the order-

(a) send to the Registrar, so far as he is aware of their addresses to all creditors a statement of his proposals

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for achieving the purpose or purposes specified in the order; and

(b) lay a copy of the statement before a meeting of the company's creditors summoned for the purpose on not less than fourteen day's notice.

(2) The administrator shall also, within three months, or such longer period as the court may allow, after the making of the order, either-

(a) send a copy of the statement so far as he is aware of their addresses to all members of the company; or

(b) publish in the prescribed manner a notice stating an address to which members of the company should write for copies of the statement to be sent to them free of charge.

(3) Where the administrator without reasonable excuse fails to comply with this section, he shall be liable to a fine and, for continued contravention, to a default fine.

[s. 261]

Consideration of proposals by creditors meeting

265.–(1) A meeting of creditors summoned under section 264 shall approve the administrator's proposals.

(2) The meeting may approve the proposals with modifications, but shall not do so unless the administrator consents to each modification.

(3) Subject to subsections (1) and (2), the meeting shall be conducted in accordance with the rules.

(4) After the conclusion of the meeting, the administrator shall report the result of the meeting to the court and shall give notice of that result to the Registrar and to such persons as may be prescribed in the rules.

(5) Where a report is given to the court under subsection (4) that the meeting has declined to approve the administrator's proposals, with or without modifications, the court may by order discharge the administration order and make such consequential provision as it thinks fit, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit.

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(6) Where the administration order is discharged, the administrator shall, within fourteen days after the making of the order affecting the discharge, send an office copy of that order to the Registrar.

(7) Where the administrator without reasonable excuse fails to comply with subsection (6), he shall be liable to a fine and, for continued contravention, to a default fine.

[s. 262]

Approval of substantial revisions

266.–(1) This section applies where-

(a) proposals have been approved, with or without modification under section 265; and

(b) the administrator proposes to make revisions of those proposals which appear to him substantial.

(2) The administrator shall-

(a) send to all creditors of the company, so far as he is aware of their addresses, a statement in the prescribed form of his proposed revisions; and

(b) lay a copy of the statement before a meeting of the company's creditors summoned for the purpose of not less than fourteen days' notice,

and he shall not make the proposed revisions unless they are approved by the meeting.

(3) The administrator shall also either-

(a) send a copy of the statement, so far as he is aware of their addresses, to all members of the company; or

(b) publish in the prescribed manner a notice stating an address to which members of the company should write for copies of the statement to be sent to them free of charge.

(4) The meeting of creditors may approve the proposed revisions with modifications, but shall not do so unless the administrator consents to each modification.

(5) Subject to subsection (4), the meeting shall be conducted in accordance with the rules.

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(6) After the conclusion of the meeting, the administrator shall give notice of the result of the meeting to the Registrar and to such persons as may be prescribed in the rules.

[s. 263]

Miscellaneous

Creditors' committee

267.–(1) Where a meeting of creditors summoned under section 264 has approved the administrator's proposals, with or without modifications, the meeting may, if it thinks fit, establish a committee "the creditors' committee", to exercise the functions conferred on it by or under this Act.

(2) Where such a committee is established, the committee may, on giving not less than seven days notice, require the administrator to attend before it at any reasonable time and furnish it with such information relating to the carrying out of his functions as it may reasonably require.

[s. 264]

Protection of interests of creditors

268. At any time when an administration order is in force, a creditor or member of the company may apply to the court by petition for an order under this section on the ground-

(a) that the company's affairs, business and property are being or have been managed by the administrator in a manner which is unfairly prejudicial to the interests of its creditors or members generally, or of some part of its creditors or members, including at least himself; or

(b) that any actual or proposed act or omission of the administrator is or would be so prejudicial.

[s. 265]

Orders to protect interests of creditors

269.–(1) On an application for an order under section 268, the court may, make such order as it thinks fit for giving relief in respect of the matters complained of, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit.

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(2) An order under this section shall not prejudice or prevent-

(a) the implementation of any compromise or arrangement sanctioned under section 267; and

(b) where the application for the order was made more than twenty eighty days after the approval of any proposals or revised proposals under sections 265 or 266, the implementation of those proposals or revised proposals.

(3) Subject as above, an order under this section may in particular-

(a) regulate the future management by the administrator of the company's affairs, business and property;

(b) require the administrator to refrain from doing or continuing an act complained of by the petitioner, or to do an act which the petitioner has complained he has omitted to do;

(c) require the summoning of a meeting of creditors or members for the purpose of considering such matters as the court may direct; and

(d) discharge the administration order and make such consequential provision as the court thinks fit.

(4) Section 257 shall not be taken as prejudicing applications to the court under this section.

(5) Where the administration order is discharged, the administrator shall, within fourteen days after the making of the order effecting the discharge, send an office copy of that order to the Registrar; and if without reasonable excuse he fails to comply with this subsection, he shall be liable to a fine and, for continued contravention to a default fine.

[s. 266]

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PART VIII
WINDING UP

CHAPTER I
PRELIMINARY PROVISIONS

Modes of Winding Up

Modes of winding up

270.–(1) The winding up of a company may be either-

(a) by the court; or

(b) voluntary.

(2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.

[s. 267]

Contributories

Contributories

271.–(1) In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities, and the expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to the provisions of section 272 and the following qualifications-

(a) 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;

(b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;

(c) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;

(d) in the case of a company limited by shares, no contribution shall be required from any member

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exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member; and

(e) in the case of a company limited by guarantee, no contribution shall, subject to the provisions of section 273, 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.

(2) This Act shall not 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.

(3) 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 among themselves.

[s. 268]

Liability of certain directors, etc.

272. In the winding up of a limited company, any director or manager, whether past or present, whose liability is, under the provisions of this Act, unlimited, shall, in addition to his liability, if any to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company:

Provided that-

(a) a past director or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up;

(b) a past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office; and

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(c) subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company and the expenses of the winding up.

[s. 269]

Contributories: companies limited by guarantee

273. In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

[s. 270]

Definition of contributory

274. 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 purpose 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.

[s. 271]

Nature of liability of contributory

275. The liability of a contributory shall create a debt accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

[s. 272]

Contributories in case of death of members

276.–(1) Where a contributory dies either before or after he has been placed on the list of contributories, his personal representatives shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

(2) Where the personal representatives make default in paying any money ordered to be paid by them, proceedings

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may be taken for administering the estate of the deceased contributory and for compelling payment thereout of the money due.

[s. 273]

Contributories in case of bankruptcy of member

277. Where a contributory becomes bankrupt, either before or after he has been placed on the list of contributories-

(a) his trustee in bankruptcy shall represent him for all the purposes of the winding up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the assets of the company; and

(b) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

[s. 274]

CHAPTER II
WINDING UP BY THE COURT

Jurisdiction

Jurisdiction to wind up companies registered in Tanzania Act No. 3 of 2012 s. 27

278.–(1) The High Court shall have jurisdiction to wind up any company registered in Tanzania and a body corporate as provided for in section 282(2).

(2) The District or Resident Magistrate Court shall have original jurisdiction to wind-up a single shareholder company registered in Tanzania and a body corporate.

(3) The provisions of sections 279, 280, 281 and 282(1)(c) shall not apply to a limited liability single shareholder company.

(4) The Minister may make regulations governing the winding-up of a limited liability single shareholder company.

[s. 275]

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Transfer of proceedings from High Court to Resident Magistrates' Court

279. Where the High Court makes an order for winding up a company under this Act, it may, if it thinks fit, direct all subsequent proceedings to be held in a Resident Magistrates' Court and thereupon such court shall for the purpose of winding up the company be deemed to be the court within the meaning of this Act, and shall have, for the purpose of such winding up, all the jurisdiction and powers of the High Court.

[s. 276]

Transfer of proceedings in Resident Magistrates' Court

280. Where during the progress of a winding up in a Resident Magistrates' Court it is made to appear to the High Court that the same could be more conveniently prosecuted in any other Resident Magistrates' Court, the High Court may transfer the same to such other court, and thereupon the winding up shall proceed in such other Resident Magistrates' Court.

[s. 277]

Statement of case for opinion of High Court

281. Where any question of law arises in any winding up proceedings in a Resident Magistrates' Court which all the parties to the proceeding, or which one of them and the Magistrate of the Court, desire to have decided in the first instance in the High Court, the Magistrate shall state the facts and the question of law which has arisen in the form of a special case for the opinion of the High Court, and thereupon the special case and the proceedings, or such of them as may be required, shall be transmitted to the High Court for the purposes of determination.

[s. 278]

Cases in which Company may be Wound Up by Court

Circumstances in which company may be wound up by the court

282.–(1) A company may be wound up by the court if the-

(a) company has by special resolution resolved that the company be wound up by the court;

(b) company does not commence its business within a year from its incorporation or suspends its business for a whole year;

(c) number of members falls below two;

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(d) company is unable to pay its debts;
(e) court is of the opinion that it is just and equitable that the company should be wound up.

(2) A body corporate may also be wound up by the court if incorporated outside Tanzania and carrying on business in Tanzania and winding up proceedings have been commenced in respect of it in the country of its incorporation or in any other country in which it has established a place of business.

[s. 279]

Definition of inability to pay debts

283. A company shall be deemed to be unable to pay its debts-

(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty thousand shillings or such other amount as may be prescribed in the regulations made by the Minister, then due has served on the company, by leaving at the registered office of the company, a written demand requiring the company to pay the sum so due and the company has for twenty-one days thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor;
(b) if execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part;
(c) if it is proved to the satisfaction of the court that the company is unable to pay its debts as they fall due; or
(d) if it is proved to the satisfaction of the court that the value of the company's assets is less than the amount of its liabilities, taking into account the contingent and prospective liabilities of the company.

[s. 280]

Petition for Winding Up and Effects Thereof

Provisions as to applications for winding up

284.–(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, either by the company or by any

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creditor or creditors, including any contingent or prospective creditor or creditors, contributory or contributories, or by an administrator, or by all or any of those parties, together or separately:

Provided that-

(a) a contributory shall not be entitled to present a winding-up petition unless-

(i) either the number of members is reduced below two; 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 eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder;

(b) the court shall not give a hearing to a winding-up petition presented by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable and until a *prima facie* case for winding up has been established to the satisfaction of the court;

(c) in a case falling within section 225(2), a winding-up petition may be presented by the Attorney General; and

(d) a petition for the winding up of a body corporate on the ground mentioned in section 282(2) may be presented by the official receiver as well as by any other person authorised to do so under the provisions of this subsection, but the court shall not make a winding-up order on a petition presented by the official receiver unless it is satisfied that the liquidator or provisional liquidator of the body corporate in the country where winding-up proceedings have been commenced in respect of it has in the manner prescribed required the official receiver to present the petition.

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(2) Where a company is being wound up voluntarily or subject to supervision, a winding-up petition may be presented by the official receiver as well as by any other person authorised 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 or winding-up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

[s. 281]

Power of court on hearing petition

285.–(1) On hearing a winding-up petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it thinks fit.

(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; and

(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.

[s. 282]

Power to stay or restrain proceedings against company

286. At any time after the presentation of a winding-up petition, and before a winding-up order has been made, the company, or any creditor or contributory, may-

(a) where any action or proceedings against the company is pending in the High Court or Court of Appeal apply to the court in which the action or proceedings is pending for a stay of proceedings therein; and

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(b) where any other action or proceeding is pending against the company, apply to the court having jurisdiction to wind up the company to restrain further steps 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.

[s. 283]

Avoidance of dispositions of property, etc., after commencement of winding up

287. In a winding up by the court, any disposition of the property of the company, including things in action, and any transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding-up, shall, unless the court otherwise orders, be void.

[s. 284]

Avoidance of attachments, etc.

288. Where any company is being wound up by the court, any attachment, sequestration, distress or execution put in force against the assets of the company after the commencement of the winding up shall be void.

[s. 285]

Commencement of Winding-Up

Commencement of winding-up by court

289.–(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, and unless the court, on proof of fraud or mistake, thinks fit otherwise to direct, all proceedings taken in the voluntary winding-up shall be deemed to have been validly taken.

(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.

[s. 286]

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Consequences of Winding-Up Order

Copy of order to be forwarded to Registrar

290. On the making of a winding-up order, a copy of the order shall immediately be forwarded by the company, or otherwise as may be prescribed, to the Registrar for registration.

[s. 287]

Actions stayed on winding-up order

291. When a winding-up order has been made or an interim liquidator has been appointed under section 298, 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.

[s. 288]

Effect of winding-up order

292. 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 made on the joint petition of a creditor and of a contributory.

[s. 289]

Official Receiver in Winding-Up

Official receiver

293. For the purpose of this Act so far as it relates to the winding-up of companies by the court, the term "official receiver" means the official receiver attached to the court for bankruptcy purposes.

[s. 290]

Appointment of official receiver by court in certain cases

294. Where, in the case of the winding-up of any company by the court it appears to the court desirable, with a view to securing the more convenient and economical conduct of the winding-up, that some officer other than the person who would by virtue of section 293 be the official receiver should be the official receiver for the purposes of that winding-up, the court may appoint that other officer to act as official receiver in that winding-up, and the person so appointed shall be deemed to be the official receiver in that winding-up for all the purpose of this Act.

[s. 291]

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Statement of company's affairs to be submitted to official receiver

295.–(1) Where the court has made a winding-up order or appointed an interim liquidator under section 298, there shall, unless the court thinks fit to order otherwise and so orders, be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets 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 may be prescribed or as the official receiver may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the 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 official receiver, subject to the direction of the court, 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 official receiver 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; and

(e) who are at the relevant date the receivers or managers of the whole or substantially the whole of the company's property.

(3) The statement shall be submitted within twenty-one days from the relevant date or within such extended time as the official receiver or the court may for special reasons appoint.

(4) A person making or concurring in making the statement and affidavit required by this section may be allowed, and if so

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allowed shall be paid by the official receiver 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 official receiver may consider reasonable, subject to an appeal to the court.

(5) Where any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a default fine.

(6) A person stating himself in writing to be a creditor or contributory of the company 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.

(7) A person untruthfully so stating himself to be a creditor or contributory commits an offence and on conviction shall be liable to a fine.

(8) In this section the expression "the relevant date" means, in a case where an interim liquidator is appointed, the date of his appointment, and in a case where no such appointment is made, the date of the winding-up order.

[s. 292]

Report by official receiver

296.–(1) In a case where a winding-up order is made, the official receiver shall, as soon as practicable after receipt of the statement to be submitted under section 295, or, in a case where the court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the court-

(a) as to the amount of capital issued, subscribed and paid up, and the estimated amount of assets and liabilities; and

(b) if the company has failed, as to the causes of the failure; and

(c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company or the conduct of the business thereof.

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(2) The official receiver may also, if he thinks fit, make a further report, or further reports, 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 officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.

(3) Where the official receiver states in any such further report that in his opinion a fraud has been committed as aforesaid, the court shall have the further powers provided in section 328.

[s. 293]

Liquidators

Power of court to appoint liquidators

297. For the purpose of conducting the proceedings in winding-up a company and performing such duties in reference thereto as the court may impose, the court may appoint a liquidator or liquidators.

[s. 294]

Appointment and powers of interim liquidator

298.–(1) The court may appoint the official receiver to be the liquidator at any time after the presentation of a winding-up petition and before the making of a winding-up order.

(2) Where a liquidator, in this Part referred to as an interim liquidator, is so appointed by the court, the court may limit and restrict his powers by the order appointing him.

[s. 295]

Appointment, style, etc., of liquidators

299. The following provisions with respect to liquidators shall have effect on a winding-up order being made-

(a) the official receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes a liquidator and is capable of acting as such;

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(b) the official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the court for appointing a liquidator in the place of the official receiver:

Provided that, where the court has dispensed with the settlement of a list of contributories it shall not be necessary for the official receiver to summon a meeting of contributories;

(c) the court may make any appointment and order required to give effect to any such determination and, if there is a difference between the determinations of the meetings of the creditors and contributories, the court shall decide the difference and make such order thereon as the court may think fit;

(d) in a case where a liquidator is not appointed by the court, the official receiver shall be the liquidator of the company;

(e) the official receiver shall by virtue of his office be the liquidator during any vacancy; and

(f) a liquidator shall be described, where a person other than the official receiver is liquidator, by the style of "the liquidator", and, where the official receiver is the liquidator, by the style of "the official receiver and liquidator", of the particular company in respect of which he is appointed and not by his individual name.

[s. 296]

Provisions where person other than official receiver is appointed liquidator

300. Where, in the winding up of a company by the court a person other than the official receiver is appointed a liquidator, that person-

(a) shall not be capable of acting as the liquidator until he has notified his appointment to the Registrar and given security in the prescribed manner to the satisfaction of the official receiver; and

(b) shall give the official receiver such information and such access to and facilities for inspecting the books

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and documents of the company and generally such aid as may be requisite for enabling that officer to perform his duties under this Act.

[s. 297]

General provisions as to liquidator

301.–(1) A liquidator appointed by the court may resign or, on cause shown, be removed by the court.

(2) Where a person other than the official receiver is appointed a liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the court may direct, and, if more such persons than one are appointed the liquidators, their remuneration shall be distributed among them in such proportions as the court directs.

(3) A vacancy in the office of a liquidator appointed by the court shall be filled by the court.

(4) Where more than one liquidator is appointed by the court, the court shall declare whether any act by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(5) Subject to the provisions of section 390, the acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

[s. 298]

Custody of company's property

302. Where a winding-up order has been made or where an interim liquidator has been appointed, the liquidator or the interim liquidator, as the case may be, shall take into his custody or under his control all the property and things in action to which the company is or appears to be entitled.

[s. 299]

Vesting of property of company in liquidator

303. Where a company is being wound up by the court, the court may on the application of the liquidator by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name, and thereupon the property to which the order relates shall vest accordingly;

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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 proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding-up the company and recovering its property.

[s. 300]

Powers of liquidator

304.–(1) The liquidator in a winding-up by the court shall have power with the sanction either of the court or of the committee of inspection-

(a) to bring or defend any action or other legal proceeding in the name and on behalf of the company;

(b) to carry on the business of the company so far as may be necessary for the beneficial winding-up thereof;

(c) to appoint an advocate to assist him in the performance of his duties;

(d) to pay any classes of creditors in full;

(e) to make any compromise, or arrangement with creditors, or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable; or

(f) to compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding-up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect thereof.

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(2) The liquidator in a winding-up by the court shall have power without the express sanction of the court-

(a) to sell the movable and immovable property and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company or to sell the same in parcels;

(b) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the company's seal;

(c) to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors;

(d) to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;

(e) to raise on the security of the assets of the company any money requisite;

(f) to take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself:

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(g) to appoint an agent to do any business which the liquidator is unable to do himself; and

(h) to do all such other things as may be necessary for winding-up the affairs of the company and distributing its assets.

(3) The exercise by a liquidator in a winding-up by the court of the powers conferred by this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

[s. 301]

Exercise and control of liquidator's powers

305.–(1) Subject to the provisions of this Act, the liquidator of a company which is being wound up by the court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories, as the case may be.

(3) The liquidator may apply to the court in the manner prescribed for directions in relation to any particular matter arising under the winding-up.

(4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

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(5) Where any person is aggrieved by any act or decision of the liquidator, that person may apply to the court, and the court may confirm, reverse or modify the act or decision complained of, and make such order in the premises as it thinks just.

[s. 302]

Books to be kept by liquidator

306. A liquidator of a company which is being wound up by the court shall keep, in the manner prescribed by the Minister in the regulations, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be so prescribed, and any creditor or contributory may, subject to the control of the court, personally or by his agent inspect any such books.

[s. 303]

Payments by liquidator into bank

307.–(1) A liquidator of a company which is being wound up by the court shall, in a manner and at times as the official receiver shall direct, pay the money received by him to the official receiver for the credit of the Company's Liquidation Account, and the official receiver shall furnish him with a receipt for the money so paid:

Provided that, if the committee of inspection satisfies the court that, for the purpose of carrying on the business of the company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any bank, the court shall, on the application of the committee of inspection, authorise the liquidator to make his payments into and out of such bank as the committee may select.

(2) Where any such liquidator at any time retains for more than twenty-one days a sum exceeding one thousand shillings, or such other amount as the court in any particular case authorised him to retain, then, unless he explains the retention to the satisfaction of the court he shall pay interest on the amount so retained in excess at the rate of five percent *per annum*, and shall be liable to disallowance of all or such part of his remuneration as the court may think just, and to be

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removed from his office by the court, and shall be liable to pay any expenses occasioned by reason of his default.

(3) A liquidator of a company which is being wound up by the court shall not pay any sums received by him as liquidator into his private banking account. If he does so he commits an offence and on conviction shall be liable to imprisonment or to a fine or to both.

[s. 304]

Audit or liquidator's accounts

308.–(1) A liquidator other than the official receiver of a company which is being wound up by the court shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the official receiver, or as he directs, an account of his receipts and payments as liquidator.

(2) The account shall be in the prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.

(3) The official receiver shall cause the account to be audited, and for the purpose of the audit, the liquidator shall furnish the official receiver with such vouchers and information as the official receiver may require, and the official receiver may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4) When the account has been audited, one copy thereof shall be filed and kept by the official receiver and the other copy shall be delivered to the court for filing, and each copy shall be open to the inspection of any person on payment of the fee prescribed by the Minister in the regulations.

(5) The liquidator shall cause a copy of the account when audited or a summary thereof to be sent by post to each creditor and contributory within thirty days after the completion of the audit:

Provided that, the official receiver may in any case dispense with compliance with this subsection.

[s. 305]

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Control over liquidators

309.–(1) The official receiver shall take notice 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 or if any complaint is made to the official receiver by any creditor or contributory in regard thereto, the official receiver shall inquire into the matter and take such action thereon as he may think expedient.

(2) The official receiver 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 he is engaged, and may, if the official receiver thinks fit, apply to the court to examine him or any other person on oath concerning the winding-up.

[s. 306]

Release of liquidators

310.–(1) When the liquidator of a company which is being wound up by the court has authorised all the property of the company, or so much thereof as can, in his opinion, be released without needlessly protracting the liquidation, 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, or has resigned, or has been removed from his office, the court shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the court, shall take into consideration the report and any objection which may be urged by any creditor or contributory or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly.

(2) Where the release of a liquidator is withheld, the court may, on the application of any creditor or contributory or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

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(3) An order of the court releasing the liquidator shall discharge him 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 the liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

[s. 307]

Committees of Inspection

Meetings of creditors and contributories to determine whether committee shall be appointed.

311.–(1) When a winding-up order has been made by the court, it shall be the business of the separate meetings of creditors and contributories summoned for the purpose of determining whether or not an application should be made to the court for appointing a liquidator in place of the official receiver, to determine further whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator and who are to be members of the committee if appointed.

(2) The court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories, the court shall decide the difference and make such order thereon as the court may think fit.

[s. 308]

Constitution and proceedings of committee of inspection

312.–(1) A committee of inspection appointed in pursuance of this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories or as, in the case of difference, may be determined by the court.

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(2) The committee shall meet at such times as they may appoint, and, failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) The committee may act by a majority of their members present at a meeting but shall not act unless a majority of the committee are present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) Where a member of the committee becomes bankrupt or compounds or arranges with his creditors or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories, of which twenty-one days notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the committee, the liquidator shall immediately summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, reappoint the same or appoint another creditor or contributory to fill the vacancy:

Provided that, if the liquidator, having regard to the position in the winding-up, is of the opinion that it is unnecessary for the vacancy to be filled he may apply to the court and the court may make an order that the vacancy shall not be filled, or shall not be filled except in such circumstances as may be specified in the order.

(8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

[s. 309]

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Powers of court where no committee of inspection

313. Where in the case of a winding-up there is no committee of inspection, the court may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Act authorised or required to be done or given by the committee:

Provided that, where the official receiver is the liquidator, he may do any such act or thing and give any such direction or permission without application to the court.

[s. 310]

General Powers of Court in Case of Winding-Up by Court

Power to stay winding up

314.–(1) The court may at any time after an order for winding up, on the application of the liquidator, the official receiver 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, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

(2) On any application under this section the court may, before making an order, require the official receiver to furnish to the court a report with respect to any facts or matters which are in his opinion relevant to the application.

(3) A copy of every order made under this section shall immediately be forwarded by the company to the Registrar for registration.

[s. 311]

Settlement of list of contributories and application of assets

315.–(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 rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities:

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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 settlement of a list of contributories.

(2) In settling the list of contributories, the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

[s. 312]

Delivery of property to liquidator

316. The court may, at any time after making a winding-up order, require any contributory for the time being on the list of contributories and any trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer immediately, 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.

[s. 313]

Payment of debts due from contributory to company

317.–(1) The court may, at any time after making a winding-up order, make an order on any contributory 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.

(2) The court in making such order may-

(a) in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and

(b) in the case of a limited company, make to any director or manager whose liability is unlimited or to his estate the like allowance.

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(3) In the case of any company, whether limited or unlimited, 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.

[s. 314]

Power of court to make calls

318.–(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 all or any of the contributories 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, charges and expenses of winding-up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.

(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.

[s. 315]

Payment into bank of moneys due to company

319.–(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 specified bank or any branch thereof to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) All moneys and securities paid or delivered into a specified bank or any branch thereof in the event of a winding-up by the court shall be subject in all respects to the orders of the court.

[s. 316]

Order on contributory conclusive evidence

320.–(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.

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(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings whatsoever.

[s. 317]

Appointment of special manager

321.–(1) Where the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court and the court may on such application appoint a special manager of the said estate or business to act during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court.

(2) The special manager shall give such security and account in such manner as the official receiver shall direct.

(3) The special manager shall receive such remuneration as may be fixed by the court.

[s. 318]

Power to exclude creditors not proving in time

322. The court may fix a time or times within which creditors are to prove their debts or claims or to be excluded from the benefit of any distribution made before those debts are proved.

[s. 319]

Adjustment of rights of contributories

323. The court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto.

[s. 320]

Inspection of books by creditors and contributories

324.–(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 of the company may be

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inspected by creditors or contributories accordingly, but not further or otherwise.

(2) This section shall not be taken as excluding or restricting any statutory rights of any department of the Government or of any officer thereof or of any person acting under the authority of any such department.

[s. 321]

Power to order costs of winding-up to be paid out of assets

325. The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding-up in such order of priority as the court thinks just.

[s. 322]

Power to summon persons suspected of having property of company, etc.

326.–(1) The court may, at any time after the appointment of an interim liquidator or the making of 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, dealing, affairs or property of the company.

(2) The court may examine him on oath either orally or on 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 that lien, and the court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) Where any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having a lawful impediment, made known to the court at the time of its sitting and allowed

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by it, the court may cause him to be arrested and brought before the court for examination.

[s. 323]

Attendance of officers of company at meetings of creditors, etc

327. In the winding-up of a company by the court, the court shall have power to require the attendance of any officer of the company at any meeting of creditors or of contributories or of a committee of inspection for the purpose of giving information as to the trade, dealings, affairs or property of the company.

[s. 324]

Power to order public examination of promoters and officers

328.–(1) Where an order has been made for winding-up a company by the court, and the official receiver has made a further report under this Act stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since its formation, the court may, after consideration of the report direct that such person or officer 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 company or as to his conduct and dealings as an officer thereof.

(2) The official receiver shall take part in the examination, and for that purpose may, if specially authorised by the court in that behalf, employ an advocate.

(3) The liquidator, where the official receiver is not the liquidator, and any creditor or contributory may also take part in the examination either personally or by advocate.

(4) The court may put such questions to the person examined as the court thinks fit.

(5) The person examined shall be examined on oath and shall answer all such questions as the court may put or allow to be put to him.

(6) A person ordered to be examined under this section shall at his own cost, before his examination, be furnished with a copy of the official receiver's report and may at his own cost employ an advocate, who shall be at liberty to put to him

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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 any such person applies to the court to be exculpated from any charges made or suggested against him, it shall be the duty of the official receiver to appear on the hearing of the application and call the attention of the court to any matters which appear to the official receiver to be relevant, and if the court, after hearing any evidence given or witnesses called by the official receiver, grants the application, the court may allow the applicant such costs as in its discretion it may think fit.

(7) 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.

[s. 325]

Absconding etc.

329. The court, at any time either before or after making a winding-up order, on proof of probable cause for believing that any person or officer of the company mentioned in section 328(1) or a contributory is about to quit Tanzania or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may cause him to be arrested and his books and papers and movable personal property to be seized safely kept until such time as the court may order.

[s. 326]

Powers of court cumulative

330. Powers by this Act conferred on the court shall 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.

[s. 327]

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Delegation to liquidator of certain powers of court

331. Provision may be made by general rules prescribed by the Minister for enabling or requiring all or any of the powers and duties conferred and imposed on the court by this Act to be exercised or performed by the liquidator as an officer of the court in respect of the following matters-

(a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;

(b) the settling of lists of contributories and the rectifying of the register of members where required, and the collecting and applying of the assets;

(c) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;

(d) the making of calls; and

(e) the fixing of a time within which debts and claims must be proved:

Provided that, the liquidator shall not, without the leave of the court, rectify the register of members, and shall not make any call without either the leave of the court or the sanction of the committee of inspection.

[s. 328]

Dissolution of company

332.–(1) When the affairs of a company have been completely wound up, the court, if the liquidator makes an application in that behalf, shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) A copy of the order shall within fourteen days from the date thereof be delivered by the liquidator to the Registrar for registration.

(3) Where the liquidator makes default in complying with the requirements of this section, he shall be liable to a default fine.

[s. 329]

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Enforcement of Orders and Appeals

Manner of enforcing orders of court

333. All orders made by a court under this Part may be enforced in the same manner as decrees of such court made in any suit.

[s. 330]

Enforcement of order in another court

334. Where any order for or in the course of winding-up made by one court is required to be enforced by another court, a certified copy of the order shall be produced to the proper officer of the court required to enforce the same, and the production of a certified copy shall be sufficient evidence of the order and thereupon the last-mentioned court shall take the requisite steps in the matter for enforcing the order in the same manner as if it had been made by that court.

[s. 331]

Appeals

335. Subject to such conditions and limitations as may be prescribed by general rules, an appeal shall lie to-

(a) the High Court from a decision or order given or made by a Resident Magistrates' Court in the exercise of any jurisdiction conferred upon it under section 279;

(b) the Court of Appeal on a matter of law, but not on a matter of fact, from a decision or order given or made by the High Court in the exercise of the appellate jurisdiction conferred upon it by paragraph (a);

(c) the Court of Appeal from a decision or order given or made by the High Court in respect of a special case referred to it under section 281;

(d) the Court of Appeal from any decision or order given or made by the High Court in the exercise of the jurisdiction conferred upon it by section 278, not being a decision or order of the kind referred to in paragraphs (b) and (c).

[s. 332]

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CHAPTER III
VOLUNTARY WINDING-UP

Resolutions for, and Commencement of, Voluntary Winding- Up

Circumstances in which company may be wound up voluntarily

336.–(1) 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; or

(c) if the company resolves by special resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

(2) In this Act the expression "a resolution for voluntary winding up" means a resolution passed under any of the provisions of subsection (1).

(3) A copy of any resolution passed as referred to in subsection (1) shall be forwarded to the Registrar within fourteen days of the resolution being passed.

[s. 333]

Notice of resolution to wind up voluntarily

337.–(1) When a company has passed a resolution for voluntary winding up, it shall, within fourteen days after the passing of the resolution, give notice of the resolution by advertisement in the *Gazette*, and in newspaper circulating in Tanzania.

(2) Where default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine, and for the purpose of this subsection the liquidator of the company shall be deemed to be an officer of the company.

[s. 334]

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Commencement of voluntary winding up

338. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up.

[s. 335]

Consequences of Voluntary Winding Up

Effect of voluntary winding up on business and status of company

339. In case of a voluntary winding up, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding-up:

Provided that, the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

[s. 336]

Avoidance of transfers, etc., after commencement of voluntary winding-up

340. A transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding-up, shall be void.

[s. 337]

Declaration of Solvency

Statutory declaration of solvency

341.–(1) Where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors, may, at a meeting of the directors make a declaration in the prescribed form to the effect that they have made a full inquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within such period not exceeding twelve months from the commencement of the winding up as may be specified in the declaration.

(2) A declaration made under this section shall have no effect for the purpose of this Act unless-

(a) it is made within the thirty days immediately preceding the date of the passing of the resolution for winding

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up the company and is delivered to the Registrar for registration before that date; and

(b) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.

(3) A director of a company making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration, on conviction shall be liable to imprisonment or to a fine or to both; and if the company is wound up in pursuance of a resolution passed within the period of thirty days after the making of the declaration, but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed until the contrary is shown that the director did not have reasonable ground for his opinion.

Act No. 46 of 1931

(4) A winding up in the case of which a declaration has been made and delivered in accordance with this section or section 226 of the repealed Companies Act is in this Act referred to as "a members' voluntary winding up", and a winding up in the case of which a declaration of solvency has not been made and delivered is in this Act referred to as "a creditors' voluntary winding up".

(5) Subsections (1) to (3) of this section shall not apply to a winding up commencing before the appointed day.

[s. 338]

Provisions Applicable to a Members' Voluntary Winding-up

Provisions applicable to members' winding up

342. The provisions contained in sections 343 to 348 shall, subject to the provisions of section 349, apply in relation to a members' voluntary winding up.

[s. 339]

Power of company to appoint and fix remuneration of liquidators

343.–(1) The company in general meeting shall 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.

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(2) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting or the liquidator sanctions the continuance thereof.

[s. 340]

Power to fill vacancy in office of liquidator

344.–(1) Where a vacancy occurs by death, resignation or otherwise in the office of a liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by any continuing liquidator.

(3) The meeting shall be held in the manner provided by this Act or by the articles, or in such manner as may, on application by any contributory or, by the continuing liquidators, be determined by the court.

[s. 341]

Power of liquidator to accept shares, etc., as consideration for sale of property of company

345.–(1) Where a company is proposed to be, or is in course of 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 a company within the meaning of 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 of compensation for the transfer or sale, of 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.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

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(3) Where 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 the 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 in accordance with the law relating to arbitration in Tanzania.

(4) Where the liquidator elects to purchase the member's interest, the purchase money must 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.

[s. 342]

Duty of liquidator to call creditors' meeting in case of insolvency

346.–(1) Where, in the case of a winding up commencing after the appointed day, the liquidator is at any time of opinion that the company will not be able to pay its debts in full within the period stated in the declaration under section 341, he shall immediately notify the Registrar accordingly and summon a meeting of the creditors, and shall lay before the meeting a statement of the assets and liabilities of the company.

(2) Notice of the creditors' meeting referred to in subsection (1) shall be given at least seven days before the meeting is to be held specifying the time, place and object thereof, and such notice shall be advertised in the *Gazette* and in a newspaper circulating in Tanzania.

(3) Where the liquidator fails to comply with this section, he shall be liable to a fine.

[s. 343]

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Duty of liquidator to call general meeting at end of each year

347.–(1) Subject to the provisions of section 349, in the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within three months from the end of the year or such longer period as the Registrar may allow, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) Where the liquidator fails to comply with this section, he shall be liable to a fine.

[s. 344]

Final meeting and dissolution

348.–(1) Subject to the provisions of section 349, as soon as the affairs of the company are fully wound up, on members voluntary winding-up, the liquidator shall make up an account of the winding-up, showing how the winding-up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) The meeting shall be called by advertisement in the *Gazette*, and in a newspaper circulating in Tanzania, specifying the time, place and object thereof, and published thirty days at least before the meeting.

(3) Within fourteen days after the meeting, the liquidator shall deliver to the Registrar a copy of the account, and shall make a return to him of the holding of the meeting and of its date, and if the copy is not delivered or the return is not made in accordance with this subsection the liquidator shall be liable to a default fine:

Provided that, if a quorum is not present at the meeting, the liquidator shall, in lieu of the return mentioned above make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this subsection as to the making of the return shall be deemed to have been complied with.

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(4) The Registrar on receiving the account and either of the returns mentioned above shall immediately register them, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved:

Provided that, the Court may, on the application of the liquidator or of 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.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to deliver to the Registrar a certified copy of the order for registration, and if that person fails so to do he shall be liable to a default fine.

(6) Where the liquidator fails to call a general meeting of the company as required by this section, he shall be liable to a fine.

[s. 345]

Alternative provisions as to annual and final meetings in case of insolvency

349. Where section 346 has effect, sections 357 and 358 shall apply to the winding-up to the exclusion of sections 347 and 348 as if the winding-up were a creditor's voluntary winding-up and not a member's voluntary winding-up:

Provided that, the liquidator shall not be required to summon a meeting of creditors under section 357 at the end of the first year from the commencement of the winding-up, unless the meeting held under section 346 is held more than three months before the end of that year.

[s. 346]

Provisions Applicable to a Creditor's Voluntary Winding Up

Provisions applicable to creditors' winding up

350. The provisions contained in sections 351 to 358 shall apply in relation to a creditors' voluntary winding up.

[s. 347]

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Meeting of creditors

351.–(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 notice of the meeting of the creditors to be advertised once in the *Gazette* and once at least in a newspaper circulating in Tanzania.

(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 the creditors; and

(b) appoint one of their number to preside at the said meeting.

(4) It shall be the duty of the director appointed to preside at the meeting of the creditors to attend the meeting and preside thereat.

(5) Where 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.

(6) Where default is made-

(a) by the company in complying with subsections (1) and (2);

(b) by the directors of the company in complying with subsection (3); or

(c) by any director of the company in complying with subsection (4),

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the company, directors or director, as the case may be, shall be liable to a fine, and, in the case of default by the company, every officer of the company who is in default shall be liable to a fine.

[s. 348]

Appointment of liquidator and cesser of directors' powers

352.–(1) The creditors and the company at their respective meetings mentioned in section 350 may nominate a person to be liquidator 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 the liquidator, and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator:

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 either 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.

(2) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction, the continuance thereof.

[s. 349]

Appointment of committee of inspection

353.–(1) The creditors at the meeting to be held in pursuance of section 351 or at any subsequent meeting may, if they think fit, appoint not more than five persons to be members of a committee of inspection, and if such a committee is appointed, the company may, either at the meeting at which the resolution for voluntary winding-up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee, so however, that the majority of the members of the committee shall be persons appointed by the creditors:

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Provided that, the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection, and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the court otherwise directs, be qualified to act as members of the committee, and on any application to the court under this provision, the Court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(2) Subject to the provisions of this section and to any general rules made in this behalf, the provisions of section 311, except subsection (1) thereof shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding-up by the court.

[s. 350]

Fixing of liquidators' remuneration

354. The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

[s. 351]

Power to fill vacancy in office of liquidator

355. Where a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by, or by the direction of, the court, the creditors may fill the vacancy.

[s. 352]

Application of section 345 to a creditors' winding up

356. The provisions of section 345 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 sanction either of the court or of the committee of inspection in substitution for the sanction of a special resolution.

[s. 353]

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Meetings of company and of creditors at end of each year

357.–(1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of the creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within three months from the end of the year or such longer period as the Registrar may allow, and shall lay before the meetings an account of his acts and dealings of the conduct of the winding up during the preceding year.

(2) Where the liquidator fails to comply with this section he shall be liable to a fine.

[s. 354]

Final meeting and dissolution on creditors' voluntary winding-up

358.–(1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding-up, showing how the winding-up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving any explanation thereof.

(2) Each such meeting shall be called by advertisement in the *Gazette* and in a newspaper circulating in Tanzania, specifying the time, place and object thereof, and published thirty days at least before the meeting.

(3) Within fourteen days after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall deliver to the Registrar a copy of the account, and shall make a return to him of the holding of the meetings and of their dates, and if the copy is not delivered or the return is not made in accordance with this subsection the liquidator shall be liable to a default fine:

Provided that, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return mentioned above, make a return that the meeting was duly summoned and that no quorum was present thereat and upon such a return being made, the provisions of this subsection as to the making

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of the return shall, in respect of that meeting, be deemed to have been complied with.

(4) The Registrar on receiving the account and, in respect of each such meeting, either of the returns mentioned above, shall immediately register them, and on the expiration of three months from the registration thereof the company shall be deemed to be dissolved:

Provided that, 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.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to deliver to the Registrar a certified copy of the order for registration, and if that person fails so to do he shall be liable to a default fine.

(6) Where the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this section he shall be liable to a fine.

[s. 355]

Provisions Applicable to Every Voluntary Winding-up

Provisions applicable to every voluntary winding-up

359. The provisions contained in sections 360 to 397 shall apply to every voluntary winding-up whether a members' or a creditors' winding-up.

[s. 356]

Distribution of property of company

360. Subject to the provisions of this Act as to preferential payments, the assets of a company shall, on its voluntary winding-up, be applied in satisfaction of its liabilities *pari passu*, and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

[s. 357]

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Powers and duties of liquidator in voluntary winding-up

361.–(1) The liquidator may-

(a) in the case of a members' voluntary winding-up, with the sanction of a special resolution of the company, and, in the case of a creditors' voluntary winding-up, with the sanction of the court or the committee of inspection or, if there is no such committee, a meeting of the creditors, exercise any of the powers given by paragraphs (d), (e) and (f) of subsection (1) of section 304 to a liquidator in a winding-up by the court;

(b) without sanction, exercise any of the other powers by this Act given to the liquidator in a winding-up by the court;

(c) exercise the power of the court under this Act of settling a list of contributories, and the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories;

(d) exercise the power of the court of making calls; or

(e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or for any other purpose he may think fit.

(2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(3) When several liquidators are appointed, any power given by this Act 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.

(4) Where the liquidator in exercise of the powers conferred on him by this Act disposes of any property of the company to a person who is connected with the company, he shall give notice thereof to the committee of inspection, if one is in existence.

(5) For the purpose of this section, a person who is connected with the company shall mean a director of the company and any connected person in relation to such director as defined in section 203(4).

[s. 358]

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Power of court to appoint and remove liquidator in voluntary winding-up

362.–(1) Where from any cause whatever there is no liquidator acting, the court may appoint a liquidator.

(2) The court may, on cause shown, remove a liquidator and appoint another liquidator.

[s. 359]

Notice by liquidator of his appointment

363.–(1) The liquidator shall, within fourteen days after his appointment, publish in the *Gazette* and deliver to the Registrar for registration a notice of his appointment in the form prescribed.

(2) Where the liquidator fails to comply with the requirements of this section, he shall be liable to a default fine.

[s. 360]

Arrangement when binding on creditors

364.–(1) An arrangement entered into between a company about to be, or in the course of being wound up, and its creditors shall, subject to the right of appeal 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 number and value of the creditors.

(2) A creditor or contributory may, within three weeks from passing of the special resolution or approval by the creditors, as the case may be, in accordance with subsection (1), appeal to the court against it, and the court may thereupon, as it thinks just, amend, vary or confirm the arrangement.

[s. 361]

Reference of questions to court

365.–(1) The liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding-up of a company, 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.

(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

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on such terms and conditions as it sees fit, or make such other order on the application as it thinks just.

(3) A copy of an order made by virtue of this section staying the proceedings in the winding-up shall immediately be delivered by the company, or otherwise as may be prescribed, to the Registrar for registration.

[s. 362]

Costs of voluntary winding-up

366. All costs, charges and expenses properly incurred in the winding-up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

[s. 363]

Savings for rights of creditors and contributories

367. The voluntary winding-up of a company shall not bar the right of any creditor or contributory to have it wound up by the court, but in the case of an application by a contributory the court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding-up.

[s. 364]

CHAPTER IV
PROVISIONS APPLICABLE TO EVERY MODE OF WINDING-UP

Proof and Ranking of Claims

Debts of all descriptions may be proved

368. In every winding-up, subject, in the case of insolvent companies, to the application in accordance with the provisions of this Act or the law of bankruptcy, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or

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sound only in damages, or for some other reason do not bear a certain value.

[s. 365]

Application of bankruptcy rules

369. In the winding-up of an insolvent company, the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force under the law of bankruptcy with respect to the estates of persons adjudged bankrupt, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding-up and make such claims against the company as they respectively are entitled to by virtue of this section.

[s. 366]

Preferential debts

370.–(1) In a winding-up, the company's preferential debts shall be paid in priority to all other debts.

(2) The following shall be considered preferential debts:

(a) all Government taxes, local rates and customs and excise duties due from the company at the relevant date and having become due and payable within twelve months next before that date;

(b) all Government rents not more than one year in arrears;

(c) all wages or salary, whether or not earned wholly or in part by way of commission of any employee not being a director in respect of services rendered to the company during four months next before the relevant date;

(d) unless the company is being wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company, or unless the company has, at the commencement of the winding-up, under any contract, rights capable of being transferred to and vested in the employee, all amounts due in respect of any compensation or liability for compensation under any law in force in Tanzania relating to compensation

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of employees, being amounts which have accrued before the relevant date.

(3) Notwithstanding subsection (2)(c), the sum to which priority is to be given under that subsection shall not, in the case of any one claimant, exceed such amount as may be specified in the regulations made by the Minister:

Provided that, where a claimant under subsection (2)(c) is an employee who has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the court may decide to be due under the contract, proportionate to the time of service up to the relevant date.

(4) Where any compensation under any law in force in Tanzania relating to compensation of employees is a weekly payment, the amount due in respect thereof shall, for the purposes of subsection (2)(d) be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under such law.

(5) Where any payment has been made to any employee, not being a director, on account of wages or salary out of money advanced by some person for that purpose, the person by whom the money was advanced shall in a winding-up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which the employee would have been entitled to priority in the winding-up has been diminished by reason of the payment having been made.

(6) Preferential debts shall-

(a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and

(b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under

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any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(7) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding-up, the preferential debts shall be discharged immediately so far as the assets are sufficient to meet them.

(8) Where any person, whether or not a landlord or person entitled to rent, has distrained upon the goods or effects of the company in the period of three months ending with the date of the winding-up order, those goods or effects, or the proceeds of their sale, shall be charged for the benefit of the company with the preferential debts of the company to the extent that the company's property is insufficient for meeting them.

(9) Where by virtue of a charge under subsection (8), a person surrenders any goods or effects to a company or makes a payment to a company, that person ranks in respect of the amount of the proceeds of sale of those goods or effects by the liquidator or, as the case may be, the amount of the payment, as a preferential creditor of the company, except as against so much of the company's property as is available for the payment of preferential creditors by virtue of the surrender or payment.

(10) For the purpose of this section-

(a) any remuneration in respect of a period of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period;

(b) the expression "the relevant date" means-

(i) in the case of a company ordered to be wound up compulsorily, the date of the appointment, or first appointment of an interim liquidator, or, if no such appointment was made, the date of the winding-up order, unless in either case the company had commenced to be wound up voluntarily before that date; and

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(ii) in any case where subparagraph (i) does not apply, means the date of the passing of the resolution for the winding-up of the company.

Act No. 46 of 1931

(11) This section shall not apply in the case of a winding-up where the relevant date as defined in subsection (6) of section 262 of the repealed Companies Act occurred before the appointed day, and in such a case the provisions relating to preferential payments which would have applied if this Act had not been passed shall be deemed to remain in full force.

[s. 367]

Effect of Winding-up on Antecedent and Other Transactions

Transactions at under value

371.–(1) This section applies in the case of a company where an administration order is made in relation to the company, or the company goes into liquidation.

(2) Where the company has at a relevant time, defined in section 373 entered into a transaction with any person at an under value, the administrator or the liquidator, as the case may be, may apply to the court, which may make such order as it thinks fit for restoring the position to what it would have been if the company had not entered into that transaction.

(3) A company enters into a transaction with a person at an under value if-

(a) the company makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration; or

(b) the company enters into a transaction with that person for a consideration the value of which is significantly less than the value of the consideration provided by the company.

(4) The court shall not make an order under this section in respect of a transaction at an under value where it is satisfied-

(a) that the company which entered into the transaction did so in good faith and for the purpose of carrying on its business; and

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(b) that at the time it did so there were reasonable grounds for believing that the transaction would benefit the company.

[s. 368]

Preferences

372.–(1) This section applies as does section 371.

(2) Where the company has at a relevant time, defined in section 373 given a preference to any person, the administrator or the liquidator, as the case may be, may apply to the court, which may make such order as it thinks fit for restoring the position to what it would have been if the company had not given that preference.

(3) A company gives a preference to a person if-

(a) that person is one of the company's creditors or a surety or guarantor for any of the company's debts or other liabilities; and

(b) the company does anything or suffers anything to be done which, in either case, has the effect of putting that person into a position which, in the event of the company going into insolvent liquidation, would be better than the position he would have been in if that thing had not been done.

(4) The court shall not make an order under this section in respect of a preference given to any person unless the company which gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in subsection (3)(b).

(5) A company which has given a preference to a person connected with the company at the time the preference was given is presumed, unless the contrary is shown to have been influenced in deciding to give it by such a desire as is mentioned in subsection (4).

(6) For the purpose of this section and section 373, a person is connected with the company if he is a director or a person connected to a director as defined by section 203(4), and a director shall be deemed to include a person in accordance with

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whose directions or instructions the directors of a company are accustomed to act.

(7) The fact that something has been done in pursuance of the order of a court does not, without more, prevent the doing or suffering of that thing from constituting the giving of a preference.

[s. 369]

"Relevant time" under sections 371 and 372

373.–(1) Subject to subsection (2), the time at which a company enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into, or the preference given-

(a) in the case of a transaction at an undervalue or of a preference which is given to a person who is connected with the company, at a time in the period of two years ending with the onset of insolvency, which expression is defined below;

(b) in the case of a preference which is not such a transaction and is not so given, at a time in the period of six months ending with the onset of insolvency; and

(c) in either case, at a time between the presentation of a petition for the making of an administration order in relation to the company and the making of such an order on that petition.

(2) Where a company enters into a transaction at an undervalue or gives a preference at a time mentioned in subsection (1)(a) or (1)(b), that time is not a relevant time for the purposes of sections 371 or 372 unless the company-

(a) is at that time unable to pay its debts within the meaning of section 283; or

(b) becomes unable to pay its debts within the meaning of that section in consequence of the transaction or preference,

but the requirements of this subsection are presumed to be satisfied, unless the contrary is shown, in relation to any transaction at an undervalue which is entered into by a company with a person who is connected with the company.

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(3) For the purpose of subsection (1), the onset of insolvency is-

(a) in a case where section 371 or section 372 applies by reason of the making of an administration order, or of a company going into liquidation immediately upon the discharge of an administration order, the date of the presentation of the petition on which the administration order was made; and

(b) in a case where the section applies by reason of a company going into liquidation at any other time, the date of the commencement of the winding-up.

[s. 370]

Orders under sections 371 and 372

374.–(1) Without prejudice to the generality of sections 371(2) and 372(2), an order under either of those sections with respect to a transaction or preference entered into or given by a company may, subject to the subsection (2)-

(a) require any property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the company;

(b) require any property to be so vested if it represents in any person's hands the application either of the proceeds of sale of property so transferred or of money so transferred;

(c) release or discharge, in whole or in part, any security given by the company;

(d) require any person to pay, in respect of benefits received by him from the company, such sums to the office-holder as the court may direct;

(e) provide for any surety or guarantor whose obligations to any person were released or discharged, in whole or in part, under the transaction, or by the giving of the preference, to be under such new or revived obligations to that person as the court thinks appropriate;

(f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order,

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for such an obligation to be charged on any property and for the security or charge to have the same priority as a security or charge released or discharged, in whole or in part, under the transaction or by the giving of the preference; and

(g) provide for the extent to which any person whose property is vested by the order in the company, or on whom obligations are imposed by the order, is to be able to prove in the winding-up of the company for debts or other liabilities which arose from, or were released or discharged, in whole or in part, under or by, the transaction or the giving of the preference.

(2) An order made by a court pursuant to sections 376 or 377 may affect the property of, or impose an obligation on, any person whether or not he is the person with whom the company in question entered into the transaction or the person to whom the preference was given; but such an order-

(a) shall not prejudice any interest in property which was acquired from a person other than the company and was acquired in good faith and for value, or prejudice any interest deriving from such an interest; and

(b) shall not require a person who received a benefit from the transaction or preference in good faith and for value to pay a sum to the administrator or the liquidator, as the case may be, except where that person was a party to the transaction or the payment is to be in respect of a preference given to that person at a time when he was a creditor of the company.

[s. 371]

Effect of floating charge

375. Where a company is being wound up, a floating charge on the undertaking or property of the company created within twelve months of the commencement of the winding-up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid, or the value of any goods and services

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supplied to the company, or the value of any discharge of any debt of the company, at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five percent per annum or such other rate as may be prescribed in the regulations by the Minister:

Provided that, in relation to a charge created more than six months before the appointed day, this section shall have effect with the substitution, for the words "twelve months", of the words "six months".

[s. 372]

Disclaimer of onerous property in case of company wound up

376.–(1) Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto, may, with the leave of the court and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding-up or such extended period as may be allowed by the court, disclaim the property:

Provided that, where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding-up, the power under this section of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the court.

(2) The disclaimer shall operate to determine as from the date of disclaimer, the rights, interest and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is

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necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the manner as the court thinks just.

(4) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any persons interested in the property requiring him to decide whether he will or will not disclaim and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such further period as may be allowed by the court, given notice to the applicant that he intends to apply to the court for leave to disclaim, and, in the case of a contract, if the liquidator, after such an application, does not within the said period or further period disclaim the contract, the company shall be deemed to have adopted it.

(5) The court may on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract or otherwise as the court thinks just, and any damages payable under the order to any such person may be proved by him as a debt in the winding-up.

(6) The court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any persons entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability, or a trustee for him, and on such terms as the court thinks just, and on any such vesting order being made, the property comprised therein

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shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose:

Provided that, where the property disclaimed is of a leasehold nature, the court shall not make a vesting order in favour of any person claiming under the company as under lessee or mortgagee except upon the terms of making that person-

(a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding-up; or

(b) if the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

and in either event, if the case so requires, as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the court shall have power to vest the estate and interest of the company in the property in any person liable either personally or in a representative character, and either alone or jointly with the company, to perform the lessee's covenants in the lease, freed and discharged from all estates, encumbrances and interests created therein by the company.

(7) A person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding-up.

[s. 373]

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Restriction of rights of creditor as to execution or attachment in case of company being wound up

377.–(1) Where a creditor has issued execution against the movable or immovable property of a company or has attached any debt due to the company, and the company is subsequently wound up, he shall not be entitled to retain the benefit of the

execution or attachment against the liquidator in the winding-up of the company unless he has completed the execution or attachment before the commencement of the winding-up:

Provided that-

(a) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding-up is to be proposed, the date on which the creditor so had notice shall, for the purposes of the foregoing provision, be substituted for the date of the commencement of the winding-up;

(b) a person who purchases in good faith under a sale by a bailiff on an order of the court any movable property of a company on which an execution has been levied shall in all cases acquire a good title thereto against the liquidator; and

(c) the rights conferred by this subsection on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court may think fit.

(2) For the purpose of this section, an execution against movable property shall be taken to be completed by seizure and sale, and an attachment of a debt shall be deemed to be completed by receipt of the debt, and an execution against immovable property shall be deemed to be completed by seizure and, in the case of an equitable interest, by the appointment of a receiver.

(3) In this section and in section 378 the expression "movable property" includes all chattels personal, and the expression "bailiff" includes any officer charged with the execution of a writ or other process.

[s. 374]

Duties of bailiff as to goods taken in execution

378.–(1) Subject to the provisions of subsection (3), where any movable property of a company is taken in execution, and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the bailiff that an interim liquidator has been

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appointed or that a winding-up order has been made or that a resolution for voluntary winding-up has been passed, the bailiff shall, on being so required, deliver the movable property including any money seized or received in part satisfaction of the execution to the liquidator; but the costs of the execution shall be a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.

(2) Subject to the provisions of subsection (3), where under an execution in respect of a decree for a sum exceeding four hundred shillings the movable property of a company is sold or money is paid in order to avoid sale, the bailiff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for fourteen days, and if within that time notice is served on him of a petition for the winding-up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding-up of the company and an order is made or a resolution is passed, as the case may be, for the winding-up of the company, the bailiff shall pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor.

(3) The rights conferred by this section on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit.

[s. 375]

Offences Antecedent to or in Course of Winding-up

Fraud, etc. in anticipation of winding up

379.–(1) When a company is ordered to be wound up by the court, or passes a resolution for voluntary winding up, any person, being a past or present officer of the company is deemed to have committed an offence, if, within the twelve months immediately preceding the commencement of the winding-up, he has-

(a) concealed any part of the company's property or concealed any debt due to or from the company;

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(b) fraudulently removed any part of the company's property to the value of or more;

(c) concealed, destroyed, mutilated or falsified any book or paper affecting or relating to the company's property or affairs;

(d) made any false entry in any book or paper affecting or relating to the company's property or affairs;

(e) fraudulently parted with, altered or made any omission in any document affecting or relating to the company's property or affairs; or

(f) pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for, unless the pawning, pledging or disposal was in the ordinary way of the company's business.

(2) Subject to subsection (1), such a person is deemed to have committed an offence if within the period above mentioned he has been privy to the doing by others of any of the things mentioned in paragraph (c), (d) and (e) of subsection (1); and he commits an offence if, at any time after the commencement of the winding-up, he does any of the things mentioned in paragraphs (a) to (f) of subsection (1), or is privy to the doing by others of any of the things mentioned in paragraph (c) to (e) of the same subsection.

(3) It is a defence-

(a) for a person charged under paragraph (a) or (f) of subsection (1), or under subsection (2) in respect of the things mentioned in either of those two paragraphs to prove that he had no intent to defraud; and

(b) for a person charged under paragraph (c) or (d) of subsection (1), or under subsection (2) in respect of the things mentioned in either of those two paragraphs to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.

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(4) Where a person pawns, pledges or disposes of any property in circumstances which amount to an offence under subsection (1)(f), a person who takes in pawn or pledge, or otherwise receives, the property knowing it to be pawned, pledged or disposed of in such circumstances, commits an offence.

(5) A person who commits an offence under this section on conviction shall be liable to a fine or to imprisonment or to both.

[s. 376]

Transactions in fraud of creditors

380.–(1) When a company is ordered to be wound up by the court or passes a resolution for voluntary winding-up, a person is deemed to have committed an offence if he, being at the time an officer of the company-

(a) has by false pretences or by means of any other fraud induced any person to give credit to the company; or

(b) has made or caused to be made any gift or transfer of, or charge on, or has caused or connived at the levying of any execution against, the company's property; or

(c) has concealed or removed any part of the company's property since, or within two months before, the date of any unsatisfied judgment or order for the payment of money obtained against the company.

(2) A person does not commit an offence under this section-

(a) by reason of conduct constituting an offence under subsection (1)(b) which occurred more than five years before the commencement of the winding-up; or

(b) if he proves that, at the time of the conduct constituting the offence, he had no intent to defraud the company's creditors.

(3) A person who commits an offence under this section on conviction shall be liable to a fine or to imprisonment to both.

[s. 377]

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Misconduct in course of winding-up

381.–(1) When a company is being wound up, whether by the court or voluntarily, any person, being a past or present officer of the company, commits an offence if he-

(a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the company's property, and how and to whom and for what consideration and when the company disposed of any part of that property, except such part as has been disposed of in the ordinary way of the company's business;

(b) does not deliver up to the liquidator, or as he directs, all such part of the company's property as is in his custody or under his control, and which he is required by law to deliver up;

(c) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up;

(d) knowing or believing that a false debt has been proved by any person in the winding-up, fails to inform the liquidator as soon as practicable; or

(e) after the commencement of the winding-up, prevents the production of any book or paper affecting or relating to the company's property or affairs.

(2) Subject to subsection (1), such a person commits an offence if after the commencement of the winding-up he attempts to account for any part of the company's property by fictitious losses or expenses; he is deemed to have committed that offence if he has so attempted at any meeting of the company's creditors within the twelve months immediately preceding the commencement of the winding-up.

(3) It is a defence for a person charged under paragraphs (a), (b) or (c) of subsection (1) to prove that he had no intent to defraud, and for a person charged under paragraph (e) of subsection (1) to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.

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(4) A person who commits an offence under this section on conviction, shall be liable to a fine or to imprisonment, or to both.

[s. 378]

Penalty for falsification of books

382. Where any contributory of any company being wound up destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the company with intent to defraud or deceive any person, commits an offence and on conviction shall be liable to imprisonment.

[s. 379]

Officers of company failing to account for loss of part of company's property

383.–(1) Where any person being a past or present officer of a company which is being wound up under the provisions of this Act, on being required by the official receiver at any time or in the course of his examination by the court under the provisions of section 328 to account for the loss of any substantial part of the company's property incurred within a period of one year next preceding the commencement of the winding-up, fails to give a satisfactory explanation of the manner in which such loss occurred, commits an offence and on conviction shall be liable to imprisonment.

(2) A prosecution shall not be instituted against any person under this section except by or with the consent of the Attorney General.

[s. 380]

Liability where proper accounts not kept

384.–(1) Where in the course of the winding-up of a company it is shown that proper books of account were not kept by the company at any time during the period of two years immediately preceding the commencement of the winding-up, or the period between the incorporation of the company and the commencement of the winding-up, whichever is the shorter, every officer of the company who is in default shall, unless he shows that he acted honestly and that in the

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circumstances in which the business of the company was carried on the default was excusable, on conviction, shall be liable to a fine or to imprisonment, or to both.

(2) For the purpose of this section, a company shall be deemed not to have kept proper books of account, if it has not kept such books or accounts as are required to be kept by section 154.

[s. 381]

Penalisation of Directors and Officers

Remedy against delinquent directors, liquidators, etc

385.–(1) This section applies if in the course of a winding-up of a company it appears that a person who-

(a) is or has been an officer of the company;

(b) has acted as liquidator, administrator or administrative receiver of the company; or

(c) not being a person falling within paragraph (a) or (b), is or has been concerned, or has taken part, in the promotion, formation or management of the company,

has misapplied or retained, or become accountable for, any money or other property of the company, or been guilty of any misfeasance or breach of any fiduciary or other duty in relation to the company.

(2) The reference in subsection (1) to any misfeasance or breach of any fiduciary or other duty in relation to the company includes, in the case of a person who has acted as liquidator or administrator of the company, any misfeasance or breach of any fiduciary or other duty in connection with the carrying out of his functions as liquidator or administrator of the company.

(3) The court may, on the application of the official receiver or the liquidator, or of any creditor or contributory, examine into the conduct of the person falling within subsection (1) and compel him-

(a) to repay, restore or account for the money or property or any part of it, with interest at such rate as the court thinks just; or

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(b) to contribute such sum to the company's assets by way of compensation in respect of the misfeasance or breach of any fiduciary or other duty as the court thinks just.

(4) The power to make an application under subsection (3) in relation to a person who has acted as liquidator or administrator of the company is not exercisable, except with the leave of the court, after that person has had his release.

(5) The power of a contributory to make an application under subsection (3) is not exercisable except with the leave of the court, but is exercisable notwithstanding that he will not benefit from any order the court may make on the application.

[s. 382]

Fraudulent trading

386. Where in the course of the winding-up of a company it appears that any business of the company has been carried on with intent to defraud the company or creditors of or any other person, or for any fraudulent purpose, the court, may on application of the liquidator declare that any persons who were knowingly parties to the carrying on of the business in the manner, above, are to be liable to make such contribution to the company's assets as the court thinks just,

[s. 383]

Wrongful trading

387.–(1) Subject to subsection (3), if in the course of the winding-up of a company it appears that subsection (2) applies in relation to a person who is or has been a director of the company, the court, on the application of the liquidator, may declare that that person is to be liable to make such contribution to the company's assets as the court thinks just.

(2) This subsection applies in relation to a person if-

(a) the company has gone into insolvent liquidation; and

(b) at sometime before the commencement of the winding-up of the company, that person knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation; and

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(c) that person was a director of the company at that time.

(3) The court shall not make a declaration under this section with respect to any person if it is satisfied that after the condition specified in subsection (2)(b) was first satisfied in relation to him, that person took every step with a view to authorised the potential loss to the company's creditors as, assuming him to have known that there was no reasonable prospect that the company would avoid going into insolvent liquidation, he ought to have taken.

(4) For the purpose of subsections (2) and (3), the facts which a director of a company ought to know or ascertain, the conclusions which he ought to reach and the steps which he ought to take are those which would be known or ascertained, or reached or taken, by a reasonably diligent person exercising the duty of care owed to the company under section 188.

(5) The reference in subsection (4) to the functions carried out in relation to a company by a director of the company includes any functions which he does not carry out but which have been entrusted to him.

(6) For the purposes of this section, a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding-up.

(7) This section is without prejudice to section 386.

[s. 384]

Proceedings under sections 386 and 387

388.–(1) On the hearing of an application under section 386 and 387, the liquidator may himself give evidence or call witnesses.

(2) Where under either section the court makes a declaration, it may give such further directions as it thinks proper for giving effect to the declaration; and in particular, the court may-

(a) provide for the liability of any person under the declaration to be a charge on any debt or obligation due from the company to him, or on any mortgage or

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charge or any interest in a mortgage or charge on assets of the company held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf; and

(b) make such further order as may be necessary for enforcing any charge imposed under this subsection.

(3) For the purpose of subsection (2), "assignee"-

(a) includes a person to whom or in whose favour, by the directions of the person made liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created; but

(b) does not include an assignee for valuable consideration, not including consideration by way of marriage, given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(4) Where the court makes a declaration under either section in relation to a person who is a creditor of the company, it may direct that the whole or any part of any debt owed by the company to that person and any interest thereon shall rank after all other debts owed by the company and after any interest on those debts.

(5) Sections 386 and 387 have effect notwithstanding that the person concerned may be criminally liable in respect of matters on the ground of which the declaration under the section is to be made.

[s. 385]

Prosecution of delinquent officers and members of company

389.–(1) Where it appears to the court in the course of a winding-up by the court that any past or present officer, or any member of the company has been guilty of any offence in relation to the company for which he is criminally liable, the court may, either on the application of any person interested in the winding-up or of its own motion, direct the liquidator to refer the matter to the Attorney General.

(2) Where it appears to the liquidator in the course of a voluntary winding-up that any past or present officer, or any

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member, of the company has committed an offence in relation to the company for which he is criminally liable, he shall immediately report the matter to the Attorney General and shall furnish to the Attorney General such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as the Attorney General may require.

(3) Where any report is made under subsection (2) to the Attorney General, he may, if he thinks fit, refer the matter to the official receiver for further inquiry, and the official receiver shall thereupon investigate the matter and may, if he thinks it expedient, apply to the court for an order conferring on him for the purpose with respect to the company concerned all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding-up by the court.

(4) Where it appears to the court in the course of a voluntary winding-up that any past or present officer, or any member, of the company has committed an offence as aforesaid, and that no report with respect to the matter has been made by the liquidator to the Attorney General under subsection (2), the court may, on the application of any person interested in the winding-up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of subsection (2).

(5) Where, where any matter is reported or referred to the Attorney General under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall institute proceedings accordingly, and it shall be the duty of the liquidator and of every officer and agent of the company past and present, other than the defendant in the proceedings, to give him all assistance in connection with the prosecution which he is reasonably able to give, and for the purposes of this subsection, the expression "agent" in relation to a company

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shall be deemed to include any banker or advocate of the company and any person employed by the company as auditor.

(6) Where any person fails or neglects to give assistance in a manner required by subsection (5), the court may, on the application of the Attorney General, direct that person to comply with the requirements of the said subsection, and where any such application is made with respect to a liquidator, the court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

[s. 386]

Supplementary Provisions as to Winding-up

Disqualification for appointment as liquidator

390. A body corporate shall not be qualified for appointment as a liquidator of a company, whether in a winding-up by the court or in a voluntary winding up, and-

(a) any appointment made in contravention of this provision shall be void; and

(b) any body corporate which acts as a liquidator of a company shall be liable to a fine.

[s. 387]

Corrupt inducement affecting appointment as liquidator

391. A person who gives or agrees or offers to give to any member or creditor of a company any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator shall be liable to a fine.

[s. 388]

Enforcement of duty of liquidator to make returns, etc

392.–(1) Where any liquidator who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default

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within fourteen days after the service on him of a notice requiring him to do so, the court may, on an application made to the court by any contributory or creditor of the company or by the Registrar, make an order directing the liquidator to make good the default within such time as may be specified in the order.

(2) An order referred under subsection (1), may provide that all costs of and incidental to the application shall be borne by the liquidator.

(3) This section shall not be taken to prejudice the operation of any enactment imposing penalties on a liquidator in respect of any such default.

[s. 389]

Notification that a company is in liquidation

393.–(1) Where a company is being wound up, whether by the court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is in liquidation.

(2) Where default is made in complying with this section, the company and any of the following persons, who knowingly and willfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be liable to a fine.

[s. 390]

Exemption of certain documents from stamp duty on winding up

394.–(1) In the case of a winding up by the court, or of a creditors' voluntary winding up of a company-

(a) every assurance relating solely to freehold or leasehold property or to a right of occupancy or to any mortgage, charge or other encumbrance on, or to any estate, right or interest in, any movable or immovable property, which forms part of the assets of the company and which, after the execution of the assurance, either at law or in equity, is or remains part of those assets; and

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(b) every power of attorney, proxy paper, writ, order, certificate, affidavit, statutory declaration, bond or other instrument or writing relating solely to the property of any company which is being so wound up, or to any proceeding under any such winding up,

shall be exempt from duties chargeable under the enactments relating to stamp duties.

(2) In subsection (1), the expression "assurance" includes deed, conveyance, grant, transfer, assignment and surrender.

[s. 391]

Books of company to be evidence

395. 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 purporting to be therein recorded.

[s. 392]

Disposal of books and papers of company
Act No. 5 of 2022 s. 20

396.–(1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows-

(a) in the case of a winding up by the court, in such way as the court directs;

(b) in the case of a members' voluntary winding up, in such way as the company by special resolution directs, and, in the case of a creditors' voluntary winding up, in such way as the committee of inspection or, if there is no such committee, as the creditors of the company, may direct.

(2) Subject to the other provisions of this section, after five years from the dissolution of the company, responsibility shall not rest on the company, the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

Provided that, the liquidator shall be responsible for maintaining accounting records and underlying documentations relating

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to the dissolution of a company for a period of at least ten years from the date of dissolution.

(3) Provision may be made in rules prescribed by the Minister to prevent, for any period not exceeding five years from the dissolution of the company, the destruction of the books and papers of a company which has been wound up, and for enabling any creditor or contributory of the company to appeal from any direction so given.

(4) Where any person acts in contravention of any such rules he shall be liable to a fine.

[s. 393]

Information as to pending liquidations

397.–(1) Where, a company is being wound up the winding up is not concluded within one year after its commencement, the liquidator shall, at six-monthly intervals thereafter, until the winding up is concluded, deliver to the Registrar a statement in the prescribed form containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

(2) Where a liquidator fails to comply with this section, he shall be liable to a default fine.

[s. 394]

Unclaimed assets

398.–(1) Where, a company is being wound up, it appears either from any statement delivered to the Registrar under section 397 or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt or any money held by the company in trust in respect of dividends or other sums due to any person as a member of the company, the liquidator shall immediately pay the said money to the official receiver for the credit of the Companies Liquidation Account, and shall be entitled to a receipt for the money so paid, and that receipt shall be an effectual discharge to him in respect thereof.

(2) For the purpose of ascertaining and getting in any money payable in pursuance of this section, the like powers

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may be exercised, and by the like authority, as are exercisable under section 136 of the Bankruptcy Act, for the purposes of ascertaining and getting in the sums, funds and dividends referred to in that section.

Cap. 25

(3) A person claiming to be entitled to any money paid in pursuance of this section may apply to the official receiver for payment thereof and the official receiver may, on a certificate by the liquidator that the person claiming is entitled, pay to that person the sum due.

(4) A person dissatisfied with the decision of the official receiver in respect of a claim made in pursuance of this section may appeal to the court.

[s. 395]

Resolutions passed at adjourned meetings of creditors and contributories

399. Where a resolution is passed at an adjourned meeting of any creditors or contributories of a company the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

[s. 396]

Supplementary Powers of Court

Meetings to ascertain wishes of creditors or contributories

400.–(1) The court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any sufficient evidence, and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or the articles.

[s. 397]

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Swearing of affidavits

401.–(1) An affidavit or declaration required to be sworn or made under the provisions or for the purpose of this Part, may be sworn or made in Tanzania before any court, Judge or person lawfully authorised to take and receive affidavits or statutory declarations or before any consuls or vice-consuls appointed by the Government in any place outside Tanzania.

(2) All Courts, Judges, Justices, Commissioners and persons acting judicially in Tanzania shall take judicial notice of the seal or stamp or signature, as the case may be, of any such court, Judge or person attached, appended or subscribed to any such affidavit or declaration, or to any other document to be used for the purpose of this Part.

[s. 398]

Provisions as to Dissolution

Power of court to declare dissolution of company void

402.–(1) Where a company has been dissolved, the court may on an application being made for the purpose 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.

(2) It shall be the duty of the person on whose application the order was made, within seven days after the making of the order or such further time as the court may allow, to deliver to the Registrar for registration a certified copy of the order, and if that person fails so to do he shall be liable to a default fine.

[s. 399]

Registrar may strike defunct company off register

403.–(1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he may send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) Where the Registrar does not within thirty days of sending the letter receive any answer thereto, he shall within

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fourteen days after the expiration of that period send to the company by registered post a 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 thirty days 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) Where the Registrar either receives an answer to the effect that the company is not carrying on business or in operation, or does not within thirty days after sending the second letter receive any answer, he may publish in the *Gazette*, and send to the company by post, a notice that at the expiration of three months from the date of the 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 be dissolved:

Provided that, the Registrar shall not be required to send the letters referred to in subsections (1) and (2) in any case where the company itself or any director or the Secretary of the company has requested him to strike the company off the register or has notified him that the company is not carrying on business.

(4) Where, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months, the Registrar shall publish in the *Gazette* and send to the company or the liquidator, if any, a like notice as is provided in subsection (3).

(5) At the expiration of the time mentioned in the notice, the Registrar may, unless cause to the contrary is previously shown by the company or the liquidator, strike its name off the register, and shall publish notice thereof in the *Gazette*, and on the publication in the *Gazette* of this notice the company shall be dissolved:

Provided that-

(a) the liability, if any, of every director, officer and member of the company shall continue and may be enforced as if the company had not been dissolved; and

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(b) nothing in this subsection shall affect the power of the court to wind up a company the name of which has been struck off the register.

(6) Where a company or any member or creditor thereof feels aggrieved by the company having been struck off the register the Court on an application made by the company or member or creditor before the expiration of ten years from the publication in the *Gazette* of the notice above may, if satisfied that the company was at the time of the striking off carrying on business or 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 upon a certified copy of the order being delivered to the Registrar for registration, 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 provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office or, if it has no registered office, to the care of some 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.

[s. 400]

Powers of Registrar to strike off a company fraudulently registered or conducting illegal business
Act No. 9 of 2019 s. 10

404.–(1) Where the Registrar has reasonable cause to believe that-

(a) a registered company has been fraudulently registered;

(b) a registered company is engaged in criminal activities such as money laundering, human trafficking, drug trafficking, terrorism financing or any other offence as may be prescribed by the Minister upon consultation with the relevant authorities;

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(c) at the time of incorporation, there was misrepresentation or fraud by a registered company;

(d) by operation of law, all shareholders or directors have been prohibited from entering the country; or

(e) a registered company is operating contrary to its objectives as prescribed in the memorandum and articles of association,

he shall issue a notice in writing to the company, of his intention to strike the company off the register.

(2) Upon receipt of the notice referred to under subsection (1), the company may, within thirty days-

(a) provide to the Registrar reasons in writing as to why the company should not be struck off the register; or

(b) challenge the notice of intention to strike the company off register by making an application to the court of competent jurisdiction.

(3) Where the company fails to provide reasons under subsection (2) within the prescribed time or where the reasons provided are not satisfactory, the Registrar shall strike the company off register, publish in the *Gazette* the name of the company which has been struck off and notify the company of its decision and the reasons thereof.

(4) Where a company, member or creditor is aggrieved by the decision of the Registrar under subsection (3) shall, within five years from the date of publication in the *Gazette*, apply to the court for restoration of the company in the register:

Provided that, the Registrar shall not, within such period of five years, register another company with the same name.

(5) Upon receipt of the application for restoration, the court may-

(a) order restoration of the company in the register; and

(b) give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

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(6) The company restored under subsection (5) shall be deemed to have continued in existence as if its name had not been struck off, and the court may, by order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) The Minister may make regulations necessary or convenient for better carrying out or giving effect to this section.

[s. 400A]

Property of dissolved company to be *bona vacantia*

405. Where a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution, but not including property held by the company on trust for any other person shall, subject and without prejudice to any order which may at any time be made by the court under sections 402 and 403 be deemed to be *bona vacantia*, and shall accordingly belong to the Government.

[s. 401]

Power of Government to disclaim title to property vesting under section 405

406.–(1) Where any property vests in the Government under section 405 the Government's title thereto under that section may be disclaimed by a notice signed by the Attorney General.

(2) Where a notice of disclaimer under this section is executed as respects any property, that property shall be deemed not to have vested in the Government under section 405 and subsections (2) and (6) of section 376 shall apply in relation to the property as if it had been disclaimed under section 376(1) immediately before the dissolution of the company.

(3) The right to execute a notice of disclaimer under this section may be waived by or on behalf of the Government either expressly or by taking possession or other act evincing that intention.

(4) A notice of disclaimer under this section shall be of no effect unless it is executed within twelve months of the date

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on which the vesting of the property as above came to the notice of the Attorney General, or, if an application in writing is made to the Attorney General by any person interested in the property requiring him to decide whether he will or will not disclaim, within a period of three months after the receipt of the application or such further period as may be allowed by the court which would have had jurisdiction to wind up the company if it had not been dissolved.

(5) A statement in a notice of disclaimer of any property under this section that the vesting of the property came to the notice of the Attorney General on a specified date or that no such application was received by him with respect to the property before a specified date shall, until the contrary is proved, be sufficient evidence of the fact stated.

(6) A notice of disclaimer under this section shall be delivered to the Registrar for registration by him, and copies thereof shall be published in the *Gazette* and sent to any persons who have given the Attorney General notice that they claim to be interested in the property.

[s. 402]

Companies Liquidation Account

Companies Liquidation Account

407. An account, to be called the Companies Liquidation Account, shall be kept by the official receiver with any of the local commercial banks approved by the Governor, or such other bank as may be prescribed by the Minister in regulations, and all moneys received by the official receiver in respect of proceedings under this Act in connection with the winding up of companies shall be paid to that account.

[s. 403]

Investment of surplus funds

408.–(1) Whenever the cash balance standing to the credit of the Companies Liquidation Account is in excess of the amount which in the opinion of the official receiver is required to answer claims against the account, the official receiver may invest the amount not so required or any part thereof in any

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investment authorised by law for the investment of trust funds, or may place the same or any part thereof on fixed deposit with any bank.

(2) Whenever any money so invested or placed on deposit is, in the opinion of the official receiver, required to answer any claims against the account, the official receiver shall thereupon raise such sums as may be required by the sale of such part of the said securities or by withdrawing such amount from deposit, as may be required and repay the same to the credit of the cash balance of the Companies Liquidation Account.

(3) All interest accruing from any money so invested or placed on deposit shall be paid by the official receiver to the credit of a separate account entitled the Companies Contingency Fund at any of the local commercial banks approved by the Governor, or such other bank as may be prescribed by the Minister in the regulations.

(4) Where it appears that, it is in the public interest, to do so and that, other funds are not available or properly chargeable, the court may, on the application of the official receiver or the Registrar, authorise the official receiver or the Registrar, to employ money in the Companies Contingency Fund to meet expenditure which it shall consider necessary or advisable to incur for the purpose of enabling the Registrar to meet any indemnity or to pay any expenses which he is required by this Act to meet or pay.

(5) Where an application is made by the Registrar under this subsection, the official receiver shall be heard by the court before such application is granted; and, if the application is granted, the official receiver shall pay to the Registrar, out of the Companies Contingency Fund, the amount authorised by the court.

(6) The court may in its discretion order that the fund be reimbursed in whole or in part of any money so recovered as a result of expenditure so authorised.

[s. 404]

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PART IX
RECEIVERS AND MANAGERS

Preliminary and General Provisions

Construction of references to receivers, managers and administrative receivers

409. Except where the context otherwise requires-

(a) any reference in this Act to a "receiver" or "manager of the property of a company", or to a receiver thereof, includes a reference to a receiver or manager, or to a receiver, of part only of that property and to a receiver only of the income arising from that property or from part thereof; and

(b) any reference in this Act to the "appointment of a receiver" or "manager" under powers contained in any instrument includes a reference to an appointment made under powers which, by virtue of any enactment, are implied in and have effect as if contained in an instrument; and

(c) any reference in this Act to "an administrative receiver" means a receiver or manager of the whole or substantially the whole of a company's property appointed by or on behalf of the holders of any debentures of the company secured by a charge which, as created, was a floating charge, or by such a charge and one or more other securities, or a person who would be such a receiver or manager but for the appointment of some other person as the receiver of part of the company's property.

[s. 405]

Disqualification of body corporate for appointment as receiver

410. A body corporate shall not be qualified for appointment as receiver of the property of a company, and any body corporate which acts as such a receiver on conviction shall be liable to a fine.

[s. 406]

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Disqualification of undischarged bankrupt from acting as receiver or manager

411.–(1) Where any person being an undischarged bankrupt acts as receiver or manager of the property of a company on behalf of debenture holders, he shall, subject to the following subsection, on conviction, shall be liable to a fine or to imprisonment, or to both.

(2) Subsection (1) shall not apply to a receiver or manager where-

(a) the appointment under which he acts and the bankruptcy were both before the appointed day; or

(b) he acts under an appointment made by order of a court.

[s. 407]

Power to appoint official receiver

412. Where an application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the court, the official receiver may be so appointed.

[s. 408]

Application to court for directions

413. A receiver or manager of the property of a company appointed under the powers contained in any instrument may apply to the court for directions in relation to any particular matter arising in connection with the performance of his functions, and on any such application the court may give such directions, or may make such order declaring the rights of persons before the court or otherwise, as the court thinks just.

[s. 409]

Liability for invalid appointment

414. Where the appointment of a person as the receiver or manager of a company's property under powers contained in an instrument is discovered to be invalid, whether by virtue of the invalidity of the instrument or otherwise, the court may order the person by whom or on whose behalf the appointment was made to indemnify the person appointed against any liability which arises solely by reason of the invalidity of the appointment.

[s. 410]

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Notification that receiver or manager appointed

415.–(1) Where a receiver or manager of the property of a company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company or the receiver or manager or the liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver or manager has been appointed.

(2) Where default is made in complying with the requirements of this section, the company and any of the following persons namely, any officer of the company, any liquidator of the company and any receiver or manager, who knowingly and willfully authorises or permits the default, on conviction shall be liable to a fine.

[s. 411]

Power of court to fix remuneration on application of liquidator

416.–(1) The court may, on an application made to the court by the liquidator of a company, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the company.

(2) The power of the court under subsection (1) shall, where no previous order has been made with respect thereto-

(a) extend to fixing the remuneration for any period before the making of the order or the application therefor; and

(b) be exercisable notwithstanding that the receiver or manager has died or ceased to act before the making of the order or the application; and

(c) where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that so fixed for that period, extend to requiring him or his legal representatives to account for the excess or such part thereof as may be specified in the order.

(3) The court may on an application made either by the liquidator or by the receiver or manager vary or amend an order made under subsection (1).

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(4) This section shall apply whether the receiver or manager was appointed before or after the appointed day.

[s. 412]

Liability for contracts, etc.

417.–(1) A receiver or manager appointed under powers contained in an instrument, other than an administrative receiver is, to the same extent as if he had been appointed by order of the court-

(a) personally liable on any contract entered into by him in performance of his functions, except in so far as the contract otherwise provides, and on any contract of employment adopted by him in the performance of those functions; and

(b) entitled in respect of that liability to indemnity out of the assets.

(2) For the purpose of subsection (1)(a), the receiver or manager is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within fourteen days after his appointment.

(3) Subsection (1) does not limit any right to indemnity which the receiver or manager would have apart from it, nor limit his liability on contracts entered into without authority, nor confer any right to indemnity in respect of that liability.

(4) Where at any time the receiver or manager so appointed vacates office-

(a) his remuneration and any expenses properly incurred by him; and

(b) any indemnity to which he is entitled out of the assets of the company,

shall be charged on and paid out of any property of the company which is in his custody or under his control at that time in priority to any charge or other security held by the person by or on whose behalf he was appointed.

[s. 413]

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Delivery to Registrar of accounts of receivers and managers

418.–(1) Except where section 426 applies, every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument shall, within one month, or such longer period as the Registrar may allow, after the expiration of the period of six months from the date of his appointment and of every subsequent period of six months, and within one month after he ceases to act as receiver or manager, deliver to the Registrar for registration an abstract in the prescribed form showing his receipts and his payments during that period of six months, or where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and the aggregate amount of his receipts and of his payments during all preceding periods since his appointment.

(2) Every receiver or manager who makes default in complying with the provisions of this section shall be liable to a default fine.

[s. 414]

Enforcement of duty of receivers and managers to make returns, etc.

419.–(1) Where any receiver or manager of the property of a company-

(a) having made default in filing, delivering or making any return, account or other document, or in giving any notice, which a receiver or manager is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so; or

(b) having been appointed under the powers contained in any instrument, has, after being required at any time by the liquidator of the company so to do, failed to render proper accounts of his receipts and payments and to vouch the same and to pay over to the liquidator the amount properly payable to him,

the court may, on an application made for the purpose, make an order redirecting the receiver or manager, to make good the default within such time as may be specified in the order.

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(2) In the case of any such default as is mentioned in subsection (1)(a), an application for the purposes of this section may be made by any member or creditor of the company or by the Registrar, and in the case of any such default as is mentioned in subsection (1)(b), the application shall be made by the liquidator, and in either case the order may provide that all costs of and incidental to the application shall be borne by the receiver or manager.

(3) This section shall not be taken to prejudice the operation of any enactments imposing penalties on receivers in respect of any such default as is mentioned in subsection (1).

[s. 415]

Administrative Receivers

General powers

420.–(1) The powers conferred on the administrative receiver of a company by the debentures by virtue of which he was appointed are deemed to include, except in so far as they are inconsistent with any of the provisions of those debentures, the powers specified in section 256.

(2) In the application of section 255 to the administrative receiver of a company-

(a) the words "he" and "him" refer to the administrative receiver; and

(b) references to the property of the company are to the property of which he is or, but for the appointment of some other person as the receiver of part of the company's property, would be the receiver or manager.

(3) A person dealing with the administrative receiver in good faith and for value is not supposed to inquire whether the receiver is acting within his powers.

[s. 416]

Power to dispose of charged property, etc.

421.–(1) Where, on an application by the administrative receiver, the court is satisfied that the disposal, with or without assets, of any relevant property which is subject to a security would be likely to promote a more advantageous authorised

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of the company's assets than would otherwise be effected, the court may by order authorise the administrative receiver to dispose of the property as if it were not subject to the security.

(2) Subsection (1) does not apply in the case of security held by the person by or on whose behalf the administrative receiver was appointed, or of any security to which a security so held has priority.

(3) It shall be a condition of an order under this section that-

(a) the net proceeds of the disposal; and

(b) where those proceeds are less than such amounts as may be determined by the court to be the net amount which would be realised on a sale of the property in the open market by a willing vendor, such sums as may be required to make good the deficiency,

shall be applied towards discharging the sums secured by the security.

(4) Where a condition imposed in pursuance of subsection (3) relates to two or more securities, that condition shall require the net proceeds of the disposal and, where paragraph (b) of that subsection applies, the sums mentioned in that paragraph to be applied towards discharging the sums secured by those securities in the order of their priorities.

(5) An office copy of an order under this section shall, within fourteen days of the making of the order, be sent by the administrative receiver to the Registrar.

(6) Where the administrative receiver without reasonable excuse fails to comply with subsection (5), he shall be liable to a fine and, for continued contravention, to a default fine.

(7) In this section "relevant property", in relation to the administrative receiver, means the property of which he is or, but for the appointment of some other person as the receiver of part of the company's property, would be the receiver or manager.

[s. 417]

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Agency and liability for contracts

422.–(1) The administrative receiver of a company-

(a) is deemed to be the company's agent, unless and until the company goes into liquidation;

(b) is personally liable on any contract entered into by him in the carrying out of his functions, except in so far as the contract otherwise provides, and on any contract of employment adopted by him in the carrying out of those functions; and

(c) is entitled in respect of that liability to an indemnity out of the assets of the company.

(2) For the purpose of subsection (1)(b), the administrative receiver is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within fourteen days after his appointment.

(3) This section does not limit any right to indemnity which the administrative receiver would have apart from it, nor limit his liability on contracts entered into or adopted without authority, nor confer any right to indemnity in respect of that liability.

[s. 418]

Vacation of office

423.–(1) An administrative receiver of a company may be removed from office by order of the court, but not otherwise and may resign his office by giving notice of his resignation in the manner and to such persons as may be prescribed by the Minister in the regulations.

(2) An administrative receiver shall vacate office if he ceases to be qualified to act as an insolvency practitioner in relation to the company.

(3) Where an administrative receiver vacates office-

(a) his remuneration and any expenses properly incurred by him; and

(b) any indemnity to which he is entitled out of the assets of the company,

shall be charged on and paid out of any property of the company which is in his custody or under his control at that

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time in priority to any security held by the person by or on whose behalf he was appointed.

(4) Where an administrative receiver vacates office otherwise than by death, he shall, within fourteen days after his vacation of office, send a notice to that effect to the Registrar.

(5) Where an administrative receiver without reasonable excuse fails to comply with subsection (4), he shall be liable to a fine and, for continued contravention, to a default fine.

[s. 419]

Information to be given by administrative receiver

424.–(1) Where an administrative receiver is appointed, he shall-

(a) immediately send to the company and publish in the prescribed manner a notice of his appointment; and

(b) within twenty eighty days after his appointment, unless the court otherwise directs, send such a notice to all the creditors of the company, so far as he is aware of their addresses.

(2) This section and section 425 do not apply in relation to the appointment of an administrative receiver to act-

(a) with an existing administrative receiver; or

(b) in place of an administrative receiver dying or ceasing to act,

except that, where they apply to an administrative receiver who dies or ceases to act before they have been fully complied with, the references in this section and the next to the administrative receiver include, subject to the next subsection his successor and any continuing administrative receiver.

(3) Where the company is being wound up, this section and section 425 apply notwithstanding that the administrative receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.

(4) Where the administrative receiver without reasonable excuse fails to comply with this section, he shall be liable to a fine and, for continued contravention, to a daily default fine.

[s. 420]

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Statement of affairs to be submitted

425.–(1) Where an administrative receiver is appointed, he shall immediately require some or all of the persons mentioned under subsection (3) to make out and submit to him a statement in the prescribed form as to the affairs of the company.

(2) A statement submitted under this section shall be verified by affidavit by the persons required to submit it and shall show-

(a) particulars of the company's assets, debts and liabilities;

(b) the names and addresses of its creditors;

(c) the securities held by them respectively;

(d) the dates when the securities were respectively given; and

(e) such further or other information as may be prescribed.

(3) The persons referred to in subsection (1) are-

(a) those who are or have been officers of the company;

(b) those who have taken part in the company's formation at any time within one year before the date of the appointment of the administrative receiver;

(c) those who are in the company's employment, or have been in its employment within that year, and are in the administrative receiver's opinion capable of giving the information required;

(d) those who are or have been within that year officers of or in the employment of a company which is, or within that year was, an officer of the company.

(4) Where any persons are required under this section to submit a statement of affairs to the administrative receiver, they shall do so, subject to subsection (5), before the end of the period of twenty one days beginning with the day after that on which the prescribed notice of the requirement is given to them by the administrative receiver.

(5) The administrative receiver, if he thinks fit, may-

(a) release a person from an obligation imposed on him under subsection (1) or (2); or

(b) either when giving notice under subsection (4) or subsequently, extend the period so mentioned,

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(6) Where the administrative receiver has refused to exercise a power conferred by this subsection, the court, if it thinks fit, may exercise it.

(7) In this section "employment" includes employment under a contract for services.

(8) Where a person without reasonable excuse fails to comply with any obligation imposed under this section, he shall be liable to a fine and, for continued contravention, to a daily default fine.

[s. 421]

Report by administrative receiver

426.–(1) Where an administrative receiver is appointed, he shall, within three months, or such longer period as the court may allow after his appointment, send to the Registrar of companies, to any trustees for secured creditors of the company and, so far as he is aware of their addresses, to all such creditors a report as to the following matters-

(a) the events leading up to his appointment, so far as he is aware of them;

(b) the disposal or proposed disposal by him of any property of the company and the carrying on or proposed carrying on by him of any business of the company;

(c) the amounts of principal and interest payable to the debenture holders by whom or on whose behalf he was appointed and the amounts payable to preferential creditors; and

(d) the amount, if any, likely to be available for the payment of other creditors.

(2) The administrative receiver shall also, within three months, or such longer period as the court may allow, after his appointment, either-

(a) send a copy of the report, so far as he is aware of their addresses, to all unsecured creditors of the company; or

(b) publish in the prescribed manner a notice stating an address to which unsecured creditors of the company

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should write for copies of the report to be sent to them free of charge.

(3) Subject to subsection (2), unless the court otherwise directs, lay a copy of the report before a meeting of the company's unsecured creditors summoned for the purpose on not less than fourteen days notice.

(4) The court shall not give a direction under subsection (3) unless-

(a) the report states the intention of the administrative receiver to apply for the direction; and

(b) a copy of the report is sent to the unsecured creditors mentioned in paragraph (a) of subsection (2), or a notice is published as mentioned in paragraph (b) of that subsection (2), not less than fourteen days before the hearing of the application.

(5) Where the company has gone or goes into liquidation, the administrative receiver-

(a) shall, within seven days after his compliance with subsection (1) or, if later, the nomination or appointment of the liquidator, send a copy of the report to the liquidator; and

(b) where he does so within the time limited for compliance with subsection (2), is not required to comply with that subsection.

(6) A report under this section shall include a summary of the statement of affairs made out and submitted to the administrative receiver under section 425 and of his comments, if any, upon it.

(7) Nothing in this section is to be taken as requiring any such report to include any information the disclosure of which would seriously prejudice the carrying out by the administrative receiver of his functions.

(8) Section 424 applies for the purposes of this section.

(9) Where the administrative receiver without reasonable excuse fails to comply with this section, he shall be liable to a fine and, for continued contravention, to a daily default fine.

[s. 422]

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Committee of creditors

427.–(1) Where a meeting of creditors is summoned under section 426 the meeting may, if it thinks fit, establish a committee to be known as, "the creditors' committee" to exercise the functions conferred on it by or under this Act

(2) Where such a committee is established, the committee may, on giving not less than seven days' notice, require the administrative receiver to attend before it at any reasonable time and furnish it with such information relating to the carrying out by him of his functions as it may reasonably require.

[s. 423]

PART X
APPLICATION TO COMPANIES FORMED OR REGISTERED UNDER THE REPEALED ACT

Application of Act to companies formed and registered under former enactments

428. This Act shall apply to existing companies-

(a) in the case of a limited company, other than a company limited by shares, as if the company had been formed and registered under this Act as a company limited by shares;

(b) in the case of a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by guarantee; and

(c) in the case of a company other than a limited company, as if the company had been formed and registered under this Act as an unlimited company:

Provided that, reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the former repealed Act under which such company was registered.

[s. 424]

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PART XI
WINDING UP OF UNREGISTERED COMPANIES

Meaning of unregistered company

429. For the purpose of this Part, the expression "unregistered company" shall include any partnership, whether limited or not, any association and any company with the following exceptions-

(a) a company registered under either of the repealed Act or this Act;

(b) a partnership, association or company which consists of less than eight members and is not a partnership, association or company, formed outside Tanzania;

(c) a building society registered under the Building Societies Act; and

Cap. 87

(d) a co-operative society registered under the Co-operative Societies Act.

Cap. 211

[s. 425]

Winding up of unregistered companies

430.–(1) Subject to the provisions of this Part, any unregistered company may be wound up under this Act and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the exceptions and additions mentioned in the following provisions of this section.

(2) An unregistered company shall not be wound up under this Act voluntarily.

(3) The circumstances in which an unregistered company may be wound up are as follows-

(a) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;

(b) if the company is unable to pay its debts; and

(c) if the court is of opinion that it is just and equitable that the company should be wound up.

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(4) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts-

(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding one thousand shillings then due, has served on the company, by leaving at its principal place of business or by delivering to the Secretary or some director, partner, manager or officer of the company, or by otherwise serving in such manner as the Registrar may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for twenty-one days after the service of the demand neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor;

(b) if any action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member or partner, and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business, or by delivering it to the Secretary, or some director, partner, manager or officer of the company, or by otherwise serving the same in such manner as the court may approve or direct, the company has not within twenty-one days after service of the notice paid, secured or compounded for the debt or demand, or procured the action or proceeding to be stayed or indemnified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same;

(c) if execution or other process issued on a judgment, decree or order obtained in any court in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied; and

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(d) if it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts as they fall due; or it is proved to the satisfaction of the court that the value of the company's assets is less than the amount of its liabilities, taking into account the contingent and prospective liabilities of the company.

[s. 426]

Foreign companies may be wound up although dissolved

431. Where a company incorporated outside Tanzania which has been carrying on business in Tanzania ceases to carry on business in Tanzania, it may be wound up as an unregistered company under this Part, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country in which it was incorporated.

[s. 427]

Contributories in winding up of unregistered company

432.–(1) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members or partners among themselves, or to pay or contribute to the payment of the costs and expenses of winding up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability.

(2) In the event of the death, bankruptcy or insolvency of any contributory, the provisions of this Act with respect to the legal representatives and heirs of deceased contributories and to the trustees in bankruptcy or insolvent contributories shall apply.

[s. 428]

Power of court to stay or restrain proceedings

433. The provisions of this Act 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

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unregistered company, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

[s. 429]

Actions stayed on winding-up order

434. Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

[s. 430]

Provisions of this Part to be cumulative

435. The provisions of this Part with respect to unregistered companies shall be in addition to and not in restriction of any provisions 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 companies which might be exercised or done by it or him in winding up companies formed and registered under this Act:

Provided that, an unregistered company 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.

[s. 431]

Saving for former enactments providing for winding up

436. This Part shall not affect the operation of any enactment which provides for any partnership, association or company being wound up, or being wound up as a company or as an unregistered company, under either of the repealed Ordinances.

[s. 432]

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PART XII
COMPANIES INCORPORATED OUTSIDE TANZANIA

Provisions as to Establishment of Place of Business in Tanzania

Application of sections 438 to 447

437.–(1) Sections 438 to 447 shall apply to all foreign companies that are companies incorporated outside Tanzania, which, after the appointed day, establish a place of business within Tanzania and companies incorporated outside Tanzania which have, before the appointed day, established a place of business within Tanzania and continue to have a place of business within Tanzania on and after the appointed day:

Provided that, the said sections shall not apply to a company incorporated outside Tanzania which is registered under Part XII of the Building Societies Act.

Cap. 87

(2) A foreign company shall not be deemed to have a place of business in Tanzania solely on account of its doing business through an agent in Tanzania at the place of business of the agent.

[s. 433]

Documents, etc., to be delivered to Registrar by foreign companies

438.–(1) Foreign companies which, after the appointed day, establish a place of business within Tanzania shall, within thirty days of the establishment of the place of business, deliver to the Registrar for registration-

(a) a certified copy of the charter, statutes or memorandum and articles of the company or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the English language, a certified translation thereof;

(b) a list of the directors and Secretary of the company containing the particulars mentioned in subsection (2);

(c) a statement of all subsisting charges created by the company, being charges of the kinds set out in section 102 and not being charges comprising solely property situate outside Tanzania;

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(d) the names and addresses of one or more persons resident in Tanzania authorised-

(i) to accept on behalf of the company service of process and any notices required to be served on the company;

(ii) to represent the company as its permanent representative for the place of business; and

(iii) in the case of subsection (1)(d)(ii), a statement as to the extent of the authority of the permanent representative, including whether he is authorised to act alone or jointly;

(e) the full address of the registered or principal office of the company, and the full address of the place of business in Tanzania;

(f) a statutory declaration made by a director or Secretary of the company stating the date on which the company's place of business in Tanzania was established, the business that is to be carried on and, if different from the registered name of the company, the name under which that business is to be carried on;

(g) a copy of the most recent accounts and related reports of the company including, where such are not in English, a translation of the same.

(2) The list referred to in subsection (1)(b) shall contain the following particulars with respect to each director and secretary-

(a) in the case of an individual, his present name and surname and any former name or surname, his usual address, his nationality and his business occupation, if any; and

(b) in the case of a corporation, its corporate name and registered or principal office, and its address:

Provided that, where all the partners in a firm are joint secretaries of the company, the name and principal office of the firm may be stated instead of the particulars mentioned in this subsection and section 213(9)(b) shall apply for the purpose of the construction of references in this subsection

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to present former names and surnames as they apply for the purpose of the construction of such references in that section.

(3) Where any charge, being a charge which ought to have been included in the statement required by subsection (1) (c), is not so included, it shall be void as regards property in Tanzania against the liquidator and any creditor of the company.

[s. 434]

Certificate of registration and power to hold land

439.–(1) On the registration of the documents specified in section 438, the Registrar shall certify under his hand that the company has complied with the provisions of that section and such certificate shall be conclusive evidence that the company is registered as a foreign company under this Act.

(2) From the date of registration under this Act and so long as it is registered, a foreign company shall have the same power to hold land in Tanzania as if it were a company incorporated under this Act.

(3) Where a foreign company has delivered to the Registrar the documents and particulars required to be delivered by any provision of any of the repealed Ordinances corresponding to section 438, it shall, subject to the provisions of the repealed Ordinances in accordance with which such documents and particulars were so delivered and of this Act, have the same power to hold land in Tanzania as if it were a company incorporated under this Act, and any certificate given by the Registrar of companies that a foreign company has complied with any provision of any of the repealed Ordinances corresponding to section 438 shall be conclusive evidence that the company has complied with any such provision.

[s. 435]

Return to be delivered to Registrar by foreign company where documents etc, altered Act No. 3 of 2012 s. 28

440.–(1) Where any alteration is made in-

(a) the charter, statutes, or memorandum and articles of a foreign company or any such instrument;

(b) the directors or secretary of a foreign company or the particulars contained in the list of the directors and secretary;

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(c) the names or postal addresses of the persons authorised to accept service on behalf of a foreign company or to represent that company, or the extent of their authority to represent the company;

(d) the address of the registered or principal office of a foreign company, or its place of business in Tanzania;

(e) the nature of the business that a foreign company is to carry on in Tanzania, or the name under which that business is to be carried on,

the company shall within sixty days deliver to the Registrar for registration a return containing the prescribed particulars of the alteration.

(2) Where in the case of a company to which this Part applies-

(a) a winding up order is made by the court; or

(b) proceedings substantially similar to a voluntary winding up of the company under this Act are commenced in a court of the country in which such company was incorporated,

the company shall within thirty days of the date of the making of such order or the commencement of such proceedings, deliver to the Registrar a return containing the prescribed particulars relating to the making of such order or the commencement of such proceedings and shall cause the advertisements prescribed by the Minister in regulations in relation thereto to be published in the *Gazette*.

(3) Where a foreign company change its name in the country of origin, that company shall, within thirty days of the change, submit to the Registrar a certified copy of the certificate of change of name.

(4) Upon receipt of the certified copy, the Registrar shall issue a certificate of change of name.

(5) The Registrar shall not issue a certificate of change of name of a foreign company if the new name is similar to the name existing in the Register of Companies.

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(6) Where a Registrar cannot issue a certificate of change in terms of subsection (5), the Registrar shall advise the foreign company concerned to submit an alternative name.

[s. 436]

Registration of charges created by foreign companies

441. The provisions of Part IV shall extend to charges on property in Tanzania which are created, and to charges on property in Tanzania which is acquired, after the appointed day, by a foreign company which has an established place of business in Tanzania:

Provided that, in the case of a charge executed by a foreign company out of Tanzania comprising property situate both within and outside Tanzania-

(a) shall not be necessary to produce to the Registrar the instrument creating the charge if the prescribed particulars of it and a copy of it, verified in the prescribed manner, are delivered to the Registrar for registration; and

(b) the time within which such particulars and copy are to be delivered to the Registrar shall be sixty days after the date of execution of the charge by the company or in the case of a deposit of title deeds the date of the deposit.

[s. 437]

Obligation on foreign companies to file accounts

442.–(1) A foreign company shall, in every calendar year, make out annual accounts in such form, and containing such particulars and including such documents, as under the provisions of this Act, subject, however, to any exceptions prescribed by the Minister in the regulations, it would, if it had been a company within the meaning of this Act, have been required to make out and lay before the company in general meeting, and deliver, within three months after the date at which such accounts are made out, copies of those documents to the Registrar for registration.

(2) Where any such document as is mentioned under subsection (1) is not written in the English language there shall be annexed to it a certified translation thereof.

[s. 438]

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Obligation to state name of foreign company, whether limited, and country where incorporated

443.–(1) A foreign company shall-

(a) in every offer document inviting subscriptions for its shares or debentures in Tanzania state the country in which the company is incorporated;

(b) conspicuously exhibit in legible characters on every place where it carries on business in Tanzania the name of the company and the country in which the company is incorporated;

(c) cause the name of the company and of the country in which the company is incorporated to be stated in legible letters in all bill heads and letter paper, and in all notices and other official publications of the company; and

(d) if the liability of the members of the company is limited, cause notice of that fact to be stated in the English language in legible characters in every such offer document and in all bill heads, letter paper, notices and other official publications of the company in Tanzania and to be affixed on every place where it carries on its business.

(2) A foreign company shall in all trade catalogues, trade circulars, and business letters and documentation on or in which the company's name appears and which are issued or sent by the company to any person in Tanzania, state in legible letters with respect to every director being a corporation, the corporate name, and with respect to every director, being an individual, the following particulars-

(a) his present name, or the initial thereof, and present surname;

(b) any former names and surnames;

(c) his nationality, if he is not a Tanzanian national:

Provided that, if special circumstances exist which render it in the opinion of the Registrar expedient that an exemption should be granted, the Registrar may by order grant, subject to such conditions as may be specified in the order, exemption from the obligations imposed by this subsection.

[s. 439]

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Service on foreign company

444. A process or notice required to be served on a foreign company shall be sufficiently served if addressed to any person whose name has been delivered to the Registrar under the foregoing provisions of this Part or under any corresponding provision contained in either of the repealed Ordinances and left at or sent by registered post to the address which has been so delivered:

Provided that-

(a) where any such company makes default in delivering to the Registrar the name and address of a person resident in Tanzania who is authorised to accept on behalf of the company service of process or notices; or

(b) if at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on behalf of the company, or for any reason cannot be served,

a document may be served on the company by leaving it at or sending it by registered post to any place of business established by the company in Tanzania.

[s. 440]

Cessation of business by foreign company and striking off register

445.–(1) Where any foreign company ceases to have a place of business in Tanzania it shall immediately give notice in writing of the fact to the Registrar for registration and as from the date on which notice is so given the obligation of the company to deliver any document to the Registrar shall cease and the Registrar shall strike the name of the company off the register.

(2) Where the Registrar has reasonable cause to believe that a foreign company has ceased to have a place of business in Tanzania, he may send by registered post to the person authorised to accept service on behalf of the company and, if more than one, to all such persons, a letter inquiring whether the company is maintaining a place of business in Tanzania.

(3) Where the Registrar receives an answer to the effect that the company has ceased to have a place of business in Tanzania or does not within three months receive any reply, he may strike the name of the company off the register.

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(4) Where the name of a foreign company is struck off the register, it shall within three months of the date of striking off, dispose of all land held by it in Tanzania by virtue of the power in that behalf contained in section 439, and if any such land is held by the company at the expiration of such period of three months, such land shall be deemed to be *bona vacantia* and shall accordingly belong to the Government.

[s. 441]

Penalties

446. Where any foreign company fails to comply with any of the foregoing provisions of this Part, the company and every officer or agent of the company who knowingly and willfully authorise or permits the default, shall be liable to a fine, or in the case of a continuing offence, a default fine.

[s. 442]

Interpretation of sections 437 to 446

447. For the purposes of sections 437 to 446-

(a) the expression "director" in relation to a company includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;

(b) the expression "place of business" includes a share transfer or share registration office;

(c) the expression "offer document" has the same meaning as when used in relation to a company incorporated under this Act; and

(d) the expression "secretary" includes any person occupying the position of secretary by whatever name called.

[s. 443]

Offer Documents

Dating of offer document and particulars to be contained therein

448.–(1) It shall not be lawful for any person to issue, circulate or distribute in Tanzania any offer document offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Tanzania, whether the company has or has not established, or when formed will or will not

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establish, a place of business in Tanzania, unless the offer document is dated and-

(a) contains particulars with respect to the following matters-

(i) the instrument constituting or defining the constitution of the company;

(ii) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected;

(iii) an address in Tanzania where the said instrument, enactments or provisions, or copies thereof, and if the same are in a language other than English a certified English translation thereof, can be inspected;

(iv) the date on which and the country in which the company was incorporated; and

(v) whether the company has established a place of business in Tanzania, and, if so, the address of its principal office in Tanzania; and

(b) subject to the provisions of this section, states the matters specified in and contains the reports required to be included in regulations made by the Minister responsible for finance, or by the Capital Markets and Securities Authority or such other authority as may be designated by that Minister for the purpose.

(2) Any conditions requiring or binding an applicant for shares or debentures to waive compliance with any requirements imposed by virtue of subsection (1), or purporting to affect him with notice of any contract, document or matter not specifically referred to in the offer document, shall be void.

(3) It shall not be lawful for any person to issue to any person in Tanzania a form of application for shares in or debentures of such a company or intended company as is mentioned in subsection (1) unless the form is issued with an offer document which complies with this Part and the issue whereof in Tanzania does not contravene the provisions of section 449.

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(4) In the event of non-compliance with or contravention of any of the requirements imposed by subsection (1), a director or other person responsible for the offer document 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 cognisant thereof; or

(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.

(5) This section shall apply to an offer document or form of application whether issued on or with reference to the formation of a company or subsequently.

(6) This section shall not limit or diminish any liability which any person may incur under the general law or this Act, apart from this section.

[s. 444]

Provisions as to expert's consent and allotment

449.–(1) It shall not be lawful for any person to issue, circulate or distribute in Tanzania, any offer document offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Tanzania, whether the company has or has not established, or when formed will or will not establish, a place of business in Tanzania if, where the offer document includes a statement purporting to be made by an expert, he has not given, or has before delivery of the offer document for registration withdrawn, his written consent to the issue of the offer document with the statement included in the form and context in which it is included or there does not appear in the offer document a statement that he has given and has not withdrawn his consent.

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(2) In this section the expression "expert" includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him, and for the purposes of this section a statement shall be deemed to be included in an offer document if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

[s. 445]

Registration of offer document

450. It shall not be lawful for any person to issue, circulate or distribute in Tanzania any offer document offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Tanzania, whether the company has or has not established, or when formed will or will not establish a place of business in Tanzania, unless before the issue, circulation or distribution of the offer document in Tanzania, a copy thereof certified by the chairman and two other directors of the company as having been approved by resolution of the managing body has been delivered to the Registrar for registration and the offer document states on the face of it that a copy has been so delivered, and there is endorsed on or attached to the copy-

(a) any consent to the issue of the offer document required by section 449; and

(b) a copy of any contract, statement or other document required pursuant to section 448.

[s. 446]

Penalty for contravention of section 448, 449 or 450

451. A person who is knowingly responsible for the issue, circulation or distribution of an offer document, or for the issue of a form of application of shares or debentures, in contravention of any of the provisions of section 448, 449 or 450 shall be liable to a fine.

[s. 447]

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Civil liability for misstatements in offer document

452. Section 52 shall extend to every offer document offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Tanzania, whether the company has or has not established, or when formed will or will not establish, a place of business in Tanzania, with the substitution for references to section 50, of references to section 448.

[s. 448]

Interpretation of provisions as to offer document

453.–(1) Where any document by which any shares in or debentures of a company incorporated outside Tanzania are offered for sale to the public would, if the company concerned had been a company within the meaning of this Act, have been deemed by virtue of section 57 to be an offer document issued by the company, that document shall be deemed to be, for the purpose of this Part, an offer document issued by the company.

(2) In this Part the expressions "offer document", "shares" and "debentures" have the same meaning as when used in relation to a company incorporated under this Act.

[s. 449]

PART XIII
GENERAL PROVISIONS AS TO REGISTRATION

Appointment of Registrar, etc.

454.–(1) The Minister shall appoint a Registrar and such Deputy and Assistant Registrars as he thinks necessary for the registration of companies under this Act, and may make regulations with respect to their duties and may remove any persons so appointed.

(2) A deputy or assistant Registrar may, subject to the directions of the Registrar, perform any act or discharge any duty which the Registrar may lawfully do or is required by this Act to do, and for such purpose shall have all the powers, privileges and authority of the Registrar.

(3) The Minister may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies:

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Act No. 46 of 1931

Provided that, any seal or seals prepared under the provisions of subsection (4) of section 295 of the repealed Companies Act may continue to be used for the purposes of this Act.

[s. 450]

Register of Companies

455.–(1) There shall be kept by the Registrar a record called "the Register of Companies" wherein shall be entered all the matters prescribed by this Act.

(2) Each company shall be identified by a company registration number allocated to the company by the Registrar.

[s. 451]

Register of beneficial owners Act No. 8 of 2020 s. 16

456. The Registrar shall establish and maintain a Register of beneficial owners in which shall be entered-

(a) information provided in accordance with section 118(2);

(b) the following information relating to a legal person-

(i) name of body corporate;

(ii) address of head office;

(iii) identity of directors, shareholders and beneficial owners;

(iv) proof of incorporation or evidence of legal status and legal form.

(v) such other information necessary to determine the ownership and control of the legal person.

[s. 451A]

Access to information on beneficial owner Act No. 8 of 2020 s. 16

457. The information on the beneficial owners of a company held by the Registrar in the register of beneficial owners shall be accessible to-

(a) national competent authorities with designated responsibilities for combating money laundering and terrorist financing;

(b) national competent authorities that have the function of investigating or prosecuting offences related to money laundering and terrorist financing, or of tracing, seizing, freezing and confiscating criminal assets;

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(c) the Financial Intelligence Unit;
(d) the Tanzania Revenue Authority;
(e) Government institution responsible for overseeing or implementing economic empowerment of Tanzanian nationals pursuant to the respective laws; and
(f) any other national competent authority, other than the authorities specified in paragraphs (a), (b) and (c) which are responsible for the prevention of money laundering and funding of terrorism.

[s. 451B]

Fees payable to Registrar

458. The Minister may by regulations require the payment to the Registrar of companies such fees as may be specified in the regulations in respect of-

(a) the performance by the Registrar of such functions under the Act as may be so specified, including the receipt by him of any document which under the Act is required to be delivered to him;
(b) the inspection of documents kept by him under the Act.

[s. 452]

Waive of late filing fee Act No. 5 of 2021 s. 38

459. The Minister in consultation with the Minister responsible for finance may, for the purpose of enabling effective and smooth operation of online registration system, by notice published in the *Gazette*, waive fees associated with late filing of documents payable under the Act.

[s. 452A]

Delivery to Registrar of documents in paper form

460.–(1) This section applies to the delivery to the Registrar under any provision of the Act of documents in paper form.

(2) The document must-

(a) state in a prominent position the registered number of the company to which it relates;
(b) satisfy any requirements prescribed by regulations for the purposes of this section; and

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(c) conform to such requirements as the Registrar may specify for the purposes of enabling him to copy the document.

(3) Where a document is delivered to the Registrar which does not comply with the requirements of this section, he may serve on the person by whom the document was delivered or, if there are two or more such persons, on any of them a notice indicating the respect in which the document does not comply.

(4) Where the Registrar serves such a notice, then, unless a replacement document-

(a) is delivered to him within fourteen days after the service of the notice; and

(b) complies with the requirements of this section or section 461 or is not rejected by him for failure to comply with those requirements,

the original document shall be deemed not to have been delivered to him:

Provided that, for the purposes of any enactment imposing a penalty for failure to deliver, so far as it imposes a penalty for continued contravention, no account shall be taken of the period between the delivery of the original document and the end of the period of fourteen days after service of the Registrar's notice.

(5) Regulations made for the purpose of this section may make different provision with respect to different descriptions of document.

[s. 453]

Delivery to Registrar of documents otherwise than in paper form

461.–(1) This section applies to the delivery to the Registrar under any provision of the Act of documents otherwise than in paper form.

(2) A requirement to deliver a document to the Registrar, or to deliver a document in the prescribed form, is satisfied by the communication to the Registrar of the requisite information in any non-paper form prescribed for the purposes of this section by the regulations or approved by the Registrar.

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(3) Where the document is required to be signed or sealed, it shall instead be authenticated in such manner as may be prescribed by regulations or approved by the Registrar.

(4) The document shall-

(a) contain in a prominent position the registered number of the company to which it relates;

(b) satisfy any requirements prescribed by regulations for the purposes of this section; and

(c) be furnished in such manner, and conform to such requirements, as the Registrar may specify for the purposes of enabling him to read and copy the document.

(5) Where a document is delivered to the Registrar which does not comply with the requirements of this section, he may serve on the person by whom the document was delivered or, if there are two or more such persons, on any of them, a notice indicating the respect in which the document does not comply.

(6) Where the Registrar serves such a notice, then, unless a replacement document-

(a) is delivered to him within fourteen days after the service of the notice; and

(b) complies with the requirements of this section or section 460 or is not rejected by him for failure to comply with those requirements,

the original document shall be deemed not to have been delivered to him:

Provided that, for the purpose of any enactment imposing a penalty for failure to deliver, so far as it imposes a penalty for continued contravention, no account shall be taken of the period between the delivery of the original document and the end of the period of fourteen days after service of the Registrar's notice.

(7) The Minister may by regulations make further provision with respect to the application of this section in relation to instantaneous forms of communication.

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(8) Regulations made for the purpose of this section may make different provision with respect to different descriptions of document and different forms of communication.

[s. 454]

Keeping of company records by Registrar

462.–(1) The information contained in a document delivered to the Registrar under the Act may be recorded and kept by him in any form he thinks fit, provided it is possible to inspect the information and to produce a copy of it in paper form.

(2) The requirements under subsection (1), shall be sufficient compliance with any duty of the Registrar to keep, file or register the document.

(3) The originals of documents delivered to the Registrar in paper form shall be kept by him for ten years, after which they may be destroyed.

(4) Where a company has been dissolved, the Registrar may, at any time after the expiration of two years from the date of the dissolution, direct that any record in his custody relating to the company may be removed to the Archives and Records Management Office, and records in respect of which such a direction is given shall be disposed of in accordance with the Records and Archives Management Act or by the rules made under them.

Cap. 309

[s. 455]

Keeping of documents Act No. 5 of 2021 s. 39

463. A company registered under this Act shall keep originals of the company's filed documents for a period as the Minister may by regulations prescribe.

[s. 455A]

Provision and authentication by Registrar of documents in non-paper form

464.–(1) A requirement of the Act as to the supply by the Registrar of a document may, if the Registrar thinks fit, be satisfied by the communication by the Registrar of the requisite information in any non-paper form prescribed for the purposes of this section by regulations prescribed by the Minister or by the Registrar.

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(2) Where the document is required to be signed by him or sealed with his official seal, it shall instead be authenticated in such manner as may be prescribed by regulations made by the Minister or the Registrar.

[s. 456]

Certificate of incorporation

465. A person may require a certificate of incorporation, signed by the Registrar or authenticated by his official seal.

[s. 457]

Inspection, production and evidence of documents kept by Registrar Act No. 20 of 2016 s. 6

466.–(1) A person may-

(a) inspect the documents kept by the Registrar, on payment of the fee prescribed by the Minister in regulations;

(b) require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the Registrar, on payment for the certificate, certified copy or extract, or the fee prescribed by the Minister in regulations:

Provided that,

(i) in relation to documents delivered to the Registrar with an offer document in pursuance of section 51(1)(b) or in pursuance of section 450(1)(b), the rights conferred by this subsection shall be exercisable only during the fourteen days beginning with the date of the offer document or with the permission of the Registrar; and

(ii) the right conferred by paragraph (a) of this subsection shall not extend to any copy, sent to the Registrar under section 426, of a report as to the affairs of a company or of any comments of the administrative receiver or his successor or a continuing administrative receiver thereon, but only to the summary thereof, except where the person claiming the right either is, or is the agent of, a person stating himself in writing to be

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a member or creditor of the company to which the statement relates, and the right conferred by paragraph (b) of this subsection shall be similarly limited.

(2) A process for compelling the production of any documents kept by the Registrar shall not be issued from any court except with the leave of that court, and any such process if issued shall bear thereon a statement that it is issued with the leave of the court.

(3) A copy of, or extract from, any document kept and registered at the office of the Registrar, certified to be a true copy under the hand of the Registrar, whose official position it shall not be necessary to prove, shall in all legal proceedings be admissible as *prima facie* evidence of such document or extract, and of the matters, transactions and accounts therein recorded.

(4) The Registrar may not, in any legal proceedings to which he is not a party, be compelled-

(a) to produce any document the contents of which can be proved under subsection (3); or

(b) to appear as a witness to prove the matters, transactions or accounts recorded in any such document,

unless by order of the court made for special cause.

(5) A person untruthfully stating himself in writing for the purposes of proviso (ii) to subsection (1) to be, or to be the agent of, a member or creditor of a company shall be liable to a fine.

(6) Notwithstanding the preceding provisions of this section, the Registrar shall, upon request by the Commissioner General of Tanzania Revenue Authority, supply any information as may be requested for the purposes of carrying out the provisions of any tax law.

[s. 458]

Verification of documents Act No. 5 of 2021 s. 40

467. The Registrar may, for the purpose of ascertaining the authenticity of facts lodged by a company, require verification of the facts in such a manner as he may consider appropriate.

[s. 458A]

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Enforcement of duty of company to make returns to Registrar

468.–(1) Where a 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 fourteen days after the service of a notice on the 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 by the Registrar, make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.

(2) 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.

(3) This section shall not be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default.

[s. 459]

Submission of information of beneficial ownership Act No. 8 of 2020 s. 17

469.–(1) A company incorporated under this Act before the 1st day of July, 2020 shall, within six months from the 1st day of July, 2020 comply with requirements of section 15(2)(b).

(2) The Minister may, by notice published in the *Gazette*, extend the period of compliance stipulated under subsection (1).

[s. 459A]

PART XIV

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

Miscellaneous Provisions with respect to Banks, Insurance Companies and Certain Societies and Partnerships

Disapplication relating to banks and insurance companies

470.–(1) This Act shall apply to banks or insurance companies except in so far as its provisions are modified or expressly or impliedly excluded by, respectively, the Banking and

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Cap. 342
Cap. 394

Financial Institutions Act or the Insurance Act or any statutory modification or re-enactment thereof.

(2) This Act shall not affect the operation of either the Banking and Financial Institutions Act or the Insurance Act so far as concerns banks and insurance companies.

[s. 460]

Certain companies to publish periodical statement

471.–(1) A company being an insurance company or a deposit, provident or benefit society shall, before it commences business, and also on the first Monday in February and the first Tuesday in August in every year during which it carries on business, make and file with the Registrar a statement in the form laid down in regulations prescribed by the Minister, or as near thereto as circumstances admit.

(2) A copy of the statement shall be exhibited in a conspicuous place in every office of the company, or other place where the business of a company is carried on.

(3) Every member and every creditor of the company shall be entitled to a copy of the statement.

(4) Where default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

[s. 461]

Certain companies deemed insurance companies

472. For the purpose of this Act, a company which carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance company.

[s. 462]

Prohibition of partnerships with more than twenty members

473. A company, association or partnership consisting of more than twenty persons shall not be formed for the purposes of carrying on any business that has for its object the acquisition of gain by the company, association 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 Act, or of letters patent:

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Provided that, this section shall not prohibit the formation for the purpose of-

(a) carrying on practice as solicitors or accountants, of a partnership consisting of persons each of whom is a solicitor or accountant as the case may be; and

(b) carrying on business as members of a authorised stock exchange, of a partnership consisting of persons each of whom is a member of that stock exchange or for any other purpose prescribed by the Minister in the regulations.

[s. 463]

Provision for Employees on Cessation or Transfer of Business

Power of company to provide for employees on cessation or transfer of business

474.–(1) The powers of a company include, if they would not otherwise do so apart from this section, power to make the following provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries, that is to say, provision in connection with the cessation or the transfer to any person of the whole or part of the undertaking of the company or that subsidiary.

(2) The power conferred by subsection (1) is exercisable notwithstanding that its exercise is not in the best interests of the company.

(3) The power which a company may exercise by virtue only of subsection (1) shall only be exercised by the company if sanctioned-

(a) in a case not falling within paragraph (b) or (c) below, by an ordinary resolution of the company; or

(b) if so authorised by the memorandum or articles, a resolution of the directors; or

(c) if the memorandum or articles require the exercise of the power to be sanctioned by a resolution of the company of some other description for which more than a simple majority of the members voting is necessary, with the sanction of a resolution of that description,

and in any case after compliance with any other requirements of the memorandum or articles applicable to its exercise.

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(4) A payment which may be made by a company under this section may, if made before the commencement of any winding up of the company, be made out of profits of the company which are available for dividend.

[s. 464]

Special Provisions relating to Statutory Corporations

Interpretation of "subsidiary company"

475. For the purpose of sections 476 and 477, "subsidiary company" means a company all the shares of which are owned directly or indirectly by a statutory corporation.

[s. 465]

Special provisions relating to statutory corporations and their subsidiaries

476. (1) A statutory corporation or a subsidiary company may acquire all the shares in any company and may become the sole member of any company.

(2) Where a statutory corporation or a subsidiary company acquires all the shares in a company or becomes the sole member of the company, every provision in this Act or other written law or in the articles or other charter or instrument of the company the shares of which are so acquired, providing for any consequence to follow, or requiring any act or thing to be done, or entitling any person to do any act or thing or to take any action whatsoever, as the result of the reduction in the number of members of such company below a certain number, shall be of no effect in relation to the company.

(3) The Minister may, by order published in the *Gazette*, exempt a subsidiary company from any of the provisions of this Act.

[s. 466]

Dissolution of subsidiary companies

477.–(1) The Minister may, by order published in the *Gazette*, dissolve a subsidiary company.

(2) An order made under subsection (1) shall specify the date, in this section referred to as the "effective date" on which the same shall come into operation.

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(3) Where an order is made under subsection (1) in respect of a subsidiary company, hereinafter referred to as "the specified company"-

(a) all the assets of the specified company subsisting upon the effective date shall, without further assurance, vest in the statutory corporation of which such company is a subsidiary, or any other company which is a subsidiary of such statutory corporation, as may be specified in such order, such statutory corporation or subsidiary company is hereinafter referred to as "the holding company";

(b) all the liabilities of the specified company subsisting on the effective date shall, without further assurance, be vested in the holding company and the specified company shall be discharged from its obligations in respect of those liabilities;

(c) all instruments, including contracts, guarantees, agreements, bonds, authorities, mortgages, charges, bills of exchange, promissory notes, bank drafts, bank cheques, letters of credit and securities-

(i) to which the specified company is a party;

(ii) under which any money is or may become payable, or any other property is to be or may become liable to be transferred, conveyed or assigned to the specified company; or

(iii) under which any money is or may become payable or any other property is to be transferred, conveyed or assigned by the specified company,

which are subsisting at the effective date shall continue in full force and effect and the holding company shall be-

(aa) deemed to have been substituted for the specified company as a party thereto;

(bb) entitled to receive and enforce payment of any money payable thereunder;

(cc) entitled to obtain a transfer, conveyance or assignment of, and enforce possession of, any property which is to be transferred, conveyed or assigned thereunder;

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(dd) liable to make payment of any money payable thereunder; and

(ee) liable to transfer, convey or assign any property which is to be transferred, conveyed or assigned thereunder.

(4) Where the Minister makes an order under subsection (1) he may by order transfer any person who is an employee of the specified company to the service of the holding company or the statutory corporation of which the specified company is a subsidiary.

(5) Where by an order made under subsection (4), the Minister transfers any employee of a specified company to the service of the holding company or the statutory corporation-

(a) such employee shall, as from the date of such transfer, be deemed to be an employee of the holding company or, as the case may be of the corporation to which he is transferred;

(b) the terms and conditions of service applicable to such employees after such transfer shall be not less favourable than those which were applicable to him immediately before the transfer, and for the purpose of determining any right to gratuity or any other superannuation benefit the service of such employee with the holding company or the corporation to which he is transferred shall be regarded as continuous with his service in the specified corporation immediately preceding such transfer; and

(c) the employment of such employee immediately prior to his transfer and his employment by the holding company or the statutory corporation to which he is transferred shall be deemed to be continuous employment by one employer within the meaning under the Employment and Labour Relations Act. Cap. 366

(6) The power conferred upon the Minister by this section shall be in addition to and without prejudice to the powers conferred upon any other authority in relation to the company by or under any written law.

[s. 467]

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Form of Registers, etc.

Form of Registers, etc.

478.–(1) A register, index, minute book or book of account required by this Act to be kept by a company may be kept either by making entries in bound books or by recording the matters in question in any other manner.

(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 facilitating its discovery, and where default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a fine and further shall be liable to a default fine.

[s. 468]

Use of computers for company records

479.–(1) The power conferred on a company by section 478 to keep a register or other record by recording the matters in question otherwise than by making entries in bound books includes power to keep the register or other record by recording those matters otherwise than in a paper form, so long as the recording is capable of being reproduced in a paper form.

(2) Any provision of an instrument made by a company which requires a register of holders of the company's debentures to be kept in a paper form is to be read as requiring the register to be kept in a paper or non-paper form.

(3) Where any such register or other record of a company as is mentioned in section 478, or a register of holders of a company's debentures, is kept by the company by recording the matters in question otherwise than in a paper form, any duty imposed on the company by this Act to allow inspection of, or to furnish a copy of, the register or other record or any part of it is to be treated as a duty to allow inspection of, or to furnish, a reproduction of the recording or of the relevant part of it in a paper form.

[s. 469]

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Service of Documents, etc

Service of documents

480.–(1) A document may be served on a company by serving it personally on an officer of the company, by sending it by post to the registered address of the company in Tanzania, or by leaving it at the registered office of the company.

(2) A document may be served on the Registrar by leaving it at or sending it by post to his office.

[s. 470]

Returns, etc., filed out of time

481.–(1) Where under the provisions of this Act, any return, account, notice or other document or particulars is or are required to be filed, delivered, given or sent to the Registrar within a specified period, the duty to file, deliver, give or send the same shall not cease on the expiration of that period but shall be a continuing duty.

(2) The Registrar shall, on payment of such additional fee as may be prescribed by the Minister in the regulations, register any document delivered to him for registration notwithstanding the expiration of the period within which the same ought to have been delivered but no such registration shall relieve any person from any liability he may have incurred by reason of his default in delivering such document within the specified period.

[s. 471]

Offences

Penalty for false statements

482. Where any person in any return, report, certificate, accounts, or other document, required by or for the purpose of any of the provisions of this Act, willfully makes a statement false in any material particular, knowing it to be false, commits an offence, and on conviction shall be liable to imprisonment and to a fine.

[s. 472]

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Fines and imprisonment, default fines and meaning of "officer in default"

483.–(1) The Minister shall make provision in regulations for the maximum penalties by way of fines or terms of imprisonment in relation to offences created by this Act.

(2) Where in any section of this Act it is provided that a company and every officer of the company who is in default shall be liable to a default fine, the company and every such officer shall, for every day during which the default, refusal or contravention continues, be liable to a fine not exceeding such amount as specified in regulations prescribed by the Minister.

(3) For the purpose of any section of this Act which provides that an officer of a 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:

Provided that-

(a) in any proceedings against a person alleged to be an officer who is in default, it shall be a good defence to prove that he had reasonable grounds to believe and did believe that a competent and reliable person was responsible for complying with the particular requirement and was in a position to discharge that responsibility; and

(b) an officer who is in default shall not be sentenced to imprisonment for any such default unless, in the opinion of the court dealing with the case, the offence was committed willfully.

[s. 473]

Production and inspection of books where offence suspected

484.–(1) Where on an application made to a Judge of the High Court in chambers by the Attorney General, or the Registrar, there is shown to be reasonable cause to believe that any person has, while an officer of a company, committed an offence in connection with the management of the company's affairs 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, an order may be made-

(a) authorising 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

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(b) requiring the Secretary of the 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.

(2) Subsection (1) shall apply in relation to any books or papers of a person carrying on the business of banking so far as they relate to the company's affairs, as it applies to any books or papers of or under the control of the company, except that no such order as is referred to in paragraph (b) thereof shall be made by virtue of this subsection.

(3) The decision of a Judge of the High Court on an application under this section shall not be appealable.

[s. 474]

Cognisance of offences

485. A court inferior to a District court shall not try any offence under this Act.

[s. 475]

Application of fines

486. The court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, and subject to any such direction, all fines under this Act shall, notwithstanding anything in any other Act, be paid into the general revenues of Tanzania.

[s. 476]

Provisions relating to institution of criminal proceedings by Attorney General

487. The provisions relating to the institution of criminal proceedings by the Attorney General shall not be taken to preclude any person from instituting or carrying on any such proceedings.

[s. 477]

Saving for privileged communications

488. Where proceedings are instituted under this Act against any person by the Attorney General or the Registrar, this Act shall not be taken to require any person who has acted as advocate for the defendant to disclose any privileged communication made to him in that capacity.

[s. 478]

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Rules and Fees

Rules and fees

489.–(1) The Minister may make rules for carrying into effect the objects of this Act and for any matter or thing which by this Act is to be or may be provided for by rules.

(2) The rules to be made under this section which are in the nature of rules of court shall not be made except after obtaining the advice of the Chief Justice.

(3) The fees to be paid under this Act shall be as the Minister may prescribe in regulations.

[s. 479]

Legal Proceedings

Costs in actions by certain limited companies

490. Where a limited company is plaintiff in any suit or other legal proceedings, any court having jurisdiction in the matter may, if it appears that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

[s. 480]

Power of court to grant relief in certain cases

491.–(1) Where in any proceedings for negligence, default, breach of duty or breach of trust against an officer of a company or a person retained by a company as auditor it appears to the court hearing the case that, the officer or person is or may be 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, that court may relieve him, either wholly or partly from his liability on such terms as the court may think fit.

(2) Where any such officer or person 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

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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 under this section as 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.

[s. 481]

Power to enforce orders

492. Orders made by the High Court under this Act may be enforced in the same manner as orders made in an action pending therein.

[s. 482]

Power to alter tables and forms and to make regulations

493. (1) The Minister may make regulations to alter Table A, Tables B, C, D and E in the Schedule to this Act; but an alteration made by the Minister in Table A shall not affect any company registered before the alteration, or repeal as respects that company of any portion of that Table.

(2) In addition to the powers conferred by this section, the Minister may make regulations in respect of any matters which by this Act are to be or may be appointed or prescribed, other than matters which are to be or may be appointed or prescribed under any provision of this Act by any other person.

[s. 483]

Saving for subsidiary legislation Act No. 46 of 1931

494.–(1) Notwithstanding the provisions of section 495, subsidiary legislation brought into force by or made under the repealed Companies Act, shall in so far as and to the extent that it is in force on the appointed day remain in force after the appointed day until it is revoked in the manner prescribed in subsection (3).

(2) Any subsidiary legislation which by virtue of subsection (1) remains in force on or after the appointed day shall be read with and considered part of this Act, except in so far as it may be inconsistent therewith.

(3) The Minister may make rules revoking any or all of the subsidiary legislation referred to in this section.

[s. 484]

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Repeal and savings Act No. 46 of 1931

495.–(1) [Repeals the Companies Ordinance]

(2) An order made on an application under section 231, subsection (4) of section 269 or section 270 of the repealed Companies Ordinance, which is in force on the coming into operation of this Act, shall have effect as if it were an order under section 200.

(3) This Act shall not affect any prosecution by a liquidator instituted or ordered by the court to be instituted under section 271 of the repealed Companies Ordinance, and the court shall have the same power of directing how any costs and expenses properly incurred by a liquidator in any such prosecution are to be defrayed as it would have had if this Act had not been passed.

[s. 485]

Provision as to winding up commenced prior to appointed day

496. The provisions of this Act with respect to winding up shall not apply to any company of which the winding up has commenced before the coming into operation of this Act, but every such company shall be wound up in the same manner and with the same incidents as if this Act had not been passed, and for purposes of the winding up, the repealed Companies Act shall be deemed to remain in full force.

[s. 486]

PART XV
FINAL PROVISIONS

Meaning of "holding company" and "subsidiary"

497.–(1) For the purpose of this Act, 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 company, 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.

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(2) For the purpose 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 holdings of all or a majority of the directorships; but for the purposes of this provision that other company shall be deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied, that is to say-

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

(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 company 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 company, except where that other company is concerned only in a fiduciary capacity; or

(ii) by, or by a nominee for, a subsidiary of that other company, not being a subsidiary, which is concerned only in a fiduciary capacity, shall be treated as held or exercisable by that other company;

(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;

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(d) any shares held or power exercisable by, or by a nominee for, that other company or its subsidiary not being held or exercisable as mentioned in paragraph (c), shall be treated as not held or exercisable by that other company if the ordinary business of that other company or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as above by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(4) For the purpose of this Act, a company shall be deemed to be another's holding company or alternatively its parent company if, only, that other company is its subsidiary.

(5) 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.

[s. 487]

Index of defined expressions

498. The following Table shows provisions defining or otherwise explaining expressions for the purposes of this Act generally-

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wholly-owned subsidiary	section 2

[s. 488]

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Miscellaneous provisions relating to directors, bodies corporate and articles

499.–(1) A person shall not be deemed to be within the meaning of any provision of this Act a person in accordance with whose directions or instructions the directors of a company are accustomed to act, by reason only that the directors of the company act on advice given by him in a professional capacity.

(2) References in this Act to a body corporate or to a corporation shall be construed as not including a corporation sole but as including a company incorporated outside Tanzania.

(3) Any provision of this Act overriding or interpreting a company's articles, shall, except as provided by this Act, apply in relation to articles in force at the commencement of this Act, as well as to articles coming into force thereafter, and shall apply also in relation to a company's memorandum as it applies in relation to its articles.

[s. 489]

References to Parts, etc.

500. All references in this Act to Parts, Chapters, sections or subsections are, unless the contrary appears from the text, references respectively to Parts, Chapters, sections and subsections of this Act.

[s. 490]

SCHEDULE

TABLE A, B, C, D and E

PART I

REGULATIONS FOR MANAGEMENT OF A PUBLIC COMPANY

LIMITED BY SHARES

TABLE A

Interpretation

1.–(1) In these Regulations-
"the Act" means the Companies Act;
"the articles" means the articles of the company;

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"clear days" in relation to the period of a notice means that period excluding the day when the notice is given or on which it is to take effect;

"the holder" in relation to shares means the member whose name is entered in the register of members as the holder of the shares;

"the seal" means the common seal of the company;

"secretary" means the secretary of the company or any person appointed to perform the duties of the secretary of the company.

(2) Expressions referred 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.

(3) 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. Subject to the provisions of the Act, and without prejudice to any rights attached to any existing shares, any share may be issued with such rights or restrictions, whether in regard to dividend, voting, return of capital or otherwise as the company may by ordinary resolution determine.

3. Subject to the provisions of section 63 of the Act, any 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. Where 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 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.

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6. The company may exercise the powers of paying commissions conferred by section 58 of the Act. Subject to the provisions of the Act, 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.

7. Except as required by law, a person shall not be recognised by the company as holding any share upon any trust, and the company shall not be bound by or be compelled in any way recognise, even when having notice thereof, any equitable, contingent, future or partial interest in any share or any interest in any fractional part of a share or, except as otherwise provided by the articles or by law, any other rights or interests in respect of any share except an absolute right to the entirety thereof in the registered holder.

Share Certificates

8. Every member, upon becoming the holder of any shares, shall be entitled without payment to receive within two months after allotment or lodgement of transfer, or within such other period as the conditions of issue shall provide, one certificate for all the shares of each class held by him, and, upon transferring a part of his holding of shares of any class, to a certificate for the balance of such holding, or several certificates each for one or more of his shares upon payment for every certificate after the first such reasonable sum as the directors may determine. A certificate shall be sealed with the seal and shall specify the number, class and distinguishing numbers, if any, of the shares to which it relates and the amount or respective amounts paid thereon. In respect of a share of shares 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 joint holder shall be sufficient delivery to all joint holders.

9. Where a share certificate is defaced, worn out, lost or destroyed, it may be renewed on such terms, if any, as to evidence and indemnity and payment of expenses reasonably incurred by the company in investigating evidence as the directors may determine but otherwise free of charge, and, in the case of defacement or wearing out, on delivery up of the old certificate.

Lien

10. 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; but the directors 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 any amounts payable in respect of it.

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11. The company may sell, in such manner as the directors determine, any shares on which the company has a lien if a sum in respect of which the lien exists is presently payable and is not paid within fourteen clear days after a notice in writing has been given to the holder of the share, or the person entitled thereto by reason of the death or bankruptcy of the holder, demanding payment and stating that if the notice is not complied with the shares may be sold.

12. To give effect to any such sale the directors may authorise some person to transfer the shares sold to, or in accordance with the directions of, 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.

13. The net 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, upon surrender to the company for cancellation of the certificate for the shares sold and subject to a like lien for sums not presently payable as existed upon the shares before the sale, be paid to the person entitled to the shares, at the date of the sale.

Calls on Shares

14. Subject to the terms of allotment, the directors may make calls upon the members in respect of any moneys unpaid on their shares, whether in respect of nominal value or 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 fourteen clear days notice specifying when and where payment is to be made, pay to the company as required by the notice the amount called on his shares. A call may be required to be paid by instalments. A call may, before receipt by the company of any sum due thereunder, be revoked in whole or part and payment of a call may be postponed in whole or part. A person upon whom a call is made shall remain liable for calls made upon him notwithstanding the subsequent transfer of the shares in respect of which the call was made.

15. A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed.

16. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

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17. If a call remains unpaid after it has become due and payable, the person from whom the sum is due shall pay interest on the amount unpaid from the day it became due and payable to the time of actual payment at the rate fixed by the term of allotment of the share or, if no rate is fixed, at a rate not exceeding five percent per annum as the directors may determine, but the directors may waive payment of such interest wholly or in part.

18. An amount payable in respect of a share on allotment or at any fixed date, whether in respect of nominal value or premium or as an instalment of a call, shall be deemed to be a call, and if it is not paid the provisions of the articles shall apply as if that amount had become due and payable by virtue of a call.

19. Subject to the terms of allotment, 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.

20. 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 advance, become payable, pay interest at such rate not exceeding, unless the company in general meeting shall otherwise direct, six percent per annum, as may be agreed upon between the directors and the members paying such sum in advance.

Transfer of Shares

21. The instrument of transfer of any share shall be in any usual form or any other form which the directors may approve and shall be executed by or on behalf of the transferor and, unless the share is fully paid up, by or on behalf of the 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.

22. The director may refuse to register the transfer of a share which is not fully paid to a person of whom they do not approve and they may refuse to register the transfer of a share on which the company has a lien. They may also refuse to register a transfer unless–

(a) it is lodged at the office or such other place as the directors may appoint, and 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

(b) it is in respect of only one class of share; and

(c) it is in favour of not more than four transferees

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23. If the directors refuse to register a transfer they shall within sixty days after the date on which the transfer was lodged with the company send to the transferee notice of the refusal.

24. The registration of transfers of shares or any transfers of any class of shares may be suspended at such times and for such periods, not exceeding thirty days in any year, as the directors may determine.

25. A fee shall not be charged for the registration of any instrument of transfer or other document relating to or affecting title to any share.

Transmission of Shares

26. In case of the death of a member, the survivor or survivors where the deceased was a joint holder, and the personal representatives of the deceased where he was a sole holder or the only survivor of joint holders, shall be the only persons recognised by the company as having any title to his interest in the shares; but nothing herein contained shall release the estate of a deceased member from any liability in respect of any share which had been jointly held by him.

27. A person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such evidence being produced as may properly be required by the directors and subject as hereinafter provided, either elect by notice to the company to be registered as holder of the share, or elect to have some person nominated by him registered as the transferee in which case he shall execute the appropriate instrument of transfer. All the articles relating to the right to transfer of shares shall apply to any such notice or transfer as if it were an instrument of transfer executed by the member and the death or bankruptcy of the member had not occurred.

28. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall have the rights to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as the holder of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

Alteration of Capital

29. Where a call remains unpaid after it has become due and payable, the directors may give to the person from whom it is due not less than fourteen clear days' notice requiring payment of the amount unpaid, together with any interest which may have accrued. The notice shall name the place where payment is to be made and shall state that if the notice is not complied with, the shares in respect of which the call was made will be liable to be forfeited.

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30. If the notice is not complied with, any share in respect of which it was given may, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect and the forfeiture shall include all dividends or other moneys payable in respect of the forfeited shares and not paid before the forfeiture.

31. Subject to the provisions of this Act, a forfeited share may be sold, re-allotted or otherwise disposed of on such terms and in such manner as the directors determine either to the person who was before the forfeiture the holder or to any other person, and at any time before a sale, re-allotment or other disposition the forfeiture may be cancelled on such terms as the directors think fit. Where for the purposes of its disposal a forfeited share is to be transferred to any person, the directors may authorise some person to execute an instrument of transfer of the share in question.

32. A person any of whose shares have been forfeited shall cease to be a member in respect of the forfeited shares and shall surrender to the company for cancellation the certificate for the shares forfeited, but shall remain liable to the company for 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, but the directors may waive payment wholly or in part or enforce payment without any allowance for the value of the shares at the time of forfeiture of any consideration received on their disposal.

33. A statutory declaration by a director or the secretary that a share has been forfeited on a date stated in the declaration shall be conclusive evidence of the facts stated therein as against all persons claiming to be entitled to the share, and the declaration shall, subject to the execution of an instrument of transfer if necessary, constitute a good title to the share, and the person to whom the share is disposed of shall not be bound to see to the application of the consideration, if any, nor shall his title to the share be affected by any irregularity or invalidity of the proceedings in reference to the forfeiture or disposal of the share.

Alteration of Capital

34. The company may by ordinary resolution-

(a) increase its share capital by new shares of such amount, as the resolution prescribes;

(b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

(c) subject to the provisions of section 67(1)(d) of the Act, subdivide its existing shares, or any of them, into shares of smaller amount than is fixed by the memorandum of association;

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(d) cancel shares which, at the date of the passing of the resolution, 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.

35. Whenever as a result of a consolidation of shares any members would become entitled to fractions of a share, the directors may, on behalf of those members, sell the shares representing the fractions for the best price reasonably obtainable to any person, including subject to the provisions of this Act, the company, and distribute the net proceeds of sale in due proportion among those members, and the directors may authorise some person to execute an instrument of transfer of the shares to or in accordance with the directions of the purchaser. The transferee shall not be bound to see to the application of the purchase money nor shall his title to the share be affected by any irregularity in or invalidity of the proceedings in reference to the sale.

36. Subject to the provisions of the Act, the company may by special resolution reduce its share capital, any capital redemption reserve fund or any share premium account in any way.

37. 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 fifteen months shall elapse between the date of one annual general meeting of the company and that of the next.

38. All general meetings other than annual general meetings shall be called extraordinary general meetings.

39. The directors may, whenever they think fit, call an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisitionists, or, in default, may be convened by such requisitionists, as provided by section 137 of the Act. Where at any time there are not within the Territory sufficient directors to call the meeting, any director or any two members of the company may call the meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Notice of General Meetings

40. The general meeting shall be called by twenty-one clear days notice in writing. The notice shall specify the time and place of the meeting and the general nature of the business and, in the case of an annual general meeting, shall specify the meeting as such:

Provided that, a meeting of the company may be called by shorter notice if it is so agreed-

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(a) in the case of an 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 number of the members having a right to attend and vote at the meeting, being a majority together holding not less than ninety-five percent in nominal value of the shares giving that right.

41. Subject to the provisions of the articles and to any restrictions imposed on any shares, the notice shall be given to all the members, to all persons entitled to a share in consequence of the death or bankruptcy of a member and to the directors and auditors. The accidental omissions 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 the meeting.

Proceedings at General Meetings

42. All business shall be deemed special that is transacted at an extra ordinary 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, 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.

43. A business shall not be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; two persons entitled to vote on the business to be transacted, each being a member or a proxy for a member or a duly authorised representative of a corporation, shall be a quorum.

44. Where within half an hour from the time appointed for the meeting a quorum is not present, or if during the course of a meeting a quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week, at the same time and place or to such other day at such other time and place as the directors may determine.

45. The chairman, if any, of the board of directors or in his absence some other director nominated by the directors shall preside as chairman of the general meeting, but if neither the chairman nor such other director (if any) be present within fifteen minutes after the time appointed for the holding of the meeting and willing to act, the directors present shall elect one of their number to be chairman of the meeting and, if there is only one director present and willing to act, he shall be chairman.

46. If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

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47. A director shall, notwithstanding that he is not a member, be entitled to attend and speak at a general meeting and at any separate meeting of the holders of any class of shares in the company.

48. 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 which might properly have been transacted at the meeting had the adjournment not taken place. When a meeting is adjourned for fourteen days or more, at least seven clear days' notice and the general nature of the business to be transacted at an adjourned meeting.

49. 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 two members having the right to vote at the meeting; 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

(c) by a member or members holding shares 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,

and a demand by a person as proxy for a member shall be the same as a demand by the member.

50. 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, or not carried by a particular majority and an entry to that effect in the minutes of the meeting shall be evidence of that fact.

51. The demand for a poll may, before the poll is taken, be withdrawn.

52. Except as provided in paragraph 54, 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.

53. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting shall be entitled to a casting vote in addition to any other vote he may have.

54. A poll demanded on the election of a chairman or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken either immediately or at such time not being more than thirty days after the poll is demanded as the chairman

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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.

55. A resolution in writing executed by or on behalf of each member who would have been entitled to vote upon it if it had been proposed at a general meeting at which he was present shall have effect as if it had been passed at a general meeting duly convened and held, and may consist of several instruments in the like form each executed by or on behalf of one or more members.

Votes of Members

56. Subject to any rights or restrictions attached to any share or class or classes of shares, on a show of hands every member, being an individual, present in person or, being a corporation, present by a duly authorised representative, not being himself a member entitled to vote, and on a poll every member shall have one vote for each share of which he is the holder.

57. 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.

58. A member in respect of whose estate a manager has been appointed under section 24(5) of the Mental Health Act (21 of 2008) Cap. 98, may vote, whether on a show of hands or on a poll, by his manager, and any such manager may, on a poll, vote by proxy.

59. A member shall not be entitled to vote at a general meeting or at a separate meeting of the holders of any class of shares in the company unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

60. Objection shall not be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

61. On a poll votes may be given either personally or by proxy. A member may appoint more than one proxy to attend on the same occasion.

62. The instrument appointing proxy shall be in writing executed by or on behalf of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under seal, or under the hand of an officer or attorney duly authorised. A proxy need not be a member of the company.

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63. The instrument appointing a proxy and any authority under which it is executed a copy of that authority certified notarially or in such other manner as approved by the directors shall be deposited at the registered office of the company or at such other place within Tanzania 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.

64. 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 ....., and at any adjournment thereof.

Signed this ..... day of ..... 20....."

65. 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 ....., and at any adjournment thereof.

Siged this ..... day of ..... 20....."

This form is to be used in favour of/against [1] resolutions {1/2/3 etc.}. Unless otherwise instructed, the proxy will vote as he thinks fit or abstain from voting.

66. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

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1 Delete whichever inapplicable

67. A vote given in accordance with the terms of an instrument of proxy, or poll demanded by proxy, or by the duly authorised representative of a corporation shall be valid notwithstanding the previous determination was received by the company at its registered office (or at such other place at which the instrument or proxy was duly deposited) before the commencement of the meeting or adjourned meeting at which the proxy is used.

Corporations acting by Representatives at Meetings

68. Any corporation which is a member of the company may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or of any class of members of the company, and the person so authorised 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

69. 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 and until such determination the signatories to the Memorandum of Association shall be the first directors. Unless otherwise determined by ordinary resolution, the number of directors shall not be subject to any maximum but shall be not less than two.

70. The shareholding qualification for directors may be fixed by the company in general meeting, and unless and until so fixed no qualification shall be required.

Powers and Duties of Directors

71. Subject to the provisions of the Act, the memorandum and the articles and to any directions given by special resolution, the business of the company shall be managed by the directors, who may exercise all the powers of the company. No alteration of the memorandum or articles and no such directions shall invalidate any prior act of the directors which would otherwise have been valid. The powers given by this paragraph shall not be limited by any special power given to the directors by the articles and a meeting of directors at which a quorum is present may exercise all powers exercisable by the directors.

72. The directors may by power of attorney appoint any person to be the attorney or agent of the company for such purposes and on such conditions as they determine, including authority for the attorney or agent to delegate all or any of his powers.

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73. 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.

74. The company may exercise the powers conferred upon it by sections 127 to 130 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.

Directors' Appointments and Interests

75. The directors may appoint one or more of their number to the office of managing director or to any other executive office under the company and may enter into an agreement or arrangement with any director for his employment by the company or for the provision by him of any services outside the scope of the ordinary duties of a director. Any such appointment, agreement or arrangement may be made on such terms as the directors determine and they may remunerate any such director for his services as they think fit. Any appointment of a director to an executive office shall terminate if he ceases to be a director, but without prejudice to any claim to damages for breach of the contract of service between the director and the company. A managing director and a director holding any other executive office shall not be subject to retirement by rotation.

76. 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 212 of the Act.

77. Subject to the provisions for the Act, and provided that, the director has disclosed to the directors the nature and extent of his material interest, the director-

(a) may be a party to, or otherwise interested in, any transaction or arrangement with the company or in which the company is otherwise interested;

(b) may be a director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in any body corporate promoted by the company or in which the company may be interested; and

(c) shall not, by reason of his office, be accountable to the company for any benefit which he derives from any such office or employment 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:

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Provided that, nothing herein contained shall authorise a director or his firm to act as auditor to the company.

78. For the purpose of articles 76 and 77-

(a) a general notice given to the directors that a director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the director has an interest in such transaction of the nature and extent specified; and

(b) an interest of which a director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his.

79. 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 in such manner as the directors shall by resolution determine.

Minutes

80. The directors shall cause minutes to be made in books kept 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; and

(c) of all resolutions and proceedings at all meetings of the company, of the holders of any class of shares in the company, and of the directors, and of committees of directors.

Remuneration and Expenses; Gratuities and Pensions

81. The remuneration of the directors shall be determined by ordinary resolution of the company and, unless the resolution otherwise provides, 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 or separate meetings of the holders of any class of shares or of debentures of the company or otherwise in connection with the business of the company.

82. The directors on behalf of the company may pay a gratuity or pension or allowance on retirement to any director who had held any other salaries 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 provisions of any such gratuity, pension or allowance.

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Disqualification and Removal of Directors

83. The office of director shall be vacated if the director-

(a) ceases to be a director by virtue of any provision of the Act or he becomes prohibited by law from being a director;
(b) becomes bankrupt or makes any arrangement or composition with his creditors generally;
(c) becomes of unsound mind;
(d) resigns his office by notice in writing to the company; or
(e) shall for more than six consecutive months have been absent without permission of the directors from meetings of the directors held during that period and the directors resolve that his office be vacated.

Appointment and Retirement of Directors

84. The company may by ordinary resolution appoint a person who is willing to act to be a director either to fill a vacancy or to be an additional director.

85. The directors may appoint a person who is willing to act to be a director, either to fill a vacancy or as an additional director, provided that the total number of directors does not exceed the number fixed by or in accordance with these articles. A director so appointed shall hold office only until the next following annual general meeting, and shall then be eligible for re-election.

86. The company may by ordinary resolution, of which special notice has been given in accordance with section 147 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 the director. Such removal shall be without prejudice to any claim the director may have for damages for breach of any service contract with the company.

87. The company may by ordinary resolution appoint another person in place of a director removed from office under the immediately preceding regulation, and without prejudice to the powers of the directors under article 85 the company may by ordinary resolution appoint any person to be a director either to fill a vacancy or as an additional director.

Proceedings of Directors

88. Subject to the provisions of the articles, the directors may regulate their meetings as they think fit. Questions arising at a meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may, and the secretary at the request of a director shall, call a meeting of the directors.

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It shall not be necessary to give notice of a meeting of directors to any director who is absent from Tanzania.

89. 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.

90. The continuing directors may act notwithstanding any vacancy in their number, but, if their number is reduced below the number fixed as the necessary quorum, the continuing directors or director may act only for the purpose of filling vacancies or of calling a general meeting.

91. The directors may appoint one of their number to be the chairman of the board of directors and determine the period of which he is to hold office. Unless he is unwilling to do so, the director so appointed shall preside at every meeting of directors at which he is present. But if no such chairman is appointed, or if he is unwilling to preside, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, directors present may choose one of their number to be chairman of the meeting.

92. The directors may delegate any of their powers to any committee consisting of one or more directors; 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. Subject to any such regulations, the proceedings of a committee with two or more members shall be governed by the articles regulating the proceedings of directors so far as they are capable of applying.

93. All acts done by a meeting of the directors or of a committee of directors or by a 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 that any of them were disqualified from holding office, or had vacated office, or were not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a director and was entitled to vote.

94. A resolution in writing, signed by all the directors entitled to receive notice of a meeting of the directors, or of a committee of directors, shall be as valid and effectual as if it had been passed at a meeting of the directors or, as the case may be, a committee of directors duly convened and held, and may consist of several documents in the like form each signed by one or more directors.

95. Save as otherwise provided in the articles, a director shall not vote at a meeting of directors or of a committee of directors on any resolution concerning a matter in which he has, directly or indirectly, an interest or duty which is material and which conflicts or may conflict with the interests of the company. Subject to and in accordance with the

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provisions of the Act, an interest of a person who is connected with a director shall be treated as an interest of the director.

96. A director shall not be counted in the quorum present at a meeting in relation to a resolution on which he is not entitled to vote.

97. The company may by ordinary resolution suspend or relax to any extent, either generally or in respect of any particular matter, any provision of the articles prohibiting a director from voting at a meeting of directors or of a committee of directors.

98. Where proposals are under consideration concerning the appointment of two or more directors to offices or employment with the company or any body corporate in which the company is interested, the proposals may be divided and considered in relation to each director separately and, provided he is not for another reason precluded from voting, each of the directors concerned shall be entitled to vote and be counted in the quorum in respect of each resolution except than concerning his own appointment.

99. Where a question arises at a meeting of directors or of a committee of directors as to the right of a director to vote, the question may, before the conclusion of the meeting, be referred to the chairman of the meeting and his ruling in relation to any director other than himself shall be final and conclusive.

Secretary

100. 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.

101. A provision of the Act or these Regulations requiring or athorising 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

102. The seal shall only be used by the authority of the directors or of a committee of the directors authorised by the directors. The directors may determine who shall sign any instrument to which the seal is affixed and unless otherwise so determined it shall be signed by a director and by the secretary or by a second director.

Dividends and Reserve

103. Subject to section 183 of the Act, the company may by ordinary resolution declare dividends in accordance with the respective rights of

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the members, but no dividend shall exceed the amount recommended by the directors.

104. Subject to the provisions of the Act, 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 available for distribution.

105. 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 reserves 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 think fit. The directors may also without placing the same to reserve carry forward and any profits which they may think prudent not to divide.

106. Except as otherwise provided by the rights attached to shares, all dividends shall be declared and paid according to the amounts paid on the shares in respect of which the dividend is paid. All dividends shall be apportioned and paid proportionately to the amounts 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, that share shall rank for dividend accordingly.

107. Any general meeting declaring a dividend may, upon the recommendation of the directors, direct payment of such dividend wholly or partly by the distribution of assets and, where any difficult arises in regard to the distribution, the directors may settle the same, and in particular may issue fractional certificates and fix the value for distribution of any assets 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 members, and may vest any assets in trustees.

108. Any dividend, interest or other moneys payable in cash in respect of shares may be paid by cheque sent through the post to the registered address of the holder or, in the case of joint holders, to the registered address of one of the joint holders who is first named in 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, and payment of the cheque shall be a good discharge to the company. Any one of two or more joint holders may give effectual receipts for any dividends or other moneys payable in respect of the shares held by them as joint holders.

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109. Dividend or other moneys payable in respect of a share shall not bear interest against the company unless otherwise provided by the rights attached to the share.

110. Any dividend which has remained unclaimed for twelve years from the date when it became due for payment shall, if the directors so resolve, be forfeited and cease to remain owing by the company.

Accounts

111.–(1) 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.

(2) 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.

112. The books of account shall be kept at the registered office of the company, or, subject to section 154(4) 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.

113. A member shall, as such, not have any right of inspecting any accounting records or other book or document of the company except as conferred by statute or authorised by the directors or by ordinary resolution of the company.

114. The directors shall, in accordance with sections 156, 158 and 162 of the Act, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets, cash flow statements, group accounts, if any, and reports as are referred to in those sections.

115. In accordance with section 166 of the Act, the copy of the company's annual accounts to be laid before the company in general meeting together with a copy of the director's report and the auditor's report shall not less than twenty-one days before the date of the meeting be sent to every member of, and every holder of debentures of, the company:

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.

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Capitalisation of Profits

116. The directors may, with the authority of an ordinary resolution of the company-

(a) resolve to authorise 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 that such sum be capitalised to the members who would have been entitled to it were distributed by way of dividend and in the same proportions and apply such sum either in or towards paying up any amounts for the time being unpaid on any shares held by such members respectively or in paying up in full in issued shares or debentures of the company to be allotted and distribute;

(b) make such provision regarding 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 authorise 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 shares or debentures to which they are entitled upon such authority on, and any agreement made under such authority shall be effective and binding on all such members.

Audit

117. Auditors shall be appointed and their duties regulated in accordance with sections 173 to 182 of the Act.

Notices

118. Any notice to be given to or by any person pursuant to the articles shall be in writing except that a notice calling a meeting of directors need not be in writing. The company may give any notice to a member whether personally or by sending it by post in a prepaid envelope addressed to the member at his registered address, or by leaving it at that address. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, preparing, and posting a letter containing the notice, and to have been effected at the expiration of (seventy-two) hours after the letter containing the same was posted. A member whose registered address is not within Tanzania and who gives to the company and address within Tanzania at which notices may be given him shall be entitled to receive any notice from the company.

119. A notice may be given by the company to the 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.

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120. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending or delivering it, in any manner authorised by the articles, addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, within Tanzania supplied for the purpose by the persons claiming to be so entitled. Until such an address has been supplied, a notice may be given in any manner in which it might have been given if the death or bankruptcy had not occurred.

121. A member present, either in person or by proxy, at any meeting of the company or of the holders of any class of shares in the company shall be deemed to have received a notice of purpose for which it was called.

Winding up

122. If the company is wound up the liquidator may, with sanction of a special resolution of the company and any other sanction required by the Act, divide amongst the members in specie the whole or any part of the assets of the company and may, for that purpose, set such value as he deems fair upon any property to be divided 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 the assets in trustees upon such trusts for the benefit of the members as the liquidator, with the like sanction, shall determine, but no member shall be compelled to accept any shares or other securities upon which there is a liability.

Indemnity

123. Subject to the provisions of the Act, but without prejudice to any indemnity to which a director may otherwise be entitled, every director or other officer or auditor 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 connection with any application under section 491 of the Act in which relief is granted to him by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the company.

PART II

REGULATIONS FOR MANAGEMENT OF A PRIVATE COMPANY LIMITED BY SHARES

1. The regulations contained in Part 1 of Table A shall apply save for regulation 22.

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2. The company is a private company and accordingly-

(a) the right to transfer shares is restricted in a manner hereinafter prescribed;

(b) the number of members of the company is limited to fifty as further provided for in the Act;

(c) any invitation to the public to subscribe for any shares or debenture of the public is prohibited; and

(d) the company shall not have power to issue share warrants to bearer.

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.

TABLE B

FORM OF MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES

1st The name of the company is "..... Limited."

2nd The Objects for which the company is established are, ...

3rd The liability of the members is limited.

4th The share capital of the company is ..... shillings divided into ..... shares of ..... shillings each.

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

Names, addresses and occupations of subscribers	Number of shares taken by each subscriber	Signatures of subscribers
1.	.....	.....
2.	.....	.....
3.	.....	.....
4.	.....	.....
5.	.....	.....
6.	.....	.....
7.	.....	.....

Total shares taken .....

Dated this ..... day of ..... 20.....

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TABLE C

FORM OF MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY

LIMITED BY GUARANTEE, AND NOT HAVING A SHARE CAPITAL

1st The name of the company is "..... Limited."

2nd The Objects for which the company is established are, ...

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 afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding ..... shillings.

WE, the persons whose names and addresses are subscribed, desire to be formed into a company, in pursuance of this memorandum of association.

Names, addresses and occupations of subscribers	Number of shares taken by each subscriber	Signatures of subscribers
1.	.....	.....
2.	.....	.....
3.	.....	.....
4.	.....	.....
5.	.....	.....
6.	.....	.....
7.	.....	.....

Total shares taken .....

Dated this ..... day of ..... 20.....

Witness to the above Signatures

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ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF ASSOCIATION

Interpretation

1. In these articles-

"the Act" means the Companies Act;

"the articles" means the articles of the company;

"clear days" in relation to the period of a notice means that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect;

"the seal" means the common seal of the company;

"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, photograph, 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.

Member

2. The number of members with which the company proposes to be registered is 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 notice calling it; and not more than fifteen 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 eighteen 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.

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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 also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section 136 of the Act. If at any time there are not within Tanzania 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

7. Every general meeting shall be called by twenty-one clear days' notice in writing at the least. The notice shall specify the place, the day and hour of meeting and, in case of special business, the general nature of that business:

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 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 number of the members having a right to attend and vote at the meeting, being a majority together representing not less than ninety-five percent of the total voting rights at that meeting of all the members.

8. Subject to the provisions of the articles, the notice shall be given to all the members, to all persons entitled to a share in consequence of the death or bankruptcy of a member and to the directors and auditors. 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 in the place of those retiring and the appointment of, and the fixing of the remuneration of the auditors.

10. Business shall not be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; two persons, entitled to vote on the business to be transacted,

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each being a member or a proxy for a member or a duly authorised representative of a corporation, shall be a quorum.

11. If within half an hour from the time appointed for the meeting a quorum is not present, or if during the course of a meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week, at the same time and place, or to such other day and at such other time and place as the directors may determine.

12. The chairman, if any, of the board of directors or in his absence some other director nominated by the directors shall preside as chairman of the general meeting, but if neither the chairman nor such other director (if any) be present within fifteen minutes after the time appointed for the holding of the meeting and willing to act, the directors present shall elect one of their number to be chairman of the meeting and, if there is only one director present and willing to act, he shall be chairman.

13. If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be a 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 and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might properly have been transacted at the meeting had the adjournment not taken place. When a meeting is adjourned for fourteen days or more, at least seven clear days notice of the adjourned meeting shall be given specifying the time and place of the meeting and the general nature of the business to be transacted. Save 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; or

(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 the 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

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votes recorded in favour of or against such resolution. The demand for a poll may, before the poll is taken, 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 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 immediately. A poll demanded on any other question shall be taken either immediately or at such time as the chairman of the meeting directs, and any business other than upon which a poll has been demanded may be proceeded with pending the taking of the poll.

19. A resolution in writing executed by or on behalf of each member who would have been entitled to vote upon it if it had been proposed at a general meeting at which he was present shall have effect as if it had been passed at a general meeting duly convened and held, and may consist of several instruments in the like form each executed by or on behalf of one or more members.

Vote of Members

20. Every member shall have one vote.

Cap. 98

21. A member in respect of whose estate a manager has been appointed under section 24(5) of the Mental Health Act, may vote, whether on a show of hands or on a poll, by his said manager, and any such manager may, on a poll, vote by proxy.

22. A member shall not 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 appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorised. 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 the Territory as is specified

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for that purpose in the notice convening the meeting, not less than forty eighty hours before the time for holding the meeting of adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than twenty four 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-

"..... 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 ..... 20....., and at any adjournment thereof.

Signed this .....day of ..... 20.....".

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-

"..... 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 ..... 20....., and at any adjournment thereof.

Signed this ..... day of ..... 20.....".

This form is to be used in favour of /against the resolution.* 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, or poll demanded by proxy, or by the duly authorised representative of a corporation shall be valid notwithstanding the previous determination

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of the authority of the person voting or demanding a poll unless notice of the determination was received by the company at its registered office (or at such other place at which the instrument of proxy was duly deposited) before the commencement of the meeting or adjourned meeting at which the proxy is used.

Corporations Acting By Representation at Meetings

30. Any corporation which is a member of the company may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company, and the person so authorised 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 and until such determination the signatories to the Memorandum of Association shall be the first directors. Unless otherwise determined by ordinary resolution, the number of directors shall not be subject to any maximum but shall be not less than two.

32. The remuneration of the directors shall be determined by the Company in general meeting. Such remuneration shall be deemed to accrue from day to day. The directors shall 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 connection with the business of the company.

Borrowing Powers

33. The director 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 any third party.

Powers and Duties of Directors

34. Subject to the provisions of the Act, the memorandum and the articles and to any directions given by special resolution, the business of the company shall be managed by the directors, who may exercise

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all the powers of the company. No alteration of the memorandum or articles and no such directions shall invalidate any prior act of the directors which would otherwise have been valid. The powers given by this article shall not be limited by any special power given to the directors by the articles and a meeting of directors at which a quorum is present may exercise all powers exercisable by the directors.

35. The directors may by power of attorney appoint any person to be the attorney or agent of the company for such purposes and on such conditions as they determine, including authority for the attorney or agent to delegate all or any of his powers.

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 they case may be, in such manner as the directors shall 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; and
(c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors.

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 bankrupt or makes any arrangement or composition with his creditors generally;
(c) ceases to be a director by virtue of any provision of the Act or becomes prohibited by law from being a director;
(d) becomes of unsound mind;
(e) resigns his office by notice in writing to the company; or
(f) is directly or indirectly interested in any contract with the company and fails to declare the nature of his interest in manner required by the Act,

a director shall not vote in respect of any contract in which he is interested or any matter arising thereat, and if he does so vote shall not be counted.

39. The company may by ordinary resolution appoint a person who is willing to act as director to fill a vacancy or be an additional director.

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40. The directors may appoint a person who is willing to act to be a director, either to fill a vacancy or as an additional director, but so that the total number of directors shall not at anytime exceed the number fixed by or 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.

41. The company may by ordinary resolution, of which special notice had been given in accordance with section 147 of the Act, remove any director before the expiration of his period of office notwithstanding anything in the article or 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.

42. The company may by ordinary resolution appoint another person in place of a director removed from office under the immediately preceding article. Without prejudice to the powers of the directors under article 40 the company in general meeting may appoint any person to be a director either to fill a vacancy or as an additional director.

Proceedings of Directors

43. Subject to the provisions of the articles, the directors may regulate their meetings as they think fit. Questions arising at a meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may, and the secretary at the request of a director shall, call a meeting of the directors. It shall not be necessary to give notice of a meeting of directors to any director who is absent from Tanzania.

44. 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.

45. The continuing directors may act notwithstanding any vacancy 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.

46. The directors may appoint one of their number to be the chairman of the board of directors and determine the period of which he is to hold office. Unless he is unwilling to do so, the director so appointed shall preside at every meeting of directors at which he is present. But if no such chairman is appointed, or if he is unwilling to preside, or if at

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any meeting the chairman is not present within fifteen minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

47. The directors may delegate any of their powers to any committee consisting of one or more directors; 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. Subject to any such regulations, the proceedings of a committee with two or more members shall be governed by the articles regulating the proceedings of directors so far as they are capable of applying.

48. All acts done by a meeting of the directors or of a committee of directors or by a 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 that any of them were disqualified from holding office, or had vacated office, or were not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a director and was entitled to vote.

49. A resolution in writing, signed by all the directors entitled to receive notice of a meeting of the directors, or of a committee of directors, shall be as valid and effectual as if it had been passed at a meeting of the directors or (as the case may be) a committee of directors duly convened and held, and may consist of several documents in the like form each signed by one or more directors.

Secretary

50. 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.

51. The provisions of the Act or these articles requiring or authorising 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

52. The seal shall only be used by the authority of the directors or of a committee of the directors authorised by the directors. The directors may determine who shall sign any instrument to which the seal is affixed and unless otherwise so determined it shall be signed by a director and by the secretary or by a second director.

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Accounts

53. 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 purchase of goods by the company; and

(c) the assets and liabilities of the company.

Property 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.

54. The books of account shall be kept at the registered officer of the company, or subject to section 154(4) 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.

55. A member shall not, as such, have any right of inspecting any accounting records or other book or document of the company except as conferred by statute or authorised by the directors or by ordinary resolution of the company.

56. The directors shall in accordance with sections 153, 156 and 158 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.

57. In accordance with section 167 of the Act, the copy of the company's annual accounts to be laid before the company in general meeting together with a copy of the director's report and the auditor's report shall not less than twenty-one days before the date of the meeting be sent to every member of, and every holder of debentures of, the company:

Provided that, this regulation shall not require a copy of those documents be to sent to any person of whose address the company is not aware or to more than one of the joint holders of any debentures the joint holders of any debentures.

Audit

58. Auditors shall be appointed and their duties regulated in accordance with sections 173 to 182 of the Act.

Notices

59. Any notice to be given to or by any person pursuant to the articles shall be in writing except that a notice calling a meeting of directors need not be in writing. The company may give any notice to a member either personally or by sending it by post in a prepaid envelope addressed to

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the member at his registered address, or by leaving it at that address. 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 at the expiration of seventy-two hours after the letter containing the same was posted. A member whose registered address is not within Tanzania and who gives to the company an address within Tanzania at which notices may be given to him, shall be entitled to have notices given to him at that address, but otherwise no such member shall be entitled to receive any notice from the company.

Names, addresses and occupations of subscribers	Number of shares taken by each subscriber	Signatures of subscribers
1.	.....	.....
2.	.....	.....
3.	.....	.....
4.	.....	.....
5.	.....	.....
6.	.....	.....
7.	.....	.....

Total shares taken .....

Dated this ..... day of ..... 20.....

Witness to the above Signatures

TABLE D

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND HAVING A SHARE CAPITAL

Memorandum of Association is

1st The name of the company is "..... Limited".

2nd The objects for which the company is established are: .....

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 afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributors among themselves, such amount as may be required not exceeding ..... shillings.

5th The share capital of the company shall consist of ..... shillings divided into ..... shares of ..... shillings each.

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

Names, addresses and occupations of subscribers	Number of shares taken by each subscriber	Signatures of subscribers
1.	.....	.....
2.	.....	.....
3.	.....	.....
4.	.....	.....
5.	.....	.....
6.	.....	.....
7.	.....	.....

Total shares taken .....

Dated this ..... day of ..... 20.....

Witness to the above Signatures

ARTICLES OF ASSOCIATION TO A COMPANY PRECEDING MEMORANDUM OF ASSOCIATION

1. The number of members with which the company proposes to be registered is, but the directors may register an increase of members.

2. The regulations of Table A set out in the Schedule to the Companies Act shall be deemed to be incorporated with these articles and shall apply to the company.

Names, addresses and occupations of subscribers	Signatures of subscribers
1.	.....
2.	.....
3.	.....
4.	.....
5.	.....
6.	.....
7.	.....

Dated this ..... day of ..... 20.....

Witness to the above Signatures

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TABLE E

MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY HAVING A SHARE CAPITAL

Memorandum of Association is

1st The name of the company is "....."

2nd The objects for which the company is established are.....

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

Names, addresses and occupations of subscribers	Number of shares taken by each subscriber	Signatures of subscribers

Dated this ..... day of ..... 20.....

Witness to the above Signature / Signatures

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF ASSOCIATION

1. The number of members with which the company proposes to be registered is ..... but the directors may register an increase of members.

2. The share capital of the company is ..... shillings divided into ..... shares ..... of ..... shillings each.

3. The company may by special resolution-

(a) increase the share capital by such sum to be divided into shares of such amount as the resolution may prescribe;

(b) consolidate its shares into shares of a larger amount than its existing shares;

(c) subdivide its shares into shares of a smaller amount than its existing shares;

(d) 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; and

(e) reduce its share capital in any way.

4. The regulations of Table A set out in the Schedule to the Companies Act (other than regulations 34 to 36 inclusive) shall be deemed to be incorporated with these articles and shall apply to the company.

Signatures of subscribers

Dated this ..... day of ..... 20.....

Witness to the above Signatures

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