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Companies Act, 1912

Act 7 of 1912

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Companies Act, 1912

Act 7 of 1912

Commenced on 19 February 1912

[This is the version of this document at 1 December 1998.]

[Repealed by [Companies Act, 2009 \(Act 8 of 2009\)](#) on 1 April 2010]

An Act to make provision for the incorporation, registration and winding-up of companies and other associations.

1. Short title

This Act may be cited as the Companies Act, 1912.

2. Contents of chapter

[This section is not reprinted.]

3. Interpretation

In this Act, unless inconsistent with the context—

"**articles**" means the articles of association of a company as originally framed, or as altered by special resolution, and shall include, so far as they apply to a company, the Regulations set forth in the Third Schedule to this Act;

"**books or papers**" and "books and papers" includes accounts, deeds, writings, and other documents;

"**company**" means a limited or unlimited company which is incorporated and registered under Part I, and shall include every company to which, by Part VI, this Act is expressed to apply;

"**Court**" means the High Court;

"**debenture**" includes debenture stock;

"**director**" includes any person occupying the position of director or alternate director of a company, by whatever name he may be called;

"**extraordinary resolution**" means a resolution passed at a general meeting of a company in accordance with [section 67\(1\)](#);

"**foreign company**" means a company or other association of persons which has for its objects the acquisition of gain by the company or association, or by the individual members thereof, and is registered or incorporated in a foreign country under the laws of that country;

"**foreign country**" means any state, country, colony, or territory, other than Swaziland;

"**limited company**" means a company having the liability of its members limited by the memorandum of association to the amount (if any) unpaid on the shares respectively held by them.

"**Master**" shall mean the Master of the High Court or any person lawfully acting in that capacity;

"**memorandum**" means the memorandum of association of a company, as originally framed or as altered in pursuance of this Act;

"**Minister**" means the Minister for Enterprise and Employment;

"**prescribed fee**" means the fee mentioned in the First Schedule to this Act, as the fee payable in respect of any particular matter;

"**prescribed form**" means a form set forth in the Second Schedule to this Act;

"**private company**" means a company which by its articles.

- (a) restricts the rights to transfer its shares; and
- (b) limits the number of its members (exclusive of persons who are in the employ of the company) to a number not exceeding fifty; and
- (c) prohibits any invitation to the public to subscribe for any of its shares or debentures;

where two or more persons hold one or more shares in a company jointly they shall be deemed for the purposes of paragraph (b) of this definition to be one member;

"**prospectus**" means any prospectus, notice, circular, or advertisement inviting the public to subscribe for or purchase any of the shares or debentures of a company, or any direct or indirect invitation to the public to so subscribe or purchase;

"**Registrar**" means the Registrar of Companies approved under [section 212](#), or any person lawfully acting in that capacity;

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

"**special resolution**" means a resolution passed at a general meeting of a company in manner provided by [section 67\(2\)](#);

"**Table A**" means the table of Regulations set forth in the Third Schedule of this Act;

"**unlimited company**" means a company which has no limit on the liability of its members.

[Amended P.8/1962]

Part I – Constitution and incorporation

Prohibition of large partnerships

4. Prohibition of trading associations or partnerships exceeding twenty members

- (1) From and after the 19th of February, 1912 no company, association, syndicate or partnership consisting of more than twenty persons shall be formed in Swaziland for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association, syndicate or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other law of Swaziland, or of Letters Patent, or Royal Charter.
- (2) Notwithstanding subsection (1) the Minister may, by notice in the *Gazette*, grant the exemption of any company, association, syndicate or partnership from the requirement of that subsection where he is satisfied that the principal purpose of the company, association, syndicate or partnership is not the direct acquisition of gain by it or its individual members but the furtherance of their collective interests.
- (3) The publication of a notice in the *Gazette* under subsection (2) shall be conclusive evidence that the company, association, syndicate or partnership to which it relates is exempt from the requirements of subsection (1).

[Amended P.52/1964]

Memorandum of association

5. Mode of forming company

Seven or more persons (or, where the company to be formed will be a private company, 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 (that is to say), either—

- (1) 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; or
- (2) a company not having any limit on the liability of its members.

6. Memorandum of association of company limited by shares

- (1) The memorandum of a limited company shall state—
 - (a) the name of the company with "Limited" as the last word in its name;
 - (b) the place in Swaziland in which the registered office of the company is to be situated;
 - (c) the objects of the company;
 - (d) that the liability of the members is limited;
 - (e) the amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount.
- (2) No subscriber of the memorandum of a limited company may take less than one share.
- (3) Each subscriber of a limited company shall write opposite to his name the number of shares he takes.

7. Memorandum of unlimited company

- (1) The memorandum of an unlimited company shall state—
 - (a) the name of the company;
 - (b) the place in Swaziland in which the registered office of the company is to be situated;
 - (c) the objects of the company.
- (2) If an unlimited company has a share capital—
 - (a) no subscriber of the memorandum may take less than one share;
 - (b) each subscriber shall write opposite to his name the number of shares he takes.

8. Signature of memorandum of association

The memorandum shall be signed by each subscriber in the presence of at least one witness who shall attest the signature and shall, in attesting, state his occupation and address.

9. Restriction on alteration of memorandum of association

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

10. Name of company and change of name

- (1) A company may not be registered by a name identical with that by which a company in existence is already registered, or so nearly resembling the name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the Registrar requires.
- (2) A company may not be registered by a name calculated to cause annoyance or offence to any person or by a name suggestive of blasphemy or indecency.
- (3) A company may not, without the consent of the Minister, be registered by a name which includes the words "Imperial", "Royal", "Crown", "Empire", "Government", or any other word which imports or suggests that it enjoys the patronage of Her Britannic Majesty or the King of Swaziland or the Government.
- (4) If a company, through inadvertence or otherwise, is registered in conflict with subsection (1) or subsection (2) or subsection (3) the company may, in the circumstances described in subsection (1), with the sanction of the Registrar, change its name, and shall, in the circumstances described in subsection (2) or subsection (3), change its name.
- (5) Any company may, by special resolution and with the approval in writing of the Minister, change its name.
- (6) Where a company changes its name, 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.
- (7) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.
- (8) The Registrar may on written application to him and on payment of the Prescribed fee reserve a name pending registration of a company or a change of name by an existing company:

Provided that such reservation shall be for a period not exceeding thirty days or such extended period, not exceeding in all sixty days as the Registrar may in his discretion allow.

11. Alteration of objects of company

- (1) Subject to this section a company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it—
 - (a) to carry on its business more economically or more efficiently; or
 - (b) to attain its main purpose by new or improved means; or
 - (c) to enlarge or change the local area of its operations; or
 - (d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or
 - (e) to restrict or abandon any of the objects specified in the memorandum.
- (2) The alteration shall not take effect until and except in so far as it is confirmed on petition by the Court.
- (3) Before confirming the alteration the Court shall be satisfied—
 - (a) that sufficient notice has been given to every mortgagee and to every holder of debentures of the company, and to any person or class of persons whose interest will, in the opinion of the Court, be affected by the alteration; and

- (b) that, with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Court:

Provided that the Court may, in the case of any person or class of persons, for special reasons, dispense with the notice required by this section.

- (4) The Court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit, and may make such order as to costs as it thinks proper.
- (5) The Court shall, in exercising its discretion under this section, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissenting members; and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement:

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

- (6) A certified copy of the order confirming the alteration, together with a copy of the memorandum as altered, shall, within fifteen days from the date of the order, be delivered by the company to the Registrar, and he shall register the same, and shall certify the registration under his hand, and his certificate shall be conclusive evidence that all the requirements of this Act with respect of the alteration and the confirmation thereof have been complied with, and thencefore the memorandum so altered shall be the memorandum of the company.
- (7) The Court may by order at any time extend the time for the delivery of documents to the Registrar under this section for such period as the Court may think proper.
- (8) If a company makes default in delivering to the Registrar any document required by this section to be delivered to him, it shall be guilty of an offence and liable on conviction to a fine not exceeding twenty emalangeneni for every day during which it is in default.

Articles of association

12. Registration of articles of association

- (1) There may, in the case of a limited company, and there shall in the case of an unlimited company, be registered with the memorandum, articles of association prescribing Regulations for the company.
- (2) Articles of associations may adopt all or any of the Regulations contained in Table A.
- (3) If an unlimited company has a share capital, the articles shall state the amount of share capital with which the company proposes to be registered.
- (4) If an unlimited company has not a share capital, the articles shall state the number of members with which the company proposes to be registered.

13. Application of Table "A"

In the case of a limited company if articles are not registered, or, if articles are registered in so far as the articles do not exclude or modify the Regulations in Table A, those Regulations shall so far as applicable be the Regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

14. Form and signature of articles

Articles shall—

- (a) be divided into paragraphs numbered consecutively;
- (b) be signed by each subscriber of the memorandum in the presence of at least one witness, who shall attest the signature, and shall, in attesting, state his occupation and address.

15. Alteration of articles by special resolution

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

General provisions

16. Effect of memorandum and articles

- (1) The memorandum and articles shall when registered, bind the company and members thereof to the same extent as if they respectively had been signed by each member, and contained covenants on the part of each member, his heirs and legal representatives, to observe all the provisions of the memorandum and of the articles, subject to the provisions of this Act.
- (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.

17. Registration of memorandum and articles

- (1) The memorandum and the articles (if any) together with a copy thereof certified by a notary public, or by two directors on oath, as a true copy, shall be transmitted or delivered to the Registrar.
- (2) Upon payment to him of the prescribed fees the Registrar shall, if the memorandum and the articles (if any) are in accordance with this Act, register them by filing the certified copy, and shall return to the company the original memorandum and articles (if any) with the date of registration endorsed.

18. Effect of registration

- (1) Upon 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.
- (2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers of 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 forthwith of exercising all the functions of an incorporated company, and having perpetual succession, but with such liability on the part of the members, to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

19. Conclusiveness of certificate of incorporation

- (1) A certificate of incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto, have been complied with, and that the association is a company authorised to be registered and duly registered under this Act.
- (2) An affidavit or other solemn declaration made by an attorney of the Court engaged in the formation of a company, or by a person named in the articles as a director or secretary of the company, of

compliance with all or any of the said requirements shall be produced to the Registrar, who may accept such affidavit or declaration as sufficient evidence of compliance.

20. Copies of memorandum and articles to be given to members

- (1) Every company shall send to every member, at his request, on payment of twenty-five cents or such less sum as the company may prescribe, a copy of the memorandum and of the articles (if any) or shall afford to every member or to his duly authorised agent adequate facilities for making a copy of the memorandum and of the articles (if any).
- (2) If a company makes default in complying with the requirements of this section, it shall be guilty of an offence and on conviction be liable to a fine not exceeding two Emalangeni.

Associations not for profits

21. Special provisions as to associations formed for purpose not of gain

- (1) Where it is proved to the satisfaction of the Minister that an association about to be formed as a limited company is to be formed for promoting commerce, art, science, religion, charity, or any other useful object, and intends to apply its profits (if any), or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Minister may, by licence under his hand direct that the association be registered with limited liability, without the addition of the word "Limited" to its name, and the association may be registered accordingly.
- (2) A licence by the Minister under this section may be granted on such conditions and subject to such Regulations as he may think fit, and those conditions and Regulations shall be binding upon the association, and shall, if the Minister so directs, be inserted in the memorandum and articles, or in one of those documents.
- (3) The association shall upon registration enjoy all the privileges of limited companies and be subject to all their obligations, except those of using the word "Limited" as any part of its name, and of publishing its name, and of sending lists of its members, directors, and managers to the Registrar.
- (4) A licence under this section may at any time be revoked by the Minister, and upon revocation the Registrar shall enter the word "Limited" at the end of the name of the association upon the register, and the association shall cease to enjoy the exemptions and privileges granted by this section:

Provided that before a licence is so revoked the Minister shall give to the association notice in writing of his intention, and shall afford the association an opportunity of being heard in opposition to the revocation.

21bis. Company licence

- (1) Every registered company and every foreign company which has a place of business in Swaziland shall, not later than the 31st day of July in each year, take out an annual licence, to be known as a "company licence".
- (2) Every company which is registered, or every foreign company which establishes a place of business in Swaziland as the case may be, during the course of any year shall, within one month of the date of such registration or establishment, take out a company licence for the remainder of the year.
- (3) Every company shall apply for a company licence to the Registrar in a form prescribed by the Minister and shall in its application state, *inter alia*, the amount of its nominal capital at the time of such application and shall, in connexion with such application, furnish such further information as the Registrar may require.
- (4) An application for a company licence shall be accompanied by a licence fee calculated as follows—

Capital	Licence fee
	E
Where the nominal capital of the company does not exceed E10 000.00	400.00
Exceeds E10 000.00 but does not exceed E30 000.00	700.00
exceeds E30 000.00 but does not exceed E50 000.00	1 000.00
exceeds E50 000.00	1 600.00

[Amended A.8/1985; L.N. 104/2006]

- (5) On compliance by the company with subsections (3) and (4) the Registrar shall issue with a company licence in a form prescribed by the Minister.
- (6) A company which fails to take out a company licence or which pays any amount less than the licence fee payable by it under subsection (4), shall pay as additional fee a further amount calculated at the rate of ten per centum of the fee so payable or of the amount short paid, as the case may be, for each month or part of a month, reckoned from the day upon which the said fee remains unpaid or short paid:
- Provided that any such additional fee shall not exceed the amount of the fee payable in terms of subsection (4) or so short paid, as the case may be.
- (7) All money payable under this section shall be due to the Government and be recoverable on its behalf by the Attorney-General by action in a court of competent jurisdiction.
- (8) An association not for profit in respect of which the Minister has granted a licence in terms of [section 21](#) shall be exempt from the payment of the licence fee payable under this section.
- (9) For the purposes of this section, "year" shall mean a period of twelve months commencing on the first day of July.

[Added A.22/1970]

Part II – Distribution and reduction of share capital, registration of unlimited company as limited, and unlimited liability of directors

Distribution of share capital

22. Nature of shares

- (1) The shares or other interest of any member in a company shall be movable property, transferable in manner provided by the articles of the company.
- (2) Each share in a company having a share capital shall be distinguished by an appropriate number.

23. Certificate of shares or stock

- (1) A certificate under the hands of two directors and the secretary of the company, or, if there be only one director, under the hand of that director and of the secretary, specifying any shares or stock held by any member, shall be *prima facie* evidence of the title of the member to the shares or stock.
- (2) Every certificate of vendors', promoters', founders', or management shares in a company shall, for a period of six months immediately succeeding the registration of the company, be distinguished as such by having the words "vendors' shares", "promoters' shares", "founders' shares", or "management shares" (as the case may be) conspicuously printed on the face of the certificate.

24. Definition of "member"

- (1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and upon 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.

25. Register of members

- (1) Every company shall keep in one or more books a register of its members, and enter therein the following particulars:
 - (a) the names and addresses of the members, and in the case of a company having a share capital, a statement of the share held by each member, distinguishing each share by its number and by its class or kind, and of the amount paid or agreed to be considered as paid on the shares of each member;
 - (b) the date at which each person was entered in the register as a member;
 - (c) the date at which any person ceased to be a member.
- (2) If a company fails to comply with the section, it shall be guilty of an offence and liable on conviction to a fine not exceeding ten emalangeni for every day during which the default continues; and every director, manager, secretary, or other officer of the company who knowingly and wilfully authorises or permits the default shall be guilty of an offence and liable on conviction to the like penalty.

26. Annual list of members and summary

- (1) Every company, including a foreign company, having a share capital shall during the month of June of every year make a list of all persons who are members of the company and all persons who, holding shares not fully paid up, ceased to be members since the date of the last return, or in the case of the first return, of the incorporation of the company.
- (2) The list shall, except in the case of a public company, state the names and addresses of all past and present members therein mentioned, and the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return, or, in the case of a first return, of the incorporation of the company, by persons who are still members and who have ceased to be members respectively and the dates of the registration of the transfers.
- (3) The list shall state the situation of the registered office of the company, the date of the last annual general meeting, the date of incorporation and registered number and shall contain a summary

distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, specifying the following particulars:

- (a) the amount of the share capital of the company and number of the shares into which it is divided;
 - (b) the number of shares taken from the commencement of the company up to the date of return;
 - (c) the amount called up on each share;
 - (d) the total amount of calls received;
 - (e) the total amount of calls unpaid;
 - (f) the total amount of the sums (if any) paid by way of commission in respect of any shares or debenture, since the date of the last return;
 - (g) the total number of shares forfeited;
 - (h) the total number of shares or stock for which shares warrants are outstanding at the date of return;
 - (i) the total amount of share warrants issued and surrendered respectively since the date of the last return;
 - (j) the number of shares or amount of stock comprised in each share warrants;
 - (k) the names and addresses of the persons who at the date of the return are the directors, managers, secretary and auditor of the company; and
 - (l) the total amount of debt due from the company in respect of all mortgages and charges.
- (4) Save in the case of a private company the summary referred to in subsection (3) shall include a statement in the form of a balance sheet, audited by the company's auditors, containing summary of its share capital, its liabilities and its assets, giving such particulars as will disclose the general nature of such liabilities and assets, and how the values of those fixed assets have been arrived at:
- Provided that such balance sheet need not include statement of profit and loss.
- (5) The list and summary shall be contained in a separate part of the register of members and the company shall at the same time as it makes application for its annual company licence, but not later than 31 July of each year, and in the form prescribed by the Minister transmit to the Registrar a copy signed by, or on behalf of, a director, manager or secretary of the company.
- (6) If a company fails to comply with any requirements of this section it shall be guilty of an offence and liable on conviction to a fine of ten emalangeni for every day that its default continues, and every director, secretary or other officer of the company who knowingly and wilfully authorises or permits such default shall be guilty of an offence and liable on conviction to a like penalty.

[Amended K.O-I-C. 7/1978]

27. Trust not to be entered on register

No notice of any trust, expressed, implied, or constructive, shall be entered on the register or be receivable by the Registrar.

28. Registration of transfer at request of transferor

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 transferee and subject also to the law for the being in force relating to stamp duty or duty upon estates of deceased persons:

Provided that no transfer of vendors', promoters', founders', or management shares in a company, nor any contract to transfer or dispose of any such shares shall be valid if made before the expiration of six months immediately succeeding the registration of the company.

29. Transfer by legal representative

A transfer of the share or other interest of a deceased member of a company made by his legal representative shall, although the legal representative is not himself a member, be as valid as if he had been a member at the date of the execution of the instrument of transfer, subject always to the law for the time being in force relating to stamp duty or duty upon the estates of deceased persons.

30. Inspection of register of members

- (1) The register of members, commencing from the date of registration of the company, shall be kept at the registered office of the company, and, except when closed under the provisions of this Act, shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member or his attorney *gratis*, and, except in the case of a private company, to the inspection of any other person on payment of twenty-five cents or such less sum as the company may prescribe, for each inspection.
- (2) Any member and, except in the case of a private company, any other person may require the company to furnish him with extracts from such register, or from the list and summary required by this Act, on payment of ten cents or such less sum as the company may prescribe, for every hundred words or fractional part thereof required to be extracted, or the company shall afford to any member and, except in the case of a private company, to any other person or his duly authorised agent adequate facilities for making such extracts.
- (3) If any inspection, extract, or facilities for making extracts, required under this section is refused, the company shall be liable for each refusal to a fine not exceeding four emalangeni and a further fine not exceeding four emalangeni for every day during which the refusal continues and every director, manager, secretary or other officer of the company who knowingly authorises or permits the refusal shall be liable to the like penalty; and the Court may by order compel an immediate inspection of the register or the furnishing of the extract or the affording of facilities for making the same.

31. Power to close register

A company may, upon giving notice by advertisement in the *Gazette* and a newspaper circulating in Swaziland, close the register of members for any time or times not exceeding in the whole sixty days in each year.

32. Remedy for improper entry or omission of entry in register

- (1) If—
 - (a) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or
 - (b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,the person aggrieved, or an member of the company or the company, may apply to the Court for rectification of the register.
- (2) The application may be made by motion or in such other manner as the Court may direct; and the Court may either refuse the application, or may order rectification of the register, and payment by the company, or by any director, manager, secretary, or other officer of the company, of any damages sustained by any party aggrieved.

- (3) On any application under this section the Court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members or between members or alleged members on the one hand and the company on the other hand; and generally may decide any question necessary or expedient to be decided for the rectification of the register.
- (4) In the case of a company required by this Act to transmit a list of its members to the Registrar, the Court when making an order for the rectification of the register, shall by its order direct notice of the rectification to be given to the Registrar.

33. Register to be evidence

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

34. Branch registers in foreign countries

- (1) A company having a share capital, may, if so authorised by its articles, cause to be kept in any foreign country a register of members resident in that foreign 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 of the discontinuance of the office in the event of its being discontinued.

35. Regulations as to branch register

- (1) A branch register shall be deemed to be a part of the company's register of members (in this section called the principal register).
- (2) It shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before closing the register shall, for a reasonable time before the closing, be inserted in some newspaper circulating in the district wherein the branch register is kept.
- (3) The company shall transmit to its registered office a copy of every entry in its branch register as soon as may be after the entry is made; and shall cause to be kept at its registered office duly entered up from time to time, a duplicate of its branch register, and the duplicate shall, for all the purposes of this Act, be deemed to be part of the principal register.
- (4) The company may discontinue to keep any branch register, and thereupon all entries in that register shall be transferred to some other branch register kept by the company in the same foreign country, or to the principal register.
- (5) Subject to this Act and of any law for the time being in force relating to stamp duty or to duty upon the estates of deceased persons, any company may, by its articles make such provisions as it may think fit respecting the keeping of branch registers.

36. Issue and effect of share warrants to bearer

- (1) A limited company if so authorised by its articles, may, with respect to any fully paid-up shares, or to stock, issue a warrant stating that the bearer of the warrant is entitled to the shares or stock therein specified, and may provide by coupons or otherwise, for the payment of the future dividends on the shares or stock included in the warrant, in this Act termed a share warrant.
- (2) A share warrant shall entitle the bearer thereof to the shares or stock therein specified, and such shares or stock may be transferred by the delivery of the share warrant.

- (3) The bearer of a share warrant shall, subject to the articles of the company, be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members; and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register the name of a bearer of a share warrant in respect of the shares or stock therein specified without the share warrant being surrendered and cancelled.
- (4) The bearer of a share warrant may, if the articles of the company so provide be deemed to be a member of the company within the meaning of this Act, either to the full extent or for any purposes defined in the articles; except that he shall not be qualified, in respect of the shares or stock specified in the warrant, for being a director or manager of the company, in cases where such a qualification is required by the articles.
- (5) On the issue of a share warrant the company shall strike out of its register of members the name of the member then entered therein as holding the shares or stock specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely:
 - (i) the fact of the issue of the warrant;
 - (ii) a statement of the shares or stock included in the warrant, distinguishing each share by its number; and
 - (iii) the date of the issue of the warrant.
- (6) Until the warrant is surrendered the said particulars shall be deemed to be the particulars required by this Act to be entered in the register of members; and on the surrender the date of the surrender shall be entered as if it were the date at which a person ceased to be a member.

37. Forgery, personation, unlawfully engraving plates, etc.

- (1) If any person—
 - (a) with intent to defraud, forges or alters or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any share warrant or coupon, or any document purporting to be a share warrant or coupon issued in pursuance of this Act; or by means of any such forged or altered share warrant, coupon, or document, purporting as aforesaid demands or endeavours to obtain or receive any share or interest in any company, or to receive any dividend or money payable in respect thereof, knowing the share warrant, coupon, or document to be forged or altered; or
 - (c) falsely and deceitfully personates any owner of any share or interest in any company, or of any share warrant or coupon issued in pursuance of this Act, and thereby obtains or endeavours to obtain any such share or interest or share warrant 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;

[Please note: numbering as in original.]

he shall be guilty of an offence, and liable on conviction to imprisonment for a period not exceeding ten years.

- (2) If any person without lawful authority or excuse (the proof whereof shall lie upon him), engraves or makes upon any plate, wood, stone, or other material any share warrant, or coupon, purporting to be a share warrant, or coupon, issued or made by any particular company in pursuance of this Act or to be a blank share warrant or coupon so issued or made, or to be a part of such a share warrant or coupon, or uses and such plate, wood, stone, or other 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 knowingly has in his custody or possession any such plate, wood, stone, or other material he shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding ten years.

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

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

- (a) make arrangements on the issue of shares for a difference between classes of shareholders in the amounts and times of payments of calls on their shares;
- (b) accept from any member who assents thereto the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up and, if the whole amount unpaid on any shares be paid, issue those shares as fully paid up;
- (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.

39. Power of limited company to alter its share capital

- (1) A limited company, if so authorised by its articles, may alter the conditions of its memorandum as follows (that is to say), it may—
 - (a) increase its share capital by the issue of new shares of such amount as it thinks expedient;
 - (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
 - (c) convert all or any of its paid-up shares into stock, and reconvert such stock into paid-up shares of any denomination.
 - (d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division 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;
 - (e) cancel shares which at the date of 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) The powers conferred by this section with respect to sub-division of shares shall be exercised by special resolution.
- (3) Where any alteration has been made under this section 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.
- (4) If a company makes default in complying with subsection (3) it shall be guilty of an offence and liable on conviction to a fine not exceeding two emalangeni for each copy in respect of which default is made; and every director and officer of the company who knowingly and wilfully authorises or permits the default shall be guilty of an offence and liable on conviction to the like penalty.
- (5) 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.

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

Where a company having a share capital has consolidated and divided its share capital into shares of larger amount than its existing shares, or converted any of its shares into stock, or reconverted stock into shares, it shall give notice to the Registrar of the consolidation and division, conversion, or reconversion specifying the shares consolidated and divided, or converted, or the stock reconverted, and until such notice is given the consolidation and division, conversion, or reconversion shall not take effect.

41. Effect of conversion of shares into stock

Where a company having a share capital has converted any of its shares into stock and given notice of the conversion to the Registrar, all the provisions of this Act which are applicable to shares only shall cease as to so much of the share capital as is converted into stock; and the register of the members of the company and the list of members to be transmitted to the Registrar shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares hereinbefore required by this Act.

42. Notice of increase of share capital or of members

- (1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share beyond the registered capital, and where a company not having a share capital has increased the number of members beyond the registered number, it shall give to the Registrar, in the case of an increase of share capital, within fifteen days after the passing, or in the case of a special resolution the confirmation of the resolution authorising the increase, and in the case of an increase of members within fifteen days after the increase was resolved upon or took place, notice of the increase of capital or members, and the Registrar shall record the increase, and the resolution shall not take effect until the increase is so recorded.
- (2) If a company makes default in complying with the requirements of this section it shall be guilty of an offence and liable on conviction to a fine not exceeding ten emalangeni for every day during which the default continues, and every director, manager, secretary, or other officer of the company who knowingly or wilfully authorises or permits the default shall be liable to the like penalty.

43. Reorganisation of share capital

- (1) A limited company may, by special resolution confirmed by an order of the Court modify the conditions contained in its memorandum so as to reorganise its share capital, whether by the consolidation of shares of different classes or by the division of its shares into shares of different classes:

Provided that no preference or special privilege attaching to or belonging to any class of shares shall be interfered with, except by a resolution passed by a majority in number of shareholders of that class holding three-fourths of the share capital of that class and confirmed at a meeting of shareholders of that class in the same manner, as a special resolution of the company is required to be confirmed, and every resolution so passed shall bind all the shareholders of the class.

- (2) Where an order is made under this section a certified copy thereof shall be lodged with the Registrar within seven days after the making of the order, or within such further time as the Court may allow and the resolution shall not take effect until such copy has been so lodged.

Reduction of share capital

44. Special resolution for reduction of capital

- (1) Subject to confirmation by the Court, a limited company, if so authorised by its articles, may by special resolution reduce its share capital in any way, and in particular (without prejudice to the generality of the power hereby conferred) may—
 - (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or
 - (b) either with or without extinguishing or reducing liability of 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 the liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company;

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

- (2) A special resolution under this section is in this Act called a resolution for reducing share capital.

45. Application to court for confirmation order

Where a company has passed and confirmed a resolution for reducing share capital, it may apply to the Court by petition for an order confirming the reduction.

46. Addition to name of company of "and reduced"

On and from the confirmation by a company of a resolution for reducing share capital, or where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital then on and from the presentation of the petition for confirming the reduction the company shall add to its name, until such date as the Court may fix, the words "and reduced" as the last words in its name, and those words shall, until that date, be deemed to be part of the name of the company:

Provided that, where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital the Court may, if it thinks expedient, dispense altogether with the addition of the words "and reduced".

47. Objections by creditors, and settlement of list of objecting creditors

- (1) Where the proposed reduction of share capital involves either the diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the Court so directs, every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction.
- (2) The Court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction.
- (3) Where a creditor entered on the list, whose debt or claim is not discharged or determined, does not consent to the reduction, the Court may, if it thinks fit, dispense with the consent of that creditor, on the company securing the payment of his debt or claim by appropriating, as the Court may direct, the following amount (that is to say)—
- (a) if the company admits the full amount of his debt or claim, or though not admitting it, is willing to provide for it, then the full amount of the debt or claim;
 - (b) if the company does not admit or is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the Court after the like enquiry and adjudication as if the company were being wound up by the Court.

48. Order confirming reduction

The Court, if satisfied, with respect to every creditor of the company who under this Act is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

49. Registration of order and minute of reduction

- (1) The Registrar on production to him of an order of the Court confirming the reduction of the share capital of a company, and the delivery to him of a copy of the order and of a minute (approved by the Court), showing with respect to the share capital of the company, as altered by the order, the amount of such capital, the number of shares into which it is to be divided, the amount of each share, and the amount (if any) at the date of the registration deemed to be paid up on each share, shall register the order and minute.
- (2) On the registration, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.
- (3) Notice of the registration shall be published in such manner as the Court may direct.
- (4) The Registrar shall certify under his hand, the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

50. Minute to form part of memorandum

- (1) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of the company and shall be as valid and alterable as if it had been originally contained therein; and shall be embodied in every copy of the memorandum issued after its registration.
- (2) If a company makes default in complying with the requirements of this section, it shall be guilty of an offence and liable on conviction to a fine not exceeding two emalangeneni for each copy in respect of which default is made, and every director, manager, secretary or other officer of the company who knowingly and wilfully authorises or permits the default shall be guilty of an offence and liable on conviction to the like penalty.

51. Liability of members in respect of reduced shares

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

Provided that if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim, not entered on the list of the creditors, and, after the reduction, the company is unable, within the meaning of the provisions of this Act relating to winding-up by the Court, to pay the amount of his debt or claim, then —

- (a) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before that registration; and
 - (b) if the company is wound up, the Court, on the application of any such creditor, and proof of his ignorance as aforesaid may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list as if they were ordinary contributories in a winding-up.
- (2) Nothing in this section shall effect the rights of the contributories among themselves.

52. Penalties for concealment of name of creditor

If any director, manager, or officer of the company wilfully conceals the name of any creditor entitled to object to the reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor, or if any director, manager, secretary or other officer of the company aids or abets in or is privy to any such concealment or misrepresentation as aforesaid, every such director, manager, or officer shall be guilty of an offence, and liable on conviction to a fine not exceeding two hundred emalangeneni, or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.

53. Publication of reasons for reduction

If any case of reduction of capital, the Court may require the company to publish as the Court directs the reasons for reduction, or such other information in regard thereto as the Court may think expedient with a view to give proper information to the public, and, if the Court thinks fit, the causes which led to the reduction.

Registration of unlimited company as limited**54. Registration of unlimited company as limited**

- (1) Subject to this section, a company registered as unlimited may register under this Act as limited, but such registration as a limited company shall not affect any debts, liabilities, obligations, or contracts, incurred or 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 which he was furnished on the occasion of the original registration of the company, but, save as aforesaid, 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.

55. Power of unlimited company to provide for reserve share capital on registration

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 amount by which the share capital is so increased shall be capable of being called up, except in the event and for the purposes 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.

Reserve liability of limited company**56. Reserve liability of limited company**

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 purposes 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 purposes aforesaid.

Unlimited liability of directors

57. Limited company may have directors with unlimited liability

- (1) In a limited company the liability of the directors or managers, or of a managing director, may, if so provided by the memorandum, be unlimited.
- (2) In a limited company in which the liability of a director or manager is unlimited, the directors or managers of the company (if any) and the member who proposes a person for election or appointment to the office of director or manager, shall add to that proposal a statement that the liability of the person holding that office will be unlimited, and the promoters, directors, managers, and secretary (if any) of the company, or one of them shall, before the person accepts the office or acts therein, give him notice in writing that his liability will be unlimited.
- (3) If any director, manager, or proposer makes default in adding such statement, or if any promotor, director, manager, or secretary makes default in giving such notice, he shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred emalangeni, and shall also be liable for any damage which the person so elected or appointed may sustain by reason of the default, but the liability of the person elected or appointed shall not be affected by the default.

58. Special resolution of limited company making liability of directors unlimited

- (1) A limited company, if so authorised by its articles, may by special resolution, alter its memorandum so as to render unlimited the liability of its directors, or managers, or of any managing director.
- (2) Upon the confirmation of such special resolution the provisions, thereof shall be as valid as if they had been originally contained in the memorandum; and a copy of the special resolution shall be embodied therein or annexed to every copy of the memorandum issued after the confirmation of the resolution.
- (3) If a company makes default in complying with the requirements of this section, it shall be guilty of an offence and liable on conviction to a fine not exceeding two emalangeni for each copy in respect of which default is made; and every director, manager, secretary, or other officer of the company who knowingly and wilfully authorises or permits the default shall be guilty of an offence and liable on conviction to the like penalty.

Part III – Management and administration

Office and name

59. Registered office of company

- (1) Every company shall have a registered office in Swaziland to which all communications and notices may be addressed.
- (2) Notice of the situation of such registered office, and of any change therein, shall be given to the Registrar, who shall record the same, and until such notice is given the company shall not be deemed to have complied with this section.
- (3) If a company carries on business without complying with the requirements of this section, it shall be guilty of an offence and liable on conviction to a fine not exceeding ten emalangeni for every day during which it so carries on business.

60. Publication of name by limited company

- (1) Every limited 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, and in letters easily legible;
 - (b) have its name engraved in legible characters on its seal (if any);
 - (c) have its name mentioned in legible characters in all notices, advertisements and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, notepaper receipts, and letters of credit of the company.
- (2) If a limited company does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be guilty of an offence and liable on conviction to a fine not exceeding ten emalangeni for not so painting or affixing its name, and for every day during which its name is not so kept painted or affixed, and every director, manager, secretary or other officer of the company who knowingly and wilfully authorises or permits the default shall be guilty of an offence and liable on conviction to the like penalty.
- (3) If any director, manager, secretary or other officer of a limited company or any person on its behalf, uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraved as aforesaid, or issues or authorises the issue of any notice, advertisement, or other official publication of the company or signs or authorises to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque, order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt, or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred emalangeni, and shall further be liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless it is duly paid by the company.

Meetings and proceedings

61. Annual general meeting

- (1) Every company, at such times as are in this section prescribed, shall hold general meetings to be known and described in the notices calling such meetings as annual general meetings of such company.
- (2) Such meetings shall be held—
 - (a) in the case of the first such meeting, within a period of eighteen months after the date of the incorporation of the company concerned;
 - (b) thereafter within not more than six months after the end of every ensuing financial year of such company; and
 - (c) within not more than fifteen months after the date of the last preceding such meeting of that company.
- (3) The annual general meeting of a company shall deal with and dispose of the matter prescribed by this Order and may deal with and dispose of such further matters as are provided for in the articles of the company and, subject to this Order, any matters capable of being dealt with by any general meeting of the company.
- (4) The Registrar may, on application to him before the expiry of the period within which an annual general meeting of a company must be held and on good cause shown, and on payment of the

prescribed fee, extend such period by a period not exceeding six months but, notwithstanding any such extension, the date for the holding of the first annual general meeting following the meeting in respect of which the extension is granted, shall be determined as if such meeting had been held on the last day on which it should have been held if the extension had not been granted.

- (5) If for any reason an annual general meeting of a company is not or cannot be held as provided in this section or any matter required by this Order to be dealt with and disposed of at such meeting is not dealt with thereat, the Registrar may, on application by the company of any member of its or his legal representative and on payment of the prescribed fee, call or direct the calling of a general meeting of the company which shall be deemed to be an annual general meeting, and may give such ancillary or consequential directions as he may think expedient, including directions modifying or supplementing, in relation to the calling, holding and conduct of the meeting, the operation of the company's articles, and directions providing for one member or the legal representative of a member or any specified number of members present in person or by proxy, to be deemed to constitute a meeting, and any meeting called, held and conducted in accordance with any such direction shall for all purposes be deemed to be an annual general meeting of the company duly called, held and conducted.
- (6) For the purpose of determining the date for holding of the next succeeding annual general meeting of a company after a meeting held in pursuance of subsection (5) of this subsection the provisions of subsection (4) shall *mutatis mutandis* apply.
- (7) Any company which fails to comply with any provision of subsections (1) and (2) or with any direction given by the Registrar under subsection (5), and every director or officer of the company who knowingly is a party to the failure, shall be guilty of an offence.
- (8) A company which has failed to hold its annual general meeting within the time or extended time prescribed by subsections (1) and (4), or as directed by the Registrar under subsection (5), shall further be liable to pay to the Registrar additional fees of one lilangeni for every day during which the default continues but not exceeding a maximum of twenty emalangeni, and the decisions of the Registrar as to the number of days during which the company is in default shall be final.

[Amended K.O-I-C. 7/1978]

62. First statutory meeting of company

- (1) Every limited company shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company which shall be called the statutory meeting
- (2) The directors shall, at least seven days before the day on which the meeting is held, transmit a report (in this Act called "the statutory report") to every member of the company and to every other person entitled under this Act to receive it.
- (3) The statutory report shall be certified by not less than two directors of the company, or, where there are less than two directors, by the sole director and manager, and shall state—
 - (a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;
 - (b) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid;
 - (c) an abstract of the receipts of the company on account of its capital whether from shares or debentures, and of the payment made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company;

- (d) the names, addresses, and occupations of the directors, auditors, managers (if any), and secretary of the company; and
 - (e) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.
- (4) The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors of the company.
 - (5) The directors shall cause a copy of the statutory report, certified as by this section required, to be lodged with the Registrar forthwith after the transmission thereof to the members of the company.
 - (6) The directors shall cause a list showing the names and addresses of the members of the company and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.
 - (7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles or with [section 65](#) may be passed.
 - (8) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before, at, or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.
 - (9) If a petition is presented to the Court in manner provided by Part IV for winding-up the company on the ground of default in lodging the statutory report or in holding the statutory meeting, the Court may, instead of directing that the company be wound up, give directions for the statutory report to be lodged or for a meeting to be held, or make such other order as may be just.
 - (10) The provisions of this section shall not apply to a private company.

[Amended K.O-I-C. 7/1978]

63. Extraordinary general meeting

- (1) Notwithstanding anything in the articles of a company, the directors of a company shall, on the requisition of the holders of not less than one-tenth of the issued share capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to convene an extraordinary general meeting of the company.
- (2) The requisition shall state the objects of the meeting, and shall be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.
- (3) If in the case of a meeting at which no extraordinary or special resolution is to be proposed, the directors of the company do not proceed to cause such a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists, or a majority of them in value, may themselves convene the meeting, but any meeting so convened shall not be held after three months from the date of the deposit.
- (4) If at any meeting convened under this section an extraordinary or special resolution is to be proposed by one of the requisitionists, the period of notice of the meeting shall be given in accordance with the provisions of [section 65](#):

Provided that if the directors of the company do not proceed to call such meeting as is referred to in this subsection to be held within three months from the date of the requisition being deposited the

requisitionists or a majority of them in value may themselves convene the meeting but any meeting so convened shall not be held later than six months from the date of the deposit.

- (5) If at any such meeting a resolution requiring confirmation at another meeting is passed, the directors shall forthwith convene a further extraordinary general meeting for the purpose of considering the resolution, and, if thought fit, of confirming it as a special resolution and, if the directors do not convene the meeting within seven days from the date of the passing of the first resolution, the requisitionists, or a majority of them in value, may themselves convene the meeting.
- (6) Save as in subsection (4) is provided any meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

64. Provisions as to meetings and votes

Save as is otherwise provided by this Act, the manner, time, and place of holding general meetings of a company (including the statutory meeting) and the regulation of proceedings at general meetings of a company shall be as provided by the articles.

65. Notice to foreign shareholders in case of matters requiring the sanction of an extraordinary or special resolution

- (1) Anything to the contrary notwithstanding in the articles, no extraordinary or special resolution of a company, nor any act or thing done by a company or its directors requiring under this Act the sanction of an extraordinary or special resolution, shall be valid unless notice, as in this section is prescribed, be given of the meeting at which the extra-ordinary or special resolution or act or thing requiring the sanction of such a resolution is to be proposed.
- (2) If the registered address of any shareholder is outside Swaziland but in South Africa, notice of the meeting shall be published three weeks at least before the date fixed for the meeting in the *Gazette* and in a leading daily newspaper published in Johannesburg.
- (3) If the registered address of any shareholder is outside South Africa, notice of the meeting shall be published two months at least before the date fixed for the meeting in a leading daily newspaper published in London.
- (4) If the registered addresses of any shareholders are in one case within and in another case outside South Africa, the notice shall be published in all the publication herein described two months at least before the date fixed for the meeting.
- (5) Nothing in this section shall be construed as preventing a company giving such a notice, in lieu of so publishing it, by prepaid registered post addressed to each member at his registered address.
- (6) For the purposes of this section—

"registered address" shall mean the address given by the shareholder and registered in the books of the company as the address to which notices of meetings may be sent to him, but shall in no case (except where the shareholder is a director, manager, secretary, or officer of the company) be the address of the registered office of the company or of any branch register hereinbefore described; and

"South Africa" shall include any part of Africa south of the Equator.

- (7) Nothing in this section shall apply to a private company.

66. Representation of companies at meetings of other companies of which they are members

A company which is a member of another company may, by resolution of the directors, authorise any of its officers or any other person to act as its representative at any meeting of that other company, and the

person so authorised shall be entitled to exercise the same powers on behalf of the company which he represents as if he were an individual shareholder of that other company.

67. Extraordinary and special resolution

- (1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than two-thirds of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a general meeting of which notice, specifying the intention to propose the resolution, and the general nature thereof, has been duly given, and at which members entitled in the aggregate to not less than one-fourth of the total votes of the company are present in person or by proxy (where proxies are allowed):

Provided that if less than one-fourth of the total votes be present at the meeting, it shall stand adjourned to the same day in the following week, or, if that day be a public holiday to the next succeeding day other than a public holiday; and

Provided further that at the adjourned meeting the members present in person or by proxy (where proxies are allowed) may deal with the business for which the original meeting was convened, and a resolution passed by not less than two-thirds of such members shall be deemed to be an extraordinary resolution notwithstanding that less than one-fourth of the total votes aforesaid be present.

- (2) A resolution shall be a special resolution when it has been—
- (a) passed in manner required for the passing of an extraordinary resolution; and
 - (b) confirmed by a majority of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a subsequent general meeting, of which notice has been duly given and held after an interval of not less than fourteen days, nor more than one month, from the date of the first meeting or adjourned meeting as the case may be.
- (3) At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (4) At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed, a poll may be demanded by a person or persons for the time entitled according to the articles to vote, and holding not less than one-sixtieth of the share capital represented at the meeting.
- (5) When a poll is demanded in accordance with this section, in computing the majority on the poll regard shall be had to the number of votes to which each member is entitled by the articles of the company.
- (6) For the purposes of this section notice of a meeting shall be deemed to be duly given and the meeting shall be deemed to be duly held when the notice is given and the meeting held in manner, provided by the articles subject always, in the case or notice, to [section 65](#).

68. Registration of copies of special and extraordinary resolutions

- (1) A copy of every special and extraordinary resolution shall within fifteen days from the confirmation of the special resolution, or from the passing of the extraordinary resolution (as the case may be), be transmitted to the Registrar, who shall record the same.
- (2) Where articles have been registered a copy of every special resolution for the time being in force shall be embodied in or annexed to every copy of the articles issued after the confirmation of the resolution.
- (3) Where articles have not been registered, a copy of every special resolution shall be transmitted to any member at his request, on payment of ten cents or such less sum as the company may direct.

- (4) If the company makes default in transmitting the copy of a special or extraordinary resolution to the Registrar, it shall be guilty of an offence and liable on conviction to a fine not exceeding four emalangeni for every day during which the default continues.
- (5) If a company makes default, in embodying or annexing to a copy of its articles or in transmitting to a member when required by this section a copy of a special resolution, it shall be guilty of an offence and liable on conviction to a fine not exceeding two emalangeni for each copy in respect of which default was made.
- (6) Every director, manager, secretary, or other officer of the company who knowingly and wilfully authorises or permits any default by the company in complying with the requirements of this section shall be guilty of an offence and liable on conviction to the like penalty as is imposed by this section on the company for that default.

69. Minutes of proceedings of meetings and directors

- (1) Every company shall cause minutes of all proceedings of general meetings and (where there are directors or managers) of its directors or managers to be entered in books kept for that purpose.
- (2) Any such minute, if purporting to be signed by the chairman of a meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.
- (3) Until the contrary is provided every general meeting of the company or meeting of directors or managers in respect of proceedings whereof minutes have been so made shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had.

Appointment, qualification, etc. of directors

69A. Number of directors and liability of subscribers

- (1) Every company, other than a private company shall have at least two directors and every private company shall have at least one director.
- (2) Every subscriber to a memorandum of association shall, until directors are appointed, be deemed to be a director of the company and be liable to all the duties and obligations of a director.

[Added P.14/1964]

70. Restrictions of appointment or advertisement of director

- (1) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in any prospectus issued by or on behalf of a company, or in relation to an intended company or in any statement in lieu of prospectus lodged by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus, or the lodging of the statement in lieu of prospectus (as the case may be) he has by himself or by his agent authorised in writing—
 - (a) signed and lodged with the Registrar a consent in writing to act as such director; and
 - (b) either signed the memorandum of association for a number of shares not less than his qualification (if any), or signed and lodged with the Registrar a contract in writing to take from the company and pay cash for his qualification shares (if any).
- (2) On the application for registration of the memorandum and articles of a company the applicant shall deliver to the Registrar a list of the persons who have consented to be directors of the company, and if this list contains the name of any person who has not so consented, the applicant and every person who knowingly and wilfully authorised or permitted the insertion in the list of the name of a person who has not so consented, shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred emalangeni.

- (3) This section shall not apply to a private company nor to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business.

71. Qualification of director

- (1) Without prejudice to the restrictions imposed by the last preceding section, it shall be the duty of every director who is by the articles 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 such period or shorter time he ceases at any time to hold his qualification; and a person vacating office under this section shall be incapable of being reappointed director of the company until he has obtained his qualification.
- (3) If after the expiration of the said period or shorter time any unqualified person acts as a director of the company he shall be guilty of an offence and liable on conviction to a fine not exceeding ten emalangeneni for every day between the expiration of the said period or shorter time and the last day on which it is proved that he acted as a director.

72. Validity of acts of director

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

73. List of directors to be sent to Registrar

- (1) Every company shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and send to the Registrar a copy thereof, and from time to time notify to the Registrar any change among its directors or managers.
- (2) If default is made in compliance with this section, the company shall be guilty of an offence and be liable to a fine not exceeding ten emalangeneni for every day during which the default continues; and every director, manager, secretary, or other officer of the company who knowingly and wilfully authorises or permits the default shall be guilty of an offence and liable on conviction to the like penalty.

Contracts, etc.

74. Form of contracts

- (1) Contracts on behalf of a company may be made as follows—
 - (a) Any contract which if made between private persons would be by law required to be in writing, signed by the parties thereto or by their agents duly authorised in writing may be made on behalf of the company in writing signed by any person duly authorised thereto in writing by two directors acting *intra vires*, or, if there be only one director, by the director acting *intra vires*, and the contract may in the same manner be varied or discharged.
 - (b) Any contract which if made between private persons would by law be valid though made verbally only and not reduced to writing, may be made verbally on behalf of the company by any person acting under its authority, expressed or implied and may in the same manner be varied or discharged.

- (2) All contracts made in accordance with this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto, their heirs or legal representatives, as the case may be.

75. Promissory notes and bills of exchange

- (1) A bill of exchange or promissory note shall be deemed to have been made, accepted, or endorsed on behalf of a company if made, accepted, or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority.
- (2) All documents, other than the documents mentioned in this section and [section 74](#), shall, if executed on behalf of a company, be signed as described in [section 74](#) unless the articles, otherwise provide.

76. Execution of deeds abroad

A company may, by writing under the hands of two of its directors, or, if there be only one director, under the hand of that director and of the secretary, empower any person, either generally or in respect of any specified matters, as its agent, to execute deeds on its behalf in any foreign country; and every deed signed by such agent, on behalf of the company, shall bind the company.

77. Power to companies to have an official seal for use in foreign countries

- (1) Any company which has a common seal and whose objects require or comprise the transaction of business in foreign countries may, if authorised by its articles, have for use in any foreign country 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 the foreign country where it is to be used.
- (2) A company having such an official seal may, by writing under its common seal, authorise any person appointed for the purpose in any foreign country, to affix the same to any deed or other document to which the company is party in that foreign country.
- (3) The authority of any such agent shall, as between the company and any person dealing with the agent continue during the period (if any) mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.
- (4) The person affixing any such official seal shall, by writing under his hand, on the deed or other document to which the seal is affixed, certify the date and the place of affixing the same.
- (5) A deed or other document to which such an official seal is duly affixed shall bind the company.

Prospectus

78. Lodging of prospectus with Registrar

- (1) Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated, and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus.
- (2) A copy of every such prospectus signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing, shall be lodged for registration with the Registrar on or before the date of publication of the prospectus, and no such prospectus shall be issued until a copy thereof has been so lodged for registration.
- (3) The Registrar shall not register any prospectus unless it is dated and the copy thereof signed in manner required by this section.

- (4) Every prospectus shall state on the face of it that a copy has been lodged for registration as required by this section.
- (5) If a prospectus is issued without a copy thereof being so lodged, the company, and every person who is knowingly a party to the issue of the prospectus, shall be guilty of an offence and liable on conviction to a fine not exceeding ten emalangeni for every day from the date of the issue of the prospectus until a copy thereof is so lodged.

79. Specific requirements as to particulars of prospectus

- (1) Every prospectus 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—
 - (a) the contents of the memorandum, with the names, occupations, and addresses of the signatories, and the number of shares subscribed for by them respectively; and the number of vendors', promoters', founders' management, deferred, or other classes of shares (if any) and the nature and extent of the interest of the holders in the property and profits of the company; and
 - (b) the number of shares (if any) fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors; and
 - (c) the names, occupations, and addresses of the directors or proposed directors; and
 - (d) the minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share; and in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, and the amount actually allotted, and the amount (if any) paid on the shares, so allotted; and
 - (e) the number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which such shares or debentures have been issued or are proposed or intended to be issued; and
 - (f) the names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares, or debentures, to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor:

Provided that where the vendors or any of them are a partnership the members of the partnership shall not be treated as separate vendors; and
 - (g) the amount (if any) paid or payable as purchase money in cash, shares, or debentures, for any such property as aforesaid, specifying the amount (if any) payable for goodwill; and
 - (h) the amount (if any) paid within the two preceding years, or payable, as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions, for any shares in, or debentures of the company or the rate of any such commission:

Provided that it shall not be necessary to state the commission payable to sub-underwriters; and
 - (i) the amount or estimated amount of preliminary expenses; and
 - (j) the amount paid within the two preceding years or intended to be paid to any promoter, and the consideration of any such payment; and

- (k) the dates of and parties to every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected:
- Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to an contract entered into more than two years before the date of issue of the prospectus; and
- (l) the names and addresses of the auditors of the company; and
- (m) full particulars of the nature and extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by the company, or where the interest of a director consists in being a member of a partnership, the nature and extent of the interest of the partnership, with a statement of all sums paid or agreed to be paid to him or to the partnership in cash or shares or otherwise by any person, either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the partnership in connection with the promotion or formation of the company; and
- (n) where the company is a company having shares of more than one class, the right of voting at meetings of the company conferred on the holders of the several classes of shares respectively.
- (2) For the purposes of this section, every person shall be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale of purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—
- (a) the purchase money is not fully paid at the date of the publication of the prospectus; or
- (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or
- (c) the contract depends for its validity or fulfilment on the result of that issue.
- (3) Where any property to be acquired by the company is to be taken on lease, this section shall apply as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.
- (4) Any condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.
- (5) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary to specify the contents of the memorandum or the signatories thereto, and the number of shares subscribed for by them.
- (6) In the event of a failure to comply with any of the requirements of this section, a director or other person responsible for the prospectus shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand emalangeni addition to any liability incurred by him civilly for such failure but he shall not incur any liability, civil or criminal, by reason of such failure if he proves that—
- (a) as regards any matter not disclosed, he was not cognisant thereof; or
- (b) the failure arose from an honest mistake of fact on his part:
- Provided that in the event of a failure to comply with the requirements contained in subsection (1) (m) no director or other person shall incur any liability, civil or criminal, in respect of such failure unless it be proved that he had knowledge of the matters not disclosed.
- (7) This section shall not apply to a circular or notice inviting existing members or debenture holders of the company to subscribe either for shares or for debentures of the company, whether with or without the right to renounce in favour of other persons, but, save as aforesaid, this section shall apply to any prospectus issued on or with reference to the formation of a company or subsequently.

- (8) The requirements of this section as to the memorandum, and the qualification, remuneration, and interest of directors, the names, occupations, and addresses of directors or proposed directors, and the amount or estimated amount of preliminary expenses, shall not apply in the case of a prospectus issued more than one year after the date at which the company is entitled to commence business.
- (9) Nothing in this section shall limit or diminish any liability which any person may incur under this Act apart from this section, or under any other statute, or under the common law.

80. Obligations of companies where no prospectus issued

- (1) A company which does not issue a prospectus on or with reference to its formation shall not allot any of its shares or debentures unless before the first allotment of either shares or debentures there has been lodged with the Registrar a statement in lieu of prospectus, signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing, in the form and containing the particulars set forth in the Fourth Schedule to this Act.
- (2) This section shall not apply to a private company.

81. Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospectus

A company shall not previously to the statutory meeting vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except subject to the approval of the statutory meeting.

82. Liability for statements in prospectus

- (1) Where a prospectus invites persons to subscribe for shares in or debentures of a company, every person who is a director of the company at the time of the issue of the prospectus, and every person who has authorised the naming of him and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time, and every promotor of the company, and every person who has authorised the issue of the prospectus, shall be liable to pay compensation to all persons who subscribe for any share or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—
 - (a) with respect to every untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, that he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures (as the case may be), believe, that the statement was true; and
 - (b) with respect to every such untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, that it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation:

Provided that the director, person named as director, promotor, or person who authorised the issue of the prospectus, shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it; and
 - (c) with respect to every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of the statement or copy of or extract from the document;

or unless it is proved—

- (i) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
 - (ii) that the prospectus was issued without his knowledge or consent and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or
 - (iii) that after the issue of the prospectus and before allotment thereunder, he on becoming aware of any untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal, and of the reason therefor.
- (2) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof, the directors of the company (except any without whose knowledge or consent the prospectus was issued) and any other person who authorised the issue thereof shall be liable to indemnify the person named as aforesaid against all damages, costs, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus, or in defending himself against any action or legal proceedings brought against him in respect thereof.
- (3) Every person who by reason of his being a director, or named as a director or as having agreed to become a director, or of his having authorised the issue of the prospectus, becomes liable to make payment under this section, may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.
- (4) For the purposes of this section—
- "promoter" means a promoter who was a party to the preparation of the prospectus, 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;
- "expert" includes an engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him.

Allotment

83. Restrictions as to a allotment

- (1) No allotment shall be made at any time of any share capital of a company offered to the public for subscription, unless the following conditions have been complied with, namely—
- (a) the amount (if any) fixed by the memorandum or articles and named in the prospectus as the minimum subscription upon which the directors may proceed to allotment not being less than seventy-five per cent of the whole amount of the share capital offered for subscription; or
 - (b) if no amount is so fixed and named then the whole amount of the share capital so offered for subscription;
- has been subscribed, and the sum payable on application for the amount so fixed and named, or for the whole amount offered for subscription, has been paid to and received by the company.
- (2) The amount so fixed and named and the whole aforesaid shall be reckoned exclusively of any amount payable otherwise than in cash, and is in this Act referred to as the minimum subscription.
- (3) The amount payable on application on each share shall not be less than ten per cent of the nominal amount of the share.

- (4) The amount paid on application shall be set apart by the directors as a separate fund and shall not be available for the purposes of the company or for the satisfaction of its debts until the minimum subscription has been made up.
- (5) If the conditions aforesaid have not been complied with on the expiration of forty days after the first issue of the prospectus, all money received from applications for shares shall be forthwith repaid to them without interest, and if any such money is not so repaid within sixty days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of six per centum per annum from the expiration of the sixtieth day:
- Provided that a director shall not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part.
- (6) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.
- (7) In the case of the first allotment of share capital payable in cash of a company which does not issue any invitation to the public to subscribe for its shares, no allotment shall be made unless the minimum subscription—
- (a) the amount (if any) fixed by the memorandum or articles and named in the statement in lieu of prospectus as the minimum subscription upon which the directors may proceed to allotment not being less than seventy-five per cent of the share capital proposed to be issued other than that issued or agreed to be issued as fully or partly paid up otherwise than in cash; or
- (b) if no amount is so fixed and named, then the whole amount of the share capital other than that issued or agreed to be issued as fully or partly paid up otherwise than in cash;
- has been subscribed and an amount not less than ten per cent of the nominal amount of each share payable in cash has been paid to and received by the company.
- (8) Subsection (7) shall not apply to a private company.

84. Effect of irregular allotment

- (1) An allotment made by a company to an applicant in contravention of the provisions of the last preceding section shall be voidable at the instance of the applicant within one month thereafter, and not later, shall be so voidable notwithstanding that the company is in course of being wound up.
- (2) If any director of a company knowingly contravenes or permits or authorises the contravention of [section 83](#) with respect to allotment, he shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred emalangeni, and shall be further liable to compensate the company and the allottee respectively for any loss, damages, or costs which the company or the allottee may have sustained or incurred thereby:
- Provided that proceedings to recover any such loss, damages, or costs shall not be commenced after the expiration of two years from the date of the allotment.

85. Restrictions on commencement of business

- (1) A company shall not commence business or exercise any borrowing powers unless—
- (a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; and
- (b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public

- subscription, or in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, on the shares payable in cash; and
- (c) there has been lodged with the Registrar an affidavit or other solemn declaration made by the secretary or one of the directors that the conditions aforesaid have been complied with; and
 - (d) in the case of a company which does not issue a prospectus there has been lodged with the Registrar a statement in lieu of prospectus.
- (2) The Registrar shall, on the lodging of this affidavit or solemn declaration, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled:
- Provided that in the case of a company which does not issue a prospectus, the Registrar shall not give such a certificate unless a statement in lieu of prospectus has been lodged with him.
- (3) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.
 - (4) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.
 - (5) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contraventions shall without prejudice to any other liability, be guilty of an offence and liable on conviction to a fine not exceeding one hundred emalangeneni for every day during which the contravention continues.
 - (6) Nothing in this section shall apply to a private company.

86. Return as to allotments

- (1) Whenever a limited company makes any allotment of its shares, the company shall within one month thereafter lodge with the Registrar—
 - (a) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names and addresses of the allottees, and the amount (if any) paid or due and payable on each share; and
 - (b) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment, together with any contract of sale, or for services or other consideration in respect of which that allotment was made, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.
- (2) Where such a contract is not reduced to writing the company shall, within one month after the allotment, lodge with the Registrar the prescribed particulars of the contract.
- (3) If default is made in complying with the requirements of this section every director, manager, secretary or other officer of the company who is knowingly a party to the default, shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred emalangeneni for every day during which the default continues:

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

Commissions and discounts

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

- (1) A company may 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 the payment of the commission is authorised by the articles, and the commission paid or agreed to be paid does not exceed the amount or rate so authorised, and if the amount or rate per cent of the commission paid or agreed to be paid is—
 - (a) in the case of shares offered to the public for subscription, disclosed in the prospectus; or
 - (b) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus, and lodged with the Registrar, and where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice.
- (2) Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount, or allowance, to any person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any shares of 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) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay, and a vendor to, promotor 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.

88. Statement in balance-sheet as to commissions and discounts

Where a company has paid any sums by way of commission in respect of any shares or debentures, or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed or so much thereof as has not been written off, shall be stated in every balance-sheet of the company until the whole amount thereof has been written off.

Payment of interest out of capital

89. Power of company to pay interest out of capital in certain cases

Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and may

charge the same to capital as part of the cost of construction of the work or building, or the provision of plant:

Provided that—

- (a) no such payment shall be made unless the same is authorised by the articles or by special resolution;
- (b) no such payment, whether authorised by the articles or by special resolution, shall be made without the previous sanction of the Minister;
- (c) before sanctioning any such payment, the Minister may, at the expense of the company, appoint a person to enquire and report to him as to the circumstances of the case, and may, before making the appointment require the company to give satisfactory security for the payment of the costs of the enquiry;
- (d) the payment shall be made only for such period as may be determined by the Minister; and such period shall in no case extend beyond the close of the half-year next after the half-year during which the works or buildings have been actually completed or the plant provided;
- (e) the rate of interest shall in no case exceed six per cent per annum or such lower rate as may for the time being be prescribed by the Minister;
- (f) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid;
- (g) the accounts of the company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate.

Certificates of shares, etc.

90. Limitation of time for issue of certificates

- (1) Every company shall, within two months after the allotment of any of its shares, debentures, or debenture stock, and within two months after the registration of the transfer of any such shares, debentures, or debenture stock, complete and have ready for delivery the certificates of all shares, the debentures, and certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures, or debenture stock otherwise provide.
- (2) If default is made in complying with the requirements of this section, the company, and every director, manager, secretary, and other officer of the company who is knowingly a party to the default, shall be guilty of an offence and liable on conviction to a fine not exceeding ten emalangeni for every day during which the default continues.

Register of mortgages

91. Company's register of mortgages

- (1) Every company shall keep a register of mortgages and enter therein all mortgages and charges specifically affecting property of the company, giving in each case a short description of the property mortgaged or charged, the amount of the mortgage or charge and (except in case of securities to bearer) the names of the mortgagees or persons entitled to the charge.
- (2) If any director, manager, secretary, or other officer of the company knowingly or wilfully authorises or permits the omission of any entry required to be made in pursuance of this section, he shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred emalangeni.

92. Right to inspect company's register of mortgages

- (1) The register of mortgages kept in pursuance of the last preceding section shall be open at all reasonable times to the inspection of the Registrar or any creditor or member of the company without fee, and of any other person on payment of such fee, not exceeding twenty-five cents for each inspection, as the company may prescribe.
- (2) If inspection of the said register is refused, any officer of the company refusing inspection, and every director, manager, secretary or other officer of the company authorising or knowingly and wilfully permitting the refusal, shall be guilty of an offence and liable on conviction to a fine not exceeding ten emalangeni, and a further fine not exceeding four emalangeni for every day during which the refusal continues; and in addition the Court may, by order, compel immediate inspection of the said register.

93. Right of debenture holders to inspect the register of debenture holders and to have copies of trust deed

- (1) Every register of holders of debentures of a company shall, except when closed in accordance with the articles, during such period or periods (not exceeding in the whole sixty days in any year) as may be specified in the articles, be opened to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that at least two hours in each day are appointed for inspection, and the company shall furnish to every such holder extracts from the register on payment by such holder of ten cents for every hundred words or fractional part thereof required to be extracted or shall afford him or his duly authorised agent adequate facilities for making such extracts.
- (2) A copy of any trust deed for securing any issue of debentures shall be transmitted to every holder of any such debentures at his request on payment, in the case of a printed trust deed, of the sum of twenty-five cents, or such less sum as may be prescribed by the company, or where the trust deed has not been printed, on payment of ten cents for every hundred words or fractional part thereof required to be copied.
- (3) If the inspection, extracts, or facilities be refused, or a copy of a trust deed be refused or not transmitted the company shall be guilty of an offence and liable on conviction to a fine not exceeding ten emalangeni, and to a further fine not exceeding four emalangeni, for every day during which the refusal continues, and every director, manager, secretary, or other officer of the company who knowingly authorises or permits the refusal shall be guilty of an offence and liable on conviction to a like penalty.

Debentures

94. Power to re-issue redeemed debentures in certain cases

- (1) Where a company has redeemed any debentures previously issued, the company, unless the articles or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the company so to do (not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns) shall have power to keep the debentures alive from the purposes of re-issue, and where a company has purported to exercise such a power the company shall have power to re-issue the debentures either by re-issuing the same debentures or by issuing other debentures in their place, and upon such a re-issue the person entitled to the debentures shall have the same rights and priorities as if the debentures had not previously been issued.
- (2) Where with the object of keeping debentures alive for the purpose of re-issue, they have been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section.

- (3) Where a company has deposited any of its debentures to secure advances from time to time on current account or otherwise the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.
- (4) Nothing in this section shall prejudice any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished reserved to a company by its debentures or securities for the same.

95. Specific performance of contract to subscribe for debentures

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.

Inspection and audit

96. Investigation of affairs of company by inspectors appointed by Minister

- (1) The Minister may appoint one or more inspectors to investigate the affairs of any company and to report thereon in such manner as he may direct—
 - (a) in the case of a company having a share capital, on the application 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.
- (2) The application shall be supported by such evidence as the Minister may require for the purpose of showing that the applicants have good reason for, and not actuated by malicious motives in requiring the investigation, and the Minister may, before appointing an inspector require the applicants to give satisfactory security for payment of the costs of the investigation.
- (3) It shall be the duty of all officers and agents of the company to produce to the inspectors all books and documents in their custody or power.
- (4) An inspector may examine on oath the officers and agents of the company in relation to its business, and may administer an oath accordingly.
- (5) If any officer or agent refuses to produce any book or document which, under this section, it is his duty to produce, or to answer any question relating to the affairs of the company, notwithstanding that the answer may tend to incriminate him, he shall be guilty of an offence and liable on conviction to a fine not exceeding ten emalangeni in respect of each offence.
- (6) On the conclusion of the investigation the inspectors shall report their opinion to the Minister, who shall cause a copy of the report to be transmitted to the registered office of the company, and at the request of the applicants for the investigation shall cause a further copy to be delivered to such applicants, and such report shall be written or printed, as the Minister directs.
- (7) All expenses of and incidental to the investigation shall be defrayed by the applicants unless the Minister orders the same to be paid by the company.

97. Power of company to appoint inspectors

- (1) A company may by special resolution appoint inspectors to investigate its affairs.
- (2) Inspectors so appointed shall have the same powers and duties as inspectors appointed by the Minister, except that instead of reporting to him, they shall report in such manner and to such persons as the company in general meeting may direct.

- (3) Officers and agents of the company shall incur the like penalties, in the case of refusal to produce any book or document required to be produced to inspectors so appointed, or to answer any question, as they would have incurred if the inspectors had been appointed by the Minister.

98. Report of inspectors to be evidence

A copy of the report of any inspectors appointed under this Act shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

99. Appointment and remuneration of auditors

- (1) Every company shall, at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.
- (2) If an appointment of auditors is not made at an annual general meeting, the Minister may, on the application of any member of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid to him by the company for his services.
- (3) No director, manager, secretary or other officer of the company shall be capable of being appointed auditor of the company.
- (4) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a shareholder to the company not less than fourteen days before the annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to the shareholders, either by advertisement or in any other mode allowed by the articles, not less than seven days before the annual general meeting:

Provided that if, after notice of intention to nominate an auditor has been so given, an annual general meeting is called for a date fourteen 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, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this subsection, be sent or given at the same time as the notice of the annual general meeting.
- (5) The first auditor or auditors of the company shall be appointed by the directors before the statutory meeting, and shall hold office until the first annual general meeting, unless previously removed by a resolution of the shareholders in general meeting, in which case the shareholders at that meeting shall appoint auditors.
- (6) The directors of a company may fill any casual vacancy in the office of auditor but while any such vacancy continues the surviving or continuing auditor or auditors may act.
- (7) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting, or to fill any casual vacancy, may be fixed by the directors.

100. Powers and duties of auditors

- (1) Every 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 directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors.
- (2) The auditors shall make to the shareholders on the accounts examined by them, and on every balance-sheet laid before the company in general meeting during their tenure of office and the report shall state—
 - (a) whether or not they have obtained all the information and explanations they have required; and

- (b) whether, in their opinion, the balance-sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company.
- (3) The balance-sheet shall be signed on behalf of the board by two of the directors of the company or, if there is only one director, by that director, and the auditor's report shall be attached to the balance-sheet, or there shall be inserted at the foot of the balance-sheet a reference to the report and the report shall be read before the company in general meeting, and shall be open to inspection by any shareholder. Any shareholder, shall be entitled to be furnished with a copy of the balance-sheet and auditors' report at a charge not exceeding ten cents for every hundred words.
- (4) If any copy of a balance-sheet which has not been signed as required by this section is issued, circulated, or published, or if any copy of a balance-sheet is issued, circulated, or published without having a copy of the auditor's report attached thereto or containing such reference to that report as is required by this section, the company, and every director, manager, secretary, or other officer who is knowingly a party to the default shall be liable to a fine not exceeding one hundred emalangeni.

101. Rights of preference shareholders and debenture holders as to receipt and inspection of reports

- (1) Holders of preference shares and debentures of a company shall have the same right to receive and inspect the balance-sheet of the company and the reports of the auditors and other reports as are possessed by the holders of ordinary shares in the company.
- (2) This section shall not apply to a private company.

Carrying on business with less than the legal minimum number of members

102. Prohibition of carrying on business with fewer than seven or in the case of a private company, two members

If at any time the number of members of a company is reduced, in the case of a private company, below two, or, in the case of any other company, below seven, and it carries on business for more than six months while the number is so reduced every person who is a member of the company during the time that it so carries on business after those six months, and is cognisant of the fact that it is carrying on business with fewer than two members, or seven members (as the case may be), shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be sued for the same, without any other member being joined in the action.

Arbitrations

103. Arbitration between companies and others

- (1) A company may, by writing under the hands of two of its directors, or, if there be only one director, under the hand of that director, agree to refer and may refer to arbitration in accordance with the Arbitration Act, [No. 24 of 1904](#), any existing or future difference between itself and any other company or person.
- (2) Companies parties to the arbitration may delegate to the arbitrator power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by their directors or other managing body.
- (3) All the provisions of the said Act, shall apply to arbitrations between companies and persons in pursuance of this Act.

Power to compromise

104. Power to compromise with creditors and members

- (1) Where any compromise or arrangement is proposed between a company and its creditors or any class of them, or between a company and its members or any class of them, the Court may, on the application of the company or any creditor or member of the company, or, in the case of 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 (as the case may be), to be summoned in such manner as the Court directs.
- (2) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members, or class of members (as the case may be), present either in person or by proxy at the meeting agree to any compromise or arrangement the compromise or arrangement shall, if sanctioned by the Court be binding on all the creditors or the class of creditors, or on the members or class of members (as the case may be) and also on the company, or in the case of a company in course of being wound up, on the liquidator and contributories of the company.

Private company becoming a public company

105. Mode in which private company may become a public company

A private company may, subject to anything contained in the memorandum or articles, by passing a special resolution and lodging with the Registrar such a statement in lieu of prospectus, as the company, if a public company would have had to lodge before allotting any of its shares or debentures together with any such affidavit or other solemn declaration as the company, if a public company, would have had to lodge before commencing business, turn itself into a public company.

Part IV – Winding-up

Preliminary

106. Modes of winding-up

- (1) The winding-up of a company may be either—
 - (i) by the Court; or
 - (ii) voluntary; or
 - (iii) subject to the supervision of the Court.
- (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.

Contributories

107. Liability as contributories of present and past members

- (1) In the event of a company being wound up, every present and past member shall, subject to the provisions of this section, be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges, and expenses of the

winding-up and for the adjustment of the rights of the contributories among themselves, with the qualifications following:

- (a) A past member shall not be liable to contribute if he has ceased to be a member for a period of 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 has ceased to be a member.
 - (c) A past member shall not be liable to contribute unless it appears to the Court that the present members are unable to satisfy the contributions required to be made by them in pursuance of this Act.
 - (d) In the case of a limited company, no contribution shall be required from any member exceeding the amount (if any) unpaid on the shares in respect of which he is liable as a present or past member.
 - (e) Nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract, whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract.
 - (f) A sum due to any member of a company in his character of a member, by way of dividends, profits, or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company; but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories amongst themselves.
- (2) In the winding-up of a limited company, any director or manager, whether past or present, whose liability is, in pursuance 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;
- (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 costs, charges, and expenses of the winding-up.

108. Meaning of "contributory"

The term "contributory" shall mean every person liable to contribute to the assets of a company in the event of its being wound up, and in all proceedings for determining and in all proceedings prior to the final determination of the persons who are to be deemed contributories, shall include any person alleged to be a contributory.

109. Nature of liability of contributory

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.

110. Contributories in case of death

If a contributory dies before or after he has been placed on the list of contributories, his executors or his heirs or legatees 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, the liability of the legatees or heirs, if the estate has passed into their hands, being assessed rateably to the extent of the legacies or inheritances (as the case may be) severally received by them.

111. Contributories in case of insolvency

If a contributory becomes insolvent either before or after he has been placed on the list of contributories, then—

- (a) his trustee in insolvency shall represent him for all the purposes of the winding-up, and shall be a contributory accordingly; and
- (b) there may be proved against the estate of the insolvent the estimated value of his liability to future calls, as well as calls already made.

Winding-up by Court

112. Circumstances in which the company may be wound up by Court

A company may be wound up by the Court if—

- (a) it has by special resolution resolved that the company be wound up by the Court;
- (b) default is made in lodging the statutory report or in holding the statutory meeting;
- (c) it does not commence its business within a year from its incorporation, or suspends its business for a whole year;
- (d) the number of members is reduced, in the case of a private company below two, or, in the case of any other company, below seven;
- (e) seventy-five per cent of the paid-up share capital of the company has been lost, or has become useless for the business of the company;
- (f) it is unable to pay its debts;
- (g) the Court is of opinion that it is just and equitable that the company should be wound up.

113. Company when deemed unable to pay its debts

A company shall be deemed to be unable to pay its debts—

- (a) if a creditor, by cession or otherwise, to whom the company is indebted in a sum exceeding one hundred emalangeni then due, has served on the company, by leaving it at its registered office, a demand requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum, or to secure or to compound for it to the reasonable satisfaction of the creditor; or
- (b) if execution or other process issued on a judgment, decree, or order of any court of law in favour of a creditor of the company is returned by the sheriff or messenger with the endorsement that he has not found sufficient assets to satisfy the judgement, decree, or order, or that any assets found did not, upon sale, satisfy the execution or other process; or
- (c) if it is provided to the satisfaction of the Court that the company is unable to pay its debts, and in determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company.

114. Application for winding-up a company

- (1) An application to the Court for the winding-up of a company shall be by petition, presented (subject to the provisions of this section) by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately:

Provided that—

- (a) a contributory shall not be entitled to present a petition for winding-up a company, unless—
- (i) the number of members is reduced in the case of a private company, below two, or in the case of any other company, below seven; or
 - (ii) the shares in respect of which he is a contributory, or some of them either were originally allotted to him or have been held by him, and registered in his name for at least six months during the eighteen months before the commencement of the winding-up, or have developed upon him through the death of a former holder; and
- (b) a petition for winding-up a company on the ground of default in lodging the statutory report or in holding the statutory meeting shall not be presented by any person except a shareholder, and not before the expiration of fourteen days after the last day on which the meeting ought to have been held; and
- (c) the Court shall not give a hearing to a petition for winding-up a company 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.
- (2) Where a company is being wound up voluntarily or subject to supervision, a petition may be presented by the Master, or 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 subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

115. Effects of winding-up order

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.

116. Commencement of winding-up by Court

A 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.

117. Court may stay or restrain proceedings against the company

At any time after the presentation of a petition for winding-up, and before a winding-up order has been made, the company, or any creditor or contributory, may—

- (a) where any action or proceeding is pending in any court of law in Swaziland, apply to such court for a stay of proceedings therein; and
- (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 proceedings in the action or proceeding;

and the Court to which application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit.

118. Powers of Court on hearing petition

- (1) On hearing the petition the Court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it deems just, but the Court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.
- (2) When a petition is presented on the ground of default in lodging the statutory report or in holding the statutory meeting the Court may order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.

119. Actions stayed on winding-up order

When a winding-up order has been made, 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.

120. Copy of order to be transmitted to Registrar and other officers

- (1) On the presentation of the petition, written notice thereof, and on the making of a winding-up order, a copy thereof shall forthwith be transmitted by the Registrar of the Court to which the petition is presented or of the Court which made the order, to the Registrar, the Master, the Registrar of Deeds, and every other officer charged with the duty of registering title to immovable property or mining title.
- (2) The Registrar upon receipt of such notice or copy shall make a minute thereof in his books, relating to the company.
- (3) The Master upon receipt of such copy shall as soon as may be thereafter advertise the terms thereof in the *Gazette*.
- (4) The Registrar of Deeds, and every other registering officer aforesaid upon receipt of such notice or copy shall make a minute thereof in his register and shall transmit to the Master as soon as may be a return of any immovable property or ground held under mining title (as the case may be) which is registered in that register in the name of the company.

121. Power of Court to stay winding-up

The Court may at any time after an order for winding-up, on the application of any creditor or contributory, and on proof to the satisfaction of the Court that all proceedings in relation to the winding-up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court deems fit.

122. Court may have regard to wishes of creditors or contributories

The Court may, as to all matters relating to a winding-up, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

Master of the Court

123. Statement of company's affairs to Master

- (1) Where the Court has made a winding-up order, there shall be made out and submitted to the Master a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts, and liabilities, the names, residences, 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 Master may require, and a duplicate of such statement shall be lodged with the liquidator.

- (2) The statement shall be submitted and verified by one or more of the persons who are at the time of the winding-up order the directors and by the person who is at that time the secretary or other chief officer of the company, or by such of the persons being or having been directors or officers of the company or having taken part in the formation of the company at any time within one year before the winding-up order, as the Master, subject to the direction of the Court, may require to submit and verify the same.
- (3) The statement shall be submitted within fourteen days from the date of the order, or within such extended time as the Master or the Court may for special reasons appoint.
- (4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the Master out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the Master may consider reasonable, subject to an appeal to the Court.
- (5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be guilty of an offence and liable on conviction to a fine not exceeding twenty emalangenzi for every day during which the default continues.
- (6) Any 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) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court and be punishable accordingly on the application of the liquidator or of the Master.

124. Report by Master

- (1) Where the Court has made a winding-up order, the Master shall, as soon as practicable after receipt of the statement of the company's affairs, submit a preliminary report to the Court—
 - (a) as to the amount of the 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 enquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.
- (2) The Master 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 director or other 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.

Liquidators

125. Appointment, remuneration and title of liquidators

- (1) 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.
- (2) The Court may make such appointment provisionally at any time after the presentation of a petition and before the making of an order for winding-up.

- (3) If a provisional liquidator is appointed before the making of a winding-up order, any fit person may be appointed.
- (4) On a winding-up order being made all the property of the company shall be deemed to be in the study or control of the Master until a liquidator is appointed and is capable of acting as such.
- (5) A person shall not be capable of acting as liquidator until he has notified his appointment to the Registrar and found security to the satisfaction of the Master.
- (6) If 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.
- (7) A liquidator appointed by the Court may, with the leave of the Court, resign, or, on cause shown, be removed by the Court.
- (8) A vacancy in the office of liquidator appointed by the Court shall be filled by the Court, and the property of the company shall be deemed to be in the custody or control of the Master during the vacancy if there is no liquidator remaining.
- (9) A liquidator shall receive the prescribed fees as remuneration.
- (10) If any such liquidator shall fail without sufficient excuse to lodge with the Master the liquidation account and plan of distribution hereinafter prescribed, and within the time so prescribed the Master may, subject to a right of appeal by the liquidator to the Court, disallow the whole or any portion of the remuneration which such liquidator, in that capacity, would otherwise have been entitled to receive.
- (11) A liquidator shall be described by the style of the liquidator of the particular company in respect of which he is appointed, and not by his individual name.
- (12) The acts of a liquidator shall be valid notwithstanding any defects that may be afterwards discovered in his appointment or qualification.

126. Custody of company's property

In a winding-up by the Court the liquidator shall take into his custody, or under his control, all the property, movable and immovable, to which the company is or appears to be entitled.

127. Powers of liquidator

- (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 to—
 - (a) bring or defend any action or other legal proceeding of a civil nature and, subject to the Criminal Procedure and Evidence Act, any criminal proceeding, in the name and on behalf of the company;
 - (b) carry on the business of the company so far as may be necessary for the beneficial winding-up thereof;
 - (c) employ an attorney of the Court or other agent to take any proceedings or do any business which the liquidator is unable to take or do himself:

Provided that the sanction of the Court shall be obtained before the employment, except in cases of urgency, and in those cases it must be shown that no undue delay took place in obtaining the sanction;
 - (d) sell the movable and immovable property 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;

- (e) 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 the company's seal, if the company has a common seal and the articles of the company require the documents to be executed under its common seal;
 - (f) prove rank and claim in the insolvency or sequestration of any contributory for any balance against his estate and to receive dividends in the insolvency or sequestration in respect of that balance, as a separate debt due from the insolvent, and rateably with the other separate creditors or in the legal order of their preference;
 - (g) 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;
 - (h) raise on the security of the assets of the company any money requisite;
 - (i) apply in his official name for letters of administration to any deceased contributory, and to do in his official name any other act that may be 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 to recover the money, be deemed to be due to the liquidator himself;
 - (j) do all such other things as may be necessary for winding-up the affairs of the company and distributing its assets.
- (2) The liquidator in a winding-up by the Court of an insolvent company shall have the same rights, in respect of leases or agreements for leases entered into by the company, which the trustee of an insolvent estate has under the law for the time being in force relating to insolvency.
- (3) The exercise by the 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.
- (4) Where a liquidator is provisionally appointed by the Court, the Court may limit and restrict his powers by the order appointing him.

128. Meetings of creditors and contributories in winding-up

- (1) When a winding-up order has been made by Court, the Master shall summon separate meetings of the creditors and contributories of the company for the purpose of—
- (a) determining the person or persons whose names shall be submitted to the Court in an application to the Court for appointing a liquidator or liquidators; and
 - (b) determining 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 the 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 meeting of the meeting of the creditors and contributories in respect of any of the matters mentioned in the preceding provisions of this section, the Court shall decide the difference and make such order thereon as the Court may think fit.
- (3) The provisions of the Fifth Schedule to this Act shall, subject to such modifications as may be made therein by rules of Court, apply to any meeting summoned in pursuance of this section.

129. Liquidator to give information to Master

Every liquidator shall give the Master such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties under this Act.

130. Payments of liquidator in winding-up into bank

- (1) Every liquidator of a company which is being wound up by the Court shall forthwith pay the money received by him to a bank named by the Master and the bank shall furnish him with a certificate of receipt of the money so paid:

Provided that, if the committee of inspection satisfy the Master 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 other bank, the Master shall, on the application of the committee of inspection, authorise the liquidator to make his payments into and out of such other bank as the committee may select, and thereupon those payments shall be made in the prescribed manner.

- (2) If any such liquidator at any time retains for more than three days a sum exceeding one hundred emalangeneni or such other amount as the Master in any particular case authorises him to retain, then, unless he explains the retention to the satisfaction of the Master, he shall pay interest on the amount so retained in excess at the rate of twenty per cent per annum, and shall be liable to disallowance of all or such part of his remuneration as the Master may think just, and to be 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.

131. Audit of liquidator's accounts in winding-up

- (1) Every liquidator 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 Master an account of his receipts and payments as liquidator.
- (2) The account shall be in a prescribed form, shall be made in triplicate and shall be verified by an affidavit or other solemn declaration in the prescribed form.
- (3) The Master shall cause the account to be audited and for the purpose of the audit the liquidator shall furnish the Master with such vouchers and information as the Master may require, and the Master 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 Master, another copy shall be sent to the liquidator, and another copy shall be filed with the Court, and each copy shall be open to the inspection of any creditor, or of any person interested.
- (5) The liquidator shall cause the account when audited or a summary thereof to be printed, and shall send a copy of the account or summary by post to every creditor and contributory.
- (6) The cost of any audit, printing or transmission of accounts under this section shall be expenses properly incurred in the winding-up.

132. Books to be kept by liquidator in winding-up

Every liquidator of a company which is being wound up by the Court shall keep, in manner prescribed, 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 prescribed, and any creditors or contributory may, subject to the control of the Court, personally or by his agent inspect any such books.

133. Obligations of liquidator as to framing liquidation account, etc.

The liquidator shall, in a winding-up of a company by the Court, be under the like obligations with regard to the framing and lodging of a liquidation account and a plan of distribution or contribution, as the trustee of an insolvent estate appointed under the law for the time being in force relating to insolvency; and the confirmation of such account and plan of distribution or contribution, and the distribution of all moneys payable thereunder, shall be subject to the provisions of such law:

Provided that the Master may give such directions with regard to the advertisement of the account and plan of distribution or contribution, and the period of time during which it shall lie open for inspection, as he shall think fit, having regard to all the circumstances of the case.

134. Procedure on failure of liquidator to lodge liquidation account

As often a liquidator shall fail to lodge with the Master the account mentioned in the last preceding section, the Master, or any person having an interest in the company being wound up, may, at any time after the expiry of six months from the date on which such liquidator was appointed apply to the Court for an order upon the liquidator to show cause why such account has not been lodged:

Provided that the Master or the person aforesaid shall, not later than one month before notice of the application is served upon the liquidator, make written demand upon him to lodge his account.

135. Release of liquidators

- (1) When the liquidator of a company which is being wound up by the Court has realised all the property of the company and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, the Master shall, on the liquidator's application, cause a report on his account to be prepared, and, on the liquidators complying with all the requirements of the Master, 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 upon consideration of that report and the objection (if any) and of a report made to the Court by the Master, the Court may either grant or withhold the release.
- (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.
- (3) An order of the Court releasing the liquidator shall discharge the liquidator from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such 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.

136. Exercise and control of liquidator's powers

- (1) Subject to 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, 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, by notice in the *Gazette*, summon general meetings of the creditors or of the contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon

meetings at such times as the creditors or the contributories (as the case may be), 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 of the contributories as the case may be.

- (3) The liquidator may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the winding-up.
- (4) Subject to this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.
- (5) If 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.

137. Control of Master over liquidators

- (1) The Master shall take cognisance 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 Master by any creditor or contributory in regard thereto, the Master shall enquire into the matter and take such action thereon as he may think expedient.
- (2) The Master may at any time require any liquidator of a company which is being wound up by the Court to answer any enquiry in relation to any winding-up in which such liquidator is engaged, and may, if he thinks fit, apply to the Court to examine such liquidator or any other person on oath concerning the winding-up.
- (3) The Master may also direct a local investigation to be made of the books and vouchers of the liquidator.
- (4) The Court may, upon the application of the Master, order that any costs reasonably incurred by him in carrying out the powers of this section be paid out of the assets of the company or by the liquidator *de bonis propriis*.

Committee of inspection – Special manager

138. Committee of inspection

- (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 case of difference, may be determined by the Court.
- (2) The committee shall meet at such times as it may from time to time 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 its members present at a meeting, but shall not act unless a majority of the committee are present.
- (4) Any member of the committee may resign by notice in writing signed by him and delivered to the liquidator.
- (5) If a member of the committee becomes insolvent, 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) Any 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 seven days' notice in the *Gazette* has been given, stating the object of the meeting.
- (7) On a vacancy occurring in the committee the liquidator shall forthwith 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.
- (8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.
- (9) If there is no committee of inspection, any act or thing or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by the Master on the application of the liquidator.

139. Power to appoint Special manager

- (1) The Master 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 apply to the Court to, and the Court may on such application, appoint a Special manager thereof to act during such time as the Court may direct, with such powers, including any of the powers of a 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 Master directs.
- (3) The Special manager shall receive the prescribed fees as remuneration.

Ordinary powers of Court

140. Settlement of list of contributories and application of assets

- (1) As soon as may be after making a winding-up order, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where such rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities.
- (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.

141. Power to require delivery of property

The Court may at any time after making a winding-up order, require any contributory for the time being settled on the list of contributories, and any trustee, banker, agent or officer of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the Court directs, to the liquidator, any money, property or books and papers in his hands to which the company is *prima facie* entitled.

142. Power to order payment of debts by contributory

- (1) The Court may, at any time after making a winding-up order, make an order on any contributory for the time being settled on the list of contributories to pay, in 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, in the case of an unlimited company allow to the contributory by way of a 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 may, in the case of a limited

company, make to any director or manager thereof whose liability is unlimited or to his estate the like allowance.

- (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.

143. Power of Court to make calls

- (1) The Court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of 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.
- (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.

144. Power of Court to order payment into bank

- (1) The Court may order any contributory, purchaser, or other person from whom money is due to the company to pay the same into a bank to be named by the Court to the account of the liquidator instead of the liquidator, and 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 bank as aforesaid in the event of a winding-up by the Court shall be subject in all respects to the orders of the Court.

145. Order on contributory conclusive evidence

- (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.
- (2) All other pertinent matters stated in such order shall be taken *prima facie* as truly stated as against all persons and in all proceedings whatsoever.

146. Power to exclude creditors not proving in time

The Court may fix a time or times within which creditors of the company are to prove their debts or claims, or to be excluded from the benefit of any distributions made before those debts are proved.

147. Court to adjust rights of contributories

The Court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto.

148. Power to order costs

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.

149. Dissolution of company

- (1) When the affairs of a company have been completely wound up, the Court 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 forthwith be transmitted by the Registrar of the Court which made the order to the Registrar, who shall make a minute in his books of the dissolution of the company.
- (3) A copy of the order shall be transmitted forthwith by the Registrar of the Court which made the order to the Master, to the Registrar of Deeds and to every officer charged with the duty of registering title of immovable property or mining title in Swaziland.
- (4) The order shall be published by the liquidator in the *Gazette* and in such newspaper as the Court may direct, within seven days after the making of the order.
- (5) If the liquidator makes default in complying with any requirements of this section, he shall be guilty of an offence and liable on conviction to a fine not exceeding ten emalangeni for every day during which he is in default.

150. Delegation to liquidator of certain powers of Court

Rules may be made by the Court for enabling or requiring all or any of the powers and duties conferred and imposed on the Court by this Act, in respect of the matters following, to be exercised or performed by the liquidator as an officer of the Court, and subject to the control of the Court; that is to say, the powers and duties of the Court in respect of—

- (a) holding and conducting meetings to ascertain the wishes of creditors and contributories;
- (b) settling lists of contributories and rectifying the register of members where required, and collecting and applying the assets;
- (c) requiring delivery of property or documents to the liquidator;
- (d) making calls;
- (e) fixing a time within which debts and claims must be proved:

Provided that the liquidator shall not, without special leave of the Court, rectify the register of members, and shall not make any call without either the special leave of the Court or the sanction of the committee of inspection.

Extraordinary powers of Court

151. Power to summon persons before it, suspected of having property of company

- (1) The Court may, after it has made a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the trade, dealings, affairs, or property of the company.
- (2) The Court may examine him on oath concerning the same, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them and he may be required to answer any question put to him on the examination, notwithstanding that the answer might tend to incriminate him:

Providing that any answer given to any such question shall not be used against him in any prosecution other than for perjury or for the offence under his Act of giving false evidence.

- (3) The Court may require him to produce any books and papers in his custody or power relating to the company; but where he claims any lien on books or papers produced by him the production shall be without prejudice to such lien, and the Court shall have jurisdiction in the winding-up to determine all questions to that lien.
- (4) If any person so summoned after being tendered a reasonable sum for his expenses, fails to come before the Court at the time appointed, having no lawful impediment (made known to the Court at

the time of its sitting and allowed by it) the Court may cause him to be apprehended, and brought before the Court for examination.

- (5) The Court may order any costs incurred under this section to be paid out of the assets of the company.

152. Power to order public examination of promoters, directors, etc.

- (1) When an order has been made for winding-up a company by the Court, and the Master has made a further report under this Act, showing that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by a director or officer of the company in relation to the company since its formation, the Court may, after consideration of the report, direct that any person who has taken part in the promotion or formation of the company, or has been a director or officer of the company, shall attend before the Court on a day appointed by the Court for that purpose, and be publicly examined as to the promotion or formation, or the conduct of the business of the company, or as to his conduct and dealings as director or officer thereof.
- (2) The Master may take part in the examination, and for that purpose may, if specially authorised by the Minister in that behalf, employ an attorney with counsel.
- (3) The liquidator, and any creditor or contributory, may also take part in the examination either personally or by attorney with counsel.
- (4) The 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 notwithstanding that any answer may tend to incriminate 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 Master's report, and may at his own cost employ an attorney with counsel, who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him:

Provided that if he is, in the opinion of the Court, exculpated from any charges made or suggested against him, the Court may allow him such costs as in its discretion it may think fit.

- (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, save as herein provided, thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times:

Provided that any answer given by a person upon examination under this section shall not be used against him in any prosecution other than for perjury or for the offence under this Act of giving false evidence.

- (8) The Court may, if it thinks fit, adjourn the examination from time to time.
- (9) An examination under this section may, if the Court so directs, and subject to rules of Court, be held before the Master, or a district officer or other person named or appointed for the purpose by the Court, and the powers of the Court under this section as to the conduct of the examination, but not as to costs, may be exercised by the person before whom the examination is held:

Provided that at an examination held before the Master, or a district officer or such other person as aforesaid, an attorney may appear without counsel.

- (10) The Court may order any costs incurred under this section to be paid out of the assets of the company.

153. Power to arrest absconding contributory

The Court, at any time before or taking after making a winding-up order, on proof that there is reason to believe that a contributory is about to quit Swaziland, or otherwise to abscond, or to remove or conceal any property for the purpose of evading payment or calls, or of avoiding examination respecting the affairs

of the company may cause the contributory to be arrested, and his books and papers and movable property to be seized, and him and them to be safely kept until such time as the Court may order.

154. Powers of Court cumulative

Any powers by this Act conferred on the Court shall be deemed to be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

155. Appeals from order

Subject to rules of Court, an appeal from an order or decision made or given for or in the winding-up of a company by the Court under this Act shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the Court in cases within its ordinary jurisdiction.

Voluntary winding-up of company

156. Circumstances under which company may be wound up voluntarily

A company may be wound up voluntarily—

- (a) when the period (if any) 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;
- (c) if the company resolves by extraordinary resolution that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

157. Commencement of voluntary winding-up

A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution authorising the winding-up.

158. Effect of voluntary winding-up on status of company

When a company is wound up voluntarily the company shall, from the commencement of the winding-up, cease to carry on its business, except in so far as may be required for the beneficial winding-up thereof:

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.

159. Notice of resolution to wind up voluntarily

- (1) When the company has resolved by special or extraordinary resolution to wind up voluntarily it shall as soon as may be give notice of the resolution by advertisement in the *Gazette*.
- (2) Notice in writing of the resolution shall also be given as soon as may be by the company to the Master, to the Registrar of Deeds, and to every officer charged with the duty of registering title to immovable property or mining title in Swaziland.
- (3) If default is made by a company in complying with the requirements of this section the company, and every director, manager, secretary, or other officer of the company, who knowingly authorised or permitted the default shall be guilty of an offence and liable on conviction to a fine not exceeding ten emalangeni for every day during which the default continues.

160. Consequences of voluntary winding-up

The following consequences shall ensue on the voluntary winding-up of a company—

- (a) the property of the company shall be applied in satisfaction of its liabilities in the legal order of their preference and subject thereto shall, unless the articles otherwise provide, be distributed amongst the members according to their rights and interests in the company;
- (b) 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;
- (c) 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;
- (d) the liquidator may, without the sanction of the Court, exercise all powers by this Act given to the liquidator in a winding-up by the Court;
- (e) the liquidator may exercise the powers of the Court under this Act of settling a list of contributories, and of making calls, and shall pay the debts of the company, and adjust the rights of the contributories among themselves;
- (f) the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories;
- (g) when several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination, by any number not less than two;
- (h) if from any cause whatever there is no liquidator acting, the Court may, on the application of a contributory, appoint a liquidator;
- (i) the Court may, on good cause shown, remove a liquidator and appoint another liquidator.

161. Notice by liquidator of his appointment

- (1) The liquidator in a voluntary winding-up shall, within twenty-one days after his appointment, lodge with the Registrar and with the Master, a notice of his appointment in the prescribed form.
- (2) If the liquidator fails to comply with the requirements of this section he shall be guilty of an offence and liable on conviction to a fine not exceeding ten emalangeni for every day during which the default continues.

162. Rights of creditors in a voluntary winding-up

- (1) Every liquidator appointed by a company in a voluntary winding-up shall within seven days from his appointment, send notice by post to all persons who appear to him to be creditors of the company, that a meeting of the creditors of the company will be held on a date, not being less than fourteen nor more than twenty-one days after his appointment, and at a place and hour to be specified in the notice, and shall also advertise notice of the meeting once in the *Gazette* and once at least in two newspapers circulating in Swaziland.
- (2) At the meeting to be held in pursuance of the provisions of this section the creditors shall determine whether an application shall be made to the Court for the appointment of any person as liquidator in the place of or jointly with the liquidator appointed by the company, or for the appointment of a committee of inspection, and, if the creditors so resolve, an application may be made accordingly to the Court at any time not later than fourteen days after the date of the meeting, by any creditor appointed for the purpose at the meeting.
- (3) On any such application the Court may make an order either for the removal of the liquidator appointed by the company and for the appointment of some other person as liquidator or for the

appointment of some other person to act as liquidator jointly with the liquidator appointed by the company, or for the appointment of a committee of inspection either together with or without any such appointment of a liquidator or such other order as, having regard to the interests of the creditors and contributories of the company, may seem just.

- (4) No appeal shall lie from any order of the Court upon a application under this section.
- (5) The Court shall make such order as to the costs of the application as it may think fit, and if it is of opinion that, having regard to the interests of the creditors in the liquidation, there were reasonable grounds for the application, may order the costs of the application to be paid out of the assets of the company, notwithstanding that the application is dismissed or otherwise disposed of adversely to the applicant.

163. Power to fill vacancy in office of liquidator

- (1) If a vacancy occurs by death, resignation, or otherwise in the office of liquidator appointed by the company in a voluntary winding-up, 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 the continuing liquidator or liquidators.
- (3) The meeting shall be held in manner prescribed by the articles, or in such manner as may, on application by any contributory or by the continuing liquidator or liquidators, be determined by the Court.

164. Delegation of authority to appoint liquidators

- (1) A company about to be, or in the course of being wound up voluntarily may, by extraordinary resolution, delegate to its creditors or to any committee of them, the power of appointing liquidators or any of them, and of supplying vacancies among the liquidators, or enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised.
- (2) Any act done by creditors in pursuance of any such delegated power shall have the same effect as if it had been done by the company.

165. Arrangements when binding on creditors

- (1) Any arrangement entered into between a company about to be, or in the course of being, wound up voluntarily and its creditors, shall, subject to any right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors.
- (2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the Court, against it and the Court may thereupon, as it thinks just, amend, vary, or confirm the arrangement.

166. Power of liquidators to accept shares, etc. as a consideration for sale of property of company

- (1) Where a company is proposed to be, or is being, wound up voluntarily and the whole or part of its business or property is proposed to be transferred or sold to another company, whether registered under this Act or not (in this section called the transferee company) the liquidator of the first-mentioned company (in this section called the transferor company) may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution amongst 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.
- (3) If any member of the transferor company who did not vote in favour of the special resolution at either of the meetings held for passing and confirming the same, expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the confirmation 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 manner provided by this section.
- (4) If the liquidator elects to purchase the member's interest, the purchase money shall be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.
- (5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for winding-up the company, or for appointing liquidators, but if an order be made within a year for winding-up the company by or subject to the supervision of the Court, the special resolution shall not be valid unless sanctioned by the Court.
- (6) For the purposes of an arbitration under this section the provisions of the Arbitration Act, [No. 24 of 1904](#), with respect to settlement of disputes by arbitration shall be incorporated with this Act.

167. Power to apply to Court

- (1) Where a company is being wound up voluntarily, the liquidator or any contributory or creditor of the company may apply to the Court to determine any question arising in the winding-up, or to exercise, as respects the enforcing of calls, or any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court.
- (2) The Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as the Court thinks fit, or may make such other order on the application as the Court thinks just.

168. Power of liquidator to call general meeting

- (1) Where a company is being wound up voluntarily, the liquidator may summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution, or for any other purposes he may think fit.
- (2) In the event of the winding-up continuing for more than six months, the liquidator shall summon a general meeting of the company at the end of the first six months from the commencement of the winding-up, and of each succeeding period of six months or as soon thereafter as may be convenient and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding-up during the preceding period of six months.

169. Final meeting and dissolution

- (1) In the case of every voluntary winding-up, 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 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* specifying the time, place, and object thereof, and published one month at least before the meeting.

- (3) Within one week after the meeting, the liquidator shall make a return to the Registrar and to the Master of the holding of the meeting and of its date, and in default of so doing shall be liable to a fine not exceeding ten emalangeneni for every day during which any such default continues.
- (4) The Registrar on receiving the return shall forthwith register it 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 lodge with the Registrar a certified copy of the order, and if that person fails so to do, he shall be guilty of an offence and liable on conviction to a fine not exceeding ten emalangeneni for every day during which the default continues.

170. Saving of rights of creditors and contributories

The voluntary winding-up of a company shall not bar the right of any creditor or contributory at any time before its dissolution to have it wound up by the Court, if the Court is of opinion, in the case of an application by a creditor, that the rights of the creditor, or, in the case of an application by a contributory, that the rights of the contributory will be prejudiced by a voluntary winding-up.

171. Power of Court to adopt proceedings of voluntary winding-up

Where a company is being wound up voluntarily, and an order is made for winding-up by the Court, the Court may, if it thinks fit, by the same or any subsequent order, provide for the adoption of all or any of the proceedings in the voluntary winding-up.

Winding-up subject to supervision of Court

172. Power to order winding-up subject to supervision

When a company has by special or extraordinary resolution resolved to wind-up voluntarily, the Court may make an order that the voluntary winding-up shall continue but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others to apply to the Court, and generally on such terms and conditions as the Court thinks just.

173. Effects of petition for winding-up subject to supervision

A petition for the continuance of a voluntary winding-up subject to the supervision of the Court shall, for the purpose of giving jurisdiction to the Court over actions, be deemed to be a petition for winding-up by the Court.

174. Court may have regard to wishes of creditors and contributories

The Court may, in deciding between a winding-up by the Court and a winding-up subject to supervision, in the appointment of liquidators, and in all other matters relating to the winding-up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

175. Power of Court to appoint or remove liquidators

- (1) When an order is made for a winding-up subject to supervision, the Court may by the same or any subsequent order appoint any additional liquidator.

- (2) A liquidator appointed by the Court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if he had been appointed by the company.
- (3) The Court may remove any liquidator so appointed by the Court or any liquidator continued under the supervision order, and fill any vacancy occasioned by the removal, or by death or resignation.

176. Effect of supervision order

- (1) Where an order is made for a winding-up subject to supervision, the liquidator may, subject to any restrictions imposed by the Court, exercise all his powers, without the sanction or intervention of the Court, in the same manner as if the company were being wound up voluntarily.
- (2) A winding-up subject to the supervision of the Court is not a winding-up by the Court for the purpose of the following provisions of this Act, namely, those contained in sections [123](#), [124](#), [125](#) except subsection (10) thereof, [128](#) to [139](#) inclusive, [150](#) and [152](#), but, save as aforesaid an order for winding-up subject to the supervision shall for all purposes, including the staying of actions and other legal proceedings, the making and enforcement of calls, and the exercise of all other powers be deemed to be an order for winding-up by the Court.

Supplementary provisions

177. Costs of winding-up

All costs, charges, and expenses properly incurred in any winding-up of a company, including the remuneration of the liquidator or liquidators, shall, unless the Court otherwise orders be payable out of the assets of the company and in priority to all other claims.

178. Avoidance of transfers after commencement of winding-up

- (1) In the case of a voluntary winding-up every transfer of shares except transfers made to or with the sanction of the liquidator, and every alteration in the status of the members of the company, made after the commencement of the winding-up, shall be void.
- (2) In the case of a winding-up by or subject to the supervision of the Court, every disposition of the property (including rights of action) of the company, and every transfer of shares, or alteration in the status of its members, made after the commencement of the winding-up, shall, unless the Court otherwise orders, be void.

179. Debts of all descriptions to be proved

In every winding-up (subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law for the time being relating to insolvency) 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 sound only in damages, or for some other reason do not bear a certain value.

180. Application of law relating to insolvency in winding-up insolvent companies

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 the debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being in force under the law relating to insolvency, with respect to the estates of persons sequestrated; and all persons who in 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.

181. Preferential payments in winding-up

- (1) In a winding-up there shall be paid in priority to all other debts—
 - (a) all taxes due and payable to the Government;
 - (b) all assessment rates, erf taxes, sanitary, water and other like charges payable to any local authority by the company at any time within twelve months ending the thirtieth day of June next before the date hereinafter mentioned in this section;
 - (c) the wages or salary of any clerk or servant in respect of services rendered to the company during two months next before the date hereinafter mentioned in this section;
 - (d) the wages of any workman or labourer not exceeding one hundred emalangeni whether payable for time or for piecework in respect of services rendered to the company during the two months immediately preceding the said date:

Provided that where any labourer or workman has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the period 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 said date;

- (2) The debts described in subsection (1) shall—
 - (a) rank equally between themselves and shall be paid in full, unless the assets of the company 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 mortgagees and holders or debentures created by the company, and be paid accordingly out of any property comprised in or subject to the document securing the claims of the mortgagees or debenture holders.
- (3) Subject to the retention of such sums as may be necessary for the costs, charges and expenses of winding-up, all the debts described in subsection (1) shall be discharged forthwith so far as the assets are sufficient to meet them.
- (4) The date hereinbefore in this section mentioned is—
 - (a) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding-up order; and
 - (b) in any other case the date of the commencement of the winding-up.
- (5) This section shall apply in the winding-up of every company.

182. Voidable and undue preferences

- (1) Every disposition of its property which would, if made by an individual be deemed in the event of his insolvency to have been void or voidable or an undue preference shall, if made by a company, be deemed, in the event of its being wound up and then insolvent, void or voidable or an undue preference (as the case may be) and the provisions of the law for the time being relating to insolvency shall *mutatis mutandis* be applied to any such disposition.
- (2) For the purpose of this section the presentation of a petition for winding-up in the case of a winding-up by or subject to the supervision of the Court, and a resolution for winding-up in the case of a voluntary winding-up, shall be deemed to correspond with the sequestration order in the case of an individual.
- (3) Any cession or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

183. Application of law relating to insolvency

In the case of a winding-up of any insolvent company, the provisions of the law for the time being relating to insolvency shall *mutatis mutandis* be applied in respect of any matter not specially provided for in this Act.

184. Avoidance of certain attachments, executions, etc.

Where any company is being wound up by or subject to the supervision of the Court, any attachment or execution put in force against the estate or effects of the company after the commencement of the winding-up shall be void to all intents.

185. General scheme of liquidation may be sanctioned

- (1) The liquidator may in the case of—
 - (a) a winding-up by the Court, with the sanction either of the Court or of the committee of inspection;
 - (b) any winding-up subject to supervision, with the sanction of the Court; and
 - (c) a voluntary winding-up, with the sanction of an extraordinary resolution of the company; do the things or any of them set out in subsection (2).
- (2) Subject to subsection (1) the liquidator may—
 - (a) pay any classes of creditors in full;
 - (b) 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;
 - (c) 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, upon such terms as may be agreed, and take any security for the discharge of such calls, debts, liability or claim and give a complete discharge in respect thereof.
- (2) In the case of a winding-up by the Court the exercise by the liquidator of the powers of 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.

186. Power of Court to assess damages delinquent promoters, directors, etc.

- (1) Where in the course of winding-up a company it appears that any person who has taken part in the information or promotion of the company, or any past or present director, manager, or liquidator, or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the Master, or of the liquidator, or of any creditor or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator, or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retention, misfeasance, or breach of trust as the Court thinks just.

- (2) This section shall apply notwithstanding that the offence is one for which the offender may be criminally responsible.

187. Penalty for falsification of books, etc.

If any director, officer, or 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 a false or fraudulent entry in any register, book of account, or document belonging to the company with intent to defraud or deceive any person, he shall be guilty of an offence and liable to imprisonment for a period not exceeding seven years.

188. Prosecution of delinquent directors, etc.

- (1) If it appears in the course of winding-up of a company that any past or present director, manager, officer or member of the company has been guilty of an offence in relation to the company for which he is criminally responsible the liquidator shall cause all the facts known to him which appear to constitute the offence to be laid before the Attorney-General, and, in the event of the Attorney-General certifying that he declines to prosecute, the liquidator may, subject to the provisions of [section 127](#), institute and conduct a private prosecution for such offence.
- (2) The Court may, upon application by the liquidator, order the whole or any portion of the costs and expenses incidental to such private prosecution to be paid out of the assets of the company in priority to all other liabilities.

189. Meetings to ascertain wishes of creditors or contributories

- (1) Where by this Act the Court is authorised, in relation to winding-up, to have regard to the wishes of creditors or contributories as proved to it by any sufficient evidence, the Court 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 the articles.

190. Books of company to be evidence

Where any 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.

191. Inspection of books

After an order has been made for winding-up by or subject to the supervision of the Court, the Court may make such order for inspection by creditors and contributories of the company of its books and papers as the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors and contributories accordingly, but not further or otherwise.

192. Disposal of books, accounts, and documents of company

- (1) When any 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 or subject to the supervision of the Court, in such way as the Court directs;

- (b) in the case of a voluntary winding-up, in such way as the company by extraordinary resolution directs.
- (2) After five years from the dissolution of the company, no responsibility shall rest on the company, or the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of the same not being forthcoming to a person claiming to be interested therein.

193. Power of Court declare dissolution of company void

- (1) When a company has been dissolved the Court may, at any time within two years of the date of the dissolution, 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, to lodge with the Registrar a certified copy of the order, and if that person fails so to do, he shall be guilty of an offence and liable on conviction to a fine not exceeding ten emalangeni for every day during which the default continues.

194. Information as to pending liquidations

- (1) Where a company is being wound up, if the winding-up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding-up is concluded, transmit to the Registrar a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.
- (2) Any person stating himself in writing to be a creditor or contributor 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, and to receive a copy thereof, or extract therefrom; but any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court, and shall be punishable accordingly on the application of the liquidator or of the Master.
- (3) If a liquidator fails to comply with the requirements of this section he shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred emalangeni for each day during which the default continues.
- (4) If it appears from any such statements 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 the receipt, the liquidator shall forthwith pay that money to the Master, who shall deposit the same in the Guardian's Fund referred to in the Administration of Estates Act, [No. 28 of 1902](#) and the liquidator shall be entitled to a certificate of receipt for the money so paid, and that certificate shall be an effectual discharge to him in respect thereof.
- (5) Any person claiming to be entitled to any money paid to the Master in pursuance of this section may apply to him for payment of the same, and the Master may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due.
- (6) Any person dissatisfied with the decision of the Master in respect of any claim made in pursuance of this section may appeal to the Court.

195. Special commissioners for taking evidence

- (1) All district officers and such other persons as the Court may appoint shall be commissioners for the purpose of taking evidence under this Act in cases where a company is wound up and the Court may refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed commissioner, although he is out of the jurisdiction of the Court which made the winding-up order.

- (2) Every commissioner shall, in addition to any powers which he might lawfully exercise as district officer, have in the matter so referred to him, the same powers of summoning and examining, of requiring the production or delivery of documents of punishing defaults by witnesses, and of allowing costs and expenses to witnesses, as the Court which made the winding-up order.
- (3) The examination so taken shall be returned or reported to the Court which made the order in such manner as that Court directs.

Removal of defunct companies from register

196. Registrar may strike defunct company off register

- (1) When the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he shall send to the company by post a letter enquiring whether it is carrying on business or is in operation.
- (2) If the Registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company a registered letter referring to the first letter and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof a notice will be published in the *Gazette* and in a newspaper circulating in Swaziland with a view to striking the name of the company off the register.
- (3) If the Registrar either receives an answer from the company to the effect that it is not carrying on business or is not in operation, or does not within one month after sending the second letter receive any answer, he may publish in the *Gazette* and in a newspaper circulating in Swaziland and send to the company by post a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.
- (4) If, 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 after notice by the Registrar demanding the returns has been sent by post to the company, or to the liquidator at his last known place of business, the Registrar may publish in the *Gazette* and a newspaper circulating in Swaziland and send to the company 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, strike its name off the register and shall publish notice thereof in the *Gazette* and a newspaper circulating in Swaziland and on the publication of this notice the company shall be dissolved:

Provided that the liability (if any) of every director, managing officer, and member of the company shall continue and may be enforced as if the company had not been dissolved.

- (6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register the Court, on the application of the company, or member or creditor may, if satisfied that the company was at the time of the striking off carrying on business or was in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if its name had not been struck off; and the Court may, by the order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position, as nearly as may be, as if the company had not been struck off.
- (7) A letter or notice under this section shall be addressed to the company at its registered office, or, if no office has been registered to the care of some director or officer of the company, or, if there is no director or 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.

- (8) The cost of any notices published in terms of subsections (3), (4) and (5) shall be recoverable from the company concerned, or if the company has no assets, then from the directors of the company either jointly or severally.

197. Orders to be transmitted to Master and registering office

- (1) Whenever under this Act any order is made by the Court in connection with the winding-up or dissolution of a company, a copy of such order shall, as soon as may be after the making thereof, be transmitted by the Registrar of the Court which made the order to the Master.
- (2) Whenever any such order affects the title to immovable property or mining title a copy of the order shall, as soon as may be after the making thereof, be transmitted by the Registrar of the Court which made the order to the Registrar of Deeds, and to every registering officer charged with the duty of registering title to immovable property or mining title in Swaziland.

Part V – Foreign companies

198. Foreign companies

- (1) Every foreign company (other than a banking company or insurance company as hereinafter defined) which on the 19th of February, 1912 had a place of business in Swaziland and every foreign company which, after such commencement establishes a place of business in Swaziland and which uses the word "Limited" as part of its name shall—
- (a) in every prospectus inviting subscriptions for its shares or debentures in Swaziland, state the foreign country in which the company is registered or incorporated; and
- (b) conspicuously exhibit, outside all its places of business in Swaziland, the name of the company and the foreign country in which the company is registered or incorporated; and
- (c) have the name of the company and of the foreign country in which the company is registered or incorporated, mentioned in legible characters in all billheads, and letter paper, and in all notices, advertisements, and other official publications of the company.
- (2) If any foreign company to which this section applies fails to comply with any requirement of this section, the company, and every officer or agent of the company in Swaziland shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred emalangeni, or, in the case of a continuing default, ten emalangeni for every day during which the default continues:

Provided that no penalty shall be recoverable under this subsection except for an offence committed after the expiration of three months, from the commencement of this Act.

- (3) For the purposes of this section—

"banking company" means a company which by reason of the business carried on by it (but so far only as concerns such business) is subject to the provisions of the Banks Act;

"insurance company" means a company which by reason of the business carried on by it (but so far only as concerns such business) is subject to the provisions of the Insurance Act;

"place of business" means any place where the company transacts, or holds itself out as transacting business, and shall include a share transfer or share registration office.

Part VI – Application of Act

199. Restricted application of Act in case of banking and insurance companies

Where a company is subject to the provisions of—

- (a) the Bank Act or any law which for the time being is specially applicable to banking companies; or
- (b) the Insurance Act or any law which for the time being is especially applicable to life, fire or accident insurance companies or societies, the provisions of this Act which would otherwise apply in respect of such company shall not apply wherever those provisions would be inconsistent with any such law.

200. Exemption from Act of co-operative agricultural societies, building societies, friendly societies and trade unions

- (1) The provisions of this Act shall not be construed as applying to a building society, a friendly society, a trade union or a co-operative agricultural society:

Provided that—

- (a) any society or union in this subsection mentioned shall, until the enactment of any law providing for its registration and management, be permitted to register under Part I upon complying with the provisions of that chapter in respect of registration;
- (b) every such society or union, unless so registered, shall be deemed for the purposes of Part VII, to be an unregistered company.

- (2) In this section—

"building society" means a building society as defined in section 5 of the Building Societies Act, [No. 1 of 1962](#);

"friendly society" shall, until a law is in force in Swaziland regulating friendly societies, mean a society of persons formed solely or mainly for the purpose of raising by the voluntary subscriptions of its members, with or without the aid of donations, a fund—

- (a) for the relief or maintenance of members and their relatives during minority, old age, widowhood, sickness, or other infirmity, mental or bodily, or for the endowment at any age of members or their nominees;
- (b) providing medical attendance and procuring medicines and medical requirements for such members or relatives;
- (c) insuring a sum of money to be paid on the birth of a member's child or on the death of a member or for the funeral expenses of the husband, wife, child, or relative of a member;

and, when any such law is in force, shall mean a friendly society as therein defined;

"trade union" means a trade union as defined in the Trade Union and Employers Organization Act, No. 12. of 1966;

"co-operative agricultural society" means a co-operative agricultural society registered under the Co-operative Societies Act, [No. 28 of 1964](#).

Part VII – Winding-up of unregistered companies

201. Winding-up of unregistered companies

Subject to the provisions of this Part any company, association, syndicate or partnership having a place of business in Swaziland, which consists of more than seven members and is not a company to which Parts I, II and III apply, may be wound up under this Act, and all the provisions of this Act with respect to winding-up shall apply to such a company, association, syndicate or partnership (hereinafter referred to as an "unregistered company") with the following exceptions and additions—

- (a) no unregistered company shall be wound up under this Act voluntarily or subject to supervision;
- (b) the circumstances in which an unregistered company may be wound up are as follows:
 - (i) 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;
 - (ii) if the company is unable to pay its debts;
 - (iii) if the Court is of opinion that it is just and equitable that the company should be wound up;
- (c) an unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts;
 - (i) if a creditor, by cession or otherwise, to whom the company is indebted in a sum exceeding one hundred emalangeni then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary or some director, manager or principal officer of the company, or by otherwise serving in such manner as the Court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand neglected to pay the sum, or to secure or to compound for it to the satisfaction of the creditor;
 - (ii) 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, and notice in writing of the institution of the action or proceeding having been served on the company by leaving it at its principal place of business, or by delivering it to the secretary, or some director, manager, or principal officer of the company, or by otherwise serving it in such manner as the Court may approve or direct, the company has not within ten 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;
 - (iii) 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 by the sheriff or messenger with the endorsement that he has not found sufficient assets, to satisfy the judgment, decree, or order, or that any assets found did not, upon sale, satisfy the execution or other process;
 - (iv) if it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

202. Contributories in winding-up of unregistered company

- (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 amongst 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 as aforesaid.

- (2) In the event of the death or insolvency of any contributory, the provisions of this Act with respect to the legal representatives, heirs, and legatees of deceased contributories and to the trustees of insolvent contributories shall apply.

203. Power of Court to stay or restrain proceedings

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 unregistered company, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

204. Actions stayed on winding-up order

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.

205. Directions as to property in certain cases

If an unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the Court may by winding-up order, or by any subsequent order direct that all or any part of the property immovable and movable (including right of action) belonging to the company, or to trustees on its behalf, is to vest in the liquidator by his official name, and thereupon the property or the part thereof specified in the order shall vest accordingly; and the liquidator may, after giving such indemnity (if any) as the Court may direct, bring or defend in his official name any action or other legal proceeding relating to that property, or necessary to be brought or defend for the purpose of effectually winding-up the company and recovering its property.

206. Provisions of this Part cumulative

The provisions of this Part with respect to unregistered companies shall be deemed to be in addition to and not in restrict of any provision hereinbefore in this Act contained with respect to winding-up companies by the Court, and the Court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding-up companies registered under Part I; but 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.

Part VIII – Miscellaneous provisions

207. Amalgamation schemes to be submitted to Minister

- (1) Three months prior to the date when any amalgamation scheme or portion thereof is to be submitted to any general meeting of a company that scheme shall be submitted to the Minister, and, unless it has been so submitted, the Registrar shall not register in his office any document which gives effect to the scheme or to any portion thereof.
- (2) For the purposes of this section an amalgamation scheme shall mean a scheme under which any one or more companies will be dissolved and the undertaking or undertakings of the dissolved company or companies transferred to a new company, or to another company then existing with or without a change in the name of that company, or a scheme under which the entire undertaking and assets of any company are transferred to another company.

207A. Costs in actions by limited companies

Where a limited company is plaintiff or applicant in any legal proceeding, the Court having jurisdiction in the matter may, at any stage, if it appears by credible testimony that there is reason to believe that the company or the liquidator of a limited company will be unable to pay the costs of the defendant or respondent if successful in his defence, require sufficient security to be given for those costs and may stay all proceedings still the security is given.

[Added P.14/1964]

208. Power of Court to grant relief in certain cases

If, any proceeding under this Act against a director of a company for negligence or breach of trust, it appears to the Court hearing the case that the director is or may be liable in respect of negligence or breach of trust, but has acted honestly and reasonably, and ought fairly to be excused for the negligence or breach of trust, that Court may relieve him either wholly or partly from his liability, on such terms as the Court may think proper.

209. Prescribed fees, forms and alterations thereof

- (1) There shall be paid in respect of the several matters mentioned in the First Schedule to this Act or in that Schedule as altered or added to under the powers of this section the several fees specified in such Schedule or in the alteration or addition thereto.
- (2) All such fees shall be paid by means of revenue stamps which shall be duly defaced by the officer concerned with the particular matter.
- (3) The forms set forth in the Second Schedule to this Act, or forms as nearly thereto as the circumstances admit, shall be used in all matters to which those forms refer.
- (4) The Minister may alter or add to the tables in the First Schedule to this Act, and may alter or add to any of the forms in the Second Schedule to this Act or Table A.
- (5) The Minister may further make or alter a table of fees which shall be payable to a liquidator or Special manager as remuneration and such a table of fees, when so made or altered, shall be deemed to form part of the First Schedule to this Act.
- (6) Any such table and form as altered, and any added form shall be published in the *Gazette*, and thenceforth shall have the same force and effect as if it were included in one of the Schedules to this Act but no alteration in, or addition to, Table A shall affect any company registered before the publication of the alteration, or addition, as respects that company, or shall repeal any portion of Table A which applies to it.

210. Penalty for late filing

If any return required by any provision of this Act to be filed with the Registrar is not so filed within the time specified by such provision, such return may only be filed on payment of a penalty equal to three times the amount of the fee which would ordinarily be payable in respect of the filing of such return, in addition to the payment of the fee ordinarily payable as aforesaid:

Provided that payment of such fee and penalty shall be without prejudice to the question of prosecuting the company or any officer thereof in respect of any default or offence specified by this Act.

211. Power to the Minister to make rules

- (1) The Minister may make, alter, or rescind rules concerning the procedure to be followed with respect to matters in which the Court is empowered under this Act to exercise jurisdiction.

- (2) Every such rule and any alteration or rescission thereof shall, when published in the *Gazette*, have full force and effect.

212. Office for registration of companies

- (1) There shall be an officer in Mbabane styled "the Registrar of Companies" and such other officers and clerks as may be necessary for carrying out the registration of companies under this Act or for effectively exercising any other power or jurisdiction or performing any other duties assigned by this Act or any amendment thereof to the Registrar.
- (2) The Minister may make Regulations not inconsistent with this Act prescribing the duties of the Registrar.
- (3) Any person may inspect the documents kept by the Registrar on payment of the prescribed fees; and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or part of any other document, to be certified by the Registrar, on payment for the certificate, certified copy, or extract, of the prescribed fee.

213. Service of documents

Any notice, or other document which by this Act may be or is required to be served upon a company may be served by leaving it at, or sending it by prepaid registered post to—

- (a) the registered office of a company;
- (b) the principal place of business in Swaziland in the case of an unregistered company.

214. Judicial notice of signature of officers

- (1) In all proceedings under this Act, all Courts, judges, and persons acting judicially, and all officers, judicial or executive, of any Court, or employed in enforcing the process of any Court, may take judicial notice of the signature of any officer of the Court, and shall take judicial notice of the official seal or stamp of any such Court appended to or impressed on any document made, signed, or issued under this Act or an official copy thereof.
- (2) All Courts, judges, commissioners, and persons acting judicially may take judicial notice of the seal, or stamp, or signature appended or subscribed (as the case may be) to an affidavit lawfully sworn or solemn declaration lawfully made for the purposes of this Act.

215. Penalties for false statements and false oaths

- (1) Any person who in any statement, return, report, certificate, balance-sheet, or other document required by or for the purposes of any of the provisions of this Act wilfully makes a statement false in any material particular, knowing it to be false, shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred emalangeneni or to imprisonment for a period not exceeding one year.
- (2) Any person who, on examination on oath authorised under this Act, or in any affidavit, solemn declaration or deposition in or about any matter arising under this Act, wilfully and corruptly gives false evidence, shall be guilty of an offence and liable on conviction to the penalties prescribed by law for perjury.

216. Penalty for improper use of word "Limited"

Any person or persons trading or carrying on business under a name or title of which the word "Limited" is the last word shall, unless duly incorporated with limited liability, be guilty of an offence and liable on conviction to a fine not exceeding ten emalangeneni for every day upon which that name or title has been used.

217. Officers liable for default by company

Whenever under this Act a company is liable to any penalty for a default or offence, proceedings may be instituted for that default or offence against any director, manager, secretary, or other officer of the company, and the Court having jurisdiction in respect of the default or offence may convict and sentence therefor any person against whom the proceedings are so instituted, unless he shall satisfy that Court that the default or offence was made or committed without his knowledge, authority, or permission.

218. Offences and penalties

Every company or person charged with a default or offence under this Act may be prosecuted before a court established under the Subordinate Courts Proclamation having jurisdiction at the place where the default is alleged to have been made or the offence to have been committed; and if the default or offence is punishable by a fine that court shall have special jurisdiction to impose the maximum fine prescribed or, in a case of a continuing default or offence, the aggregate amount of the maximum fines.

219. Imprisonment in default of payment of fines

Whenever under this Act any fine is imposed for a default or offence, and the person convicted does not forthwith pay the fine, the Court imposing the same may, without prejudice to any steps that may be lawfully taken for levying such fine by distress and sale of movable property belonging to that person, order the imprisonment of that person for a period not exceeding one month if the fine does not exceed ten emalangeni, for a period not exceeding three months if the fine exceed ten emalangeni and does not exceed one hundred emalangeni, and for a period not exceeding one year if the fine exceeds one hundred emalangeni, and a Court imposing the fine shall have special jurisdiction to impose, in default of payment thereof, the maximum period of imprisonment.

First Schedule

[Replaced in its entirety by L.N.55/1994]

Table of fees to be paid by a company under this Act		
1.	For registration of original Memorandum of Association	E 150.00
2.	For registration of an altered Memorandum of Association or a substituted Memorandum and Article of Association and Order of Court confirming same	E 150.00
3.	For registration of reduction of the capital of a company and the Order of Court confirming same	E 200.00
4.	For registration of change of name of a company	E 300.00
5.	For registration of any document hereby required or authorised to be registered other than the above	E 50.00
6.	For making any record of any fact by the Registrar	E 70.00
7.	Upon lodging annual list and summary, pursuant to section 26	E 70.00
8.	For any certificate issued by the Registrar	E 75.00
9.	For inspection of any document filed with the Registrar	E 50.00
10.	For inspection of the registers kept by the Registrar	E 50.00
11.	For altering address in register	E 20.00
12.	For reserving a new company name (for each period of three months)	E 20.00
13.	Change of the end of a company's financial year	E 20.00

14.	Registration of a special resolution for the conversion of one type of company into another type or form of company	E 50.00
15.	Registration of a Memorandum of an external company	E 200.00
16.	Requesting the submission of provisional financial statement of a private company	E 20.00
17.	Certifying additional copies of documents lodged for registration (a) Own documents (b) Government	E 20.00 E 100.00
18.	Granting of exemption from lodging annual financial statement of a subsidiary	E 50.00

[Amended L.N.62/1971; A.8/1985; L.N.104/2006]

Second Schedule

Form A – Memorandum of association of a limited company

1. The name of the company is “The Derdepoort (Deep) Mining Company, Limited”.
2. The registered office of the company will be situated in Swaziland.
3. The objects for which the company is established are to purchase, take on lease, or otherwise acquire any mines, mining rights, and metalliferous land in Swaziland, and any interest therein, to explore, work, exercise, develop and turn to account the same and to do all such other things as are incidental or conducive to the attainment of the above objects.
4. The liability of the members is limited.
5. The share capital of the company is two hundred thousand Emalangeni divided into one hundred thousand shares of two Emalangeni each.

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

Names, Addresses and Description of Subscribers			No. of Shares taken by each Subscriber
1.	John Jones of	Merchant	200
2.	Andries de Villiers of	Farmer	25
3.	Peter Grant of	Prospector	30
4.	Jacobus Steenkamp of	General Agent	40
5.	James Murphy of	Financier	15
6.	Paulus Oosthuizen of	Mining Engineer	5
7.	William Smith of	Attorney	10
Total shares taken			325

Dated the _____ day of _____, 19 ____.

Witnesses to the above signatures: _____

A.B.

C.D.

Form B – Memorandum and articles of association of an unlimited company having a share capital

Memorandum of association

1. The name of the company is “The Patent Stereotype Company”.
2. The registered office of the company will be situated in Mbabane.
3. The objects for which the company is established are the working of a patent method of founding and casting stereotype plates of which method John Smith of Johannesburg is the sole patentee.

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

Names, Addresses and Description of Subscribers			No. of Shares taken by each Subscriber
1.	John Jones of	Merchant	3
2.	Andries de Villiers of	Farmer	2
3.	Peter Grant of	Prospector	1
4.	Jacobus Steenkamp of	General Agent	2
5.	James Murphy of	Financier	2
6.	Paulus Oosthuizen of	Mining Engineer	1
7.	William Smith of	Attorney	1
Total shares taken			12

Dated the _____ day of _____, 19 ____.

Witnesses to the above signatures: _____

A.B.

C.D.

Articles of association to accompany the preceding memorandum of association

1. The share capital of the company is four thousand emalangeni divided into twenty shares of two hundred emalangeni each.
2. All the articles of Table A in the Third Schedule to the Companies Act shall, so far as they are applicable to an unlimited company, be deemed to be incorporated with these articles and to apply to the company.

Names, Addresses and Description of Subscribers			
1.	John Jones of	Merchant	
2.	Andries de Villiers of	Farmer	
3.	Peter Grant of	Prospector	
4.	Jacobus Steenkamp of	General Agent	
5.	James Murphy of	Financier	
6.	Paulus Oosthuizen of	Mining Engineer	
7.	William Smith of	Attorney	

Dated the _____ day of _____, 19 ____.

Witnesses to the above signatures: _____

A.B.

C.D.

Form C – (As required by Part II of the Act)

Summary of Share Capital and Shares of the _____ Company, Limited, _____ made up to the _____ day of _____ 19 _____ (being the fourteenth day after the date of the first ordinary general meeting in 19 _____).

Nominal capital E _____ divided into* _____ shares of E. _____ each. _____ shares of E. _____ each.

Total number of shares taken up to the _____ day of _____ 19 _____ (which number must agree with the total shown in the list as held by existing members)

Number of shares issued subject to payment wholly in cash _____

Number of shares issued as fully paid for a consideration other than cash _____

Number of shares issued as partly paid up to the extent of _____ per share for a consideration other than cash _____

†There has been called up on each _____ shares, E

*

When there are shares of different kinds or amounts (e.g. preference and ordinary of E20 or E10) state the numbers and nominal values separately.

†

†There has been called up‡ on each _____ shares, E

†There has been called up on each _____ shares, E

§Total amount of calls received, including payments on application and allotment
_____ E

Total amount (if any) agreed to be considered as paid on shares which have been issued as fully paid (for a consideration other than cash) _____ E

Total amount (if any) agreed to be considered as paid on shares which have been issued as fully paid up to the extent of _____ per share _____ E

Total amount of calls unpaid _____ e

Total amount (if any) of sums paid by way of commission in respect of shares or debentures or allowed by way of discount since date of last summary _____ E

Total amount (if any) paid on^f _____ shares forfeited _____ E

Total amount of shares and stock for which share warrants are outstanding _____ E

Total amount of share warrants issued and surrendered respectively since date of last summary _____ E

Number of shares or amount of stock comprised in each share warrant _____ E

Total amount of debt due from the company in respect of all mortgages and charges _____ E

Statement in the form of a balance-sheet containing the particulars of the capital, liabilities, and assets of the company.

The return must be signed at the end by the manager or secretary of the company. Presented for filing by

List of persons holding shares in the Company Limited _____ on the _____ day of _____ 19 _____, and of persons who have held shares therein not fully paid up at any time during the year immediately preceding the said date, showing their names and addresses and the account of the shares so held.

Where various amounts have been called or there are shares of different kinds state them separately.

†

Where various amounts have been called or there are shares of different kinds state them separately.

‡

Include what has been received on forfeited as well as on existing shares.

†

Where various amounts have been called or there are shares of different kinds state them separately.

§

Include what has been received on forfeited as well as on existing shares.

f

State the aggregate number of shares forfeited (if any).

Name and address			Account of shares not fully paid up				
Surname	Christian Name	Address	‡Particulars of Shares transferred during the preceding year by person who are still Members		‡Particulars of Shares transferred during the preceding year by person who have ceased to be Members		
			†Number	Date of Registration of Transfer	†Number	Date of Registration of Transfer	Remarks

Names and addresses of the persons who are the directors of the _____ Limited on the _____ day of _____ 19 ____.

‡

The date of registration of each transfer should be given as well as the number of shares transferred on each date. The particulars should be placed opposite the name of the transferor and not opposite that of the transferee, but the name of the transferee may be inserted in the "Remarks" column immediately opposite the particulars of each transfer.

‡

The date of registration of each transfer should be given as well as the number of shares transferred on each date. The particulars should be placed opposite the name of the transferor and not opposite that of the transferee, but the name of the transferee may be inserted in the "Remarks" column immediately opposite the particulars of each transfer.

†

When the shares are of different classes these columns may be sub-divided so that the number of each class held or transferred may be shown respectively.

†

When the shares are of different classes these columns may be sub-divided so that the number of each class held or transferred may be shown respectively.

Names	Address

(Signature)

(State whether manager or secretary)

Third Schedule

Table A – Regulations for management of a company limited by shares

Preliminary

1. In these Regulations, unless the context otherwise requires, expressions defined in the Swaziland Companies Act (hereinafter called “the Act”), or any statutory modification thereof in force at the date at which these Regulations binding on the company, shall have the meanings so defined; the expression “foreign committee” shall mean any such committee as is appointed under article 89 of these Regulations and words importing the singular shall include the plural, and vice versa, and words importing the masculine gender shall include females, and words importing persons shall include bodies corporate.

Business

2. The directors shall have regard to the restrictions on the commencement of the business imposed by [section 85](#) of the Act, if, and so far as, those restrictions are binding upon the company.

Shares and certificates of shares

3. Subject to the provisions, if any, in that behalf of the memorandum of association of the company and without prejudice to any special rights previously conferred on the holders of existing shares in the company, any share in the company may be issued with such preferred, deferred, or other special rights, or such restrictions, whether in regard to dividend, voting, return of capital or otherwise, as the company may from time to time by special resolution determine.
4. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may 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 an extraordinary resolution passed at a separate general meeting of the holders of the shares of that class. To

- every such separate general meeting the provisions of these Regulations relating to general meetings, and [section 63](#) and [65](#) of the Act whenever applicable, shall *mutatis mutandis* 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.
5. No share shall be offered to the public for subscription except upon the terms that the amount payable on application shall be at least ten per centum of the nominal amount of the share; and the directors shall, as regards any allotment of shares, duly comply with such of the provisions of [section 83](#) and [86](#) of the Act, as may be applicable thereto.
 6. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate specifying the share or shares held by him and the amount paid up thereon.
 7. If a share certificate is defaced, lost, or destroyed, it may be renewed on payment of such fee, if any, not exceeding ten cents, and on such terms, if any, as to evidence and indemnity as the directors think fit.
 8. Share certificates shall be issued under the authority of the directors, or the foreign committee when authorised thereto by resolution of the directors, in such manner and form as the directors shall from time to time prescribe. All shares shall be numbered in numerical progression beginning with the number one, and each share shall be distinguished by its appropriate number.
 9. Each member shall be entitled to one certificate for all the shares registered in his name, or to several certificates, each for a part of such shares. Every share certificate shall specify the number of shares in respect of which it is issued, and the amount paid up thereon. Every original member shall be entitled to one share certificate *gratis* but for every subsequent certificate the directors may make such charge as from time to time they may think fit.
 10. A certificate for shares registered in the names of two or more persons shall be delivered to the person first named in the register as a holder thereof, and delivery of a certificate for a share to that person shall be a sufficient delivery to all joint holders of that share.
 11. No part of the funds of the company shall be employed in the purchase of, or in loans upon the security of, the company's shares.

Lien

12. The company shall have a 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 such share and the company shall also have a lien on all shares (other than fully paid shares) standing registered in the name of a single person, for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause. The company's lien, if any, on a share shall extend to all dividends payable thereon.
13. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists, is presently payable, nor until the expiration of fourteen days after a notice in writing stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share or, the person entitled by reason of his death or insolvency to the share.
14. The proceeds of the sale shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale. The purchaser shall be registered as the holder of the shares, and he shall not be bound to see 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.

Calls on shares

15. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares:

Provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable in less than one month from the last call; and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payment) pay to the company at the time or times so specified the amount called on his shares.
16. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.
17. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of twenty emalangenani per centum per annum from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of such interest wholly or in part.
18. The provisions of these Regulations as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.
19. The directors may make arrangements on the issue of shares for a difference between classes of holders in the amount of calls to be paid and in 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 presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, six per centum) as may be agreed upon between the members paying the sum in advance and the directors. If the whole amount paid on any shares be paid, the directors may issue those shares as fully paid up.

Transfer and transmission of shares

21. The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.
22. Shares in the company shall be transferred in the following form, or in any usual or common form which the directors shall approve:

I, A.B., of _____ in consideration of the sum of E _____ paid to me by C. D., of _____ (hereinafter called "the said transferee") do hereby transfer to the said transferee the share (or shares) numbered _____ in the undertaking called the _____ Company, Limited, to hold unto the said transferee, his legal representatives and assigns, subject to the several conditions on which I held the same at the time of the execution thereof; and I, the said transferee, do hereby agree to take the said share (or shares) subject to the conditions aforesaid. As witness our hands the _____ day of _____ 19 _____.

Witness to the signatures of, etc.
23. The directors may decline to register any transfer of shares not being fully paid up shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognise any instrument of transfer unless—
 - (a) a fee not exceeding twenty-five cents is paid to the company in respect thereof; and

- (b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.
24. Every instrument of transfer shall be left at a transfer office of the company at which it is present for registration, accompanied by a certificate of the shares to be transferred. Every power of attorney given by a shareholder authorising the transfer of shares, shall, when lodged, produced or exhibited to the company or any of its proper officers, be deemed as between the company and the donor of the power to continue and remain in full force and effect, and the company may allow that power to be acted upon until such time as express notice in writing of its revocation has been lodged at such of the company's transfer offices as the power was lodged, produced or exhibited as aforesaid. The company shall not be bound to allow the exercise of any act or matter by an agent for a shareholder unless a duly certified copy of that agent's authority be produced and lodged with the company.
25. The legal representatives of a deceased sole holder of a share shall be the only person recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the legal representatives of the deceased survivor shall be the only person recognised by the company as having any title to the share.
26. Any person becoming entitled to a share in consequence of the death or insolvency of a member shall, upon such evidence being produced as may from time to time be required by the directors, have the right, either to be registered as a member in respect of the share or instead of being registered himself, to make such transfer of the share as the deceased or insolvent could have made; but the directors shall, in either case, have the same right to declare or suspend registration as they would have had in the case of a transfer of the share by the deceased or insolvent before the death or insolvency but nothing herein contained shall release the estate of a deceased joint shareholder from any liability in respect of shares jointly held by him.
27. The parent or guardian of a minor and the *curator bonis* of a lunatic member and any person becoming entitled to shares in consequence of the death, insolvency, or arrangement with creditors, of any member or the marriage of any female member or by any lawful means other than by transfer in accordance with these Regulations, may, upon producing such evidence as sustains the character in respect of which he proposes to act under this Regulation, or of his title, as the directors think sufficient, transfer those shares to himself or any other person, subject always to the Regulations as to transfer hereinbefore contained.
- This Regulation is hereinafter referred to as the "transmission clause".
28. A person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relations to meetings of the company.

Forfeiture of shares

29. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.
30. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.
31. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

32. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.
33. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently 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 the nominal amount of the shares.
34. When any shares shall have been so forfeited notice of the resolution shall be given to the person in whose name the shares stood prior to the forfeiture, and an entry of the forfeiture with the date thereof shall forthwith be made in the register.
35. An affidavit or solemn declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share, and such declaration, and the receipt of the company for the consideration (if any) given for the share on the sale or disposition thereof shall constitute a good title to share, and the person to whom the share is sold or disposed of shall be registered as the holder of the share and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.
36. The provisions of these Regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time whether, on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

Conversion of shares into stock

37. The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock and may with the like sanction reconvert any stock into paid-up shares of any denomination.
38. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same Regulations as, and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of such minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.
39. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges, and advantages as regard dividends, voting at meetings of the company, and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not if existing in shares, have conferred that privilege or advantage.
40. Such of the Regulations of the company (other than those relating to share warrants) as are applicable to paid-up shares shall apply to stock, and the word "share" and "shareholder" therein shall include "stock" and "stock-holder".

Share warrants

41. The company may issue share warrants, and accordingly the directors or, if so authorised, any foreign committee, may, in their discretion, with respect to any share which is fully paid up, on application in writing signed by the person registered as holder of the share, and authenticated by such evidence (if any) as the directors or foreign committee (as the case may be), may from time to time require as to the identity of the person signing the request, and on receiving the certificate (if any), of the share, and the amount of

the stamp duty (if any) on the warrant and such fee as the directors may from time to time require, issue a warrant, duly stamped, when stamp duty is payable stating that the bearer of the warrant is entitled to the shares therein specified and may provide by coupons or otherwise for the payment of dividends, or other moneys, on the shares included in the warrant.

42. A share warrant shall entitle the bearer to the shares included in it and the shares shall be transferred by the delivery of the share warrant, and the provisions of the Regulations of the company with respect to transfer and transmission of shares shall not apply thereto.
43. The bearer of a share warrant shall, on surrender of a warrant to the company for cancellation, and on payment of such sum as the director may from time to time prescribe, be entitled to have his name entered as a member in the register of members in respect of the shares included in the warrant.
44. The bearer of a share warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited the depositor shall have the same right of signing a requisition for calling a meeting of the company, and of attending and voting and exercising the other privileges of a member at any meeting held after the expiration of two clear days from the time of the deposit, as if his name were inserted in the register of members as the holder of the shares included in the deposited warrant. Not more than one person shall be recognised as depositor of the share warrant. The company shall, on two days' written notice, return the deposited share warrant to the depositor.
45. Subject as herein otherwise specially provided no person shall as bearer of a share warrant, sign a requisition for calling a meeting of the company, or attend, or vote, or exercise any other privilege of a member at a meeting of the company, or be entitled to receive any notice from the company; but the bearer of a share warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the company.
46. The directors may from time to time make rules as to the terms on which (if they shall think fit) a new share warrant or coupon may be issued by way of renewal in case of defacement, loss, or destruction.

Alteration of capital

47. The directors may, with the sanction of an extraordinary resolution of the company, increase the capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.
48. Subject to any direction to the contrary that may be given by the resolution sanctioning the increase of share capital, and subject also to the provisions of section 83 of the Act, all new shares shall before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled.

The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer if not accepted, will be deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

49. The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture and otherwise as the shares in the original capital.
50. The company may, by special resolution—
 - (a) consolidate and divide its share capital into shares of larger amount than its existing shares;
 - (b) by sub-division of its existing shares, or any of them, divide the whole, or any part, of its share capital into shares of smaller amount than is fixed by the memorandum of association, subject, nevertheless, to section 39(1)(a) of the Act;

- (c) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person;
- (d) reduce its share capital in any manner and with, and subject to, any incident authorised, and consent required, by law.

Borrowing powers

51. The directors may in their discretion, from time to time, raise or borrow from the members or other persons any sum or sums of money for the purposes of the company:
- Provided that the moneys so raised or borrowed shall not without the sanction of a special resolution exceed one-half the issued share capital for the time being of the company.
52. The directors may raise or secure the repayment of such moneys in such manner and upon such terms and conditions in all respects as they think fit, and in particular by the execution of mortgage bonds, the issue of debentures, or debenture stock of the company charged upon all or any part of the property and rights of the company, both present and future, including its uncalled capital.
53. If any uncalled capital of the company is included in or charged by any mortgage bond or other security, the directors may delegate to any person a trustee for the person in whose favour the mortgage bond or security is executed, the power to make calls on members in respect of such uncalled capital, and to sue in the name of the company or otherwise for the recovery of the moneys becoming due in respect of calls so made and to give valid receipts for such moneys, and the power so delegated shall subsist during the continuance of the mortgage bond or security, notwithstanding any change in the directors, and shall be assignable if expressed so to be.

General meetings

54. The statutory general meeting of the company shall be held within the period required by section 62 of the Act.
55. A general meeting shall be held once in every year at such time and place as may be prescribed by the company in general meeting, or in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.
56. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.
57. 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 requisitions as provided by and subject to the provisions of section 63 of the Act. If at any time there shall not be within Swaziland 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.

Proceedings at general meetings

58. Subject to the provisions of section 65 of the Act, seven days' notice at least (exclusive of the day on which the notice is served, or deemed to be served but inclusive of the day for which notice is given) specifying the place, the day, and the hour of meeting and, in case of special business, the general nature of such business shall be given in manner hereinafter mentioned, or in such other manner (if any), as may be prescribed by the company in general meeting, to such persons as are, under the Regulations of the

- company, entitled to receive such notices from the company; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.
59. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, the consideration of the accounts, balance-sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.
 60. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, a person or persons entitled under these Regulations to vote and holding not less than one-sixtieth of the issued share capital of the company and personally present at the meeting shall be a quorum.
 61. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place or, if that day be a public holiday, to the next succeeding day other than a public holiday, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.
 62. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.
 63. If there is no such chairman, or if at any meeting he is not present, within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.
 64. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more notice of the adjourned meeting shall be given as in the case of an original meeting. 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.
 65. 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, in case the resolution be proposed as a special or extraordinary resolution by a person or persons entitled under these Regulations to vote and holding not less than one-sixtieth of the share capital represented at the meeting and, unless a poll is so demanded a declaration by the chairman that a resolution has, on a show of hands, been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.
 66. 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. In computing the majority on the poll regard shall be had to the number of votes to which each member is entitled under these Regulations. Scrutineers shall be elected to declare the result of the poll, and their decision, which shall be given by the chairman of the meeting, shall be final.
 67. In the case of an equality of votes, whether on a show of hands, or on a poll, the chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.
 68. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs. The demand for a poll shall not prevent the continuation of the meeting for the transaction of any business other than the question upon which the poll has been demanded.

Votes of members

69. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.
70. 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.
71. The parent or guardian of a minor, and the *curator bonis* of a lunatic member, and also any person entitled under the transmission clause to transfer any shares, may vote at any general meeting in respect thereof in the same manner as if he were the registered holder of those shares provided that forty-eight hours at least before the time of holding the meeting at which he proposes to vote he shall have satisfied the directors that he is such parent, guardian or curator or that he is entitled under the transmission clause to transfer those shares, or that the directors have previously admitted his right to vote in respect of those shares. Several executors of a deceased member in whose name shares stand in the register shall, for the purpose of this Regulation, be deemed joint holders of those shares.
72. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.
73. On a poll votes may be given either personally or by proxy.
74. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his agent duly authorised in writing, or, if the appointer is a corporate body, under the hand of an officer or agent authorised by the body. No person shall act as a proxy unless either he is entitled on his own behalf to be present and vote at the meeting at which he acts as proxy, or he is appointed to act at that meeting as proxy for a corporate body. The holder of a general or special power of attorney given by a shareholder shall be entitled to vote, if duly authorised under that power to attend and take part in the meetings and proceedings of the company, whether or not he be himself a shareholder in the company.
75. 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 such power or authority shall be deposited at the registered office of the company not less than forty-eight hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid. No instrument appointing a proxy shall be valid after the expiration of six months from the date when it was signed, unless so specifically stated in the proxy itself, and no proxy shall be used at an adjourned meeting which could not have been used at the original meeting.
76. An instrument appointing a proxy may be in the following form or in any other form which the directors shall approve:

_____ Company, Limited.

I _____ of _____ being a member of the _____ Company, Limited, hereby appoint _____ of _____ as my proxy to vote for me and on my behalf at the (ordinary 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 _____ 19 _____.

Directors

77. The number of directors and the names of the first directors, shall be determined in writing by a majority of the subscribers of the memorandum of association.
78. The remuneration of the directors shall from time to time be determined by the company in general meeting.

79. If any director be called upon to perform extra services or to make any special exertions in going or residing abroad, or otherwise, for any of the purposes of the company, the company may remunerate that director either by a fixed sum or by a percentage of profits or otherwise as may be determined, and such remuneration may be either in addition to, or in substitution for his or their share in the remuneration determined under the last preceding Regulation.
80. The qualification of a director shall be the holding of at least one share in the company, and it shall be his duty to comply with the provisions of section 71 of the Act.

Alternate directors

81. Each director shall have the power to nominate one of the shareholders possessing the necessary qualifications of a director, to act as alternate director in his place during his absence of inability to act as such director, and provided that the appointment of an alternate director shall be approved of by the board and on such appointment being made, the alternate director shall, in all respects, be subject to the terms, qualifications, and conditions, existing with reference to the other directors of the company.
82. The alternate directors, whilst acting in the place of the directors who appointed them, shall exercise and discharge all the duties and functions of the directors they represent. The appointment of an alternate director shall be cancelled, and the alternate director shall cease to hold office whenever the director who appointed him shall cease to be a director, or shall give notice to the secretary of the company that the alternate director representing him shall have ceased to do so, and in case of the disqualification or resignation of any alternate director during the absence or inability to act of the director whom he represents, the vacancy so arising shall be filled by the chairman of the time being of the directors nominating a duly qualified shareholder to fill the same, subject to approval of the board.

Powers and duties of directors

83. The business of the company shall be managed by the directors who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not by the Act, or any amendment thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any Regulation of these Regulations, to the provisions of the said Laws, and to such Regulations being not inconsistent with the aforesaid Regulations or provisions, as may be prescribed by the company in general meeting; but no Regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such Regulation had not been made.
84. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term, and at such remuneration (whether by way of salary, or commission, or participation in profits, or partly in one way, and partly in another) as they may think fit and a director so appointed shall not, while holding such office, be subject to retirement by rotation, or taken into account in determining the rotation of retirement of directors; but his appointment shall be subject to determination *ipso facto* if he shall cease from any cause to be a director, or if the company in general meeting shall resolve that his tenure of the office of managing director or manager be determined.
85. The directors may from time to time entrust to or confer upon a managing director or manager for the time being such of the powers and authorities vested in them, as they may think fit, and may confer such powers and authorities for such time and be exercised for such objects and purposes and upon such terms and conditions and with such restrictions as they may think expedient; and they may confer such powers and authorities either collaterally or to the exclusion of, and in substitution for, all or any of the powers and authorities of the directors in that behalf and may from time to time revoke or vary all or any of such powers and authorities.
86. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed one-half the issued share capital of the company without the sanction of the company in general meeting.

87. The directors shall duly comply with the provisions of the Act, or any statutory modification thereof for the time being in force, and in particular the provisions in regard to keeping a register of the directors, and in regard to sending to the Registrar of Companies an annual list of members, and a summary of particulars relating thereto, and notice of any consolidation or increase of share capital, or conversion of shares into stock, and copies of special resolutions and a copy of the register of directors and notifications of any charges therein.
88. The directors shall cause minutes to be made in books provided for the purpose—
- (a) of all appointments of officers made by the directors;
 - (b) of the names of the directors present at each meeting of the directors and of any committee of the directors;
 - (c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors;
- and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

Foreign committees

89. The directors may from time to time appoint persons resident in a foreign country to be a foreign committee for the company in that country and may appoint transfer offices of the company in any foreign country and close the same at their direction, and may appoint and remove agents to represent the company in a foreign country for the issue, sub-division, and transmission of shares of the company, subject to the provisions of these Regulations, and for such other purposes as the directors may, subject to these Regulations, determine. The directors may further give to the members of a foreign committee or such agents the power to appoint alternate committee men or substitute agents to act during their absence and remove such alternate committee men and substitute agents and appoint others or themselves again to act for the company, and may grant to such committee men or agents the power to appoint other persons as co-committee-men or joint agents.
90. The directors may act on a foreign committee whenever temporarily in the foreign country in which the committee is appointed, and may take part in the proceedings of such committee and have the same rights and privileges as any member of the committee permanently resident in that foreign country.
91. A foreign committee may—
- (a) appoint a transfer office of the company in the foreign country for which it is appointed and pay the rent and other expenses connected therewith;
 - (b) engage and at their discretion remove or suspend a secretary, clerks, and servants in connection with the business of the company in a foreign country for which it is appointed and determine their duties and pay their salaries as fixed by the directors of the company;
 - (c) execute and sign transfers of shares in the foreign country for which it is appointed and do any act or thing necessary for effecting the transmission of such shares;
 - (d) issue and sign new certificates relating to shares transferred or to be transferred at the transfer office of the country for which the committee is appointed, replace any existing share certificates, sub-divide shares, or replace defaced or worn-out certificates upon production thereof to the committee and if any such certificate or any cheque, dividend warrant, or other document be lost or destroyed, the committee may upon proof to its satisfaction of the loss or destruction and on receiving such indemnity and giving such advertisement as it deems adequate, issue and sign a new certificate, dividend, warrant, cheque, or other document in lieu thereof. A foreign committee may charge fees and expenses in respect of all or any of the acts mentioned in this paragraph which may from time to time be payable under these Regulations and may by its committee or its secretary give valid receipts for such fees. Every certificate relating to shares transferred at the transfer

- office in the country for which the committee is appointed shall be signed by two members of that committee and countersigned by its secretary or like officer;
- (e) issue shares and certificates therefor when thereto authorised by resolution of the board of directors in such manner or form as the directors may from time to time prescribe, subject to the provisions of these Regulations;
 - (f) do in the name of and on behalf of the company all such acts and things not specifically mentioned in these Regulations as may in the judgment of the committee be necessary or convenient for the exercise of any of the committee's powers.
92. Each member of a foreign committee may appoint an alternative committee man to act with full power during his own absence or inability to act, provided the appointment be confirmed by the foreign committee.
93. It shall not be necessary for a member of a foreign committee to be a shareholder of the company.
94. The meetings, proceedings, and acts of a foreign committee shall be governed by the provisions of these Regulations relating to meetings, proceedings, and acts of directors so far as the same are applicable and are not superseded by any express powers vested from time to time in the foreign committee by the creditors.

Disqualifications of directors

95. The office of director shall be vacated—
- if he gives one month's notice in writing to the board of directors of his intention to resign office and his resignation be accepted by them;
 - if he ceases to be a director by virtue of section 71 of the Act; or
 - if he holds any other office of profit under the company except that of managing director or manager; or
 - if he becomes insolvent or assigns his estate for the benefit of or compounds with his creditors; or
 - if he is found lunatic or becomes of unsound mind; or
 - if he is absent from four consecutive meetings of the directors without special leave of absence given by the board provided all such four meetings be not held within a period of thirty days; provided further that the board may not grant such special leave for more than six consecutive months unless the director is to be absent on the business of the company; this sub-clause shall not apply to a director represented by an alternative director; or
 - if he is concerned or participate in the profits of any contract with the company:
- Provided that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is a director if he has fully disclosed to the board of directors his interest in such contract or work; but a director shall not vote in respect of such contract or work, and if he does so vote his vote shall not be counted.

Rotation of directors

96. At the first ordinary meeting of the company the whole of the directors shall retire from office, and at the ordinary meeting in every subsequent year one-third of the directors for the time being, or if their number is not three or a multiple of three, then the number nearest to one-third, shall retire from office.
97. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall, unless they otherwise agree among themselves, be determined by lot.

98. A retiring director shall be eligible for re-election.
99. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto.
100. If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week at the same time and place, and if at such adjourned meeting the places of the vacating directors are not filled up the vacating directors, or such of them as have not had their places filled up, shall be deemed to have been re-elected at such adjourned meeting.
101. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.
102. Unless the shareholders otherwise determine in general meeting any casual vacancy occurring in the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.
103. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.
104. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead; the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of directors

105. The directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.
106. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall (when the number of directors exceeds three) be three.
107. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the Regulations of the company as the necessary quorum of directors the continuing directors 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.
108. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.
109. The directors may delegate any of their powers to committee consisting of such member or members of their body as they think fit; any committee so formed shall, in the exercise of the powers so delegated, conform to any Regulations that may be imposed on them by the directors.
110. A committee may elect a chairman of their meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.
111. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

112. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, of that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends bonus and reserve

113. The company in general meeting may declare dividends.
114. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.
115. No dividend shall be paid otherwise than out of profits.
116. Subject to the rights of persons (if any) entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid up on any of the shares in the company dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purpose of this article as paid on the share.
117. 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 meeting contingencies or for equalising dividends, or for any other purpose to which the profits of the company may be properly applied and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.
118. If several persons are registered as joint holders of any share any one of them may give effectual receipts for any dividend payable on the share.
119. Notice of any dividend that may have been declared shall be given in manner hereinafter mentioned to the persons entitled to share therein.
120. The directors may deduct from the dividends or bonus payable to any member of all such claims or sums of money which may be due from time to time to the company on account of calls or otherwise. No dividend or bonus shall bear interest against the company, and any dividend or bonus remaining unclaimed for a period of five years from this declaration may, provided notice of this declaration has been given by advertisement to the person entitled thereto and sent to his last registered address, be forfeited by resolution of the directors for the benefit of the company.
121. Every dividend or bonus may be paid by cheque, warrant, coupon, or otherwise as the directors may from time to time determine, and shall, if paid otherwise than by coupon, either be sent by post to the last registered address of the member entitled thereto, or be given to him personally, and the receipt or endorsement on the cheque or warrant of the person whose name appears in the register as the shareholder, or his duly authorised agent or the surrender of any coupon shall be a good discharge to the company in respect thereof.
122. The company shall not be responsible for the loss in transmission of any cheque, warrant, coupon, or other document sent through the post to the registered address of any member, whether or not it was sent at his request.

Accounts

123. The directors shall cause true accounts to be kept—
- (a) of the sums of money received and expended by the company and the matter in respect of which such receipt and expenditure takes place; and

- (b) of the assets and liabilities of the company.
124. The books of account shall be kept at the registered office of the company or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.
125. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or Regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.
126. Once at least in every year the directors shall lay before the company, in general meeting, a profit and loss account for the period since the preceding account or (in the case of the first account) since the incorporation of the company, made up to a date not more than six months before such meeting.
127. A balance-sheet shall be made out in every year and laid before the company in general meeting made up to a date not more than six months before such meeting. The balance-sheet shall be accompanied by a report of the directors as to the state of the company's affairs, and the amount which they recommend to be paid by way of dividend, and the amount, if any, which they propose to carry to a reserve fund.
128. A copy of the balance-sheet and report shall, seven days previously to the meeting, be sent to the persons entitled to receive notices of general meetings in the manner in which notices are to be given hereunder.

Audit

129. Auditors shall be appointed and their duties regulated in accordance with sections 99 and 100 of the Act or any amendment thereof.

Notices

130. A notice may be given by the company to any member either by advertisement or personally, or by sending it through the post in a prepaid letter addressed to such member at his registered address within Swaziland. Any notice which may be given by advertisement shall be inserted in the *Gazette* and in such newspapers as the directors may from time to time determine.
131. Whenever a notice is to be given personally or sent by post, the notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register in respect of the share.
132. Whenever a notice is to be given personally or sent by post the notice may be given by the company or the persons entitled to a share in consequence of the death or insolvency of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the insolvent or by any like description at the address (if any) in Swaziland supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or insolvency had not occurred.
133. Notice of every general meeting shall be given in some manner hereinbefore authorised to (a) every member of the company (including bearers of share warrants) except, in the case of notices to be given personally or sent by post, those members who have no registered address within Swaziland, and also to (b) every person entitled to a share in consequence of the death or insolvency of a member who, but for his death or insolvency, would be entitled to receive notice of the meeting. No other persons shall be entitled to receive notices of general meetings.
134. Any notice, if given by post, shall be deemed to have been served at the time when the letter containing the same is put into the Post Office, and any notice given by advertisement shall be deemed to have been given on the day upon which the advertisement was published in the *Gazette*, and, in proving the giving

of the notice sent by post it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the Post Office.

135. A notice given to any member shall be binding on all persons claiming on death, or by any transmission of his interests.
136. The signature to any notice given by the company may be written or printed, or partly written and partly printed.
137. When a given number of day's notice or notice extending over any other period is required to be given, the day of service shall be counted in such number of days or period.

Miscellaneous

138. If the provisions of these Regulations are in any way inconsistent with the provisions of the Act, or any other law, the provisions of that Act or other law shall prevail, and these Regulations shall be read in all respects subject to that Act or that other law.

Fourth Schedule

(The Companies Act)

Statement in lieu of prospectus lodged by _____ Limited pursuant to section 80 of the Companies Act.

Presented for filing by _____ Limited.

Statement in lieu of prospectus

The nominal capital of the company	E
Divided into	Shares of E each.
	Shares of E each.
	Shares of E each.
	Shares of E each.
Names, descriptions and addresses of directors or proposed directors.	
Minimum subscription (if any) fixed by the memorandum or articles of association on which the company may proceed to allotment.	
Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash. The consideration for the intended issue of such shares and debentures.	1. ____ shares of E ____ paid. 2. ____ shares upon which E ____ per share credited as paid. 3. ____ debenture E _____. 4. Consideration.
Names and addresses of [*] vendors of property purchased or acquired, or proposed to be purchased or acquired by the company. Amount (in cash shares or debentures) payable to each separate vendor.	
Amount (if any) paid or payable in cash or shares or (if debentures) for any such property specifying amount (if any) paid or payable for goodwill.	Total purchase price E
	Cash E
	Shares E
	Debentures E

* For definition of vendor see section 79(2) of the Companies Act.

	Goodwill E
	E
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company or	Amount paid Amount payable
Rate of such commission	Rate per cent
Estimated amount of preliminary expenses	E
Amount paid or intended to be paid to any promotor.	Name of promotor Amount E
Consideration for such payment	Consideration
Dates of and parties to every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the filing of this statement).	
Time and place at which such contracts or copies thereof may be inspected.	
Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company or where the interest of such a director consists in being a member of a partnership the nature and extent of the interest of the partnership with a statement of all sums paid or agreed to be paid to him or to the partnership in cash or shares or otherwise by any person either to induce him to become or to qualify him as a director or otherwise for services rendered by him or by the partnership in connection with the promotion or formation of the company.	
Whether the articles contain any provisions precluding holders of shares or debentures receiving and inspecting balance sheets or reports of the auditors or other reports.	Nature of Provisions

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Fifth Schedule

Meetings of creditors and contributories

1. The meetings of creditors and contributories shall be held within twenty-one days, or if a Special manager has been appointed then within one month, after the date of the winding-up order, or within such further time as the Court may approve.
2. The Master shall summon the meeting by giving not less than seven days' notice of the time and place thereof in the *Gazette* and in a paper circulating in Swaziland, and thereupon the liquidator shall send by post to every person appearing by the company's books to be a creditor of the company notice of the meeting of creditors, and to every person appearing from the company's books or otherwise to be a contributory of the company, notice of the meeting of contributories.
3. The liquidator shall also, as soon as practicable, send to each creditor mentioned in the company's statement of affairs, and to each person appearing from the company's books or otherwise to be a contributory of the company, a summary of the company's statement of affairs, including the causes of its failure, and any observations thereon which the liquidator may think fit to make. The proceedings at a meeting shall not be invalidated by reason of any summary or notice required by these rules not having been sent or received before the meeting.
4. The meeting shall be held at such place as in the opinion of the Master is most convenient for the majority of the creditors and contributories.
5. The Master, or some person nominated by him, shall be the chairman at the meetings.
6. A person shall not be entitled to vote as a creditor unless he has duly proved a debt to be due to him from the company, and the proof has been duly lodged with the Master not later than the time mentioned for that purpose in the notice convening the meeting or adjourned meeting.
7. A creditor shall not vote in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.
8. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him, after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.
9. A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the company, and against whom a sequestration order in insolvency has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.
10. The liquidator may, within twenty-eight days after a proof estimating the value of a security as aforesaid has been used in voting at a meeting, require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated, with an addition thereto of twenty per cent:

Provided, that where a creditor has valued his security, he may at any time before being required to give it up, correct the valuation by a new proof, and deduct the new value from his debt, but in that case the said addition of twenty per cent shall not be made if the security is required to be given up.
11. The chairman shall have power to admit or reject a proof, but his decision shall be subject to appeal to the Court. If he is in doubt whether a proof should be admitted or rejected he shall mark it as objected to, and

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See section 79 (3) of the Swaziland Companies Act.

- allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.
12. A creditor or a contributory may vote either in person or by proxy.
 13. Every instrument of proxy shall be in the prescribed form, and be issued by the liquidator, and every written part thereof shall be in the handwriting of the person giving the proxy or of any manager or clerk or other person in his regular employment, or of a justice of the peace.
 14. General and special forms of proxy shall be sent to the creditors and contributories with the notice summoning the meeting, and neither the name nor description of an person shall be printed or inserted in the body of any instrument of proxy before it is so sent.
 15. A creditor or contributory may give a general proxy to his manager or clerk, or any other person in his regular employment. In any such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor or contributory.
 16. A creditor or contributory may give a special proxy to any person to vote at any specified meeting, or adjournment thereof—
 - (a) for or against the appointment or continuance in office of any specified person, as liquidator or member of the committee of inspection; and
 - (b) on all questions relating to any matter other than those above referred to and arising at the meeting or an adjournment thereof.
 17. A proxy intended to be used at the first meeting of creditors or contributories, or an adjournment thereof, shall be lodged with the Master not later than the time mentioned for that purpose in the notice convening the meeting or adjourned meeting, which time shall not be earlier than twelve o'clock at noon of the day but one before nor later than twelve o'clock at noon of the day before the day appointed for that meeting, unless the Court otherwise directs.
 18. Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of a liquidator in obtaining proxies, or in procuring his appointment as liquidator except by the direction of a meeting of creditors or contributories, the Court, if it thinks fit, may order that no remuneration be allowed to the person by whom or on whose behalf the solicitation was exercised, notwithstanding any resolution of the committee of inspection, or of the creditors or contributories to the contrary.
 19. The chairman may, with the consent of the meeting, adjourn it from time to time and from place to place.
 20. A meeting may not act for any purpose except the proving of debts and the adjournment of the meeting, unless there are present or represented thereat, at least three creditors entitled to vote or three contributories, or all of the creditors or contributories if their number does not exceed three.
 21. If within half an hour from the time appointed for the meeting a quorum of creditors or contributories is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other day as the chairman may appoint, not being less than seven or more than twenty-one days.
 22. The chairman shall cause minutes of the proceedings at the meeting to be drawn up, and the minutes shall be signed by him and filed for record in the Master's office.
 23. No person acting either under a general or a special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer, in a position to receive any remuneration out of the estate of the company otherwise than as a creditor rateably with the other creditors of the company. Provided that where any person holds special proxies to vote for an application to the Court in favour of the appointment of himself as liquidator he may use the said proxies and vote accordingly.