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THE REPUBLIC OF THE GAMBIA

BUSINESS ORGANISATIONS LEGISLATION

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BUSINESS REGISTRATION BILL, 1994

A BILL ENTITLED

An Act to provide for the registration of businesses and for other matters connected therewith.

Enacted by the Parliament of The Gambia

Short title and commencement.

1. This Act may be cited as the Business Registration Act, 1994, and shall come into force on such day as the Minister may by Order published in the *Gazette* appoint.

Interpretation.

2. (1) In this Act, unless the context otherwise requires,

"agent" in relation to an absent person includes

(a) the agent, attorney, factor, receiver or manager in The Gambia of such person; and

(b) any person, in The Gambia through whom such person is in receipt of any profits or income arising in or derived from the registrable business;

"business" means any form of trade, commerce, craftsmanship, profession, calling or other activity carried on for the purpose of gain;

"Business Gazette" means the gazette published by the Registrar under this Act;

"certificate" means a business registration certificate, and includes an original certificate or a renewal of that original certificate;

"Commissioner" means the Commissioner of Income Tax;

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"court" means the Supreme Court;

"exempted business" means a business of a class or nature which has been exempted from registration under the Act by the Act itself or by the Minister by Order published in the *Business Gazette*;

"incapacitated person" means any minor, lunatic, idiot or person of unsound mind;

"Minister" means the Minister responsible for the administration of this Act;

"original certificate" means the business certificate granted to the proprietor of a business upon registration of that business;

"previous Act" means the Business Registration Act in force before the commencement of this Act;

"proprietor" means a person who manages or owns a business;

"register" means the register of businesses;

"Registrar" means the person appointed to register businesses and shall include any other person authorised by him to act as Registrar under this Act;

"renewal certificate" means the business certificate granted to the proprietor upon the annual renewal of the original certificate granted for carrying on the same business;

"tax identification number" means the number given by the Commissioner as the identification number for every resident of The Gambia to use in his communications with the Commissioner or with any other revenue collection authority in The Gambia;

"trustee" includes a guardian, curator, manager or other person having the direction, control or management of any property on behalf of any person but does not include an executor.

(2) For the purpose of this Act a "person carrying on business" means,

- (a) in the case of a single person or corporate body, that person or corporate body;
- (b) in the case of a business carried on by a partnership, each and all of the partners; and
- (c) in the case of a business carried on by any other body of persons, the principal officers of that body.

(3) Any act or thing required by or under this Act to be done by any person carrying on a business shall, if such person is an incapacitated person or is absent from The Gambia, be deemed to be required to be done by the trustee of such incapacitated person or by the agent of such absent person, as the case may be.

(4) For the purpose of subsection (2), a person shall be deemed to be absent from The Gambia where upon the Registrar having posted a registered letter to that person's place of business requiring him to attend upon the Registrar, he fails to attend during ordinary office hours at the place specified therein within seven days of the posting of such letter.

(5) Where the person carrying on business who is required under this Act to do any act or thing is a company, the secretary, manager, or any director of the company shall be answerable for the doing of that act or thing.

Obligation to register.

3. (1) Any person carrying on any business in The Gambia which is not an exempted business without a certificate granted by the Registrar commits an offence.

(2) Where the Registrar serves notice on a person to the effect that he is deemed to be a person carrying on business, he shall be deemed to be carrying on such business unless within one month from the day of service of the notice he proves to the satisfaction of the Registrar that he is not carrying on such a business.

(3) Where the person fails to satisfy the Registrar within the period of one month, that person may appeal to the Minister within a further period of fourteen days immediately following.

(4) The Minister may from time to time by Order published in the *Business Gazette* declare that a particular type or class of business is an

exempted business, and upon that declaration the provisions of this Act shall not apply to that business.

(5) Notwithstanding the provisions of this Act, an existing business which is being carried on under a valid certificate of registration issued under the previous Act shall be deemed to be carried on under a certificate issued under this Act valid until the 31st day of December of the year of commencement of this Act.

Application for registration.

4. (1) A person carrying on a business or commencing to carry on business shall, unless the business is an exempted business, make application to the Registrar in the prescribed form for the registration of that business.

(2) Such application shall, in the case of an existing business, be made within one month of the coming into force of this Act, or in the case of a new business at any date prior to the commencement of the business.

(3) The Registrar may extend the period in which existing businesses may register.

(4) Notwithstanding the provisions of this section, only one application for the registration of the business is required to be made in respect of any one business.

(5) An application shall be made in the prescribed form signed by the proprietor, containing the following particulars:

(a) the name of the business;

(b) a description of the general nature of the business;

(c) the principal place where the business is carried on;

(d) the capital employed in the business;

(e) where the application is made on behalf of an incorporated company, the name of the company and address of its registered office or its principal place of business;

(f) where the registration effected is made on behalf of a partnership, the full names and any former names, the

nationality, residential addresses and other business occupation, if any, of each of the partners;

- (g) where the registration effected is that of an individual proprietor, the present full name, any former name, the nationality, the usual address, and any other business occupation of the proprietor;
- (h) if the business is an existing business, the fact that it is an existing business and if the business commenced after the commencement of this Act, the date of its commencement;
- (i) the tax identification number of the company, each partner in a partnership or the individual proprietor.

(6) The application shall be accompanied by a statement in writing issued by the Commissioner certifying that the company, each partner in a partnership or the sole proprietor has either paid or made satisfactory arrangements for payment of any tax, penalty or fine which has become due under the Income Tax Act.

Cap. 81.

Registration and
issue of
certificate.

5. (1) Upon application being made under section 4, the Registrar may register the business in the register in accordance with this section.

(2) The Registrar shall within 30 days register the business and issue a certificate in the prescribed form, if satisfied

- (a) that the name under which the business is to be conducted is not forbidden by law and that, if the business is being carried on under a name other than the name of the proprietor, the name is not similar to the name of an existing business or likely to mislead members of the public;
- (b) that the particulars contained in the application are correct and sufficient to enable him to maintain the register in accordance with section 16;
- (c) that the provisions of section 4 and subsection (5) of this section have been fully complied with;
- (d) that the business is not an exempted business under the provisions of this Act;
- (e) that the prescribed fee for registration has been paid; and

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(f) such other conditions that may be prescribed have been complied with.

(3) For the purpose of satisfying himself in the manner required under subsection (2), the Registrar may orally or in writing call upon any proprietor, partner, shareholder or former partner or shareholder to supply him with such information as he considers necessary and the person so called upon shall promptly comply with any such request.

(4) Subject to subsection 5, upon payment of the prescribed fee, the Registrar shall issue a certificate in respect of each business registered, valid until the 31st day of December of the year of issue.

(5) Where one fee is payable in respect of several businesses, the Registrar shall issue one certificate in respect of all the businesses.

(6) If not satisfied in the manner required under subsection (2), the Registrar shall refuse registration.

(7) The issue of a certificate in respect of any business shall not be deemed to imply that the requirement of any other law in relation to the business or to the persons carrying on the business or employed therein has been complied with.

Display of
certificate.

6. (1) The certificate granted under section 5 or a certified copy thereof shall be prominently exhibited in a conspicuous position at the principal place in which the business is carried on.

(2) A proprietor who fails to display his certificate commits an offence and is liable to the penalty under section 14.

(3) A proprietor of a business required to be registered under this Act shall permit the Registrar or any person authorised in writing for the purpose by him to enter and inspect all premises and places where the business is carried on or controlled or where the certificate is displayed and to carry out such investigations as may be considered necessary for the carrying into effect of the provisions of this Act.

Payment of fees.

7. The Registrar shall have power to call upon a person carrying on a business who is not in possession of a valid certificate in respect of such business, to pay the prescribed fee, but the exercise of the power conferred upon the Registrar shall not exempt the person so called upon from any penalty arising from his failure to procure a certificate.

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Change of
particulars to be
furnished.

8. (1) Where there occurs a change in the particulars of a business as set out in the form of application for registration, a person carrying on that business shall within fourteen days of the change notify the Registrar and the Commissioner in writing, thereof.

(2) Where a business ceases to be carried on, a person who was carrying on that business shall within fourteen days of the cessation, notify the Registrar and the Commissioner in writing thereof.

(3) Where a business ceases and is thereafter recommenced a person carrying on that business shall within fourteen days of the commencement notify the Registrar and the Commissioner in writing thereof.

Annual renewal of
certificate.

9. (1) A certificate issued under section 5 shall be valid until the 31st day of December of the year of issue and shall, if the business continues, to be renewed for each succeeding year ending on the 31st day of December.

(2) For the purpose of obtaining a renewal certificate, the proprietor shall present to the Registrar

(a) an application in the prescribed form;

(b) payment of the prescribed fee; and

(c) in the case of a business which has been in existence for more than twelve months, a declaration by the Commissioner that the proprietor has submitted to him the accounts for the business in the prescribed form and detail for the immediately preceding year.

(3) For purposes of section 2 (c) the Commissioner may extend the period within which the accounts shall be submitted, in which case, a provisional certificate will be granted pending the presentation of the accounts.

(4) The provisions of section (4) shall apply to an application for renewal under this section as if such application were an application for registration of a business under that section.

Renewal of
certificate.

10. (1) Upon receiving an application for the renewal of a certificate pursuant to section 9, the Registrar shall, if satisfied in the manner required under subsection (2) of section 5, issue a renewal certificate in

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the prescribed form which shall be valid for the period specified therein, but not beyond the 31st of December of that year, and he shall record the renewal in the register.

(2) The provisions of section 6 shall apply to a renewal certificate as if the references in that section to a certificate were references to a renewal certificate issued hereunder.

Power of Registrar to retain money paid.

11. Where the Registrar refuses to register any business or to renew a certificate,

(a) he shall give reasons in writing for the refusal, and

(b) he may retain the fees paid, or any proportion thereof as he may consider reasonable, in respect of an application for such registration or renewal for work already performed by him in respect of the application or renewal.

Power of Registrar to cancel registration.

12. (1) The Registrar may cancel a registration or certificate issued under this Act and strike the name of a business off the register, if satisfied that the information supplied under section 4(4) is false, or that the business is not being carried on in accordance with the particulars provided in support of the application to satisfy the Registrar under section 5(2)(a) or (f) or in accordance with any terms or conditions stated in the certificate.

(2) Without prejudice to the provisions of subsection (1), where a proprietor of a business has not obtained a renewal certificate by the 1st of July of a year, the registration of that business shall be deemed to have been cancelled automatically and the Registrar shall strike it off the register.

(3) Where the Registrar cancels a registration, certificate or renewal certificate after the date of registration, the monies paid as fees under section 5 or section 9 shall not be refundable to the proprietor.

(4) Where the registration certificate or renewal certificate has been cancelled, the proprietor shall cease to carry on the business on the expiry of the prescribed period for filing an appeal to the court under section 20 and, where an appeal has been filed within the prescribed period, on the expiry of fifteen days from the date of the decision of the court confirming the order cancelling registration or renewal of registration.

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Penalties

13. (1) Where a fee prescribed under section 7 has not been paid within the time given for its payment, a person liable therefor shall further be liable to ten *per centum* of the fee due to be recovered therewith.

(2) If the prescribed fee together with any sum ordered to be paid under subsection (1) is not paid within the next following month, fifteen *per centum* of the sum due shall be paid in addition to the fee at that time and at the end of each succeeding month.

(3) The Registrar may

(a) extend the time specified for the payment of a fee; or

(b) remit any sums paid in addition to a fee under subsection (1) or subsection (2).

(4) Where a proprietor of a business, without reasonable excuse, fails to

(a) make an application under section 4 or to make it within the prescribed period,

(b) comply with the provisions of section 6,

(c) furnish the particulars referred to in section 8, or

(d) furnish the application required under subsection (2) of section 9

shall be liable to a fine not exceeding ten thousand dalasis..

Offences.

14. (1) A person who,

(a) carries on a business which is not an exempted business without a certificate in contravention of section 3 or 9;

(b) carries on a business which is not an exempted business after the cancellation of the registration or renewal thereof in contravention of section 12;

(c) furnishes false information in any application or statement filed or in any information furnished or in any records produced, or

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(d) contravenes a provision of this Act in respect of which no penalty has been fixed under section 13,

commits an offence and is liable on conviction to a fine not exceeding ten thousand dalasis or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

Exemption from fee, if fee paid under any other Act.

15. (1) Notwithstanding the provisions of this Act, the prescribed fee for registration or renewal of registration shall not be required to be paid by a business or person carrying on business which is required to be registered by any other enactment, if that enactment makes provision for the payment of a registration or a renewal fee.

Cap. 92:01.

(2) The payment of a licence fee under the Licences Act does not amount to a registration or renewal fee under this Act.

Maintenance of register.

16. (1) The Registrar shall maintain a register into which shall be entered all the particulars supplied in the application for a registration or a renewal as specified in subsection (4) of section 4 and subsection (2) of section 9.

(2) Where a business is carried on under two or more business names that fact shall be stated in the register.

(3) A change in the particulars specified in subsection (2) which is reported to the Registrar shall be recorded in the register.

(4) A person may inspect the register during working hours and may, upon the payment of the prescribed fee, take extracts from it.

The Business Gazette.

17. (1) The Registrar shall cause to be published on a regular basis in the *Business Gazette* notices of the particulars, specified in subsection (4) of section 4, subsection (2) of section 9 and section 16, of every business registered under this Act or of the particulars supplied by a business upon registration under any other enactment.

(2) A notification of a change in the particulars of a business in conformity with section 8 or in accordance with the appropriate section of any other enactment shall also be published in the *Business Gazette*.

Inspection.

18. (1) The Registrar may authorise a person in writing to be an Inspector for the purposes of this Act.

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Cap. 81.

(2) Without prejudice to subsection (1), a person authorised by the Commissioner under subsection (2) of section 3 of the Income Tax Act to perform or assist in the performance of any specific duty under that Act may also exercise the functions of an Inspector under this Act.

(3) An Inspector authorised under subsection (1) or (2) shall, for the purpose of ascertaining whether the provisions of this act are being complied with, have power at all reasonable times to enter any premises at which he has reason to believe a business is being carried on and to make such examination and inquiry as may be necessary for such purpose.

Appeals to the court.

19. (1) Where the Minister rejects an appeal made to him under section 3(3) or where the Registrar refuses to register a business or issue a certificate under section 5 or cancels a registration, renewal of registration or certificate under section 12, a proprietor affected by the refusal or cancellation may appeal to the court; provided further that no appeal shall lie from the refusal by the Registrar on the ground that the name of the business is likely to mislead members of the public.

(2) An appeal under subsection 1 shall be filed within thirty days of the date of refusal or cancellation.

(3) A person who files an appeal under this section shall give the Registrar at least 28 days notice prior to the hearing and the Registrar may appear at the hearing and give evidence and call witnesses and draw the attention of the court to any relevant matters.

(4) Where the court allows an appeal under this section the business in respect of which the appeal was made shall, subject to compliance with any order of the court, be registered or restored to the register, as the case may be, and if its registration or certification was cancelled the registration or certificate shall be deemed never to have been cancelled and the Registrar shall publish a notice to that effect in the *Business Gazette*.

Applications by Registrar to the court.

20. The Registrar may apply to the court for directions in relation to any matter arising in connection with his functions under this Act, and on any such application the court may give such directions or make such orders as the court thinks fit.

Regulations.

21. The Minister may make regulations providing for

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- (a) the manner in which application for registration of a business shall be made;
 - (b) any information additional to that specified under this Act to be furnished to the Registrar;
 - (c) the form of and particulars additional to the particulars specified in section 16 to be entered in the register;
 - (d) the forms of the certificate;
 - (e) the issue of duplicate certificates;
 - (f) fees payable upon registration of a business and for the issue of a certificate and for certification and issue of a certificate;
 - (g) generally for the carrying into effect of the provisions of this Act.

Repeal.

22. (1) The Business Registration Act 1973 [Cap/ 95:02] is hereby repealed.

Cap. 95:02.

(2) Notwithstanding subsection (1) the Regulations made under the Business Registration Act shall continue in force as if they were made under this Act.

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NOTES ON THE DRAFT BUSINESS REGISTRATION ACT

Section 3 - Obligation to register

This section imposes the obligation to register on persons carrying on business. The main thrust of the previous Act has been reversed: instead of the Minister declaring from time to time which businesses are registrable, all businesses are now made registrable unless exempted by the Minister by Order published in the Gazette. As with section 16 of the previous Act, this section of the new Act does not apply to any business exempted from its provisions by the Minister.

Sections 4 and 5 - Application for registration/ Registration and issue of certificate

These sections provide the mechanics for registering a business and obtaining a business registration certificate. The power of the Minister to order a rejection of an application has been taken away on the ground that all businesses should be treated on a uniform basis. The power to reject an application is vested in the Registrar. Among the particulars to be supplied in an application for registration is the tax identification number (TIN), which is a number identifying every resident when dealing with the revenue collecting authorities.

The initial certificate issued will not be for a period of twelve calendar months as was the case under the previous Act, but will be valid, whatever the date of original registration, until 31 December of the year of registration. This is to simplify renewals without the need to search through records.

Section 6 - Display of certificate

The section requires that business registration certificates should be displayed in a conspicuous place in the principal place of business. It is in substance the same as section 6(4) and (5) of the previous Act.

Section 7 - Payment of fees

This section is in substance section 7 of the previous Act.

Section 8 - Change of particulars to be notified

This section is the same as section 8 of the previous Act.

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Section 9 - Annual renewal of certificate

The point is made in the marginal note that the renewal is of the registration certificate, not of the registration itself. The section is otherwise the same as section 9 of the previous Act, with an elaboration of the particulars to be supplied, which under this Act includes a declaration of the Commissioner of Income Tax that the accounts of the business have been supplied or that an extension of time has been granted for their submission.

Section 10 - Renewal of certificate

Under this section the renewed certificate is not valid beyond 31 December of the year of renewal. The reason for this change to a twelve month period, dating from 1 January, is given in the note on sections 4 and 5 above.

Section 11 - Power of registrar to retain money paid

This section is reproduced from section 11 of the previous Act.

Section 12 - Power of Registrar to cancel registration

This is in substance section 12 of the previous Act. A new subsection (2) has been added by which a registration is deemed cancelled if a renewal certificate for any given year has not been obtained by 1 July, and power is given to the Registrar thereupon to strike the business off the register. Appeals to the Minister have been changed to appeals to the court.

Section 13 - Penalties

This section is a substantial amendment of section 13 of the previous Act. The section prescribes penalties for the non-payment of prescribed fees within the specified time. The section further empowers the Registrar to extend the time for the payment of fees and to remit monies paid in addition to the prescribed fees.

Section 14 - Offences

The section is substantially section 14 of the previous Act. As the penalties imposed are maximum penalties, a court dealing with the matter will exercise its discretion, depending on factors appearing relevant in the case, as to what level of punishment should be awarded for any particular offence.

Section 15 - Exemption from fee, if paid under any other Act

The section is the same as section 15 of the previous Act.

Section 16 - Maintenance of register

This section obliges the Registrar to maintain a register in which he would record the same particulars as are required to be submitted with the original application for registration under section 4(4) and for a certificate renewal application under section 9(2), as well as changes in the particulars.

Section 17 - The Business Gazette

The section introduces the Business Gazette, into which would be inserted all important particulars about registered entities and such changes in those particulars as are relevant or of interest to an informed business community.

Section 18 - Inspection

This section is based on section 18 of the previous Act. Subsection (2) makes tax inspectors also Inspectors under this Act, which would enable them to check business registrations and certificates at the same time as they collect the fees, thus improving the enforcement machinery at minimal cost.

Section 19 - Appeals to the court

The provision for appeals from the decisions of the Registrar going to the Minister has been replaced by appeals to the Supreme Court. This section makes provision for that and requires a person who files an appeal to give the Registrar at least 28 days' notice prior to the hearing. The Registrar may appear at the hearing and give evidence, call witnesses and draw the attention of the court to any relevant matters.

Section 20 - Application by the Registrar to the court

This section gives the Registrar the right to ask the Court for directions as to how to proceed with his functions when in doubt. This should improve performance.

Section 21 - Regulations

This section is substantially section 17 of the previous Act.

Section 22 - Repeal

This section repeals the previous Act while preserving the Regulations made thereunder until new regulations are made under this Act.

COMPANIES BILL, 1994

COMPANIES BILL, 1994

CLAUSE: ARRANGEMENT OF CLAUSES

1. Short title and commencement.
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PART I

FORMATION AND OPERATION OF COMPANIES

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COMPANIES BILL, 1994

A BILL ENTITLED

An Act to revise and amend the law relating to companies and to provide for matters connected therewith.

Enacted by the Parliament of The Gambia

Short title and commencement.

1. (1) This Act may be cited as the Companies Act, 1994.
- (2) This Act shall come into operation on such date as the Minister may, by Order published in the *Gazette*, determine.

Interpretation.

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

"affairs" means, in relation to a company or other body corporate, the relationship among the company or body corporate, its affiliates and the shareholders, directors and officers thereof, but does not include a business carried on by the company or other body corporate;

"affiliate" means an affiliated company or affiliated body corporate within the meaning of section 3(1);

"associate" when used to indicate a relationship with a person means

(a) a company or body corporate of which that person beneficially owns or controls, directly or indirectly, shares or debentures convertible into shares, that carry more than twenty percent of the voting rights

(i) under all circumstances;

(ii) by reason of the occurrence of an event that has occurred and is continuing, or

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- (iii) by reason of a currently exercisable option or right to purchase those shares or those convertible debentures;
- (b) a partner of that person acting on behalf of the partnership;
- (c) a trust or estate in which that person has a substantial beneficial interest or in respect of which he serves as a trustee or in a similar capacity;
- (d) a relative of that person if that relative has the same residence as that person;

"auditor" includes a partnership of auditors;

"beneficial interest" or "beneficial ownership" includes ownership through a trustee, legal representative, agent or other intermediary;

"body corporate" includes a company or body corporate wherever or however incorporated, other than a corporation sole;

"company" means a body corporate that is incorporated or continued under this Act;

"court" means the Supreme Court;

"corporate instruments" includes a statute, letters patent, memorandum of association, articles of association, certificate of incorporation, certificate of continuance or other instrument by which a body corporate is incorporated or continued or that governs or regulates the affairs of a body corporate;

"debenture" includes debenture stock and a bond or other instrument evidencing an obligation or guarantee, whether secured or not;

"director" in relation to a body corporate, means a person occupying therein the position of a director by whatever title he is called;

"external company" means a firm or other body of persons, whether incorporated or unincorporated, that is formed under the laws of a country other than The Gambia;

Cap. 95:01

"former Act" means the Companies Act;

Cap. 95:01

"former Act company" means a company incorporated or registered under the Companies Act;

"incorporator" means, in relation to a company, a person who signs the articles of incorporation of the company;

"legal representative" in relation to a company, shareholder, debenture holder or other person, means a person who stands in place of and represents the company, shareholder, debenture holder or other person, and includes a trustee, executor, administrator, assignee, or receiver of the company, shareholder, debenture holder or other person;

"Minister" means the Minister responsible for the administration of this Act;

"non-profit company" means a company without a share capital, limited by guarantee which may not lawfully be incorporated with the object of carrying on business for the purpose of making profits;

"officer" in relation to a body corporate means

(a) the chairman, deputy chairman, president or vice-president of the board of directors;

(b) the managing director, general manager, comptroller, secretary or treasurer; or

(c) any other person who performs for the body corporate functions similar to those normally performed by the holder of an office specified in paragraph (a) or (b) and who is appointed by the board of directors to perform such functions;

"Official Receiver" means the Official Receiver attached to the court for bankruptcy purposes;

"ordinary resolution" means a resolution passed by a majority of the votes cast by the shareholders who voted in respect of that resolution;

"public company" means a company whose issued shares or debentures are or were part of a distribution to the public within the meaning of section 3(1);

"record" includes a register, book or other record that is required to be kept by a company or other body corporate;

"redeemable share" means a share issued by a company

(a) which the company can purchase or redeem upon demand of the company, or

(b) which the company is required by its articles of incorporation to purchase or redeem at a specified time or upon the demand of a shareholder;

"Registrar" means the Registrar of Companies;

"security interest" means an interest in or charge upon property of a company, by way of mortgage, bond, lien, pledge or other means, that is created or taken to secure the payment of an obligation of the company;

"share" includes stock;

"shareholder" in relation to a company, includes

(a) a member of a company described in Chapter IV of Part V;

(b) the personal representative of a deceased shareholder;

(c) the Official Trustee under the Insolvency Act 1992;

(d) a person in whose favour a transfer of shares has been executed but whose name has not been entered in the register of members, or, if two or more transfers of those shares have been executed, the person in whose favour the most recent transfer has been made;

"special resolution" means a resolution of which at least twenty-one days' notice is given which is

(a) passed by a majority of not less than seventy-five per cent of the votes cast by the shareholders who voted in respect of the resolution; or

(b) signed by all the shareholders entitled to vote on the resolution; and

"stock exchange" means a market where shares or bonds are traded.

Corporate
relationships.

3. (1) For the purposes of this Act,

(a) one body corporate is affiliated with another body corporate if one of them is the subsidiary of the other, or both are subsidiaries of the same body corporate, or each of them is controlled by the same person;

(b) if two bodies corporate are affiliated with the same body corporate at the same time, they are affiliated with each other;

(c) a body corporate is controlled by a person if any shares of the body corporate carrying voting rights sufficient to elect a majority of the directors of the body corporate are, except by way of security only, held, directly or indirectly, by or on behalf of that person;

(d) a body corporate is the holding body corporate of another if that other body corporate is its subsidiary;

(e) a body corporate is a subsidiary of another body corporate if it is controlled by that other body corporate;

(f) a share or debenture of a body corporate is part of a distribution to the public, when, in respect of the share or debenture,

(i) there has been, under the laws of The Gambia or any other jurisdiction, a filing of a prospectus, statement in lieu of prospectus, registration statement, stock exchange take-over bid circular or similar instrument; or

(ii) the share or debenture is listed for trading on a stock exchange;

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- (g) a share or debenture of a body corporate is deemed to be part of a distribution to the public where the share or debenture has been issued and a filing referred to in subparagraph (i) of paragraph (f) would be required if the share or debenture were being issued currently;
- (h) the share or debentures of a company that are issued upon a conversion of other shares or debentures of a company, or in exchange for other shares or debentures, are part of a distribution to the public if any of those others were part of a distribution to the public;
- (i) a statement is included in a prospectus or in a statement in lieu of a prospectus if it is included in a report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith;
- (j) a statement included in a prospectus or a statement in lieu of a prospectus is deemed to be untrue if it is misleading in the form and context in which it is included;
- (k) a reference to an offer or offering of shares or debentures for subscription or purchase is deemed to include an offer of shares or debentures by way of barter or otherwise;
- (l) a reference to holders of shares is a reference to persons who are shareholders in respect of the shares and a reference to holding shares shall be construed accordingly; and
- (m) shares shall be considered as having been issued if a person is a shareholder in respect of them.
- (2) A reference in this Act to offering shares or debentures to the public includes, unless the contrary intention appears, a reference to offering them to a section of the public, whether selected as clients of the person issuing the prospectus or in any other manner, and references in this Act or in the articles of incorporation of a company to invitations to the public to subscribe for shares or debentures shall, unless the contrary intention appears, be similarly construed.
- (3) Subsection (2) does not require that an offer or invitation be treated as being made to the public if the offer or invitation can properly be regarded, in all the circumstances, as not being calculated to result,

directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or otherwise as being a domestic concern of the persons making and receiving the offer or invitation.

(4) A provision in the articles of incorporation or by-laws of a company that prohibits invitations to the public to subscribe for shares or debentures does not prohibit the making of an invitation to the shareholders, debenture holders or employees of the company.

Prohibition.

4. No association, partnership, society or other group consisting of more than twenty persons shall be formed for the purpose of carrying on a trade or business for gain unless it is incorporated under this Act or formed under some other enactment.

PART I

FORMATION AND OPERATION OF COMPANIES

CHAPTER I

FORMALITIES OF INCORPORATION

(i) Incorporation of Companies

Incorporation.

5. (1) Subject to subsection (3),
- (a) one or more persons may incorporate a company by signing and sending articles of incorporation to the Registrar;
 - (b) a company incorporated under this Act shall,
 - (i) in the case of a private company, comprise at least one person; and
 - (ii) in the case of a public company, comprise at least seven persons.

(2) Where the number of persons of a company is reduced below the minimum specified under subsection (1) and the company 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 period it so carries on

business after the six months is liable for the payment of the debts of the company contracted during that period.

(3) The name of every incorporator shall be entered in the company's register of members upon the company's registration.

(4) No person shall form or join in the formation of a company if;

(a) he is less than twenty-one years of age;

(b) he is of unsound mind and has been so found by a court in The Gambia or elsewhere; or

(c) he is an insolvent or an undischarged bankrupt.

(5) If articles of incorporation submitted to the Registrar are accompanied with a statutory declaration by a legal practitioner that to the best of his knowledge and belief no signatory to the articles of incorporation is a person described in subsection (4), the declaration is, for the purposes of this Act, conclusive of the facts therein declared.

Formalities
and regulations
of existing
companies.

6. (1) The articles of incorporation of a company shall be in the form prescribed in Schedule I and shall set out,

(a) the proposed name of the company;

(b) the nature of the business or businesses which the company is authorised to carry on, or if the company is not formed for the purpose of carrying on a business, the nature of the object or objects for which it is established;

(c) that the company has, for the furtherance of its authorised businesses or objects, all the powers of a natural person of full capacity except in so far as such powers are expressly excluded by the articles of incorporation;

(d) the names of the first directors of the company;

(e) notice of the address of the registered office of the company;

(f) the classes and any maximum number of shares that the company is authorised to issue and,

(i) if there will be two or more classes of shares, the rights, privileges, restrictions and conditions attaching to each class of shares; and

(ii) if a class of shares can be issued in series, the authority given to the directors to fix the number of shares in, or to determine the designation of, and the rights, privileges, restrictions and conditions attaching to, the shares of each series;

(g) if the right to transfer shares of the company is to be restricted, a statement that the right to transfer shares is restricted and the nature of those restrictions;

(h) the number of directors, or subject to paragraph (a) of section 73 the minimum and maximum number of directors;

(i) any restrictions on the business that the company may carry on; and

(j) any provision, permitted by this Act or other enactment, to be set out in the by-laws of the company.

(2) A director named in the articles of incorporation under paragraph (d) of subsection (1) holds office as a director of the company from the date of issue of the certificate of incorporation of the company until the first meeting of the shareholders of the company.

(3) Where the right to transfer a share is restricted, a notification to that effect shall be given on each share certificate issued in respect of that share.

(4) An existing company may by special resolution adopt articles of incorporation in the form required by this Act in lieu of its memorandum and articles of association.

(5) A reference in this Act to the articles of incorporation of a company shall, in the case of an existing company which has not adopted articles of incorporation in lieu of its memorandum and articles of incorporation, be deemed to be a reference to its memorandum and articles of incorporation.

Types of
company.

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7. (1) An incorporated company may be
- (a) a company having the liability of its members limited to the amount, if any, unpaid on the shares respectively held by them;
 - (b) a company having the liability of its members limited to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up; or
 - (c) a company not having a limit on the liability of its members.
- (2) A company under subsection (1) may either be a private company or a public company.
- (3) A private company shall be a company which by its articles of incorporation
- (a) restricts the right to transfer its shares, if any;
 - (b) limits the total number of its members and debentureholders to fifty, not including persons who are *bona fide* in the employment of the company and persons who, having been formerly *bona fide* in the employment of the company, were while in that employment, and have continued after the determination of that employment to be, members or debentureholders of the company;
 - (c) prohibits the company from making any invitation to the public to acquire shares or debentures of the company; and
 - (d) prohibits the company from making any invitation to the public to deposit money for fixed periods or payable to call, whether bearing or not bearing interest.
- (4) Where two or more persons hold one or more shares or debentures jointly, they shall, for the purposes of this subsection, be treated as a single member or debentureholder.
- (5) Any other company not falling under subsection (3) shall be a public company.
- (6) A company limited by shares and an unlimited company shall be registered with shares.

(7) A company limited by guarantee shall not be registered with shares and shall not create or issue shares.

Conversion of
company

8. (1) A company limited by shares may be converted into a company limited by guarantee if,

- (a) there is no unpaid liability on any of its shares;
- (b) all its members agree in writing to the conversion and to the voluntary surrender to the company for cancellation of all the shares held by them immediately prior to the conversion;
- (c) new articles of incorporation appropriate to a company limited by guarantee, are adopted by the company in accordance with this Act; and
- (d) a member or members agree in writing to contribute to the assets of the company, in the event of its being wound up.

(2) Upon delivery to the Registrar for registration of,

- (a) a copy of the new articles of incorporation and of the special resolution adopting these articles, and
- (b) a statutory declaration by a director and the secretary of the company confirming that the conditions under subsection (1) have been complied with,

the Registrar shall issue a new certificate of incorporation altered to meet the circumstances of the case.

(3) Where the Registrar issues a new certificate of incorporation under subsection (2), a company limited by shares shall be converted to a company limited by guarantee and the shares held by it shall be surrendered and cancelled notwithstanding anything contained in this Act.

(4) A member of the company who has not agreed to contribute to the assets of the company in the event of its being wound up shall cease to be a member thereof.

(5) The company may not change the name under which it was registered prior to the conversion, but the omission of the word "limited"

as the last word of the name of the company after conversion shall not be regarded as a change of name.

(6) Where the Registrar is of the opinion that the name under which the company is registered will be misleading or undesirable on its conversion to a company limited by guarantee he shall, in accordance with the provisions of this Act, direct the company to change its name and shall not issue a new certificate of incorporation until the direction has been complied with or cancelled in accordance with the provisions of that subsection.

(7) Until a new certificate of incorporation is issued the former articles of incorporation shall continue to apply and neither the surrender of the shares of the company nor the agreement to contribute to the assets of the company in the event of its being wound up shall take effect.

(8) The conversion of a company pursuant to the provisions of this section shall not affect any rights or obligations of the company except as mentioned in this section or render defective any legal proceedings by or against the company.

Subscribing of
articles of
incorporation.

9. (1) The articles of incorporation of a company registered under this Act shall be signed by the number of subscribers therein stated in the presence of, and shall be attested by, one witness at the least.

(2) In the case of articles of incorporation of a company with shares the subscriber, or each subscriber if more than one, shall write opposite to his name the number of shares he takes and the cash price payable therefor, and must take at least one share.

Effect of articles
of incorporation.

10. (1) Subject to the provisions of this Act, the articles of incorporation, when registered, shall have the effect of a contract under seal between the company and its members and officers and between the members and officers themselves whereby they agree to observe and perform the provisions of the articles of incorporation as altered from time to time, in so far as they relate to the company, members, or officers as such.

(2) Where the articles of incorporation empower a person to appoint or remove any director or other officer of the company that power shall be enforceable by that person notwithstanding that he is not a member or officer of the company.

(3) In an action by a member or officer to enforce an obligation owed under the articles of incorporation to him and any other member or officer, such member or officer shall, if any other member or officer is affected by the alleged breach of the obligation, sue in a representative capacity on behalf of himself and all other members or officers who may be affected other than those who are defendants.

Certificate of incorporation.

11. (1) Upon receipt of articles of incorporation, the Registrar shall issue a certificate of incorporation in accordance with section 392.

(2) The certificate is conclusive proof of the incorporation of the company.

(3) A company comes into existence on the date shown in its certificate of incorporation.

(ii) Corporate Name

Corporate name.

12. (1) The word or words "public limited company", "limited", "corporation", "incorporated", "limited by guarantee" or the abbreviation "plc", "ltd", "corp.", "inc." or "ltd./gte" shall be part of the name of a company and a company may use and be legally designated by either the full or the abbreviated form.

(2) The Registrar may exempt a body corporate continued as a company under this Act from the requirements of subsection (1).

Reserved name.

13. A company shall not be incorporated with or have a name

(a) that is prohibited or refused under this Act; or

(b) that is reserved for another company or intended company under this Act.

Name change.

14. Where, through inadvertence or otherwise, a company

(a) is registered with a name that contravenes section 13, or

(b) is, upon an application to change its name, granted a name that contravenes section 13,

the Registrar may direct the company to change its name in accordance with this Act.

Continued name.

15. Notwithstanding sections 13 and 14, a company that is continued under this Act is entitled to be continued with the name it lawfully had before this Act came into force.

Revocation and assignment of name.

16. Where a company has been directed under section 14 to change its name and has not, within sixty days from the service of the direction to that effect, changed its name to a name that complies with this Act, the Registrar may revoke the name of the company and assign to it a name, and, until changed in accordance with this Act, the name of the company is the name so assigned.

Certificate of amendment of name.

17. (1) When a company has had its name revoked and a name assigned to it under section 16, the Registrar shall issue a certificate of amendment showing the new name of the company and shall publish a notice of the change in the *Business Gazette*.

(2) Upon the issue of a certificate of amendment under subsection (1), the articles of incorporation of the company to which the certificate refers are amended accordingly on the date shown in the certificate.

(iii) Pre-Incorporation Agreements

Pre-incorporation agreements.

18. (1) Except as provided in this section, a person who enters into a written contract in the name of or on behalf of a company before it comes into existence is personally bound by the contract and is entitled to the benefits of the contract.

(2) Within a reasonable time after a company is incorporated, it may, by any action or conduct signifying the intention to be bound thereby, adopt a written contract made, in its name or on its behalf, before it was incorporated.

(3) Where a company adopts a contract under subsection (2),

(a) the company is bound by the contract and is entitled to the benefits thereof as if the company had been in existence at the date of the contract and had been a party to it; and

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- (b) a person who purported to act in the name of the company or on its behalf ceases, except as provided in subsection (4), to be bound by or entitled to the benefits of the contract.
- (4) Except as provided in subsection (6), whether or not a written contract made before the incorporation of the company is adopted by the company, a party to the contract may apply to the court for an order
- (a) fixing obligations under the contract as joint or joint and several; or
- (b) apportioning liability between the company and a person who purported to act in the name of the company or on its behalf.
- (5) Where an application is made under subsection (4), the court may make such order as it thinks fit.
- (6) If expressly so provided in the written contract, a person who purported to act for or on behalf of a company before it was incorporated is not in any event bound by the contract or entitled to the benefits of the contract.

CHAPTER II

CORPORATE CAPACITY AND POWERS

Capacity and powers.

19. (1) A company has the capacity, and, subject to this Act, the rights, powers and privileges of a natural person of full capacity, including the power to hold land.
- (2) It is not necessary for a by-law to be passed to confer a particular power on a company or its directors.
- (3) This section does not authorise a company to carry on any business or activity in breach of
- (a) an enactment prohibiting or restricting the carrying on of the business or activity; or
- (b) a provision in an enactment requiring permission or licence for the carrying on of the business or activity.

Restrictions
on company.

20. A company shall not carry on a business or exercise a power that is not permitted by its articles of incorporation or exercise a power in a manner contrary to its articles of incorporation.

Validity of
acts.

21. For the avoidance of doubt, no act of a company, including a transfer of property to or by the company, is invalid by reason only that the act or transfer is contrary to its articles of incorporation.

Notice not
presumed.

22. No person is affected by, or presumed to have notice or knowledge of, the contents of a document concerning a company by reason only that the document has been filed with the Registrar or is available for inspection at any office of the company.

No disclaimer
allowed.

23. A company or a guarantor of an obligation of the company may not assert against a person dealing with the company or with a person who has acquired rights from the company

- (a) that the articles of incorporation, or by-laws of the company or any unanimous shareholder agreement has not been complied with;
- (b) that the persons named in the articles of incorporation under section 6 or 61 are not the directors of the company;
- (c) that the place named in the most recent notice sent to the Registrar under section 6 or 262 is not the registered office of the company;
- (d) that a person held out by a company as a director, an officer or an agent of the company has not been duly appointed or had no authority to exercise the powers and perform the duties that are customary in the business of the company or usual for such a director, officer or agent;
- (e) that a document issued by any director, officer or agent of the company with actual or usual authority to issue the document is not valid or genuine; or
- (f) that the financial assistance referred to in section 79 or the sale, lease, or exchange of property referred to in section 155 was not authorised,

except where that person has, or ought to have by virtue of his position with or relationship to the company, knowledge to the contrary.

Contracts of a company.

24. (1) A contract made on behalf of a company

(a) is effective in law and binds the company and the other party to the contract; and

(b) may be varied or discharged in accordance with law.

(2) A contract that, if made between individuals, would, by law,

(a) be required to be in writing under seal may be made on behalf of a company in writing under seal;

(b) be required to be in writing or to be evidenced in writing by the parties to the contract may be made or evidenced in writing signed in the name or on behalf of the company; or

(c) be valid although made by parol only and not reduced to writing may be made by parol on behalf of the company.

Presumptions regarding bills and notes.

25. A bill of exchange or promissory note is presumed to have been made, accepted or endorsed, on behalf of a company, if made, accepted or endorsed in the name of the company or if expressed to be made, accepted or endorsed on behalf or on account of the company.

Power of attorney.

26. (1) A company may, by writing under seal, empower a person, either generally or in respect of a specified matter, as its attorney to execute a deed on its behalf.

(2) A deed signed by a person empowered as provided in subsection (1) binds the company and has the same effect as if it were under the company's seal.

Company seals.

27. (1) A company may have a common seal with its name engraved thereon in legible characters.

(2) Except when required by an enactment to use its common seal, a company may, for the purpose of sealing a document, use its common seal or other form of seal.

(3) If authorised by its by-laws, a company may have for use in a country other than The Gambia or for use in a district or place not situated in The Gambia an official seal, which shall be a facsimile of the common seal of the company with the addition on its face of the name of every country, district or place where it is to be used.

(4) Every document on which an official seal of the company is duly affixed binds the company as if it had been sealed with the common seal of the company.

(5) A company may, by an instrument in writing under its common seal, authorise a person appointed for that purpose to affix the company's official seal to a document to which the company is party in the country, district or place where its official seal can be used.

(6) A person dealing with an agent appointed pursuant to subsection (5) in reliance on the instrument conferring the authority may assume that the authority of the agent continues during the period mentioned in the instrument, or, if no period is so mentioned, until that person has actual notice of the revocation or determination of the authority.

(4) A person who affixes an official seal of a company to a document shall, by writing under his hand, certify on the document the date on which, and the place at which, the official seal is affixed.

Commencement
of business.

28. A company incorporated after the coming into force of this Act shall not transact any business, exercise any borrowing powers or incur any indebtedness, unless the company is registered to commence business in accordance with the Business Registration Act, 1994.

Minimum capital.

29. (1) A company limited by shares registered after the coming into force of this Act, shall not transact any business until

(a) there has been paid to it for the issue of its shares consideration to the value of at least two hundred and fifty thousand dalasis of which at least one hundred and twenty-five thousand dalasis, in the case of a public company, or twenty-five thousand dalasis of which at least ten thousand dalasis in the case of a private company, has been paid in cash; and

(b) the company has delivered to the Registrar for registration a declaration in the prescribed form verifying that such payments have been received.

(2) An existing company limited by shares shall not continue, after the expiration of six months from the date of coming into force of this Act, to transact any business, unless

(a) prior to the expiration of the six months there has been paid to it for the issue of its shares consideration to the value of at least two hundred and fifty thousand dalasis of which at least one hundred and twenty-five thousand dalasis in the case of a public company, or twenty-five thousand dalasis of which at least ten thousand dalasis in the case of a private company, has been paid in cash; and

(b) the company has delivered to the Registrar for registration a declaration in the prescribed form verifying that such payments have been received.

(3) For the purposes of this section a value attributed to the goodwill of a business or to services rendered or to be rendered to the company shall not be regarded as valuable consideration for the issue of shares.

(4) The declarations referred to in subsections (1) and (2) shall be signed by all the directors and by the secretary of the company.

(5) Shares shall not be deemed to have been paid for in cash except to the extent that the company has actually received cash therefor at the time of, or subsequently to, the agreement to issue the shares, and where shares are issued to a person who has sold or agreed to sell property or rendered or agreed to render services to the company or to persons nominated by him, the amount of any payment made for the property or services shall be deducted from the amount of any cash payment made for the shares and only the balance, if any, shall be treated as having been paid in cash for such shares notwithstanding any exchange of cheques or other securities for money.

(6) In the event of default in complying with this section,

(a) the company and every officer of the company who is in default is liable to a fine not exceeding one hundred dalasis for each day during which the default continues; and

(b) the rights of the company concerned under or arising out of any contract made during such time as the default continues shall not be enforceable by action or other legal proceedings.

(7) In the event of a default in complying with subsection (1) then, without prejudice to subsection (6), the subscribers to the company's articles of incorporation, the first directors named in the articles of incorporation and any person who was a director at any time thereafter until subsection (1) has been complied with, shall be jointly and severally liable for the whole of the debts and liabilities of the company incurred while the company was in default.

CHAPTER III

SHARE CAPITAL

Nature of
shares.

30. (1) Shares in a company are personal estate and are not of the nature of real estate and a share is transferable in the manner provided by this Act.

(2) Shares in a company are to be without nominal or par value.

(3) When a former Act company is continued under this Act, a share with nominal or par value issued by the company before it was so continued is, for the purposes of subsection (2), deemed to be a share without nominal or par value.

(4) Subject to subsection (5), each share in a company shall be distinguished by an appropriate designation.

(5) If at any time all the issued shares in a company, or all the issued shares in a company of a particular class, rank equally for all purposes, none of those shares need thereafter have a distinguishing designation so long as it ranks equally for all purposes with all shares for the time being issued, or, as the case may be, all the shares for the time being issued of the particular class.

Rights under a
single class of
shares.

31. When a company has only one class of shares, the rights of the holders of that class of shares are equal in all respects, and include

(a) the right to vote at a meeting of shareholders;

(b) the right to receive a dividend declared by the company; and

(c) the right to receive the remaining property of the company on dissolution.

Share classes.

32. The articles of incorporation of a company may provide for more than one class of shares and, if they so provide,

- (a) the rights, privileges, restrictions and conditions attaching to the shares of each class shall be set out in the articles of incorporation; and
- (b) the rights set out in section 31 shall be attached to at least one class of shares, but all of those rights need not be attached to the same class of shares.

Share issue.

33. (1) Subject to the articles of incorporation, the by-laws, any unanimous shareholder agreement and section 38, shares may be issued at such times and to such persons, and for such consideration, as the directors may determine.

(2) No company shall issue bearer shares or bearer share certificates.

Consideration.

34. (1) A share shall not be issued until it is fully paid

- (a) in money; or
- (b) in property or past service that is the fair equivalent of the money that the company would have received if the share had been issued for money.

(2) In determining whether property or past service is the fair equivalent of a money consideration, the directors may take into account reasonable charges and expenses of organisation and reorganisation, and payments for property and past services reasonably expected to benefit the company.

(3) For the purposes of this section, "property" does not include a promissory note or a promise to pay.

Stated capital accounts.

35. (1) A company shall maintain a separate stated capital account for each class and series of shares that it issues.

(2) A company shall add to the appropriate stated capital account the full amount of the consideration that it receives for any shares that it issues.

(3) A company shall not reduce its stated capital or any stated capital account except in the manner provided by this Act.

(4) A company shall not, in respect of a share that it issues, add to a stated capital account an amount greater than the amount of the consideration that it receives for the share.

(5) When a company proposes to add an amount to a stated capital account that it maintains in respect of a class or series of shares, that addition to the stated capital account shall be approved by special resolution if

(a) the amount to be added was not received by the company as consideration for the issue of shares; and

(b) the company has issued any outstanding shares of more than one class or series.

(6) Notwithstanding subsection (2) and section 34

(a) when, in exchange for property, a company issues shares

(i) to a body corporate that was an affiliate of the company immediately before the exchange, or

(ii) to a person who controlled the company immediately before the exchange,

the company, subject to subsection (4), may add to the stated capital accounts that are maintained for the shares of the classes or series issued, the amount agreed, by the company and the body corporate or person, to be the consideration for the shares so exchanged;

(b) when a company issues shares in exchange for shares of a body corporate that was an affiliate of the company immediately before the exchange, the company may, subject to subsection (4), add to the stated capital accounts that are maintained for the shares of the classes or series issued an amount that is not less than the amount set out, in respect of the acquired shares of the body corporate, in the stated capital or equivalent accounts of the body corporate immediately before the exchange; or

(c) when a company issues shares in exchange for shares of a body corporate that becomes, because of the exchange, an affiliate of the company, the company may, subject to subsection (4), add to the stated capital accounts that are maintained for the classes or series issued an amount that is not less than the amount set out, in respect of the acquired shares of the body corporate, in the stated capital or equivalent accounts of the body corporate immediately before the exchange.

(7) When a former Act company is continued under this Act,

(a) then, notwithstanding subsection (2), it is not required to add to a stated capital account any consideration received by it before it was so continued, unless the share in respect of which the consideration is received is issued after the company is continued under this Act;

(b) an amount unpaid in respect of a share issued by the former Act company before it was so continued shall be added to the stated capital account that is maintained for the shares of that class or series; and

(c) its stated capital account for the purposes of

(i) subsection (2) of section 43,

(ii) section 48,

(iii) paragraph (b) of subsection (2) of section 79, and

(iv) paragraph (a) of subsection (2) of section 281,

includes the amount that would have been included in the stated capital if the company had been incorporated under this Act.

Open-ended
mutual company.

36. Section 35 and any other provision of this Act relating to the stated capital do not apply to a company

(a) that is a public company;

(b) that carries on only the business of investing the consideration it receives for the shares it issues; and

- (c) all or substantially all of whose issued shares are redeemable upon the demand of shareholders.

Issuing of shares
in series.

37. (1) The articles of incorporation of a company may authorise the issue of a class of shares in one or more series, and may authorise the directors to fix the number of shares in, and to determine the designation, rights, privileges, restrictions and conditions attaching to, the shares of each series, subject to the limitations set out in the articles of incorporation.

(2) If any cumulative dividends or amounts payable on return of capital in respect of a series of shares are not paid in full, the shares of all series of the same class participate rateably in respect of accumulated dividends and return of capital.

(3) No rights, privileges, restrictions or conditions attached to a series of shares authorised under this section may confer upon the series a priority in respect of dividends or return of capital over any other series of shares of the same class that are then outstanding.

(4) Before the issue of shares of a series authorised under this section, the directors shall send to the Registrar articles of incorporation of amendment in the prescribed form to designate a series of shares.

(5) Upon receipt from a company of articles of incorporation of amendment designating a series of shares, the Registrar shall issue to the company a certificate of amendment in accordance with section 392.

(6) The articles of incorporation of a company are amended accordingly on the date shown in the certificate of amendment issued under subsection (5).

Pre-emptive
rights.

38. (1) If the articles of incorporation so provide, no shares of a class of shares may be issued unless the shares have first been offered to the shareholders of the company holding shares of that class, and those shareholders have a pre-emptive right to acquire the offered shares in proportion to their holdings of the shares of that class, at such price and on such terms as those shares are to be offered to others.

(2) Notwithstanding that the articles of incorporation of a company provide the pre-emptive right referred to in subsection (1), the shareholders of the company have no pre-emptive right in respect of shares to be issued by the company

(a) for a consideration other than money; and

(b) pursuant to the exercise of conversion privileges, options or rights previously granted by the company.

Conversion
privileges.

39. (1) A company may grant conversion privileges, options or rights to acquire shares of the company, but shall set out the conditions thereof in any certificates or other instruments issued in respect thereof.

(2) Conversion privileges, options and rights to acquire shares of a company may be made transferable or non-transferable, and options and rights to acquire shares may be made separable or inseparable from any debentures or shares to which they are attached.

Reserve shares.

40. Where a company

(a) has granted privileges to convert any debentures or shares issued by the company into shares or into shares of another class or series of shares, or

(b) has issued or granted options or rights to acquire shares,

if the articles of incorporation of the company limit the number of authorised shares, the company shall reserve and continue to reserve sufficient authorised shares to meet the exercise of those conversion privileges, options and rights.

Restrictions on
company to hold
shares.

41. (1) Subject to subsection (2), and except as provided in sections 42 to 45, a company shall not hold shares in itself or in its holding body corporate.

(2) A company shall cause a subsidiary body corporate of the company that holds shares of the company to sell or otherwise dispose of those shares within five years from the date, as the case requires,

(a) that the body corporate became a subsidiary of the company; or

(b) that the company was continued under this Act.

Exemptions.

42. (1) A company may in the capacity of a legal representative hold shares in itself or in its holding body corporate unless it, or the holding body corporate, or a subsidiary of either of them has a beneficial interest in the shares.

(2) A company may hold shares in itself or in its holding body corporate by way of security for the purposes of a transaction entered into by it in the ordinary course of a business that includes the lending of money.

Acquisition of
own shares.

43. (1) Subject to subsection (2) and to its articles of incorporation, a company may purchase or otherwise acquire shares issued by it.

(2) A company shall not make a payment to purchase or otherwise acquire shares issued by it, if there are reasonable grounds for believing that

(a) the company is unable, or would, after that payment, be unable to pay its liabilities as they become due; or

(b) the realisable value of the company's assets would, after that payment, be less than the aggregate of its liabilities and stated capital of all classes.

Other
acquisition.

44. (1) Notwithstanding subsection (2) of section 49, but subject to subsection (3) and to its articles of incorporation, a company may purchase or otherwise acquire its own issued shares

(a) to settle or compromise a debt or claim asserted by or against the company;

(b) to eliminate fractional shares; or

(c) to fulfil the terms of a non-assignable agreement under which the company has an option or is obligated to purchase shares owned by a director, an officer or an employee of the company.

(2) Notwithstanding subsection (2) of section 43, a company may purchase or otherwise acquire its own issued shares.

(a) to satisfy the claim of a shareholder who dissents under section 283; or

(b) to comply with an order under section 373.

(3) A company shall not make a payment to purchase or acquire under subsection (1) shares issued by it if there are reasonable grounds for believing that

- (a) the company is unable, or would, after the payment, be unable to pay its liabilities as they become due; or
- (b) the realisable value of the company's assets would, after that payment, be less than the aggregate of its liabilities and the amount required for payment on a redemption or in a winding up of all shares the holders of which have the right to be paid before the holders of the shares to be purchased or acquired.

Redeemable shares.

45. (1) Notwithstanding subsection (2) of section 43 or subsection (3) of section 44, but subject to subsection (2) of this section and to its articles of incorporation, a company may, at prices calculated according to a formula stated in its articles of incorporation, purchase or redeem any redeemable shares issued by it.

(2) A company shall not make a payment to purchase or redeem any redeemable shares issued by it if there are reasonable grounds for believing that

- (a) the company is unable or would, after that payment, be unable to pay its liabilities as they become due; or
- (b) the realisable value of the company's assets would, after that payment, be less than the aggregate of its liabilities, and the amount that would be required to pay the holders of shares that have a right to be paid, on a redemption or in a winding up, rateably with or before the holders of the shares to be purchased or redeemed.

Donated shares.

46. Subject to section 50, a company may accept from a shareholder a share of the company surrendered to it as a gift, but shall not extinguish or reduce a liability in respect of an amount unpaid on any such share except in accordance with section 48.

Voting on shares held by company.

47. A company holding shares in itself or in its holding body corporate shall not vote or permit those shares to be voted on unless the company

- (a) holds the shares in the capacity of a legal representative; and
- (b) has complied with section 163.

Stated capital
reduction.

48. (1) Subject to subsection (3), a company may by special resolution reduce its stated capital by

- (a) extinguishing or reducing a liability in respect of an amount unpaid on a share;
- (b) returning an amount in respect of consideration that the company received for an issued share, whether or not the company purchases, redeems or otherwise acquires a share or fraction thereof that it issued; and
- (c) declaring its stated capital to be reduced by an amount that is not represented by realisable assets.

(2) A special resolution under this section shall specify the stated capital account or accounts from which the reduction of stated capital effected by the special resolution will be made.

(3) A company shall not reduce its stated capital under paragraph (a) or (b) of subsection (1) if there are reasonable grounds for believing that

- (a) the company is unable, or would, after that reduction, be unable, to pay its liabilities as they become due; or
- (b) the realisable value of the company's assets would as a result be less than the aggregate of its liabilities.

(4) A company that reduces its stated capital under this section shall, not later than thirty days after the date of the passing of the resolution, serve notice of the resolution on all persons who on the date of the passing of the resolution were creditors of the company.

(5) A creditor may apply to the court for an order compelling a shareholder or other recipient

- (a) to pay to the company an amount equal to a liability of the shareholder that was extinguished or reduced contrary to this section; or
- (b) to pay or deliver to the company any money or property that was paid or distributed to the shareholder or other recipient as a consequence of a reduction of capital made contrary to this section.

Stated capital
adjustment.

49. (1) Upon a purchase, redemption or other acquisition by a company under section 43, 44, 45, 59 or 283 or paragraph (f) of subsection (3) of section 373, of share or fractions of shares issued by it, the company shall deduct, from the stated capital account maintained for the class or series of shares purchased, redeemed or otherwise acquired, an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series or fractions of shares purchased, redeemed or otherwise acquired, divided by the number of issued shares of that class or series immediately before the purchase, redemption or other acquisition.

(2) A company shall deduct the amount of a payment made by the company to a shareholder under paragraph (g) of subsection (3) of section 373 from the stated capital account maintained for the class or series of shares in respect of which the payment was made.

(3) A company shall adjust its stated capital accounts in accordance with a special resolution referred to in subsection (2) of section 48.

(4) Upon a conversion of issued shares of a class into shares of another class, or upon a change under section 270, 293, or 373 of issued shares of a company into shares of another class or series, the company shall

(a) deduct, from the stated capital account maintained for the class or series of shares changed or converted, an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series changed or converted, divided by the number of issued shares of that class or series immediately before the change or conversion; and

(b) add the result obtained under paragraph (a), and any additional consideration received by the company pursuant to the change, to the stated capital account maintained or series of shares into which the shares have been changed or converted.

(5) For the purposes of subsection (4), when a company issues two classes of shares and there is attached to each of the classes a right to convert a share of the one class into a share of the other class, then, if a share of one class is converted into a share of the other class, the amount of stated capital attributable to a share in either class is the aggregate of

the stated capital of both classes divided by the number of issued shares of both classes immediately before the conversion.

Cancellation
of shares.

50. Shares or fractions of shares issued by a company and purchased, redeemed or otherwise acquired by the company shall be cancelled, or, if the articles of incorporation of the company limit the number of authorised shares, the shares or fractions may be restored to the status of authorised, but unissued, shares.

Presumption as
to own shares.

51. For the purposes of sections 49 and 50, a company holding shares in itself as permitted by section 42 is deemed not to have purchased, redeemed or otherwise acquired those shares.

Changing share
class.

52. (1) Shares issued by a company and converted or changed under section 270, 293, or 373 into shares of another class or series, become issued shares of the class or series of shares into which the shares have been converted or changed.

(2) Where its articles of incorporation limit the number of authorised shares of a class or series of shares of a company and the issued shares of that class or series have become, pursuant to subsection (1), issued shares of another class or series, the number of unissued shares of the first-mentioned class or series shall, unless the articles of incorporation of amendment or reorganisation otherwise provide, be increased by the number of shares that, pursuant to subsection (1), became shares of another class or series.

Effect of
purchase contract.

53. (1) A contract with a company providing for the purchase of shares of the company is specifically enforceable against the company except to the extent that the company cannot perform the contract without thereby being in breach of section 43 or 44.

(2) In any action brought on a contract referred to in subsection (1), the company has the burden of proving that performance of the contract is prevented by section 43 or 44.

(3) Until the company has fully performed a contract referred to in subsection (1), the other party retains the status of a claimant who is entitled

(a) to be paid as soon as the company is lawfully able to do so; or

(b) to be ranked in a winding up subordinate to the rights of creditors but in priority to the shareholders.

Commission for share purchase.

54. The directors of a company acting honestly and in good faith with a view to the best interests of the company may authorise the company to pay a commission to any person in consideration of his purchasing or agreeing to purchase shares of the company from the company or from any other person, or procuring or agreeing to procure purchasers for any such shares.

Prohibited dividend.

55. A company shall not declare or pay a dividend if there are reasonable grounds for believing that

(a) the company is unable, or would, after the payment, be unable, to pay its liabilities as they become due; or

(b) the realisable value of the company's assets would thereby be less than the aggregate of its liabilities and stated capital of all classes.

Payment of dividend.

56. Subject to subsection (2) a company may pay a dividend in money, in property, or by issuing fully paid shares of the company.

(2) A company shall not pay a dividend in money or in property out of unrealised profits.

(3) If the shares of a company are issued in payment of a dividend, the value of the dividend stated as an amount in money shall be added to the stated capital account maintained or to be maintained for the shares of the class or series issued in payment of the dividend.

Enforcement of illicit loans.

57. A contract made by a company contrary to section 79 may be enforced by the company or by a lender for value in good faith without notice of the contravention.

Immunity of shareholders.

58. The shareholders of a company are not, as shareholders, liable for any liability, act or default of the company except under subsection (5) of section 48 or subsection (2) of section 152.

Lien on shares.

59. (1) Subject to this Act, the articles of incorporation of a company may provide that the company has a lien on a share registered in the name of a shareholder or his legal representative for a debt of that shareholder

to the company including an amount unpaid in respect of a share issued by a former-Act company on the date it was continued under this Act.

(2) A company may enforce a lien referred to in subsection (1).

CHAPTER IV

MANAGEMENT OF COMPANIES

Directors.

60. (1) A reference in this Act to "directors" means the persons who are appointed to direct and administer the business of a company.

(2) A person, not being an appointed director of a company,

(a) who holds himself out or knowingly allows himself to be held out as a director of that company, or

(b) on whose directions or instructions the appointed directors are accustomed to act,

shall be subject to the same duties and liabilities as if he were an appointed director of the company.

(3) Nothing contained in subsection (2) shall be deemed to derogate from the duties and liabilities of the appointed directors, including the duty not to act on the directions or instructions of any other person.

(4) In this section, a person is deemed to hold himself out, or to be held out, as a director of a company, if he is described as director of the company irrespective of whether the description is qualified or otherwise.

(5) If a person, not being an appointed director of a company, holds himself out, or knowingly allows himself to be held out, as a director of a company, or if the company holds out that person, or knowingly allows that person to hold himself out, as a director of the company, that person or the company, as the case may be, commits an offence.

(6) A person who, or a company that, commits an offence under subsection (5) is liable on conviction to a fine not exceeding five thousand dalasis or to a term of imprisonment not exceeding three years.

Number of
Directors.

61. (1) Subject to section 295, a company incorporated

(a) after the coming into force of this Act shall have at least two directors; and

(b) prior to the coming into force of this Act shall, within six months of the coming into force of this Act, have at least two directors.

(2) Where the number of directors of a company is less than two contrary to subsection (1) and the company continues to carry on business, the company and every officer of the company is liable to a fine of two hundred dalasis for every day during which the company carries on business from the date the number of directors is reduced to less than two.

(3) Every officer, who is cognisant of the fact that a company is carrying on business with fewer than two directors shall be jointly and severally liable for the debts and liabilities of the company incurred during the period of contravention of this section.

(4) Only an individual may be a director of a company.

(5) Subject to this Act, the number of directors of a company shall be fixed by, or in accordance with, the company's articles of incorporation.

(6) Within fifteen days after a change is made among its directors, a company shall send to the Registrar a notice in the prescribed form setting out the change and the Registrar shall file the notice.

(7) An interested person, or the Registrar, may apply to the court for an order to require a company to comply with subsection (1), and the court may so order and make any further order it thinks fit.

Secretary.

62. (1) Every company shall have a secretary and may have one or more assistant secretaries who, or each of whom

(a) shall be appointed by the directors, or if provision is made in the by-laws of the company for the appointment, then in accordance with that provision; and

(b) may be an individual, a corporation or a firm.

(2) If a company carries on business for more than one month without a secretary, the company and every officer of the company who is in default is liable to a fine not exceeding two hundred dalasis for every day during which the company carries on business at the end of the one month during which the company remained without a secretary.

Acts of
Secretary.

63. Anything required or authorised to be done by or in relation to the secretary, may, if the office is vacant, or if for any other reason the secretary is not capable of acting, be done by or in relation to an assistant secretary or, if there is no assistant or deputy secretary capable of acting, by or in relation to an officer of the company authorised generally or specially in that behalf by the directors of the company.

Acts done by
person in dual
capacity.

64. A provision requiring or authorising a thing to be done by or in relation to a director and the secretary is not satisfied by its being done by or in relation to the same person acting both as director and as, or in the place of, the secretary.

Validity of acts
of director.

65. An act of a director or officer of a company is valid notwithstanding any defect in his qualification or appointment.

Appointment of
directors.

66. (1) A person shall be appointed a director of a company only if he gives his consent in writing to such appointment.

(2) Subject to this section and sections 67 and 68, the appointment of directors shall be regulated by the company's articles of incorporation and except as otherwise provided in the articles of incorporation section 333 shall regulate the appointment of directors of a private company, and sections 306 and 307 the appointment of directors of a public company.

(3) The articles of incorporation of a company may provide for the appointment of a director or directors by any class of shareholders, debentureholders or creditors.

(4) Notwithstanding the company's articles of incorporation, a casual vacancy in the number of directors may be filled by

(a) the continuing directors irrespective of the fact that their number may have been reduced below that fixed as the necessary quorum of directors; or

(b) by an ordinary resolution of the company in a general meeting.

(5) Where the directors exercise their power to fill a vacancy under subsection (4), they shall observe the rules in section 100 and shall not appoint a person to be a director unless they have taken reasonable steps to satisfy themselves that he is a person of integrity and suitable to be a director of the company.

(6) Where the casual vacancy filled is one which, under the company's articles of incorporation, should be filled by an appointment by any class of shareholders, debentureholders or creditors, the director appointed by the continuing directors or by an ordinary resolution of the company in a general meeting, as the case may be, shall cease to hold office as soon as any other director is appointed in accordance with the articles of incorporation.

Disqualification
to act as director

67. (1) No person is qualified to be a director of a company if

(a) he is less than 21 years of age;

(b) he is of unsound mind and has been so found by a court in The Gambia or elsewhere; or

(c) he has the status of a bankrupt or an insolvent.

(2) If any of the persons specified in paragraph (a) or (c) of subsection (1) acts as a director of a company or knowingly allows himself to be appointed a director, he commits an offence.

(3) A person who commits an offence under subsection (2) is liable on conviction to a fine not exceeding five thousand dalasis or to a term of imprisonment not exceeding three years.

(4) Where a company appoints a person as director in contravention of this section, the company and every director of the company who is in default is liable to a fine not exceeding five thousand dalasis.

(5) A company's articles of incorporation may add to the list of disqualified persons in subsection (1), classes of persons who are incompetent to be directors of the company.

Directors's share
qualifications.

68. Unless the articles of incorporation of a company otherwise provide, a director of the company need not hold shares issued by the company.

Termination of
office of director.

69. (1) A director of a company ceases to hold office when

(a) he dies or resigns;

(b) he is removed from office in accordance with section 70; or

(c) he becomes disqualified under section 297.

(2) The resignation of a director of a company becomes effective at the time his written resignation is sent to the company or at the time specified in the resignation, whichever is later.

Removal of
directors.

70. (1) Subject to paragraph (g) of section 73, the shareholders of a company may,

(a) by ordinary resolution at a special meeting, remove a director from office;

(b) where a director was elected or appointed for a term exceeding one year and is not up for re-election or re-appointment, remove such director by ordinary resolution at that meeting.

(2) Where the holders of a class or series of shares of a company have an exclusive right to elect or appoint one or more directors, a director so elected or appointed may only be removed by an ordinary resolution at a meeting of the shareholders of that class or series of shares.

(3) Subject to paragraphs (b) to (e) of section 73, a vacancy created by the removal of a director may be filled at the meeting of the shareholders at which the director is removed, or, if the vacancy is not so filled, it may be filled pursuant to section 66.

Right to notice

71. (1) A director of a company is entitled to receive notice of, and to attend and be heard at every meeting of shareholders.

(2) A director

(a) who resigns,

(b) who receives a notice or otherwise learns of a meeting of shareholders called for the purpose of removing him from office, or

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- (c) who receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed or elected to fill the office of director, whether because of his resignation or removal, or because his term of office has expired or is about to expire,

may submit to the company a written statement giving the reasons for his resignation or the reasons why he opposes any proposed action or resolution.

(3) The company shall send a copy of the statement referred to in subsection (2) to the Registrar and to every shareholder entitled to receive notice of a meeting referred to in subsection (1).

(4) No company or person acting on its behalf incurs any liability by reason only of circulating a director's statement in compliance with subsection (3).

Alternative
directors

72. (1) A meeting of the shareholders of a company may, by ordinary resolution, elect a person to act as a director in the alternative to a director of the company, or may authorise the directors to appoint such alternative directors as are necessary for the proper discharge of the affairs of the company.

(2) An alternate director shall have all the rights and powers of the director for whom he is elected or appointed in the alternative, except that he shall not be entitled to attend and vote at any meeting of the directors otherwise than in the absence of that other director.

Cumulative
voting.

73. Where the articles of incorporation of a company provide for cumulative voting, the following rules apply:

- (a) the articles of incorporation shall require a fixed number, and not a minimum and maximum number of directors;
- (b) each shareholder who is entitled to vote at an election of directors has the right to cast a number of votes equal to the number of votes attached to the shares held by him, multiplied by the number of directors to be elected, and he may cast all his votes in favour of one candidate, or distribute them among the candidates in any manner;

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- (c) a separate vote of shareholders shall be taken with respect to each candidate nominated for director unless a resolution is passed unanimously permitting two or more persons to be elected by a single resolution;
 - (d) if a shareholder votes for more than one candidate without specifying the distribution of his votes among the candidates, he distributes his votes equally among the candidates for whom he votes;
 - (e) if the number of candidates nominated for director exceeds the number of positions to be filled, the candidates who receive the least number of votes shall be eliminated until the number of candidates remaining equals the number of positions to be filled;
 - (f) each director ceases to hold office at the close of the first annual meeting of shareholders following his election;
 - (g) a director may not be removed from office if the votes cast against his removal would be sufficient to elect him and those votes could be voted cumulatively at an election at which the same total number of votes were cast and the number of directors required by the articles of incorporation were then being elected; and
 - (h) the number of directors required by the articles of incorporation may not be decreased if the votes cast against the motion to decrease would be sufficient to elect a director and those votes could be voted cumulatively at an election at which the same total number of votes were cast and the number of directors required by the articles of incorporation were then being elected.

Restraining
fraudulent persons
from managing
companies.

74. (1) Where

- (a) a person is convicted, whether in The Gambia or elsewhere, of an offence involving fraud or dishonesty or an offence in connection with the promotion, formation or management of a body corporate, or
- (b) a person is adjudicated a bankrupt or an insolvent whether in The Gambia or elsewhere, or

(c) it appears that a person has committed a criminal offence, whether convicted or not, in relation to a body corporate or of a fraud or breach of duty in relation to a body corporate,

the Court, on its own motion or on the application of any of the persons referred to in subsection (2), may order that that person shall not, without the leave of the court, be a director of or in any way, whether directly or indirectly, be concerned or take part in the management of a company or act as auditor, receiver or liquidator of a company for such period as may be specified in the order.

(2) An application for an order under this section may be made by the Registrar, or by the Official Trustee or Administrator under the Insolvency Act, 1992, of the person concerned or by the liquidator of a body corporate.

(3) A person intending to apply for the making of an order under this section shall give not less than twenty-eight days written notice of his intention to the person against whom the order is sought, and to the Registrar if the application is made by some person other than the Registrar.

(4) On the hearing of an application under this section the applicant, the person against whom the order is sought, the Registrar, the Official Trustee and the Administrator may appear, and give evidence and call witnesses and draw the attention of the court to any relevant matters.

(5) A person against whom an order has been made under this section who intends to apply for leave to act as a director or in the management of a company shall give at least twenty-eight days written notice of his intention to the Registrar, and the Registrar, the Official Trustee, the Administrator, and any person on whose application the order was made or who appeared at the hearing at which the order was made, may appear and give evidence and call witnesses and draw the attention of the Court to any relevant matters.

(6) Where an order is made or leave is granted under this section, the Court making the order or granting leave shall forward a copy to the Registrar who shall cause a summary thereof to be published in the *Business Gazette*.

(7) The Registrar shall maintain a register of orders made under this section and shall enter therein particulars of each order and of any leave

granted and the register shall be open to the inspection of any person on payment of the prescribed fee for each inspection.

(8) A person who contravenes a provision of this section commits an offence and is liable on conviction to a fine not exceeding five thousand dalasis or to a term of imprisonment not exceeding three years.

Residence of
directors.

75. (1) At least one director of every company shall at all times be resident in The Gambia.

(2) In the event of a wilful breach of this section the company and every director of the company who is in default is liable to a fine not exceeding one thousand dalasis.

(3) Subject to subsections (4) and (5), the rights of the company concerned under or arising out of a contract made during a period when no director of the company is present in The Gambia shall not be enforceable by action or other legal proceedings.

(4) The company may apply to the court for relief against the disability imposed by subsection (3) and the court, on being satisfied that it is just and equitable to grant relief, may grant such relief either generally or as respects any particular contract and on such conditions as the court may impose.

(5) Where a person commences an action against the company to enforce his rights in respect of a contract, the company may enforce in that action by way of counterclaim, set off or otherwise, such rights as it may have against that person in respect of the contract.

(6) Nothing contained in this section shall prejudice the rights of a party as against the company, or any other person in respect of a contract entered into with the company.

Executive
directors.

76. Unless the company's articles of incorporation otherwise provide,

(a) a director may hold any other office or place of profit under the company, other than the office of auditor, in conjunction with the office of director;

(b) the directors may from time to time appoint one or more of their body to such other office for such period and on such terms as

they may determine and, subject to the terms of any agreement entered into in any particular case, may revoke such appointment;

- (c) subject to compliance with section 78 such office may be remunerated by way of salary, commission, share of profits, participation in pension and retirement schemes, or partly in one way and partly in another, as the directors may determine; and
- (d) in exercising their powers hereunder the directors shall observe the rules laid down in section 100 and, in particular, in determining the amount of remuneration, shall satisfy themselves that the amount of the remuneration is reasonably related to the value of the services of the holder of the office.

Appointment of
managing director.

77. (1) The directors of a company may appoint from their body a managing director or a committee of directors and delegate to the managing director or committee any of the powers of the directors on such terms and with such restrictions as they think fit.

(2) Notwithstanding subsection (1), no managing director and no committee of directors of a company shall

- (a) submit to the shareholders any question or matter requiring the approval of the shareholders;
- (b) fill a vacancy among the directors or in the office of auditor;
- (c) issue shares except in the manner and on the terms authorised by the directors;
- (d) declare dividends;
- (e) purchase, redeem or otherwise acquire shares issued by the company;
- (f) pay a commission to a person for purchasing or agreeing to purchase shares of the company, or procuring or agreeing to procure purchasers for such shares;
- (g) approve a management proxy circular;
- (h) approve any financial statements; and

(i) adopt, amend or repeal by-laws.

(3) The appointment of a managing director shall be automatically determined if the holder of the office ceases from any cause to be a director and, unless the agreement entered into in any particular case provides otherwise, such determination shall not constitute a breach of contract with the company.

Remuneration.

78. (1) Subject to subsection (2) and to its articles of incorporation or by-laws, or any unanimous shareholder agreement, the directors of a company may fix the remuneration of the directors, officers and employees of the company.

(2) Where the directors fix remuneration under subsection (1), they shall submit it for approval by ordinary resolution of the company.

Restrictions for
issuing of loans
by company.

79. (1) When circumstances prejudicial to a company exist, the company or any company with which it is affiliated shall not, except as permitted by section 80, directly or indirectly, give financial assistance by means of a loan, guarantee or otherwise,

(a) to a shareholder, director, officer or employee of the company or affiliated company, or to an associate of any such person for any purpose; or

(b) to a person for the purpose of, or in connection with, a purchase of a share issued or to be issued by the company or a company with which it is affiliated.

(2) Circumstances prejudicial to the company exist in respect of financial assistance mentioned in subsection (1) when there are reasonable grounds for believing that

(a) the company is unable or would, after giving the financial assistance, be unable to pay its liabilities as they become due; or

(b) the realisable value of the company's assets, excluding the amount of any financial assistance in the form of a loan and in the form of assets pledged or encumbered to secure a guarantee, would, after the giving of the financial assistance, be less than the aggregate of the company's liabilities and stated capital of all classes.

Permitted loans.

80. A company may give financial assistance to a person by means of a loan, guarantee or otherwise

- (a) in the ordinary course of business, if the lending of money is part of the ordinary business of the company;
- (b) on account of expenditures incurred or to be incurred on behalf of the company;
- (c) to a holding body corporate if the company is a wholly-owned subsidiary of the holding body corporate;
- (d) to a subsidiary body corporate of the company; and
- (e) to employees of the company or any of its affiliates
 - (i) to enable or assist them to purchase or erect living accommodation for their own occupation;
 - (ii) in accordance with a plan for the purchase of shares of the company or any of its affiliates to be held by a trustee; or
 - (iii) to enable or assist them to improve their education or skills, or to meet reasonable medical expenses.

Payments to directors for loss of office or on transfer of the company's undertaking

81. (1) No company shall make to a director or former director of the company or an associated company any payment by way of compensation for loss of office in the company or an associated company, or as consideration for or in connection with his retirement from office, without particulars with respect to the proposed payment, including the amount thereof, being disclosed to the members of the company and the proposal being approved by an ordinary resolution of the company.

(2) No payment shall be made, whether by the company or otherwise, to a director or former director of a company in connection with the transfer of the whole or any part of the undertaking or property of the company or an associated company, whether such payment is expressed to be by way of compensation for loss of office or otherwise, unless particulars with respect to the proposed payment, including the amount thereof, have been disclosed to the members of the company and the proposal approved by an ordinary resolution of the company.

(3) Where a payment is made to a director or former director of a company or an associated company in contravention of subsections (1) and (2), the payment received shall be deemed to have been received in trust for the company.

Payments to
directors in
connection with
takeover bids.

82. (1) Where an offer is made for the acquisition of any shares of a company on the terms that the shares are available for acceptance

(a) by all the shareholders of the company or by all the holders of shares of the class to which the offer relates, or

(b) by the holders of shares which, together with any shares already owned beneficially by the person making the offer or by a body corporate in which he is the controlling shareholder, confer the right to exercise or control the exercise of not less than one-third of the voting power at a general meeting of the company,

and in connection with such an offer it is proposed that a payment shall be made or a payment has been made to a director or former director of the company or an associated company, over and above the receipt by him in respect of any shares in the company held by him of the same price as may be receivable by other holders of the shares of the same class, it shall be the duty of that director to take all reasonable steps to secure that particulars of the payment are included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(2) A director or other person is liable to a fine not exceeding five hundred dalasis if,

(a) in the case of the director, he fails to take reasonable steps as required under subsection (1); and

(b) in the case of the other person who has been properly required by a director to include in or send with a notice the particulars of payment as required under subsection (1), he fails to do so.

(3) Unless,

(a) the requirements of subsection (1) are complied with, and

(b) the making of the payment is, before the transfer of any shares in pursuance of the offer, approved by an ordinary resolution

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- (i) agreed to by all the holders of the shares to which the offer relates, or
 - (ii) passed at a meeting, summoned for the purpose by notice complying with subsection (7), of such holders at which neither the director concerned nor the holders of any shares in which he is beneficially interested, either directly or indirectly, shall have voted on such resolution,

such payment shall be distributed in the manner provided by subsection (4).

(4) Subject to subsections (5) and (6) where a payment is to be distributed in accordance with the provisions of subsection (3), the person making or proposing to make the payment and the director or former director to whom it is made or proposed to be made shall be jointly and severally liable to distribute the payment among any persons who have sold their shares as a result of the offer in proportion to the number of shares sold by them, and if any director or former director receives any such payment he shall hold that payment on trust for such persons.

(5) The expenses incurred in distributing such payment shall be borne by the persons liable to make the distribution and not retained out of the payment.

(6) If, in proceedings instituted prior to the expiration of three months from the first transfer of any shares in pursuance of the offer, the Court awards or approves the payment of damages to a director or former director for breach of a valid service agreement, the amount of the damages, but not of any costs or expenses incurred in connection with the proceedings, shall be paid to or retained by the director or former director out of such payment and only the balance thereof, if any, shall be distributable as required by this section.

(7) The notice of a general meeting summoned for the purposes of subsection (3) shall be convened, held and conducted as nearly as may be in accordance with the provisions of this Act and the company's articles of incorporation relating to general meetings of the company, and the notices convening the meeting shall state that if the resolution approving the payment is not passed the payment will be distributable among the persons who have sold their shares in pursuance of the offer except to the extent that the Court may award or approve the payment to the director

or former director concerned of damages for breach of a valid service agreement.

(8) An offer referred to in subsection (1) shall not be made conditional upon approval of a payment or proposed payment to a director or former director and, if an offer is expressed to be made subject to a condition, the condition is void.

(9) For the purposes of paragraph (b) of subsection (1),

(a) when the offer is made by a body corporate, shares shall be deemed to be owned beneficially by the body corporate if they are owned beneficially by it or by any of its associated companies or by any controlling shareholders of it; and

(b) a person shall be deemed to be a controlling shareholder of a body corporate if the body corporate or its directors are accustomed to act in accordance with the directions or instruction of that person or his nominee or if, at a general meeting of the body corporate, that person is entitled to exercise or control the exercise of one-third or more of the voting power.

83. (1) For the purposes of sections 81 and 82 and of this section the expression "payment" includes a benefit or advantage whether in cash or in kind.

(2) Sections 81 and 82 shall not render unlawful or apply to the payment of damages awarded or approved by a competent court for breach of a valid service agreement or the *bona fide* payment of a pension or superannuation benefit in respect of past services in accordance with a valid service agreement.

(3) For the purposes of subsection (4) of section 82 and subsection (2) of this section, a service agreement shall not be deemed to be valid if it was entered into in contemplation of a transfer as is referred to in subsection (2) of section 81 or of an offer as is referred to in subsection (1) of section 82, and unless the contrary is proved, the service agreement shall be deemed to have been entered into in contemplation of the transfer or offer if it is made within one year before or contemporaneously with, or at any time after the date of the agreement to transfer or the making of the offer.

(4) For the purposes of sections 81 and 82, if

Supplemental
provisions to
sections 81 and
82.

(a) a payment, not being remuneration payable in accordance with section 78, is received by a director or former director within a period of one year before, or two years after the date of the agreement to make such transfer as is referred to in subsection (2) of section 81, or of the date of making such an offer as is referred to in subsection (1) of section 82, and

(b) the company or the person to whom such transfer or by whom such offer was made was privy to the making of the payment,

such payment shall be deemed to have been received by him in connection with the transfer or offer unless he proves that the payment would have been received by him whether or not the transfer or offer had been made.

Indemnifying
directors.

84. (1) Except in respect of an action by or on behalf of a company or body corporate to obtain a judgment in its favour, a company may indemnify

(a) a director or officer of the company,

(b) a former director or former officer of the company, or

(c) a person who acts or acted at the company's request as a director or officer of a body corporate of which the company is or was a shareholder or creditor,

and his legal representatives, against all costs, charges and expenses (including an amount paid to settle an action or satisfy a judgment) reasonably incurred by him in respect of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being, or having been, a director or officer of that company or body corporate.

(2) Subsection (1) does not apply unless the director or officer to be so indemnified

(a) acted honestly and in good faith with a view to the best interests of the company; and

(b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, had reasonable grounds for believing that his conduct was lawful.

For derivative
action.

85. A company may, with the approval of the court, indemnify a person referred to in section 84 in respect of an action

(a) by or on behalf of the company or body corporate to obtain a judgment in its favour, and

(b) to which he is made a party by reason of being or having been a director or an officer of the company or body corporate,

against all costs, charges and expenses reasonably incurred by him in connection with the action, if he fulfills the conditions set out in subsection (2) of section 84.

Right to
indemnity.

86. Notwithstanding anything in section 84 or 85, a person described in section 84 is entitled to indemnity from the company in respect of all costs, charges and expenses reasonably incurred by him in connection with the defence of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being, or having been, a director or officer of the company or body corporate, if the person seeking indemnity

(a) was substantially successful on the merits in his defence of the action or proceeding;

(b) qualified in accordance with the standards set out in section 84 or 85; and

(c) is fairly and reasonably entitled to indemnity.

Insurance of
directors.

87. A company may purchase and maintain insurance for the benefit of any person referred to in section 84 against any liability incurred by him in his capacity as a director or officer of the company.

Court approval of
indemnity.

88. (1) A company or person referred to in section 84 may apply to the court for an order approving an indemnity under section 85 or 86 and the court may so order and make any further order it thinks fit.

(2) An applicant under subsection (1) shall give the Registrar notice of the application, and the Registrar may appear and be heard in the matter.

(3) Upon an application under subsection (1), the court may order notice to be given to any interested person and that person may appear and be heard in the matter.

Register of
directors and
secretaries.

89. (1) The register of directors and secretaries kept by a company pursuant to subsection (3) of section 263 shall contain with respect to each director

- (a) a statement of his present forename and surname, any former forename or surname, his usual residential address and his business occupation (if any);
- (b) particulars of other directorships held by him; and
- (c) who is, or who is to perform the function of, a managing director, a statement to that effect.

(2) The register kept by a particular company need not contain, pursuant to paragraph (b) of subsection (1), particulars of directorships held by a director in a company of which the particular company is a wholly owned subsidiary.

(3) The register shall contain with respect to the secretary and each assistant secretary,

- (a) in the case of an individual, a statement of his present forename and surname, any former forename or surname, and his usual residential address;
- (b) in the case of a corporation, a statement of its corporate name and registered or principal office; and
- (c) in the case of a firm, a statement of the name and principal office of the firm.

(4) A company shall lodge with the Registrar,

- (a) within one month after a person ceases to be a director or, except in the case of a person becoming a director at the time of incorporation of the company, a return notifying the Registrar of the change and containing, with respect to each person who is then a director of the company, the particulars required to be specified in the register in relation to him;

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- (b) within one month after a person becomes the secretary or an assistant secretary, a return notifying the Registrar of that fact and containing with respect to the person, the particulars required to be specified in the register in relation to that person; and
 - (c) within one month after a person ceases to be the secretary or an assistant secretary, a return notifying the Registrar of that fact.

(5) A director in respect of whom an entry is required to be made in the register shall notify the company in writing within seven days after the matter occasioning the requirement of the entry occurs or arises, and shall include in the notification the particulars which the company is required to enter in the register in respect of that matter.

(6) A director commits an offence

(a) if he fails to comply with subsection (5); or

(b) if he gives false, misleading or incomplete information to a company with a view to it making an entry in its register.

(7) A director who commits an offence under subsection (6) is liable on conviction to a fine not exceeding one thousand dalasis or to a term of imprisonment not exceeding six months.

90. (1) Unless the articles of incorporation or by-laws of a company otherwise provide, the directors of the company may meet at any place, and upon such notice as the by-laws require.

(2) Subject to the articles of incorporation or by-laws, a majority of the number of directors or minimum number of directors required by the articles of incorporation constitutes a quorum at a meeting of directors, and notwithstanding any vacancy among the directors, a quorum of directors may exercise all the powers of the directors.

(3) A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of directors, and any director being a member of a committee established under section 93 may, and the secretary on the requisition of any such director shall, at any time summon a meeting of the committee.

Directors'
meetings and
organisational
matters.

(4) After the issue of a certificate of incorporation of a company, a meeting of the directors of the company shall be held at which the directors may

- (a) make by-laws;
- (b) adopt forms of share certificates and corporate records;
- (c) authorities the issue of shares;
- (d) appoint officers;
- (e) appoint an auditor to hold office until the first annual meeting of shareholders;
- (f) make banking arrangements; or
- (g) transact any other business.

(5) An incorporator or a director may call a meeting of directors referred to in subsection (1) by giving by post not less than seven clear days' notice of the meeting to each director and stating in the notice the time and place of the meeting.

(6) Subsection (1) does not apply to a company to which a certificate of amalgamation has been issued under section 282.

Notice and
waiver.

91. (1) It is not necessary to give notice of a meeting of directors or of a committee of directors to any director for the time being absent from The Gambia, unless the director who is absent from The Gambia provides an address to which a notice of a meeting of directors or of a committee of directors may be sent.

(2) A notice of a meeting of the directors of a company shall specify any matter referred to in subsection (7) of section 61 that is to be dealt with at the meeting, but, unless the by-laws of the company otherwise provide, the notice need not specify the purpose of or the business to be transacted at the meeting.

(3) A director may, in any manner, waive a notice of a meeting of directors, and attendance of a director at a meeting of directors is a waiver of notice of the meeting by the director except when he attends the

meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called.

(4) Notice of an adjourned meeting of directors need not be given if the time and place of the adjourned meeting is announced at the original meeting.

Telephone participation.

92. (1) Subject to the by-laws of a company, a director may, if all the directors of the company consent, participate in a meeting of directors of the company or of a committee of the directors by means of such telephone or other communication facilities as permit all persons participating in the meeting to hear each other.

(2) A director who participates in a meeting of directors by such means as are described in subsection (1), is, for the purposes of this Act, present at the meeting.

Establishment of committees.

93. (1) The directors of a company may, in the discharge of their functions, establish committees consisting of such member or members of their body as they think fit, and may delegate any of their powers to those committees.

(2) A committee established under subsection (1) shall, in the exercise of the powers delegated to it, conform to any regulations that may be imposed on it by the directors.

(3) The quorum necessary for the transaction of business of a committee of directors shall be fixed by the directors.

Election of chairman.

94. (1) The directors and a committee of directors of a company may elect a chairman of their meetings and determine the period for which he is to hold office, but where a chairman is not elected, or where at a meeting the chairman is not present within five minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be chairman of the meeting.

(2) Any question arising at a meeting of the directors or a committee of directors shall be decided by a majority of votes and where there is an equality of votes the chairman shall have a casting vote.

(3) Voting by proxy at meetings of directors or committees of directors shall not be permitted.

Effect of
directors'
resolution

95. (1) When a resolution in writing is signed by all the directors entitled to vote on that resolution at a meeting of directors or committee of directors,

(a) the resolution is as valid as if it had been passed at a meeting of directors or a committee of directors; and

(b) the resolution satisfies all the requirements of this Act relating to meetings of directors or committees of directors.

(2) A copy of every resolution referred to in subsection (1) shall be kept with the minutes of the proceedings of the directors or committee of directors.

Dissenting to
resolutions.

96. (1) A director who is present at a meeting of the directors or of a committee of directors consents to a resolution passed or action taken at that meeting, unless

(a) he requests that his dissent be or his dissent is entered in the minutes of the meeting;

(b) he sends his written dissent to the secretary of the meeting before the meeting is adjourned; or

(c) he sends his dissent by registered post or delivers it to the registered office of the company immediately after the meeting is adjourned.

(2) A director who votes for, or consents to, a resolution may not dissent under subsection (1).

(3) A director who was not present at a meeting at which a resolution was passed or action taken is presumed to have consented thereto unless, within seven days after he becomes aware of the resolution, he

(a) causes his dissent to be placed with the minutes of the meeting;
or

(b) sends his dissent by registered post or delivers it to the registered office of the company.

Minutes of
directors'
meetings.

97. (1) A company shall cause minutes of the proceedings of meetings of its directors and any committee of directors to be entered in a book kept for that purpose.

(2) Where minutes of a meeting are signed by the chairman of the meeting at which the proceedings took place or of the next succeeding meeting, those minutes shall be *prima facie* evidence of the proceedings.

(3) Where minutes of a meeting are recorded in accordance with this section then, until the contrary is proved, the meeting shall be deemed to be duly convened, held and conducted and all appointments of directors shall be deemed to be valid.

(4) Where a company fails to comply with subsection (1), the company and every officer of the company who is in default is liable to a fine not exceeding five hundred dalasis.

Restricted powers
of directors.

98. If the powers of the directors of a company to manage the business and affairs of the company are in whole or in part restricted by the articles of incorporation of the company, the directors have all the rights, powers and duties of the directors to the extent that the articles of incorporation do not restrict those powers, but the directors are thereby relieved of their duties and liabilities to the extent that the articles of incorporation restrict their powers.

By-law powers.

99. (1) Unless the articles of incorporation, by-laws, or unanimous shareholder agreement otherwise provide, the directors of a company may by resolution make, amend, or repeal any by-laws for the regulation of the business or affairs of the company.

(2) The directors of a company shall submit a by-law or any amendment or repeal of a by-law made under subsection (1) to the shareholders of the company at the next meeting of shareholders after the making, amendment or repeal of the by-law, and the shareholders may, by ordinary resolution, confirm, amend or reject the by-law, amendment or repeal.

(3) A by-law or any amendment or repeal of a by-law is effective from the date of the resolution of the directors making, amending or repealing the by-law until

(a) the by-law, amendment or repeal is confirmed, amended or rejected by the shareholders pursuant to subsection (2), or

(b) the by-law, amendment or repeal ceases to be effective pursuant to subsection (4),

and, if the by-law, amendment or repeal is confirmed or amended by the shareholders, it continues in effect in the form in which it was confirmed or amended.

(4) When a by-law, or an amendment or a repeal of a by-law is not submitted to the shareholders as required by subsection (2), or is rejected by the shareholders, the by-law, amendment or repeal ceases to be effective.

(5) Where a by-law, an amendment or a repeal ceases to be effective, no subsequent resolution of the directors to make, amend or repeal a by-law having substantially the same purpose or effect is effective until the resolution is confirmed, with or without amendment, by the shareholders.

Duty of care.

100. (1) Every director and officer of a company in exercising his powers and discharging his duties shall

(a) act honestly and in good faith with a view to the best interests of the company; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) In determining what are the best interests of a company, a director shall have regard to the interests of the company's employees in general as well as to the interests of its shareholders.

(3) The duty imposed by this section on the directors of a company is owed by them to the company alone, and the duty is enforceable in the same way as any other fiduciary duty owed to a company by its directors.

(4) No information about the business or affairs of a company shall be disclosed by a director or officer of the company except

(a) for the purposes of the exercise or performance of his functions as a director or officer;

(b) for the purposes of any legal proceedings;

(c) pursuant to the requirements of an enactment; or

(d) when authorised by the company.

(5) Every director and officer of a company shall comply with this Act and with the articles of incorporation and by-laws of the company, and any unanimous shareholder agreement relating to the company.

(6) Subject to a shareholder agreement which restricts the powers of the directors to manage the business and affairs of the company, no provision in a contract, the articles of incorporation of a company, its by-laws or any resolution relieves a director or officer of the company from the duty to act in accordance with this Act or relieves him from liability for a breach of this Act.

Conflicts of duty
and interests.

101. Notwithstanding any provision in the company's articles of incorporation, a director shall not, without the consent of the company in accordance with section 102, place himself in a position in which his duty to the company conflicts or may conflict with his personal interests or his duties to other persons, and in particular, without such consent a director shall not,

(a) use for his own advantage any money or property of the company or any confidential information or special knowledge obtained by him in his capacity of director;

(b) be interested directly or indirectly, otherwise than merely as a shareholder or debentureholder in a public company, in any business which competes with that of the company; or

(c) be personally interested, directly or indirectly, in any contract or other transaction entered into by the company except as provided by section 103.

Consent of
company.

102. (1) For the purposes of section 101, the company shall not be deemed to have consented unless, after full disclosure of all material facts, including the nature and extent of any interests of the directors, the transaction concerned has been specifically authorised by an ordinary resolution of the company which either have been agreed to by all the members of the company entitled to attend and vote at a general meeting or have been passed at a general meeting at which neither the director concerned nor the holders of any shares in which he is beneficially

interested, either directly or indirectly, have voted as members on such resolution.

(2) Subject to subsection (3), consent in accordance with subsection (1) may be given either before or after the occurrence of the transaction to which it relates.

(3) A resolution of the company ratifying a transaction or series of related transactions which have already taken place shall not be effective for the purposes of subsection (1) unless it was passed not later than fifteen months after the date when the transaction or first of such transactions took place.

Interest in
contracts.

103. (1) A director or officer of a company

(a) who is a party to a material contract or proposed material contract with the company, or

(b) who is a director or an officer of a body, or has a material interest in a body, that is a party to a material contract or proposed material contract with the company,

shall disclose in writing to the company or request to have entered in the minutes of meetings of directors the nature and extent of his interest.

(2) The disclosure required by subsection (1) shall be made, in the case of a director of a company,

(a) at the meeting at which a proposed contract is first considered;

(b) if the director was not then interested in a proposed contract, at the first meeting after he becomes so interested;

(c) if the director becomes interested after a contract is made, at the first meeting after he becomes so interested; or

(d) if a person who is interested in a contract later becomes a director of the company, at the first meeting after he becomes a director.

(3) The disclosure required by subsection (1) shall be made, in the case of an officer of a company who is not a director,

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- (a) forthwith after he becomes aware that the contract or proposed contract is to be considered, or has been considered, at a meeting of directors of the company;
- (b) if the officer becomes interested after a contract is made, forthwith after he becomes so interested; or
- (c) if a person who is interested in a contract later becomes an officer of the company, forthwith after he becomes an officer.
- (4) If a material contract or a proposed material contract is one that, in the ordinary course of the company's business, would not require approval by the directors or shareholders of the company, a director or officer of the company shall disclose in writing to the company, or request to have entered in the minutes of meetings of directors, the nature and extent of his interest forthwith after the director or officer becomes aware of the contract or proposed contract.
- (5) A director of a company who is referred to in subsection (1) may vote on a resolution to approve a contract that he has an interest in, if the contract
- (a) is an arrangement by way of security for money loaned to, or obligations undertaken by, him for the benefit of the company or an affiliate of the company;
- (b) is a contract that relates primarily to his remuneration as director, officer, employee or agent of the company or an affiliate of the company;
- (c) is a contract for indemnity or insurance under sections 84 to 88;
- (d) is a contract with an affiliate of the company; or
- (e) is a contract other than one referred to in paragraphs (a) to (d).
- (6) In the case of a contract described in paragraph (e) of subsection (5) no resolution is valid unless notice of the nature and extent of the director's interest in the contract is declared and disclosed in reasonable detail to the shareholders of the company and the resolution is approved by not less than two-thirds of the votes.

Interest
declaration.

104. For the purposes of section 103, a general notice to the directors of a company by a director or an officer of the company declaring that he is a director or officer of, or has a material interest in, another body, and is to be regarded as interested in any contract with that body is a sufficient declaration of interest in relation to any such contract.

Avoidance of
nullity.

105. A material contract between a company and one or more of its directors or officers, or between a company and another body of which a director or officer of the company is a director or officer, or in which he has a material interest, is neither void nor voidable

(a) by reason only of that relationship, or

(b) by reason only that a director with an interest in the contract is present at, or is counted to determine the presence of a quorum at, a meeting of directors or a committee of directors that authorised the contract,

if the director or officer disclosed his interest in accordance with subsection (2), (3) or (4) of section 103 or section 104, as the case may be, and the contract was approved by the directors or the shareholders and was reasonable and fair to the company at the time it was approved.

Setting aside
contract.

106. When a director or officer of a company fails to disclose, in accordance with section 103 or 104, his interest in a material contract made by the company, the court may, upon the application of the company or a shareholder of the company set aside the contract on such terms as the court thinks fit.

Designation of
offices.

107. Subject to this Act and to the articles of incorporation or by-laws of a company or any unanimous shareholder agreement,

(a) the directors of the company may designate the offices of the company, appoint as officers persons of full capacity, specify their duties and delegate to them powers to manage the business and affairs of the company, except powers to do anything referred to in subsection (2) of section 77;

(b) a director may be appointed to any office of the company; and

(c) two or more offices of the company may be held by the same person.

Directors' borrowing powers.

108. (1) Unless the articles of incorporation or by-laws of, or any unanimous shareholder agreement relating to, the company otherwise provide, the directors of the company may, without authorisation of the shareholders,

- (a) borrow money upon the credit of the company;
- (b) issue, re-issue, sell or pledge debentures of the company;
- (c) subject to section 79, give a guarantee on behalf of the company to secure performance of an obligation of any person; and
- (d) mortgage, charge, pledge, or otherwise create to secure any obligation of the company or any other person a security interest in all or any property of the company that is owned or subsequently acquired by the company.

(2) Notwithstanding subsection (2) of section 77 and paragraph (a) of section 107, unless the articles of incorporation or by-laws of, or any unanimous shareholder agreement relating to, a company otherwise provide, the directors of the company may by resolution delegate the powers mentioned in subsection (1) to a director, a committee of directors or any officer of the company.

Liability for breach of duty.

109. Where a director commits a breach of his duties under section 100 or 101,

- (a) the director and any other person who knowingly participated in the breach is liable to compensate the company for any loss it suffers as a result of the breach;
- (b) the director shall account to the company for any profit made by him as a result of the breach; and
- (c) a contract or other transaction entered into between the director and the company in breach of those duties may be rescinded by the company.

Liability for share issue.

110. Directors of a company who vote for or consent to a resolution authorising the issue of a share for a consideration other than money are jointly and severally liable to the company to make good any amount by which the consideration received is less than the fair equivalent of the

money that the company would have received if the share had been issued for money on the date of the resolution.

Liability for other acts.

111. Directors of a company who vote for, or consent to, a resolution authorising

(a) a purchase, redemption or other acquisition of shares,

(b) a commission,

(c) a payment of a dividend,

(d) financial assistance,

(e) a payment of an indemnity contrary to sections 283 to 292 or 373,

are jointly and severally liable to restore to the company any amounts so distributed or paid and not otherwise recovered by the company.

Contribution for judgment.

112. A director who has satisfied a judgment founded on a liability under section 110 or 111 is entitled to contribution from the other directors who voted for or consented to the unlawful act upon which the judgment was founded.

Enforcement of contract.

113. A contract made by a company contrary to section 79 may be enforced by the company or by a lender for value in good faith without notice of the contravention.

Recovery by action.

114. (1) A director who is liable under section 111 may apply to the court for an order compelling a shareholder or other recipient to pay or deliver to the director any money or property that was paid or distributed to the shareholder or other recipient contrary to this Act.

(2) In connection with an application under subsection (1), the court may, if it is satisfied that it is equitable to do so,

(a) order a shareholder or other recipient to pay or deliver to a director any money or property that was paid or distributed to the shareholder or other recipient contrary to this Act;

(b) order a company to return or issue shares to a person from whom the company has purchased, redeemed or otherwise acquired shares; or

(c) make any further order it thinks fit.

Defence to liability.

115. A director of a company is not liable

(a) under section 110, if he did not know and could not reasonably have known that the share was issued for a consideration less than the fair equivalent of the money that the company would have received if the share had been issued for money; and

(b) under section 100 or 111, if he relies in good faith upon

(i) financial statements of the company represented to him by an officer of the company; or

(ii) a report of a legal practitioner, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by him.

Limitation.

116. An action to enforce a liability imposed under section 110 or 111 may not be commenced after two years from the date of a resolution authorising the action complained of.

Duties of directors in connection with sales or purchases of the company's securities.

117. (1) If a director of a company, having acquired as such director any special information which may substantially affect the value of the shares or debentures of the company or any associated company, sells those shares or debentures without disclosing such information to the seller or purchaser thereof, the purchase or sale is voidable at the option of the seller or purchaser within twelve months after the date of the agreement to sell or buy.

(2) For the purposes of this section, any shares or debentures bought or sold shall be deemed to have been bought or sold by a director if his interest therein is such as to require recording in relation to him in the register to be maintained in accordance with section 263, unless it is proved that the sale or purchase was not made by him on his instructions or advice or on the instructions or advice of any other person to whom he had imparted any special information affecting the value of the shares or debentures obtained by him in his capacity of director.

(3) This section shall not prejudice the right of the company to proceed against a director for breach of section 101.

Prohibition of assignment of office.

118. A provision in the articles of incorporation of a company or an agreement purporting to empower a director or other officer to assign his office to another person and a purported assignment of the office is void.

CHAPTER V

SHAREHOLDERS OF COMPANIES

(i) Membership and Meetings

Constitution of membership.

119. (1) The subscribers of the articles of incorporation shall be deemed to be members of the company.

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

(3) Every member shall have such rights, duties and liabilities as are by this Act and the articles of incorporation of the company conferred and imposed upon members.

(4) In the case of a company with shares each member shall be a shareholder of the company and shall hold at least one share, and every holder of a share shall be a member of the company.

(5) Membership of a company with shares shall continue until a valid transfer of all the shares held by the member is registered by the company, or until all such shares are transmitted by operation of law to another person or forfeited for non-payment of calls under a provision in the articles of incorporation or until the member dies.

(6) Membership of a company limited by guarantee shall continue until the member dies, or validly retires or is excluded from membership in accordance with a provision to that effect in the articles of incorporation.

(7) The following persons are shareholders in a company:

- (a) the personal representative of a deceased shareholder and the trustee in bankruptcy of a bankrupt shareholder; and
- (b) a person in whose favour a transfer of shares has been executed but whose name has not been entered in the register of members of the company or, if two or more such transfers have been executed, the person in whose favour the most recent transfer has been made.

Right to attend and vote at a meeting.

120. (1) Subject to subsection (2), a member of a company shall, notwithstanding a provision in the articles of incorporation, have a right to attend a general meeting of the company and to speak and vote on a resolution before the meeting.

(2) A company's articles of incorporation may provide that a member shall not be entitled to attend and vote unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

Rectification of register.

121. (1) A member of a company may apply to the court for rectification of the register if,

- (a) his name is, without sufficient cause, entered in or omitted from the register of members of the company; or
- (b) default is made in entering on the register particulars which are required to be entered thereon.

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

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

(4) A company may, without application to the Court, at any time rectify an error or omission in the register of members but such a

rectification shall not adversely affect a person unless he agrees to the rectification made.

Companies
ceasing to have
members.

122. If at any time a company ceases to have a member and it carries on business for more than six months without at least one member, every person who is a director or officer of the company during the time that it so carries on business after those six months shall be jointly and severally liable for the payment of all the debts and liabilities of the company incurred during that period.

Meetings of
shareholders.

123. (1) Meetings of shareholders of a company shall be held at the place within The Gambia provided in the by-laws, or, in the absence of any such provision, at the place within The Gambia that the directors determine.

(2) Notwithstanding subsection (1), a meeting of shareholders of a company may be held outside The Gambia if all the shareholders entitled to vote at the meeting so agree.

(3) A shareholder who attends a meeting of shareholders held outside The Gambia agrees to its being so held unless he attends the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully held.

Calling meetings.

124. The directors of a company

(a) shall call an annual meeting of shareholders not later than eighteen months after the company comes into existence, and subsequently not later than fifteen months after holding the last preceding annual meeting; and

(b) may at any time call a special meeting of shareholders.

Record date of
shareholders.

125. (1) For the purpose of

(a) determining the shareholders of the company who are

(i) entitled to receive payment of a dividend, or

(ii) entitled to participate in a winding up distribution, or

- (b) determining the shareholders of the company for any other purpose except the right to receive notice of, or to vote at, a meeting,

the directors may fix in advance a date as the record date for the determination of shareholders, but that record date shall not precede by more than thirty days the particular action to be taken.

(2) For the purpose of determining shareholders who are entitled to receive notice of a meeting of shareholders of the company, the directors of the company may fix in advance a date as the record date for the determination of shareholders, but the record date shall not precede by more than thirty days or by less than seven days the date on which the meeting is to be held.

Statutory
date.

126. If no record date is fixed,

(a) the record date for determining the shareholders who are entitled to receive a notice of a meeting of the shareholders is

(i) the close of business on the date immediately preceding the day on which the notice is given, or

(ii) if no notice is given, the day on which the meeting is held; and

(b) the record date for the determination of shareholders for any purpose other than the purpose of business on the day on which the directors pass the resolution relating to that purpose.

Notice of
record date.

127. If a record date is fixed under section 125, notice thereof shall, in the case of a public company, be given by advertisement twice in a newspaper published in The Gambia and by radio announcement not less than seven days before the date so fixed.

Notice of
meeting.

128. (1) Notice of the time and place of a meeting of shareholders shall be sent not less than seven days nor more than thirty days before the meeting,

(a) to each shareholder entitled to vote at the meeting;

(b) to each director; and

(c) to the auditor of the company.

(2) A notice of a meeting of shareholders of a company is not required to be sent to shareholders of the company who were not registered on the records of the company or its transfer agent on the record date determined under section 125 or 126, as the case may be, but failure to receive notice does not deprive a shareholder of the right to vote at the meeting.

(3) If a meeting of shareholders is adjourned for less than thirty days, it is not necessary, unless the by-laws otherwise provide, to give notice of the adjourned meeting, other than by announcement at the earliest meeting that is adjourned.

(4) If a meeting of shareholders is adjourned by one or more adjournments for an aggregate of thirty days or more, notice of the adjourned meeting shall be given as for an original meeting but, unless the meeting is adjourned by one or more adjournments for an aggregate of more than ninety days, subsection (1) of section 158 does not apply.

Special business.

129. (1) All business transacted at a special meeting of shareholders, and all business transacted at an annual meeting of shareholders, is special business, except

(a) the consideration of the financial statements;

(b) the directors' report;

(c) the auditor's report;

(d) the sanction of dividends;

(e) the election of directors; and

(f) the re-appointment of the incumbent auditor.

(2) Notice of a meeting of shareholders at which special business is to be transacted shall state

(a) the nature of that business in sufficient detail to permit the shareholder to form a reasoned judgment thereon; and

(b) the text of any special resolution to be submitted to the meeting.

Waiver of notice and telephone participation.

130. (1) A shareholder and any other person who is entitled to attend a meeting of shareholders may in any manner waive notice of the meeting.

(2) The attendance of a person at a meeting of shareholders is a waiver of notice of the meeting by that person, unless he attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

(3) Subject to the by-laws of a company, a shareholder may, if all the shareholders of the company consent, participate in a meeting of shareholders of the company by means of such telephone or other communication facilities as permit all persons participating in the meeting to hear each other.

(4) A shareholder who participates in a meeting of shareholders by such means as are described in subsection (3) is, for the purposes of this Act, present at the meeting.

(ii) Proposals and Proxies

"Proposals" of shareholders.

131. A shareholder of a company who is entitled to vote at an annual meeting of the shareholders may

(a) submit to the company notice of any matter that he proposes to raise at the meeting, in this Chapter referred to as a "proposal"; and

(b) discuss at the meeting any matter in respect of which he would have been entitled to submit a proposal.

Proxy circular.

132. (1) A company that solicits proxies shall set out the proposal in the management proxy circular required by section 373 or attach the proposal to that circular.

(2) If so requested by a shareholder who submits a proposal to a company, the company shall include in the management proxy circular, or attach to it, a statement by the shareholder of not more than two hundred words in support of the proposal, and the name and address of the shareholder.

Nomination in
proposal.

133. (1) A proposal may include nomination for the election of directors if the proposal is signed by one or more holders of shares who represent in the aggregate not less than

(a) five percent of the shares of the company, or

(b) five percent of the shares of a class of shares of the company,

entitled to vote at a meeting to which the proposal is to be presented.

(2) Subsection (1) does not preclude nominations made at a meeting of shareholders of a company that is not required to solicit proxies under section

Non-compliance
with proxy
solicitation.

134. A company is not required to comply with subsection (2) of section 132 if

(a) the proposal is not submitted to the company at least ninety days before the anniversary date of the previous annual meeting of shareholders of the company;

(b) it clearly appears to the company that the proposal is submitted by the shareholder primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the company or its directors, officers, shareholders or debenture holders, or primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes;

(c) the company, at the shareholder's request, included a proposal in a management proxy circular relating to a meeting of shareholders held within two years preceding the receipt of that request and the shareholder failed to present the proposal, in person or by proxy, at the meeting;

(d) substantially the same proposal was submitted to shareholders in a management proxy circular or a dissident's proxy circular relating to a meeting of shareholders held within two years preceding the receipt of the shareholder's request and the proposal was defeated; or

(e) the rights conferred by that subsection are being abused to secure publicity.

- Publishing immunity.** **135.** No company, or person acting on its behalf, incurs a liability by reason only of circulating a proposal or statement in compliance with this Act.
- Refusal notice.** **136.** When a company refuses to include a proposal in a management proxy circular, the company shall, within ten days after receiving the proposal, notify the shareholder submitting the proposal of its intention to omit the proposal from the management proxy circular, and the company shall send him a statement of the reasons for its refusal.
- Restraining meeting.** **137.** Upon application to the court by a shareholder of a company who is claiming to be aggrieved by the company's refusal under section 136 to include a proposal in a management proxy circular, the court may restrain the holding of the meeting to which the proposal is sought to be presented and make any further order it thinks fit.
- Right to omit proposal.** **138.** A company or any person claiming to be aggrieved by a proposal submitted to the company may apply to the court for an order permitting the company to omit the proposal from its management proxy circular, and the court may, if it is satisfied that section 134 applies, make such order as it thinks fit.
- Registrar's notice.** **139.** An applicant under section 137 or 138 shall give the Registrar notice of the application, and the Registrar may appear and be heard in person or by a legal practitioner.

(iii) Shareholder Lists

- List of shareholders.** **140.(1)** A company shall
- (a)** not later than ten days after the record date is fixed under subsection (2) of section 125, or
- (b)** if no record date is fixed,
- (i)** at the close of business on the date immediately preceding the day on which the notice is given, or
- (ii)** if no notice is given, as of the day on which the meeting is held,

prepare a list of its shareholders who are entitled to receive notice of a meeting, arranged in alphabetical order and showing the number of shares held by each shareholder.

(2) When a company fixes a record date under subsection (2) of section 125, a person named in the list prepared under paragraph (a) of subsection (1) is, subject to subsection (3) entitled, at the meeting to which the list relates to vote the shares shown opposite his name.

(3) Where a person has transferred the ownership of any of his shares in a company after the record date fixed by the company, if the transferee of those shares

(a) produces properly endorsed share certificates to the company or otherwise establishes to the company that he owns the shares, and

(b) demands, not later than ten days before the meeting of the shareholders of the company, that his name be included in the list of shareholders before the meeting,

the transferee may vote his shares at the meeting.

(4) When a company does not fix a record date under subsection (2) of section 125, a person named in a list of shareholders prepared under paragraph (b) of subsection (1) may, at the meeting to which the list relates, vote the shares shown opposite his name.

Examination of
list.

141. A shareholder of a company may examine the list of its shareholders

(a) during usual business hours at the registered office of the company or at the place where its register of shareholders is maintained;

(b) at the meeting of shareholders for which the list was prepared.

(iv) Quorum

Quorum at
meetings.

142. (1) Unless the by-laws otherwise provide, a quorum of shareholders is present at a meeting of shareholders if the holders of a majority of the shares entitled to vote at the meeting are present in person or represented by proxy.

(2) If a quorum is present at the opening of a meeting of shareholders, the shareholders present may, unless the by-laws otherwise provide, proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting.

(3) If a quorum is not present within thirty minutes of the time appointed for a meeting of shareholders, the meeting stands adjourned to the same day two weeks thereafter, at the same time and place, and, if at the adjourned meeting, a quorum is not present within thirty minutes of the appointed time, the shareholders present constitute a quorum.

(4) When a company has only one shareholder of any class or series of shares, that shareholder present in person or by proxy constitutes a meeting.

(v) Voting the Shares

Right to vote
share.

143. Unless the articles of incorporation of the company otherwise provide, on a show of hands a shareholder or proxy holder has one vote and upon a poll a shareholder or proxy holder has one vote for every share held.

Representation
of other body.

144. (1) When a body corporate or association is a shareholder of a company, the company shall recognise any individual authorised by a resolution of the directors or governing body of the body corporate or association to represent it at meetings of shareholders of the company.

(2) An individual who is authorised as described in subsection (1) may exercise, on behalf of the body corporate or association that he represents, all the powers it could exercise if it were an individual shareholder.

Joint shareholders.

145. Unless the by-laws otherwise provide, if two or more persons hold shares jointly, one of those holders present at a meeting of shareholders may, in the absence of the other, vote the shares, but if two or more of those persons who are present, in person or by proxy, vote, they shall vote as one on the shares jointly held by them.

Voting method at
meetings.

146. (1) Unless the by-laws otherwise provide, voting at a meeting of shareholders shall be by a show of hands, except when a ballot is demanded by a shareholder or proxy holder entitled to vote at the meeting.

(2) A shareholder or proxy holder may demand a ballot either before or after any vote by show of hands.

Resolution in writing.

147.(1) Except where a written statement is submitted by a director under section 71 or an auditor under section 229,

- (a) a resolution in writing signed by all the shareholders entitled to vote on that resolution at a meeting of shareholders is as valid as if it had been passed at a meeting of the shareholders; and
- (b) a resolution in writing dealing with all matters required by this Act to be dealt with at a meeting of shareholders, and signed by all the shareholders entitled to vote at that meeting, satisfied all the requirements of this Act relating to meetings of shareholders.

(2) A copy of every resolution referred to in subsection (1) shall be kept with the minutes of the meetings of shareholders but failure so to keep such copy does not render void any action taken by the company.

(vi) Compulsory Meeting

Requisitioned shareholders meeting.

148. (1) The holders of not less than five percent of the issued shares of a company that carry the right to vote at a meeting sought to be held by them may requisition the directors to call a meeting of shareholders for the purposes stated in the requisition.

(2) The requisition referred to in subsection (1), which may consist of several documents of like form, each signed by one or more shareholders of the company, shall state the business to be transacted at the meeting and shall be sent to each director and to the registered office of the company.

(3) Upon receiving a requisition referred to in subsection (1), the directors shall call a meeting of shareholders to transact the business stated in the requisition, unless

- (a) a record date has been fixed under subsection (2) of section 125 and notice thereof has been given under section 127;
- (b) the directors have called a meeting of shareholders and have given notice thereof under section 128; or

(c) the business of the meeting as stated in the requisition includes matters described in paragraphs (b) to (e) of section 134.

(4) If, after receiving a requisition referred to in subsection (1), the directors do not call a meeting of shareholders within twenty-one days after receiving the requisition, any shareholder who signed the requisition may call the meeting.

(5) A meeting called under this section shall be called as nearly as possible in the manner in which meetings are to be called pursuant to the by-laws, this Chapter and Chapter VI.

(6) Unless the shareholders otherwise resolve at a meeting called under subsection (4), the company shall reimburse the shareholders who requisitioned the meeting the expenses reasonably incurred by them in requisitioning, calling and holding the meeting.

Court-called
meeting.

149. (1) Upon the application to the court by a director of a company or a shareholder of the company who is entitled to vote at a meeting of the shareholders, or by the Registrar, the court may,

(a) when for any reason it is impracticable

(i) to call a meeting of shareholders in the manner in which meetings of shareholders can be called, or

(ii) to conduct the meeting in the manner prescribed by the by-laws and this Act, or

(b) when the directors fail to call a meeting of the shareholders in contravention of section 148, or

(c) for any other reason thought fit by the court,

order a meeting of shareholders to be called, held and conducted in such manner as the court may direct.

(2) Without restricting the generality of subsection (1), the court may order that the quorum required by the by-laws or this Act be varied or dispensed with at a meeting called, held and conducted pursuant to this section.

(3) A meeting of the shareholders of a company called, held and conducted pursuant to this section is for all purposes a meeting of shareholders of the company duly called, held and conducted.

(vii) Controverted Affairs

Power of court
to determine
controversy.

150. (1) A company or a shareholder or director thereof may apply to the court to determine any controversy with respect to an election or appointment of a director or auditor of the company.

(2) Upon an application made under this section, the court may make any order it thinks fit including,

- (a) an order restraining a director or auditor whose election or appointment is challenged from acting, pending determination of the dispute;
- (b) an order declaring the result of the disputed election or appointment;
- (c) an order requiring a new election or appointment, and including in the order directions for the management of the business and affairs of the company until a new election is held, or appointment made; and
- (d) an order determining the voting rights of shareholders and of persons claiming to own shares.

(viii) Shareholder Agreements

Pooling
agreement.

151. A written agreement between two or more shareholders of a company may provide that in exercising voting rights the shares held by them will be voted as provided in the agreement.

Unanimous
shareholder
agreement.

152. (1) An otherwise lawful written agreement among all the shareholders of a company, or among all the shareholders and a person who is not a shareholder, that restricts, in whole or in part, the powers of the directors of the company to manage the business and affairs of the company is valid.

(2) A shareholder who is a party to any unanimous shareholder agreement has all the rights, powers and duties, and incurs all the liabilities of a director of the company to which the agreement relates, to the extent that the agreement restricts the discretion or powers of the directors to manage the business and affairs of the company, and the directors are thereby relieved of their duties and liabilities to the same extent.

(3) If a person who is the beneficial owner of all the issued shares of a company makes a written declaration that restricts in whole or in part the powers of the directors to manage the business and affairs of the company, the declaration constitutes a unanimous shareholder agreement.

(4) Where any unanimous shareholder agreement is executed or terminated, written notice of that fact, together with the date of the execution or termination thereof, shall be filed with the Registrar within fifteen days after the execution or termination.

(ix) Shareholder Approvals

Extra-ordinary
transaction.

153. (1) A sale, lease or exchange of all, or substantially all, the property of a company other than in the ordinary course of business of the company requires the approval of the shareholders in accordance with this section.

(2) A notice of a meeting of shareholders complying with section 128 shall be sent in accordance with that section to each shareholder and shall

(a) include or be accompanied by a copy or summary of the agreement of sale, lease or exchange, and

(b) state that a dissenting shareholder is entitled to be paid the fair value of his shares in accordance with section 283,

but failure to make the statement referred to in paragraph (b) does not invalidate a sale, lease or exchange referred to in subsection (1).

(3) At the meeting referred to in subsection (2) the shareholders may authorise the sale, lease or exchange of the property, and may fix or authorise the directors to fix any of the terms and conditions of the sale, lease or exchange.

(4) Each share of the company carries the right to vote in respect of a sale, lease or exchange referred to in subsection (1), whether or not it otherwise carries the right to vote.

(5) The shareholders of a class or series of shares of the company are entitled to vote separately as a class or series in respect of a sale, lease or exchange referred to in subsection (1) only if the class or series is affected by the sale, lease or exchange in a manner different from the shares of another class or series.

(6) A sale, lease or exchange referred to in subsection (1) is adopted when the shareholders of each class or series of shares who are entitled to vote thereon have, by special resolution, approved of the sale, lease or exchange.

(7) The directors of a company, if authorised by the shareholders approving a proposed sale, lease or exchange, may, subject to the rights of third parties, abandon the sale, lease or exchange without any further approval of the shareholders.

CHAPTER VI

PROXIES

Definitions.

154. (1) In this Chapter,

"form of proxy" means a written or printed form that, upon completion and signature by or on behalf of a shareholder, becomes a proxy;

"proxy" means a completed and signed form of proxy by means of which a shareholder appoints a proxy holder to attend and act on his behalf at a meeting of shareholders;

"registrant" means a broker or dealer required to be registered to trade or deal in shares or debentures under the law of any jurisdiction;

"solicit" or "solicitation" includes, subject to subsection (2),

(a) a request for a proxy, whether or not accompanied with or included in a form of proxy;

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- (b) a request to execute or not to execute a form of proxy or to revoke a proxy;
 - (c) the sending of a form of proxy or other communication to a shareholder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy, and
 - (d) the sending of a form of proxy to a shareholder under section 158; and

"solicitation by or on behalf of the management of a company" means a solicitation by any person pursuant to a resolution or instructions of, or with the acquiescence of, the directors or a committee of directors of the company concerned.

- (2) The term "solicit" or "solicitation" does not include
 - (a) the sending of a form of proxy in response to an unsolicited request made by or on behalf of a shareholder;
 - (b) the performance of administrative acts or professional services on behalf of a person soliciting a proxy;
 - (c) the sending by a registrant of the documents referred to in section 163; or
 - (d) a solicitation by a person in respect of shares of which he is the beneficial owner.

(i) Proxy Holders

Proxy
appointment.

155. (1) A shareholder who is entitled to vote at a meeting of shareholders may by means of a proxy appoint a proxy holder, or one or more alternate proxy holders, none of whom need be shareholders, to attend and act at the meeting in the manner and to the extent authorised by the proxy and with the authority conferred by the proxy.

(2) A proxy shall be executed in writing by the shareholder or his attorney authorised in writing.

(3) A proxy is valid only at the meeting in respect of which it is given or any adjournment of that meeting.

Revocation of proxy.

156. A shareholder of a company may revoke a proxy

(a) by depositing an instrument in writing executed by him or by his attorney authorised in writing,

(i) at the registered office of the company at any time, up to and including the last business day preceding the day of the meeting, or any adjournment of that meeting, at which the proxy is to be used, or

(ii) with the chairman of the meeting on the day of the meeting or any adjournment of that meeting; or

(b) in any other manner permitted by law.

Deposit of proxy.

157. The directors of a company may specify in a notice calling a meeting of the shareholders of the company a time not exceeding forty-eight hours preceding the meeting or an adjournment of the meeting before which time proxies to be used at the meeting shall be deposited with the company or its agent.

Mandatory solicitation of proxy.

158. (1) Subject to subsection (2), the management of a company shall, concurrently with the giving of notice of a meeting of shareholders, send a form of proxy in the prescribed form to each shareholder who is entitled to receive notice of the meeting.

(2) Where a company has fewer than fifteen shareholders, two or more joint shareholders being counted as one, the management of the company need not send a form of proxy under subsection (1).

Prohibited solicitation.

159. A person shall not solicit proxies unless there is sent to the auditor of the company, to each shareholder whose proxy is solicited and to the company if the solicitation is not by or on behalf of the management of the company,

(a) a management proxy circular in the prescribed form, either as an appendix to, or as a separate document accompanying the notice of the meeting, when the solicitation is by or on behalf of the management of the company; or

(b) a dissident's proxy solicitation, in the prescribed form stating the purpose of the solicitation, when the solicitation is not by or on behalf of the management of the company.

Documents for Registrar.

160. A person required to send a management proxy circular or dissident's proxy circular shall concurrently send a copy thereof to the Registrar, together with a copy of the notice of the meeting, form of proxy and any other documents for use in connection with the meeting.

Exemption by Registrar.

161. Upon the application of an interested person, the Registrar may, on such terms as he thinks fit, exempt that person from any of the requirements of section 158 or 159, and the exemption may be given retroactive effect by the Registrar.

Proxy attending meeting.

162. (1) A person who solicits a proxy and is appointed proxy holder shall

(a) attend in person, or cause an alternate proxy holder to attend, the meeting in respect of which the proxy is given; and

(b) comply with the directions of the shareholder who appointed him.

(2) A proxy holder or an alternate proxy holder has the same rights as the shareholder who appointed him

(a) to speak at the meeting of shareholders in respect of any matter;

(b) to vote by way of ballot at the meeting; and

(c) except when a proxy holder or an alternate proxy holder has conflicting instructions from more than one shareholder, to vote at the meeting in respect of any matter by way of any show of hands.

(ii) Share Registrants

Registrant's duty.

163. (1) Shares of a company that are registered in the name of a registrant or his nominee and not beneficially owned by the registrant may not be voted unless the registrant forthwith after the receipt thereof sends to the beneficial owner

(a) a copy of the notice of the meeting, financial statements, management proxy circular, dissident's proxy circular and any other documents sent to shareholders by or on behalf of any person for use in connection with the meeting, other than the form of proxy; and

(b) except where the registrant has received written voting instructions from the beneficial owner, a written request for voting instructions.

(2) A registrant may not vote or appoint a proxy holder to vote shares registered in his name or in the name of his nominee that he does not beneficially own unless he receives voting instructions from the beneficial owner of the shares.

(3) A person by or on behalf of whom a solicitation is made shall, at the request of a registrant, forthwith furnish to the registrant at that person's expense the necessary number of copies of the documents referred to in paragraph (a) of subsection (1).

(4) A registrant shall vote or appoint a proxy holder to vote any shares referred to in subsection (1) in accordance with any written voting instructions received from the beneficial owner.

(5) If requested by a beneficial owner of shares of a company, the registrant of those shares shall appoint the beneficial owner or a nominee of the beneficial owner as proxy holder for those shares.

(6) The failure of a registrant to comply with this section does not render void any meeting of shareholders or any action taken at the meeting.

Governing
prohibition.

164. Nothing in section 163 gives a registrant the right to vote shares that he is otherwise prohibited from voting.

(iii) Remedial Powers

Restraining
order.

165. (1) If a form of proxy, management proxy circular or dissident's proxy circular

(a) contains an untrue statement of a material fact, or

- (b) omits to state a material fact required therein or necessary to make a statement contained therein not misleading in the light of the circumstances in which it was made,

an interested person or the Registrar may apply to the court.

(2) On an application under this section the court may make any order it thinks fit, including any or all of the following orders:

- (a) an order restraining the solicitation or the holding of the meeting or restraining any person from implementing or acting upon any resolution passed at the meeting to which the form of proxy, management proxy circular or dissident's proxy circular relates;
- (b) an order requiring correction of a form of proxy or proxy circular and a further solicitation; or
- (c) an order adjourning the meeting.

(3) An applicant under this section other than the Registrar shall give the Registrar notice of the application, and the Registrar may appear and be heard in person or by a legal practitioner.

PART II - PROTECTION OF CREDITORS AND INVESTORS

CHAPTER I

TRUST DEEDS AND DEBENTURES

Definitions.

166. In this Chapter,

- (a) "event of default" means an event specified in a trust deed on the occurrence of which
- (i) a security interest constituted by the trust deed becomes enforceable, or
- (ii) the principal, interest and other moneys payable thereunder become, or can be declared to be, payable before maturity,

but the event is not an event of default until all conditions prescribed in the trust deed in connection with that event for the

giving of notice or the lapse of time or otherwise have been satisfied;

(b) "trustee" means a person appointed as trustee under the terms of a trust deed to which a company is a party, and includes a successor trustee;

(c) "trust deed" means any deed, indenture or other instrument, including any supplement or amendment thereto, made by a company after its incorporation or continuance under this Act, under which the company issues debentures and in which a person is appointed as trustee for the holders of the debentures issued thereunder.

Application of
Chapter.

167. This Chapter applies to a trust deed if the debentures issued or to be issued under the trust deed are part of a distribution to the public.

(i) Trustees

Conflict of
interest.

168. (1) No person shall be appointed as trustee if there is a material conflict of interest between his role as trustee and his role in any other capacity.

(2) There is a material conflict of interest for the purpose of subsection (1) where a person is an officer or employee, or a shareholder of the company issuing the debentures.

(3) Within ninety days after a trustee becomes aware that a material conflict of interest exists in his case, he shall

(a) eliminate the conflict of interest; or

(b) resign from office.

(4) A trust deed, any debentures issued thereunder and a security interest effected thereby are valid notwithstanding a material conflict of interest of the trustee.

(5) If the trustee is appointed contrary to subsection (1) or continues as a trustee contrary to subsection (3), any interested person may apply to the court for an order that the trustee be replaced and the court may make an order on such terms as it thinks fit.

List of
debenture-
holders.

169. (1) A holder of debentures issued under a trust deed may, upon payment to the trustee of a reasonable fee, require the trustee to furnish, within fifteen days after delivering to the trustee the statutory declaration referred to in subsection (4), a list setting out

(a) the names and addresses of the registered holders of the outstanding debentures of the issuer,

(b) the principal amount of outstanding debentures owned by each such holder, and

(c) the aggregate principal amount of debentures outstanding,

as shown in the records maintained by the trustee on the day that the statutory declaration is delivered to him.

(2) Where a debentureholder and a trustee fail to agree on the reasonable fee to be paid to the trustee under subsection (1), they shall refer the matter to the Registrar for determination and the Registrar's decision shall be final.

(3) Upon the demands of a trustee, the issuer of debentures shall furnish the trustee with the information required to enable the trustee to comply with subsection (1).

(4) If the person requiring the trustee to furnish a list under subsection (1) is a body corporate, the statutory declaration required under that subsection shall be made by a director or officer of the body corporate.

(5) The statutory declaration required under subsection (1) shall state

(a) the name and address of the person requiring the trustee to furnish the list, and, if the person is a body corporate, its address for service; and

(b) that the list will not be used except as permitted under subsection (6).

(6) A list obtained under this section shall not be used by any person except in connection with

(a) an effort to influence the voting of the debenture holders;

- (b) an offer to acquire debentures; or
- (c) any other matter relating to the debentures or the affairs of the issuer or guarantor thereof.

Evidence of compliance.

170. An issuer or a guarantor of debentures issued or to be issued under a trust deed shall, before

- (a) the issue, certification and delivery of debentures under the trust deed,
- (b) the release, or release and substitution, of property that is subject to a security interest constituted by the trust deed, or
- (c) the satisfaction and discharge of the trust deed,

furnish the trustee with evidence of compliance with the conditions in the trust deed.

Contents of evidence.

171. Evidence of compliance as required by section 170 shall consist of the following:

- (a) a statutory declaration or certificate made by a director or an officer of the issuer or guarantor stating that the conditions referred to in that section have been complied with;
- (b) if the trust deed requires compliance with conditions that are subject to review by a legal practitioner his opinion that those conditions have been complied with; and
- (c) if the trust deed requires compliance with conditions that are subject to review by an auditor or accountant, an opinion or report of the auditor of the issuer or guarantor, or such other accountant as the trustee may select, that those conditions have been complied with.

Further evidence.

172. The evidence of compliance referred to in section 171 shall include a statement by the person giving the evidence

- (a) declaring that he has read and understands the conditions of the trust deed described in section 170;

- (b) describing the nature and scope of the examination or investigation upon which he based the certificate, statement or opinion; and
- (c) declaring that he has made such examination or investigation as he believes necessary to enable him to make the statements or give the opinion contained or expressed therein.

Evidence relating to conditions.

173. Upon the demand of a trustee, the issuer or guarantor of debentures issued under a trust deed shall furnish the trustee with evidence in such form as the trustee may require as to compliance with a condition of the trust deed relating to an action required or permitted to be taken by the issuer or guarantor under the trust deed.

Certificate of compliance.

174. At least once in every twelve month period beginning on the date of the trust deed and at any other time upon the demand of a trustee, the issuer or guarantor of debentures issued under the trust deed shall furnish the trustee with a certificate that the issuer or guarantor has complied with all requirements contained in the trust deed that, if not complied with, would, with the giving of notice, lapse of time or otherwise, constitute an event of default, or, if there has been failure to so comply, giving particulars of that failure.

Notice of default.

175. Within thirty days after a trustee under a trust deed becomes aware of an event of default thereunder, he shall give to the holder of any debentures issued under the trust deed notice of the event of default arising under the trust deed and continuing at the time the notice is given, unless the trustee reasonably believes that it is in the best interests of the debenture holder to withhold that notice and in writing so informs the issuer and guarantor.

Redemption of debenture.

176. (1) Debentures issued, pledged or deposited by a company are not redeemed by reason only that the amount in respect of which the debentures are issued, pledged or deposited is repaid.

(2) Debentures issued by a company and purchased, redeemed or otherwise acquired by it may be cancelled, or, subject to any applicable trust deed or other agreement, may be re-issued, pledged or deposited to secure an obligation of the company then existing or thereafter incurred and any such acquisition and re-issue, pledge or deposit is not a cancellation of the debenture.

Duty of care
of trustee.

177. A trustee under a trust deed in exercising his powers and discharging his duties shall

- (a) act honestly and in good faith with a view to the best interests of the holders of the debentures issued under the trust deed; and
- (b) exercise the care, diligence and skill of a reasonably prudent trustee.

Reliance on
statements.

178. Notwithstanding section 177, a trustee is not liable if he relies in good faith upon statements contained in a statutory declaration, certificate, opinion or report that complies with this Act or the trust deed.

No exculpation
from duty of
care.

179. No term of a trust deed or of an agreement between a trustee and the holders of debentures issued thereunder, or between the trustee and the issuers or guarantor, operates to relieve a trustee from the duties imposed upon him by section 177.

Rights of
trustees.

180. (1) The trustee under a trust deed holds all contracts, stipulations and undertakings given to him and all mortgages, charges and securities vested in him, in connection with the debentures covered by the trust deed, or some of those debentures, exclusively for the benefit of the debenture holders concerned, except in so far as the trust deed otherwise provides.

(2) A debenture holder may

- (a) sue the company that issued the debentures he holds for payment of any amount payable to him in respect of the debentures, or
- (b) sue the trustee of the trust deed covering the debentures he holds for compensation for any breach of the duties that the trustee owes him,

and in any such action it is not necessary for a debentureholder of the same class, or, if the action is brought against the company, the trustee under the covering trust deed, to be joined as a party.

(3) Subject to subsection (4), this section applies notwithstanding anything contained in a debenture, trust deed or other instrument.

(4) A provision in a debenture or trust deed is valid and binding on all the debenture-holders of the class concerned to the extent that, by a

resolution supported by the votes of the holders of at least three-quarters in value of the debentures of that class in respect of which votes are cast on the resolution, the provision enables a meeting of the debenture-holders

- (a) to release a trustee from liability for a breach of his duties to the debenture-holders that he has already committed or generally from liability for all such breaches, without necessarily specifying them, upon his ceasing to be a trustee;
- (b) to consent to the alteration or abrogation of any of the rights, powers or remedies of the debenture holders and the trustee under the trust deed covering their debentures, except the powers and remedies under section 187; or
- (c) to consent to the substitution of debentures of a different class issued by the company or any other company or body corporate of the debentures of the debentureholders, to consent to the cancellation of the debentures in consideration of the issue to the debentureholders of shares credited and fully paid in the company or any other body corporate.

(ii) Trust Deeds

Need for
trust deed.

181. (1) A public company shall, before issuing any of its debentures, execute a trust deed in respect of the debentures and procure the execution thereof by a trustee.

(2) No trust deed may cover more than one class of debentures, whether or not the trust deed is required by this section to be executed.

(3) Where a trust deed is required by this section to be executed in respect of any debentures issued by a public company but a trust deed has not been executed, the court may, on the application of a holder of any debenture issued by the company,

- (a) order the company to execute a trust deed in respect of those debentures;
- (b) direct that a person nominated by the court be appointed a trustee of the trust deed; and

- (c) give such consequential directions as the court thinks fit regarding the contents of the trust deed and its execution by the trustee.

Kinds of debentures.

182. (1) Debentures belong to different classes if different rights attach to them in respect of

- (a) the rate of interest or the dates for payment of interest;
- (b) the dates when, or the installments by which, the principal of the debentures will be repaid, unless the difference is solely that the class of debentures will be repaid during a stated period of time and particular debentures will be repaid at different dates during that period according to selections made by the company or by drawings, ballot or otherwise;
- (c) any right to subscribe for or convert the debentures into other shares or other debentures of the company or any other body corporate; or
- (d) the powers of the debentureholders to realise any security interest.

(2) Debentures belong to different classes if they do not rank equally for payment when

- (a) any security interest is realised, or
- (b) the company is wound up,

that is to say, if, in those circumstances, the security interest or the proceeds thereof, or any assets available to satisfy the debentures, is or are not to be applied in satisfying the debentures strictly in proportion to the amount of principal, premiums and arrears of interest to which the holders of them are respectively entitled.

Cover of trust deed.

183. A debenture is covered by a trust deed if the debentureholder is entitled to participate in any money payable by the company under the trust deed, or is entitled by the trust deed to the benefit of any security interest, whether alone or together with other persons.

Exception.

184. Sections 181 to 185 do not apply to debentures issued before the coming into force of this Act or to debentures forming part of a class of debentures some of which were issued before this Act came into force.

Contents of trust deed.

185. (1) Every trust deed shall state

- (a) the maximum sum that the company can raise by issuing debentures of each specific issue;
- (b) the maximum discount that can be allowed on the issue or re-issue of the debentures, and the maximum premium at which the debentures can be made redeemable;
- (c) the nature of any assets over which a security interest is created by the trust deed in favour of the trustee for the benefit of the debentureholders equally, and, except where such an interest is a floating charge or a general floating charge, the identity of the assets subject to it;
- (d) the nature of any assets over which a security interest has been, or will be, created in favour of a person other than the trustee for the benefit of the debentureholders equally, and, except where such an interest is a floating charge or a general floating charge, the identity of the assets subject to it;
- (e) whether the company has created or will have to create any security interest for the benefit of some, but not all, of the holders of debentures issued under the trust deed;
- (f) any prohibition or restriction on the power of the company to issue debentures or to create any security interest on any of its assets ranking in priority to, or equally with, the debentures issued under the trust deed;
- (g) whether the company will have power to acquire debentures issued under the trust deed before the date for their redemption and to re-issue the debentures;
- (h) the dates on which interest on the debentures issued under the trust deed will be paid, and the manner in which payment will be made;

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- (i) the dates on which the principal of the debentures issued under the trust deed will be repaid, and, unless the whole principal is to be repaid to all the debentureholders at the same time, the manner in which redemption will be effected, whether by the payment of equal instalments of principal in respect of each debenture or by the selection of debentures for redemption by the company, or by drawing, ballot or otherwise;
- (j) in the case of convertible debentures, the dates and terms on which the debentures can be converted into shares and the amounts that will be credited as paid upon those shares, and the dates and terms on which the debenture holders can exercise any right to subscribe for shares in right of the debentures held by them;
- (k) the circumstances in which the debentureholders will be entitled to realise any security interest vested in the trustee or any other person for their benefit, other than the circumstances in which they are entitled to do so by this Act;
- (l) the power of the company and the trustee to call meetings of the debentureholders, and the rights of debentureholders to require the company or the trustee to call meetings of the debentureholders;
- (m) whether the rights of debentureholders can be altered or abrogated, and, if so, the conditions that are to be fulfilled, and the procedures that are to be followed, to effect an alteration or an abrogation; and
- (n) the amount or rate of remuneration to be paid to the trustee and the period for which it will be paid, and whether it will be paid in priority to the principal, interest and costs in respect of debentures issued under the trust deed.
- (2) If debentures are issued without a covering trust deed being executed, the statements required by subsection (1) shall be included in each debenture or in a note forming part of the same document, or endorsed thereon and in applying that subsection, references therein to the trust deed are to be construed as references to all or any of the debentures of the same class.
- (3) Subsection (2) does not apply if

Contents of
debentures.

- (a) the debenture is the only debenture of the class to which it belongs that has been or that can be issued; and
 - (b) the rights of the debentureholder cannot be altered or abrogated without his consent.
- (4) This section does not apply to a trust deed or debentures executed or issued before the coming into force of this Act.

186. (1) Every debenture that is covered by a trust deed shall state either in the body of the debenture or in a note forming part of the same document or endorsed thereon

- (a) the matters required to be stated in a trust deed by paragraphs (a), (b), (f), (h), (i), (j), (l) and (m) of subsection (1) of section 185;
 - (b) whether the trustee of the covering trust deed holds the security interest vested in him by the trust deed in trust for the debentureholders equally, or in trust for some only of the debentureholders, and, if so which debentureholders; and
 - (c) whether the debenture is secured by a general floating charge vested in the trustee of the covering trust deed or in the debentureholders.
- (2) A debenture issued by a company shall state on its face in clearly legible print that it is unsecured if no security interest is vested in the holder of the debenture or in any other person for his benefit as security for payment of principal and interest.
- (3) This section does not apply to debentures issued before the coming into force of this Act.

(iii) Realisation Of Security

187. (1) Debentureholders are entitled to realise any security interest vested in them or in any other person for their benefit, if

- (a) the company fails, within one month after it becomes due, to pay
 - (i) any instalment of interest,

Equity
realisation.

(ii) the whole or part of the principal, or

(iii) any premium,

owing under the debentures or the trust deed covering the debentures;

(b) the company fails to fulfil any of the obligations imposed on it by the debentures or the trust deed;

(c) any circumstances occur that by the terms of the debentures or trust deed entitle the holders of the debentures to realise their security interest; or

(d) the company goes into liquidation.

(2) Debenture holders whose debentures are secured by a general floating charge vested in themselves or the trustee of the covering trust deed or any other person are additionally entitled to realise their security interest, if

(a) a creditor of the company issues a process of execution against any of its assets or commences proceedings for winding up of the company by order of a court of competent jurisdiction;

(b) the company ceases to pay its debts as they fall due;

(c) the company ceases to carry on business;

(d) the company incurs, after the issue of debentures of the class concerned, losses or diminution in the value of its assets that in the aggregate amount to more than one-half of the total amount owing in respect of

(i) debentures of the class held by the debentureholders who seek to enforce their security interest, and

(ii) debentures whose holders rank before them for payment of principal or interest; or

(e) any circumstances occur that entitle debentureholders who rank for payment of principal or interest in priority to the debentures secured by the general floating charge to realise their security interest.

(3) At any time after a class of debentureholders become entitled to realise their security interest, a receiver of any assets subject to such security interest or in favour of the class of debentureholders or the trustee of the covering trust deed or any other person may be appointed

(a) by the trustee;

(b) by the holders of debentures in respect of which there is owing more than half of the total amount owing in respect of all the debentures of the same class; or

(c) by the court on the application of a trustee or debentureholder of the class concerned.

(4) A receiver appointed pursuant to subsection (3) has, subject to any order made by the court, power

(a) to take possession of the assets that are subject to the security interest and to sell those assets; and

(b) if the security interest extends to that property,

(i) to collect debts owed to the company;

(ii) to enforce claims vested in the company;

(iii) to compromise, settle and enter into arrangements in respect of claims by or against the company;

(iv) to carry on the company's business with a view to selling it on the most favourable terms;

(v) to grant or accept leases of land and licences in respect of patents, designs, copyright, or trade, service or collective marks; and

(vi) to recover capital unpaid on the company's issued shares.

(5) The remedies given by this section are in addition to, and not in substitution for, any other powers and remedies conferred on the trustees under the trust deed or the debentureholders by the debentures or the trust deed.

(6) A power of remedy that is expressed in any instrument to be exercisable if the debentureholders become entitled to realise their security interest, is exercisable on the occurrence of any of the events specified in subsection (1), or, in the case of a general floating charge, in subsections (1) and (2), but a manager of the business or of any of the assets of a company shall not be appointed for the benefit of debentureholders unless a receiver has also been appointed and has not ceased to act.

(7) This section applies to debentures issued before as well as after the coming into force of this Act.

(8) No provision in any instrument is valid that purports to exclude or restrict the remedies given by this section.

CHAPTER II

TRANSFER OF SHARES AND DEBENTURES

Transferring
of shares.

188. (1) The shares or debentures of a company may be transferred by a written instrument of transfer signed by the transferor and naming the transferee.

(2) Where an instrument of transfer is prescribed in the by-laws of a company, that instrument shall be used to transfer the shares or debentures of the company.

(3) Subject to subsection (2) and to any enactment, no particular form of words are necessary to transfer shares or debentures, if words are used that show with reasonable certainty that the person signing the transfer intends to vest the title to the shares or debentures in the transferee.

(4) Subject to subsection (5) and to any enactment, the beneficial ownership of the shares or debentures of a company passes to the transferee

(a) on the delivery to him of the instrument of transfer signed by the transferor and of the transferor's share certificate or debenture, as the case may be; or

(b) on the delivery to him of an instrument of transfer signed by the transferor that has been certified by or on behalf of the company, or by or on behalf of the stock exchange.

(5) If the transferor concerned is not registered with the company in respect of the shares, or, as the case may be, the debentures, subsection (4) has effect as if references to the transfer signed by the transferor included a reference to transfers signed by the person so registered and all holders of the shares or debentures intermediate between the person so registered and the transferor.

(6) Notwithstanding subsection (4) or (5), a company, and, in the case of debentures, the trustee of the covering trust deed, is not bound or entitled to treat the transferee of shares or debentures as the owner of them until the court orders the registration of the transfer to him; and until the transfer is presented to the company for registration, the company is not to be treated as having notice of the transferee's interest thereunder or of the fact that the transfer has been made.

(7) This section applies notwithstanding anything contained in the articles of incorporation or by-laws of a company, and notwithstanding anything contained in any trust deed or debentures or any contract or instrument.

189. (1) No restriction or condition in a trust deed covering a debenture of a company, or in the debenture, limits the right of any person to transfer the debenture held by him.

(2) A transfer of the shares or debentures of a shareholder or debentureholder of a company made by

(a) a personal representative,

(b) a trustee in bankruptcy,

(c) a receiver appointed by or for the benefit of debentureholders,

(d) a receiver or other person appointed by the court to administer the estate of a person of unsound mind,

Restrictions on transfers.

(e) a guardian of a minor, or

(f) a person appointed by the court to execute the transfer,

is although the person executing the transfer is not himself registered with the company as the holder of the shares or debentures, as valid as if he had been so registered at the time of the execution of the instrument of transfer.

(3) This section applies in respect of a company notwithstanding anything contained

(a) in the articles of incorporation or by-laws of the company;

(b) in a trust deed or debentures; or

(c) a contract or instrument relating to the shares or debentures of the company.

Duty to
issue.

190. (1) A company shall issue a certification of the transfer of a share or debenture on the presentation to the company of a transfer that is signed by the holder of the share or debenture and accompanied by delivery to the company of the share or debenture.

(2) A certification consists of a statement signed on behalf of the company and written or endorsed on the transfer to the effect that the share certificate or debenture has been delivered to, or lodged with, the company.

(3) The certification by a company of a transfer of a share or debenture of the company is a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show a *prima facie* title to the share or debenture in the transferor named in the transfer, but it is not a representation that the transferor has a title to the share or debenture.

(4) Where a person acts on the faith of a false certification by a company made fraudulently or negligently, the company is liable to compensate him for any loss he incurs in consequence of his so acting.

(5) A company that has issued a certification of a transfer of a share or debenture of the company is liable to compensate a person for loss that

he incurs in consequence of the company subsequently releasing, otherwise than on surrender of the certification of the transfer of the share or debenture, possession of the share certificate or debenture in respect of which the certification was issued.

(6) For the purposes of this section,

(a) the certification of a transfer is deemed to be made by a company if

(i) the person issuing the certification is a person authorised to issue certifications of transfers on the company's behalf, and

(ii) the certification is signed by a person authorised to issue certifications of transfers on the company's behalf, or by any other officer or employee, either of the company or of a body corporate so authorised; and

(b) a certification is deemed to be signed by a person if it purports to be authenticated by his signature or initials, whether handwritten or not, unless the signature or initials were placed on the certification neither by that person nor any person authorised to use the signature or initials for the purpose of issuing certifications of transfers on the company's behalf.

Transfer
certificate.

191. (1) A company shall, within five weeks after the allotment of any of its shares or debentures, and within two months after the date on which a transfer of any of its shares or debentures is presented to the company for registration, complete and have ready for delivery to the allottee or transferee a proper certificate or debenture for any share or debenture allotted or transferred to him.

(2) When a company on which a notice is served requiring the company to make good any default in complying with subsection (1) fails to make good the default within seven days after the service of the notice, the court may, on the application of the person entitled to have a certificate or debenture delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order, and the order may provide that all costs incidental to the application be borne by the company and any officer of the company responsible for the default.

(3) For the purposes of this section "transfer" means a transfer in proper form duly signed by the transferor and otherwise valid, and does not include a transfer that the company is for any reason entitled to refuse to register and does not register.

Registration.

192. (1) Notwithstanding anything in the articles of incorporation or by-laws of a company or in any debenture, trust deed or other contract or instrument, the company shall not register a transfer of a share or debenture of the company unless a transfer in proper form and duly signed by the transferor has been delivered to the company.

(2) Nothing in this section affects any duty of the company to register as a member or debentureholder of the company a person to whom the ownership of a share or debenture of the company has been transmitted by operation of law.

(3) On the application of the transferor of a share or debenture of a company, the company shall enter in its register of members or debentureholders, as the case requires, the name of the transferee in the same manner and subject to the same conditions as if the application for the entry had been made by the transferee.

(4) Notwithstanding anything in the articles of incorporation or by-laws of a company or in any debenture, trust deed or other contract or instrument, a company shall register the trustee in bankruptcy or the personal representative of a shareholder or debentureholder as a member in respect of the shares, or as holder of the debentures of the bankrupt or as the case may be, the deceased person, in its register of members or debentureholders within seven days after he produces to the company satisfactory evidence of his title and requests it to register him as a member or debentureholder.

Effect of
certificate.

193. (1) A certificate issued by a company and signed on its behalf stating that any shares or debentures of the company are held by a person is *prima facie* proof of the title of that person to the shares or debentures.

(2) The registration of a person as a member or debentureholder of a company, or the issue of a share certificate or debenture, constitutes a representation by the company that the person so registered, or the person named in the share certificate or debenture as entitled to the shares or debentures mentioned therein, is entitled to the shares or debentures mentioned in the register or in the share certificate or debenture.

(3) The company shall not deny the truth of representation under subsection (2) as against a person who believes it to be true and contracts to acquire the shares or debentures or any interest therein in good faith and for money or money's worth.

(4) It is no defence for a company to show for the purposes of subsections (2) and (3) that a registration or the issue of a share certificate or other document was procured by fraud or by the presentation to it of a forged document.

(5) Subsections (2), (3) and (4) do not apply in respect of certificates issued by a former Act company before the coming into force of this Act.

CHAPTER III

REGISTRATION OF CHARGES

(i) Charges

Registration with
Registrar.

194. (1) Subject to this Chapter where a charge to which this section applies is created by a company, the company shall within twenty-eight days after the creation of the charge, lodge with the Registrar a statement of the charge and

- (a) any instrument by which the charge is created or evidenced; or
- (b) a copy of the instrument together with a statutory declaration verifying the execution of the charge and also verifying the copy as being a true copy of the instrument,

and if this provision is not complied with in relation to the charge, the charge is void as far as it purported to create a security interest.

(2) Nothing in subsection (1) affects any contract or obligation for repayment of the money secured by a charge that is void under that subsection and the money received under the charge becomes immediately payable.

(3) This section applies to all charges created by a company except

- (a) any pledge of, or possessory lien on, goods; and

- (b) any charge by way of pledge, deposit or trust receipt, or bills of lading, dock warrants or other documents of title to goods, or of bills of exchange, promissory notes, or other negotiable securities for money.

Contents of
charge statements.

195. (1) Subject to subsections (2) and (3), the statement referred to in section 194 shall contain the following particulars:

- (a) the date of the creation of the charge;
- (b) the nature of the charge;
- (c) the amount secured by the charge, or the maximum sum deemed to be secured by the charge in accordance with section 199;
- (d) short particulars of the property charged;
- (e) the persons entitled to the charge; and
- (f) in the case of a floating charge, the nature of any restriction on the power of the company to grant further charges ranking in priority to, or equally with, the charge thereby created.

(2) Where a company creates a series of debentures containing or giving by reference to any other instrument any charge to the benefit of which the debentureholders of that series are entitled equally, it is sufficient if there is lodged with the Registrar for registration, within twenty-eight days after the execution of the instrument containing the charges, or, if there is no such instrument, after the execution of the first debenture of the series, a statement containing

- (a) the total amount secured by the whole series;
- (b) the dates of the resolutions authorising the issue of the series and the date of any covering instrument by which the security interest is created or defined;
- (c) the name of any trustee for the debentureholders; and
- (d) the particulars specified in paragraphs (b), (d) and (f) of subsection (1).

(3) The statement referred to in subsection (2) shall be accompanied by the instrument containing the charge or a copy of that instrument and a statutory declaration verifying the execution of the instrument and verifying the copy to be a true copy, but, if there is no such instrument, the statement shall be accompanied by a copy of one of the debentures of the series and a statutory declaration verifying the copy to be a true copy.

Certified copy
of instrument.

196. For the purposes of subsection (1) of section 194 and subsection (3) of section 195, a certified copy of an instrument or debenture is a copy of the instrument or debenture that has endorsed on it a certificate

- (a) that states that the instrument or debenture is a true and complete copy of the original; and
- (b) that is under seal of the company or under the hand of some person interested in the instrument or debenture otherwise than on behalf of the company.

Later charges.

197. When a charge requiring registration under sections 194 to 196

- (a) is created before the lapse of thirty days after the creation of a prior unregistered charge that comprises all or any part of the property comprised in the prior charge, and
- (b) is given as security for the same debt that is secured by the prior charge or any part of that debt,

then, to the extent to which the subsequent charge is a security for the same debt or part thereof and so far as respects the property comprised in the prior charge, the subsequent charge does not operate nor is it valid, unless it was given in good faith for the purpose of correcting some material error in the prior charge or under other proper circumstances and not for the purpose of avoiding or evading the provisions of this Chapter.

Effect on
enactments.

198. Sections 194 to 197 do not affect any other enactment relating to the registration of charges.

Fluctuating
charges.

199. (1) When a charge the particulars of which require registration under section 194 is expressed to secure all sums due or to become due or some other fluctuating amount, the particulars required under paragraph (c) of subsection (1) of section 195 shall state the

maximum sum that is deemed to be secured by the charge, which shall be the maximum covered by the stamp duty paid between thereon, and the charge is, subject to subsection (2), void, so far as any security interest is created by the charge, as respects any excess over the stated maximum.

(2) Where, in respect of a charge on the property of a company of a kind referred to in subsection (1)

(a) any additional stamp duty is later paid on the charge, and

(b) at any time after that, but before the commencement of the winding up of the company, amended particulars of the charge stating the increased maximum sum deemed to be secured by the charge, together with the original instrument by which the charge was created or evidenced, are lodged with the Registrar for registration,

then, as from the date on which it is lodged, the charge, if otherwise valid, is effective to the extent of the increased maximum sum, except as regards any person who, before the date on which the charge was so lodged, had acquired any proprietary rights in, or a fixed or floating charge on, the property that is subject to the charge.

200. (1) Where a company acquires a property that is subject to a charge of any kind that would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Chapter, the company shall within twenty-eight days after the date on which the acquisition is completed, lodge with the Registrar for registration

(a) a statement of the particulars required by section 195 and of the date of the acquisition of the property, and

(b) the instrument by which the charge was created or is evidenced or a copy thereof,

accompanied by a statutory declaration as required by section 194 and certified as provided in section 196.

(2) Failure to comply with subsection (1) does not affect the validity of the charge concerned.

Charge on
acquisition of
property.

(ii) Registration of Charges

Duty to Register.

201. (1) Documents and particulars required to be lodged for registration may,

(a) in the case of a requirement under section 194, be lodged by the company concerned or by any person interested in the documents; and

(b) in the case of a requirement under section 200, be lodged by the company concerned.

(2) A person not being the company concerned who lodges documents or particulars for registration pursuant to paragraph (a) of subsection (1) may recover from the company concerned the amount of any fees properly payable on the registration if he meets the requirements of sections 194 to 197.

Register of charges.

202. (1) The Registrar shall keep a register of all the charges lodged for registration under this Chapter and enter in the register with respect to those charges the following particulars:

(a) in any case to which subsection (2) of section 195 applies, such particulars as are required to be contained in a statement lodged under that subsection;

(b) in any case to which section 200 applies, such particulars as are required to be contained in a statement lodged under paragraph (a) of subsection (1) of that section; and

(c) in any other case, such particulars as are required by section 195 to be contained in a statement lodged under that section.

(2) The Registrar shall issue a certificate of every registration, stating the amount secured by the charge, or, in a case referred to in section 199, the maximum amount secured by the charge, and the certificate is conclusive proof that the requirements as to registration have been complied with.

Endorsement on debenture.

203. (1) A company shall endorse on every debenture issued by it

(a) a copy of the certificate of registration of a charge related to the debenture; or

(b) a statement that the registration of a charge related to the debenture has been effected and the date of the registration.

(2) Subsection (1) does not apply to a debenture issued by a company before the charge was created in relation to the debenture.

Satisfaction and payment.

204. (1) Where, with respect to any registered charge,

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

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

the company may lodge with the Registrar a memorandum of satisfaction, in whole or in part, or a memorandum of the fact that the property or undertaking, or any part thereof, has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be, and the Registrar shall enter particulars of that memorandum in the register.

(2) The memorandum shall be supported by evidence sufficient to satisfy the Registrar of the payment, satisfaction, release or cessation referred to in subsection (1).

Rectification of error.

205. On being satisfied that the omission to register a charge within the time required, or that the omission or mis-statement of any particular information with respect to any such charge or in a memorandum

(a) was accidental or due to inadvertence or to some other sufficient cause,

(b) is not of a nature to affect adversely the position of creditors or shareholders, or

(c) that, on other grounds, it is just and equitable to grant relief,

the court may, on the application of the company or any person interested, and on such terms and conditions as seem to the court to be just and expedient, order that the time for registration be extended or that the omission or mis-statement be rectified.

Retention of
copy.

206. (1) A company shall retain, at the registered office of the company, a copy of every instrument creating a charge that requires registration under this Chapter but, in the case of a series of debentures, the retention of a copy of one debenture of the series is sufficient for the purposes of this subsection.

(2) A company shall record all charges specifically affecting property of the company, and all floating charges on the undertaking or any property of the company, giving in each case a short description of the property charged, the amount of the charge and the names of the persons entitled thereto.

Inspection of
copies.

207. The copies of instruments retained by the company pursuant to section 206 shall be kept open for the inspection of creditors and shareholders of the company, free of charge.

Registration of
receiver.

208. (1) Where a person

- (a) obtains an order for the appointment of a receiver of any of the property of a company, or
- (b) appoints a receiver of any of the property of a company or enters into possession of any property of a company under any powers contained in any charge,

he shall, within ten days from the date of the order, appointment or entry into possession give notice thereof to the Registrar, who shall enter the fact in the register of the particulars of charges relating to the company.

(2) When

- (a) a person who has been appointed a receiver of the property of a company ceases to act as receiver, or
- (b) a person who had entered into possession of any property of a company goes out of possession of that property,

he shall, within ten days of his having done so, give notice of his so doing to the Registrar, who shall enter the notice in the register of the particulars of charges relating to the company.

External
company.

209. This Chapter applies to charges created or acquired after the coming into force of this Act by an external company, on property in The Gambia in like manner and with like consequences as if the external company were company as defined in section 2 whether or not the external company is registered under this Act pursuant to Chapter V of Part V.

PART III - ACCOUNTABILITY

CHAPTER I

FINANCIAL DISCLOSURE

(i) Comparative Financial Statements

Annual financial
returns.

210. (1) A company incorporated under this Act shall prepare and submit its annual accounts and returns in accordance with Schedule II.

(2) Subject to this section and to section 211, the directors of a company shall prepare and place before the shareholders at every annual meeting of the shareholders of the company

(a) comparative financial statements relating separately to

(i) the period that began on the date the company came into existence and ended not more than twelve months after that date, or, if the company has completed a financial year, the period that began immediately after the end of the last period for which financial statements were prepared and ended not more than twelve months after the beginning of that period, and

(ii) the immediately preceding financial year;

(b) the report of the auditor; and

(c) any further information respecting the financial position of the company and the results of its operations required by the articles of incorporation of the company, its by-laws, or any unanimous shareholder agreement.

(3) The financial statements required by sub-paragraph (ii) of the paragraph (a) of subsection (2) may be omitted if the reason for the omission is set out in the financial statements, or in a note thereto, to be placed before the shareholders at an annual meeting.

(4) The Registrar may in any particular case adjust the period relating to which comparable financial statements are to be placed before the shareholders at any annual meeting.

Exemption for information.

211. Upon the application of a company for authorisation to omit from its financial statements a prescribed item, or to dispense with the publication of a particular prescribed financial statement, the Registrar may, if he reasonably believes that disclosure of the information therein contained would be detrimental to the company, permit its omission on such reasonable conditions as he thinks fit.

Consolidated financial returns.

212. (1) A company shall keep at its registered office a copy of the financial statements of each of its subsidiary bodies corporate the accounts of which are consolidated in the financial statements of the company.

(2) Shareholders of a company and their agents and legal representatives may, upon request therefor, examine the statements referred to in subsection (1) during the usual business hours of the company, and may make extracts from those statements, free of charge.

(3) A company may, within fifteen days of a request to examine statements under subsection (2), apply to the court for an order barring the right of any person to examine those statements, and the court may, if it is satisfied that the examination would be detrimental to the company or a subsidiary body corporate, bar that right and make any further order the court thinks fit.

(4) A company shall give the Registrar and the person asking to examine statements under subsection (2) notice of any application under subsection (3), and the Registrar and that person may appear and be heard in person or by a legal practitioner.

Approval of
directors.

213. (1) The directors of a company shall approve the financial statements referred to in section 210, and the approval shall be evidenced by the signature of one or more directors.

(2) A company shall not issue, publish or circulate copies of the financial statements referred to in section 210 unless the financial statements are

(a) approved and signed in accordance with subsection (1); and

(b) accompanied by a report of the auditor of the company.

Copies of
documents to be
sent to
shareholders.

214. (1) Not less than twenty-one days before each annual meeting of the shareholders of a company or before the signing of a resolution under paragraph (b) of subsection (1) of section 147 in lieu of its annual meeting, the company shall send a copy of the documents referred to in section 210 to each shareholder, except a shareholder who has informed the company in writing that he does not want a copy of those documents.

(2) Notwithstanding subsection (1), a public company whose shares, or a class of whose shares, are listed need not, in such cases as may be prescribed and provided any prescribed conditions are complied with, send copies of the documents referred to in section 210 to shareholders of the company, but may instead send them a summary financial statement.

(3) The summary financial statement shall be derived from the company's annual accounts and the directors' report and shall contain the information prescribed in Schedule II.

Schedule.

(4) Every summary financial statement shall

(a) state that it is only a summary of information in the company's annual accounts and the directors' report;

(b) contain a statement of the company's auditors of their opinion as to whether the summary financial statement is consistent with the company's annual accounts and the directors' report.

(c) state whether the auditors' report on the annual accounts was unqualified or qualified, and if it was qualified set out the report in full together with any further material needed to understand the qualification;

(d) state whether the auditor's report on the annual accounts contained a statement as to

- (i) the inadequacy of the accounting records or returns,
- (ii) the accounts not agreeing with the records or returns, or
- (iii) the failure to obtain necessary information or explanations.

(5) In subsection (2) "listed" means admitted to the official list of the stock exchange.

Submission of documents to Registrar.

215. (1) A company

- (a) that is a public company, or
- (b) the gross revenue of which, as shown in the most recent financial statements referred to in section 210, exceed five hundred thousand dalasis or the assets of which as shown in those financial statements exceed two hundred and fifty thousand dalasis

shall send a copy of the documents referred to in section 210 to the Registrar, not less than twenty-one days before each annual meeting of the shareholders or forthwith after the signing of a resolution under paragraph (b) of subsection (1) of section 147 in lieu of the annual meeting, and in any event not later than fifteen months after the last date when the last preceding annual meeting should have been held or a resolution in lieu of the meeting should have been signed.

(2) For the purposes of paragraph (b) of subsection (1), the gross revenues and assets of a company include the gross revenues and assets of its affiliates.

(3) Upon the application of a company, the Registrar may exempt the company from the application of subsection (1).

(4) If a company referred to in subsection (1)

- (a) sends interim financial statements or related documents to its shareholders, or

(b) is required to file interim financial statements or related documents with, or to send them to, the stock exchange, the company shall forthwith send copies thereof to the Registrar.

(5) A subsidiary company is not required to comply with this section if

(a) the financial statements of its holding company are in consolidated or combined form and include the accounts of the subsidiary, and

(b) the consolidated or combined financial statements of the holding company are included in the documents sent to the Registrar by the holding company in compliance with this section.

Declaration of solvency.

216. (1) Subject to this section, a company that is not, pursuant to subsection (1) of section 215, required to send to the Registrar a copy of the documents referred to in section 210, shall within the period specified in the said subsection send to the Registrar

(a) a certificate of solvency signed by at least one director on behalf of the board of directors and by the auditor containing the statements and opinions required by subsection (2) made with reference to the company's assets and liabilities at the date on which the financial statements of the company laid before the annual general meeting or, as the case may be, of the signing of a resolution under paragraph (b) of subsection (1) of section 147 in lieu of the annual meeting; and

(b) a certificate signed by at least one director on behalf of the board and by the auditor that the certificate referred to in paragraph (a) agrees with the balance sheet and profit and loss account which form part of the financial statements.

(2) A certificate of solvency shall state

(a) the amounts shown in the company's balance sheet as the total values respectively of the company's fixed assets, current assets investments and other assets;

(b) the amount shown in the company's balance sheet as the total amount of the company's debts and liabilities, accrued due at, or

accruing due within one year after, the date as at which the balance sheet is made out and the amount so shown as the total amount of the company's other debts and liabilities; and

(c) whether, in the opinion of the auditor, or if there is no auditor, of each director, the company was at the date at which the balance sheet was made out able or unable to pay its debts and liabilities as they fell due.

(3) If the auditor of a company refuses to give or sign either of the certificates mentioned in subsection (2), a note of his refusal shall be endorsed on the certificate.

(4) A director or auditor of a company who signs or sends to the Registrar or concurs in the sending to the Registrar of a certificate required by this section which contains a statement that is false, misleading or deceptive or an opinion that he has no reasonable ground to believe to be accurate, commits an offence.

(5) A person who commits an offence under subsection (4) is liable on conviction to a fine not exceeding five thousand dalasis or to a term of imprisonment not exceeding three years or both.

(6) It is a sufficient defence if the person charged with an offence under this section proves that up to the time of the sending to the Registrar of the certificate he believed on reasonable grounds that this section has been complied with.

(7) A company that is not required to comply with section 215 by virtue of subsection (5) of that section, is not required to comply with this section.

Eligibility for
appointment.

217. (1) A person is eligible for appointment as auditor of a company only if he is a practising accountant recognised by the Accountants Council established under the Accountants Act, 1991.

(2) An individual or a firm may be appointed as auditor of a company.

Effect of
appointment of
partnership.

218. (1) This section applies to the appointment as auditor of a company of a partnership constituted under the laws of The Gambia or under the law of any other country or territory.

(2) The appointment is, unless a contrary intention appears, an appointment of the partnership as such and not of the partners.

(3) Where the partnership ceases, the appointment shall be treated as extending to

(a) any partnership which succeeds to the practice of that partnership and is eligible for the appointment; and

(b) any person who succeeds to that practice having previously carried it on in partnership and is eligible for the appointment.

(4) For the purpose of subsection (3),

(a) a partnership shall be regarded as succeeding to the practice of another partnership only if the members of the successor partnership are substantially the same as those of the former partnership; and

(b) a partnership or other person shall be regarded as succeeding to the practice of a partnership only if it or he succeeds to the whole or substantially the whole of the business of the former partnership.

(5) Where the partnership ceases and no person succeeds to the appointment under subsection (3) the appointment may with the consent of the company be treated as extending to a partnership or other person eligible for the appointment who succeeds to the business of the former partnership or to such part of it as is agreed by the company.

**Ineligibility
as auditor.**

219. (1) A person is ineligible for appointment as auditor of a company if he is

(a) an officer or employee of the company; or

(b) a partner or employee of a person, or a partnership of which a person is a partner; or

(c) ineligible by virtue of paragraph (a) or (b) for appointment as auditor of an associated undertaking of the company.

(2) A person is also ineligible for appointment as auditor of a company if there exists between him and an associate of his and the

company or an associated undertaking a connection of such description as may be specified by regulations made under this Act.

(2) In this section "associated undertaking" in relation to a company means

(a) a parent undertaking or subsidiary undertaking of the company; or

(b) a subsidiary undertaking of a parent undertaking of the company.

Effect of
ineligibility.

220. (1) No person shall act as auditor of a company if he is ineligible for appointment to the office.

(2) If during his term of office an auditor of a company becomes ineligible for appointment to the office, he shall thereupon vacate office and shall forthwith give notice in writing to the company concerned that he has vacated it by reason of ineligibility.

(3) A person who acts as auditor of a company in contravention of subsection (1) or fails to give notice of vacating his office as required by subsection (2) commits an offence.

(4) A person who commits an offence under subsection (3) is liable on conviction to a fine not exceeding five thousand dalasis or to a term of imprisonment not exceeding three years, or both.

(5) In proceedings against a person for an offence under this section it is a defence for him to show that he did not know and had no reason to believe that he was or had become ineligible for appointment.

Appointment of
auditor.

221. (1) Subject to section 222, the shareholders of a company shall, by ordinary resolution, at the first annual meeting of shareholders and at each succeeding annual meeting, appoint an auditor to hold office until the close of the next annual meeting.

(2) An auditor appointed under paragraph (e) of subsection (4) of section 90 is eligible for appointment under subsection (1).

(3) Notwithstanding subsection (1), if an auditor is not appointed at a meeting of shareholders, the incumbent auditor continues in office until his successor is appointed.

(4) The remuneration of an auditor may be fixed by ordinary resolution of the shareholders, or if not so fixed, it may be fixed by the directors.

Dispensing with
auditor.

222. (1) The shareholders of a company other than a company mentioned in subsection (1) of section 215 may resolve not to appoint an auditor.

(2) A resolution under subsection (1)

(a) is valid only until the next succeeding annual meeting of shareholders; and

(b) is not valid unless it is consented to by all the shareholders, including shareholders not otherwise entitled to vote.

Cessation of
office.

223. (1) An auditor of a company ceases to hold office when

(a) he dies or resigns; or

(b) he is removed pursuant to section 224.

(2) A resignation of an auditor becomes effective at the time a written resignation is sent to the company, or at the time specified in the resignation, whichever is the later date.

Removal of
auditor.

224. (1) The shareholders of a company may by ordinary resolution at a special meeting remove an auditor other than an auditor appointed by a court order under section 226.

(2) A vacancy created by the removal of an auditor may be filled at any meeting at which the auditor is removed, or, if the vacancy is not so filled, it may be filled under section 225.

Vacancy in office
of auditor.

225. (1) Subject to subsection (3), the directors shall fill a vacancy in the office of auditor.

(2) If there is not a quorum of directors, the directors then in office shall, within twenty-one days after a vacancy in the office of auditor occurs, call a special meeting of shareholders to fill the vacancy, and if they fail to call a meeting, or if there are no directors, the meeting may be called by any shareholder.

(3) The articles of incorporation of a company may provide that a vacancy in the office of auditor be filled only by vote of the shareholders.

(4) An auditor appointed to fill a vacancy holds office for the unexpired term of his predecessor.

Court
appointed
auditor.

226. (1) If a company does not have an auditor, the court may, upon the application of a shareholder or the Registrar, appoint and fix the remuneration of an auditor, and that auditor holds office until an auditor is appointed by the shareholders.

(2) Subsection (1) does not apply if the shareholders have resolved under section 222 not to appoint an auditor.

Auditor's rights
to notice.

227. The auditor of a company is entitled to receive notice of every meeting of the shareholders of the company, and, at the expense of the company, to attend and be heard at the meeting on matters relating to his duties as auditor.

Required
attendance at
meeting of
shareholders.

228. (1) If a shareholder of a company, whether or not he is entitled to vote at the meeting, or a director of a company gives written notice to the auditor of the company, not less than ten days before a meeting of the shareholders of the company, to attend the meeting, the auditor shall attend the meeting at the expense of the company and answer questions relating to his duties as auditor or former auditor of the company.

(2) A shareholder or director who sends a notice referred to in subsection (1) shall, concurrently, send a copy of the notice to the company.

(3) Subsection (1) applies *mutatis mutandis* to a former auditor of the company.

Auditor's right
to comment.

229. (1) An auditor who

(a) resigns,

(b) receives a notice or otherwise learns of a meeting of shareholders called for the purpose of removing him from office,

(c) receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed to fill the

office of auditor, whether because of the resignation or removal of the incumbent auditor or because his term of office has expired or is about to expire, or

(d) receives a notice or otherwise learns of a meeting of shareholders at which a resolution referred to in section 222 is to be proposed,

may submit to the company a written statement giving the reasons for his resignation or the reasons why he opposes any proposed action or resolution.

(2) When it receives a statement referred to in subsection (1), the company shall forthwith send a copy of the statement to every shareholder entitled to receive notice of a meeting referred to in section 227 and to the Registrar, unless the statement is included in, or attached to, a management proxy circular required by section 158.

230. (1) An auditor of a company shall make the examination that is in his opinion necessary to enable him to report on the financial statements required by this Act to be placed before the shareholders, except such financial statements or parts thereof that relate to the immediately preceding financial year referred to in subparagraph (ii) of paragraph (a) of subsection (1) of section 210.

(2) Notwithstanding section 213, an auditor of a company may reasonably rely upon the report of an auditor of a body corporate or an unincorporated business the accounts of which are included in whole or in part in the financial statements of the company.

(3) For the purpose of subsection (2) reasonableness is a question of fact.

(4) Subsection (2) applies whether or not the financial statements of the holding company reported upon by the auditor are in consolidated form.

231. (1) Upon the demand of an auditor of a company, the present or former directors, officers, employees or agents of the company shall furnish to the auditor

(a) such information and explanations, and

Examination
by auditor.

Right to
inspect.

(b) such access to records, documents, books, accounts and vouchers of the company or any of its subsidiaries,

as are, in the opinion of the auditor, necessary to enable him to make the examination and report required under section 230 and that the directors, officers, employees or agents are reasonably able to furnish.

(2) Upon the demand of an auditor of a company, the directors of the company shall

(a) obtain from the present or former directors, officers, employees or agents of any subsidiary of the company the information and explanations that the directors, officers, employees and agents are reasonably able to furnish, and that are, in the opinion of the auditor, necessary to enable him to make the examination and report required under section 230; and

(b) furnish the information and explanations so obtained to the auditor.

Detected error.

232. (1) A director or an officer of a company shall forthwith notify the audit committee and the auditor of any error or mis-statement of which he becomes aware in a financial statement that the auditor or a former auditor of the company has reported upon.

(2) When the auditor or a former auditor of a company is notified or becomes aware of an error or mis-statement in a financial statement upon which he has reported to the company and in his opinion, the error or mis-statement is material, he shall inform each director of the company accordingly.

(3) When under subsection (2) the auditor or a former auditor of a company informs the directors of an error or mis-statement in a financial statement of the company, the directors shall

(a) prepare and issue revised financial statements, or

(b) otherwise inform the shareholders of the error or mis-statement,

and, if the company is one that is required to comply with section 215, inform the Registrar of the error or mis-statement in the same manner as the directors inform the shareholders of the error or mis-statement.

Privilege of
auditor.

233. An auditor is not liable to any person in an action for defamation based on any act done or not done, or any statement made by him in good faith in connection with a matter he is authorised or required to do under this Act.

CHAPTER II

TAKEOVER BIDS

Definitions.

234. In this Chapter,

"dissenting offeree", if a take-over bid is made for all the shares of a class of shares,

(a) means a shareholder of that class of share who does not accept the take-over bid, and

(b) includes a subsequent holder of that share who acquires it from the person mentioned in paragraph (a);

"offer" includes an invitation to make an offer;

"offeree" means a person to whom take-over bid is made;

"offeree company" means a company whose shares are the object of a take-over bid;

"offeror" means a person who makes a take-over bid otherwise than as an agent, and includes two or more persons who, directly or indirectly,

(a) make take-over bids jointly or in concert; or

(b) intend to exercise, jointly or in concert, voting rights attached to shares for which a take-over bid is made;

"share" means a share with or without voting rights, and includes

(a) a debenture currently convertible into a share; and

- (b) currently exercisable options and rights to acquire a share or such a convertible debenture; and

"take-over bid" means an offer made by an offeror to shareholders of an offeree company to acquire all the shares of a class of issued shares of the offeree company, and includes every offer by an issuer to repurchase its own shares.

Offeror rights.

235. If, within one hundred and twenty days after the date of a take-over bid, the bid is accepted by the holders of not less than ninety percent of the shares of a class of shares to which the take-over bid relates, other than shares held at the date of the take-over bid by or on behalf of the offeror or an affiliate or associate of the offeror, the offeror may, upon complying with this Chapter acquire the shares held by the dissenting offerees.

Notice to dissenting shareholders.

236. An offeror may acquire shares held by a dissenting offeree by sending, by registered post, within sixty days after the date of termination of the take-over bid, and in any event within one hundred and eighty days after the date of the take-over bid, an offeror's notice to each dissenting offeree and to the Registrar stating

- (a) that offerees who are holding ninety percent or more of the shares to which the bid relates accepted the take-over bid;
- (b) that the offeror is bound to take up and pay for or has taken up and paid for the shares of the offerees who accepted the take-over bid;
- (c) that a dissenting offeree is required to elect
- (i) to transfer his shares to the offeror on the terms on which the offeror acquired the shares of the offerees who accepted the take-over bid; or
- (ii) to demand payment of the fair value of his shares in accordance with sections 242 to 245 by notifying the offeror within twenty days after the dissenting offeree receives the offeror's notice;
- (d) that a dissenting offeree who does not notify the offeror in accordance with subparagraph (ii) of paragraph (c) is presumed to have elected to transfer his shares to the offeror on the same

terms as the offeror acquired the shares from the offerees who accepted the take-over bids; and

- (e) that a dissenting offeree shall send those shares of his to which the take-over bid relates to the offeree company within twenty days after he receives the offeror's notice.

Adverse claims.

237. Concurrently with sending the offeror's notice under section 236, the offeror shall send to the offeree company a notice of adverse claim with respect to each share held by a dissenting offeree.

Delivery of certificates.

238. A dissenting offeree to whom an offeror's notice is sent under section 236 shall, within twenty days after he receives that notice, send the share certificate of his for the class of shares to which the take-over bid relates to the offeree company.

Payment for shares.

239. Within twenty days after the offeror sends an offeror's notice under section 236, the offeror shall pay or transfer to the offeree company the amount of money or other consideration that the offeror would have had to pay or transfer to a dissenting offeree if the dissenting offeree had elected, under subparagraph (i) of paragraph (c) of section 236, to accept the take-over bid.

Money in trust.

240. The offeree company holds in trust for the dissenting shareholders the money or other consideration it receives under section 239, and the offeree company shall deposit the money in a separate account in a bank and shall place the other consideration in the custody of a bank.

Duty of offeree company.

241. Within thirty days after the offeror sends an offeror's notice under section 236, the offeree company shall

- (a) issue the offeror a share certificate in respect of the shares that were held by dissenting offerees;
- (b) give to each dissenting offeree who,
- (i) under subparagraph (1) of paragraph (c) of section 236, elects to accept the take-over bid, and
- (ii) sends his share certificate as required under section 238,

the money or other consideration to which he is entitled, disregarding fractional shares, which may be paid for in money; and

- (c) send to each dissenting shareholder who has not sent his share certificates as required under section 238 a notice stating that
- (i) his shares have been cancelled;
 - (ii) the offeree company or some designated person holds in trust for him the money or other consideration to which he is entitled as payment for or in exchange for his shares; and
 - (iii) the offeree company will, subject to sections 242 and 244, send that money or other consideration to him forthwith after receiving his shares.

Application to court.

242. (1) If a dissenting offeree has, under subparagraph (ii) of paragraph (c) of section 236, elected to demand payment of the fair value of his shares, the offeror may, within twenty days after it has paid the money or transferred the other consideration under section 239, apply to the court to fix the fair value of the shares of that dissenting offeree.

(2) If an offeror fails to apply to the court under subsection (1), a dissenting offeree may, within a further period of twenty days, apply to the court to fix the fair value of the shares of the dissenting shareholder.

(3) If no application is made to the court under subsection (2) within the time provided therefor in that subsection, a dissenting offeree thereby elects to transfer his shares to the offeror on the same terms as the offeror acquired the shares from the offerees who accepted the take-over bid.

Joined parties.

243. Upon an application under section 242,

- (a) all dissenting offerees referred to in subparagraph (ii) of paragraph (c) of section 236 whose shares have not been acquired by the offeror are to be joined as parties and are bound by the decision of the court; and
- (b) the offeror shall notify each affected dissenting offeree of the date, place and consequences of the application and of the offeree's right to appear and be heard in person or by a legal practitioner.

Powers and order
of court.

244. (1) Upon an application to the court under section 242, the court may determine whether any other person is a dissenting offeree who should be joined as a party, and the court shall then fix a fair value for the shares of all dissenting offerees.

(2) The court may appoint one or more appraisers to assist the court to fix a fair value for the shares of a dissenting offeree.

(3) The final order of the court shall be made in favour of each dissenting offeree against the offeror and be for the amount of the offeree's shares as fixed by the court.

Additional
orders.

245. In connection with proceedings under this Chapter the court may make any order it thinks fit, and, in particular, it may

(a) fix the amount of money or other consideration that is required to be held in trust under section 240;

(b) order that the money or other consideration be held in trust by a person other than the offeree company;

(c) allow to each dissenting offeree, from the date he sends or delivers his share certificates under section 238 until the date of payment, a reasonable rate of interest on the amount payable to him; or

(d) order that any money payable to a shareholder who cannot be found be paid into court and subsection (2) of section 541 applies in respect of that payment.

CHAPTER III

INSIDER TRADING

"Insider" defined.

246. In this Chapter, "insider" means, in respect of a company,

(a) a director or officer of the company;

(b) a company that purchases or otherwise acquires shares issued by it or any of its affiliates;

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- (c) a person who beneficially owns more than ten per cent of the shares of the company, or who exercises control or direction over more than ten per cent of the votes attached to shares of the company;
 - (d) an associate, a spouse, relative or affiliate of a person mentioned in paragraphs (a) to (c);
 - (e) a person, whether or not he is employed by the company, who
 - (i) receives specific confidential information from a person described in this section, including a person described in this paragraph, and
 - (ii) has knowledge that the person giving the information is a person described in this section, including a person described in this paragraph; and
 - (f) a public officer who receives confidential information by virtue of his office.

Presumed insider.

247. (1) For the purposes of this Chapter,

- (a) a director or officer of a body corporate that is an insider of a company is an insider of the company;
- (b) a director or officer of a body corporate that is a subsidiary is an insider of its holding company;
- (c) if a body corporate becomes an insider of a company, or enters into a business combination with a company, a director or officer of the body corporate is presumed to have been an insider of the company for the previous twelve months or for such shorter period as he was a director or an officer of the body corporate; and
- (d) if a company becomes an insider of a body corporate, or enters into a business combination with a body corporate, a director or officer of the body corporate is presumed to have been an insider of the company for the previous twelve months, or for such shorter period as he was a director or officer of the body corporate.

(2) In subsection (1) "business combination" means an acquisition of all or substantially all the property of one body corporate by another, or an amalgamation of two or more bodies corporate.

Liability of
insider.

248. (1) An insider who, in connection with a transaction in a share or debenture of the company or any of its affiliates, makes use of any specific confidential information for his own benefit or advantage that, if generally known, might reasonably be expected to affect materially its value commits an offence.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding ten thousand dalasis or to a term of imprisonment not exceeding five years, or both.

(3) In addition to the penalty in subsection (2), a person who commits an offence under subsection (1)

(a) is liable to compensate a person for any direct loss incurred by that person as a result of the transaction, unless the information was known or in the exercise of reasonable diligence should have been known, to that person at the time of the transaction; and

(b) is accountable to the company for any direct benefit or advantage received or receivable by the insider as a result of the transaction.

Time limit
on action.

249. An action to enforce a right created by section 248 may not be commenced except within two years after the discovery of the facts that gave rise to the cause of action.

CHAPTER IV

INVESTIGATION OF COMPANIES

Investigation
order.

250. (1) A shareholder or debenture holder of a company, or the Registrar, may apply, *ex parte*, or upon such notice as the court may require, to the court for an order directing that an investigation be made of the company and any of its affiliated companies.

(2) If, upon an application under subsection (1) in respect of a company, it appears to the court that

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- (a) the business of the company or any of its affiliates is or has been carried on with intent to defraud any person,
 - (b) the business or affairs of the company or any of its affiliates are or have been carried on in a manner, or the powers of the directors are or have been exercised in a manner, that is oppressive or unfairly prejudicial to, or that unfairly disregards, the interest of a shareholder or debenture holder,
 - (c) the company or any of its affiliates was formed for a fraudulent or unlawful purpose, or is to be dissolved for a fraudulent or unlawful purpose,
 - (d) persons concerned with the formation, business or affairs of the company or any of its affiliates have in connection therewith acted fraudulently or dishonestly,
 - (e) the company's shareholders or debenture holders have not been given all the information with respect to the company's affairs which they might reasonably expect, or
 - (f) in any case it is in the public interest that an investigation of the company be made,

the court may order that an investigation be made of the company and any of its affiliated companies.

(3) Where a shareholder or debenture holder makes an application under subsection (1), he shall give the Registrar reasonable notice of the application and the Registrar is entitled to appear and be heard in respect of the application.

(4) An *ex parte* application under this section shall be heard in camera.

(5) Any person who publishes anything relating to an *ex parte* proceeding without the authorisation of the court or the written consent of the company that is being, or to be, investigated commits an offence.

251. (1) In connection with an investigation under this Chapter in respect of a company, the court may make any order it thinks fit, including

Powers of the court.

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- (a) an order to investigate;
 - (b) an order appointing an inspector and fixing the remuneration of the inspector and replacing the inspector;
 - (c) an order determining the notice to be given to any interested person, or dispensing with notice to any person;
 - (d) an order authorising an inspector to enter any premises in which the court is satisfied there might be relevant information, and to examine anything, and to make copies of any documents or records, found on the premises;
 - (e) an order requiring a person to produce documents of records to the inspector;
 - (f) an order authorising an inspector to conduct a hearing, administer oaths and examine a person upon oath, and prescribing rules for the conduct of the hearing;
 - (g) an order requiring a person to attend a hearing conducted by an inspector and to give evidence upon oath;
 - (h) an order giving directions to an inspector or an interested person on a matter arising in the investigation;
 - (i) an order requiring an inspector to make an interim or final report to the court;
 - (j) an order determining whether a report of an inspector should be published, and, if so, ordering the Registrar to publish the report in whole or in part, or to send copies to a person the court designates;
 - (k) an order requiring an inspector to discontinue an investigation; and
 - (l) an order requiring the company to pay the costs of the investigation.
- (2) An inspector shall send to the Registrar a copy of every report made by the inspector under this Chapter.

Inspector's
powers.

252. (1) An inspector under this Chapter has the powers set out in the order appointing him.

(2) An inspector shall, in the course of his investigation, upon request produce to an interested person a copy of an order made under subsection (1) of section 251.

Obstruction of
inspector.

253. (1) Where a person whose affairs are being investigated by, or who is required to furnish information to, an inspector, fails to cooperate with or obstructs the inspector in the discharge of his duties, the inspector shall certify in writing the failure to cooperate or the obstruction to the court.

(2) Where the court receives a certification under subsection (1), it shall inquire into the case and, after hearing any witness who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, deal with the alleged offender in like manner as if he had committed a contempt of the court.

In camera hearing.

254. (1) An interested person may apply to the court for an order that a hearing conducted by an inspector under this Chapter be heard in camera and for directions on any matter arising in the investigation.

(2) A person whose conduct is being investigated or who is being examined at a hearing conducted by an inspector may appear and be heard in person or by a legal practitioner.

Proceedings by
Registrar.

255. Where the court receives a report from an inspector and it appears to the court that proceedings ought in the public interest to be brought by a company dealt with by the report

(a) for the recovery of damages in respect of any fraud or other misconduct in connection with the promotion or formation of the company or the management of its affairs, or

(b) for the recovery of any property of the company which has been misapplied or wrongfully retained,

the court may direct the Registrar to bring proceedings for that purpose in the name of the company.

Incriminating
evidence.

256. No person is excused from attending and giving evidence and producing documents and records to an inspector by reason only that the

evidence tends to incriminate that person or subject him to any proceeding or penalty, but the evidence may not be used or received against him in any proceeding thereafter instituted against him, other than a prosecution for perjury in giving the evidence.

Privilege absolute.

257. An oral or written statement or report made by an inspector or any other person in an investigation under this Chapter has absolute privilege.

Ownership
interest.

258. (1) Where the Registrar is satisfied that, for the purposes of this Act, there is reason to enquire into the ownership or control of a share or debenture of a company or any of its affiliates, the Registrar may require a person that he reasonably believes has or has had interest in the share or debenture, or acts or has acted on behalf of a person with such an interest, to furnish to the Registrar, or to any person the Registrar appoints,

- (a) information that the person has or can reasonably be expected to obtain as to present and past interests in the share or debenture; and
- (b) the names and addresses of the persons so interested and of any person who acts or has acted in relation to the share or debenture on behalf of the persons so interested.

(2) For the purposes of subsection (1), a person has an interest in a share or debenture, if

- (a) he has a right to vote or to acquire or dispose of the share or debenture or any interest therein;
- (b) his consent is necessary for the exercise of the rights or privileges of any other person interested in the share or debenture; or
- (c) any other person interested in the share or debenture can be required, or is accustomed, to exercise rights or privileges attached to the share or debenture in accordance with his instructions.

(3) A person commits an offence under this section if,

- (a) he fails to give information that is required of him;

(b) he gives information which he knows to be false; or

(c) he recklessly makes a statement which is false.

(4) A person who commits an offence under subsection (3) is liable on conviction to a fine not exceeding five thousand dalasis or to a term of imprisonment not exceeding two years or to both.

Power to impose
restrictions on
shares or
debentures.

259. Where in connection with an inquiry under this Chapter it appears to the Registrar that there is difficulty in finding out the relevant facts about any shares (whether issued or to be issued), and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned or any of them to assist the inquiry as required under this Act, the Registrar may by order place restrictions on the shares for such period as he considers necessary.

(2) Where the Registrar places restrictions on shares under subsection (1),

(a) a transfer of the shares, or in the case of unissued shares, a transfer of the right to be issued those shares and any issue of the shares is void;

(b) no voting rights shall be exercisable in respect of the shares;

(c) no further shares shall be issued in right of those shares or in pursuance of an offer made to the holder of the shares; and

(d) except in a liquidation, no payment shall be made of any sums due from the company on those shares, whether in respect of capital or otherwise.

(3) A person who is aggrieved by an order made under subsection (1) or by a refusal of the Registrar to remove the restrictions placed on shares, may apply to the court, and the court may, if it sees fit, direct the Registrar to remove the restrictions.

(4) Where restrictions on shares are removed with a view to permitting a transfer of those shares, the Registrar may continue the restrictions in respect of paragraphs (c) and (d) of subsection (2), either in whole or in part, so far as they relate to a right acquired or offer made before the transfer.

(5) This section shall apply in relation to debentures as it applied in relation to shares.

(6) A person commits an offence if,

(a) he exercises or purports to exercise a right to dispose of shares which, to his knowledge, are subject to restrictions or of a right to be issued with such shares;

(b) he votes in respect of such shares, whether as holder or proxy, or appoints a proxy to vote in respect of those shares; or

(c) being the holder of such shares, he fails to notify of their being subject to restrictions a person whom he does not know to be aware of that fact but does know to be entitled, apart from the restrictions, to vote in respect of those shares whether as holder or proxy.

(7) A person who commits an offence under subsection (6) is liable on conviction to a fine not exceeding five thousand dalasis or to a term of imprisonment not exceeding two years, or both.

(8) Where shares in a company are issued in contravention of restrictions placed on the shares, the company and every officer of the company who is in default is liable to a fine not exceeding five thousand dalasis.

Client privileges.

260. Nothing in this Chapter affects the privileges that exist in respect of a legal practitioner and his client.

Inquiries.

261. The Registrar may make of any person any inquiries that relate to compliance with this Act.

PART IV - COMPANY RECORDS AND CHANGES

CHAPTER I

CORPORATE RECORDS

(i) Company Office, Registers and Records

Registered office.

262. (1) A company shall at all times have a registered office in The Gambia.

(2) The directors of the company may by resolution change the address of the registered office.

(3) A company shall within fifteen days of a change of the address of its registered office, send to the Registrar a notice of the change, which the Registrar shall file.

Records of
company.

263. (1) A company shall prepare and maintain at its registered office records containing

- (a) the articles of incorporation and the by-laws, and all amendments thereto, and a copy of any unanimous shareholder agreement and amendments thereto;
- (b) minutes of meetings and resolutions of shareholders; and
- (c) copies of all notices required by this Act.

(2) A company shall prepare and maintain a register of members showing

- (a) the name and the latest known address of each person who is a member;
- (b) a statement of the shares held by each member;
- (c) the date on which each person was entered on the register as a member, and the date on which a person ceased to be a member.

(3) A company shall prepare and maintain a register of its directors and secretaries and a register of its directors' holdings in accordance with sections 89, 298 and 299.

(4) A public company shall prepare and maintain a register of substantial shareholding in the company in accordance with sections 300 to 303.

(5) A company that issues debentures shall prepare and maintain a register of debentureholders showing

- (a) the name and the latest known address of each debentureholder;
- (b) the principal of the debentures held by each holder;

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- (c) the amount or the highest amount of any premium payable on redemption of the debentures;
 - (d) the issue price of the debentures and the amount paid up on the issue price;
 - (e) the date on which the name of each person was entered on the register as a debentureholder; and
 - (f) the date on which each person ceased to be a debentureholder.
- (6) A company that grants conversion privileges, options, or rights to acquire shares of the company shall maintain a register showing the name and latest known address of each person to whom the privileges, options or rights have been granted, and such other particulars in respect thereof as may be prescribed.
- (7) A company may appoint an agent to prepare and maintain the registers required by this section to be prepared and maintained by the company, and the registers may be kept at the registered office of the company or at some other place in The Gambia designated by the directors of the company.

(ii) Records of Trusts

Trust notices.

264. (1) Except as provided in this section, notice of a trust, whether express, implied or constructive, shall not

- (a) be entered by a company in any of the registers maintained by it pursuant to section 263; or
- (b) be received by the Registrar.

(2) No liabilities are affected by anything done in pursuance of subsection (3), (4) or (5), and the company concerned is not affected with notice of a trust by reason of anything so done.

(3) A personal representative of the estate of a deceased individual who was registered in a register of a company as a member or debentureholder may become registered as the holder of that share or debenture as personal representative of that estate.

(4) A personal representative of the estate of a deceased individual who was beneficially entitled to a share or debenture of the company that is registered in a register of the company may, with the consent of the company and of the registered member or debenture holder, become the registered member or debentureholder as the personal representative of the estate.

(5) When a personal representative of an estate of a deceased individual is registered pursuant to subsection (3) as a holder of a share or debenture of a company, the personal representative is, in respect of that share or debenture, subject to the same liabilities that he would be subject to had the share or debenture remained registered in the name of the deceased individual.

(iii) Accounts, Minutes and Other Records

Other records.

265. (1) In addition to the records described in section 263, a company shall prepare and maintain adequate accounting records and records containing minutes of meetings and resolutions of the directors and any committees of the directors.

(2) The records required under subsection (1) shall be kept at the registered office of the company or at some other place in The Gambia designated by the directors, and those records shall at all reasonable times be available for inspection by the directors and shareholders.

(3) When any accounting records of a company are kept at a place outside The Gambia accounting records that are adequate to enable the directors to ascertain the financial position of the company with reasonable accuracy on a quarterly basis shall be kept by the company at the registered office of the company or at some other place in The Gambia designated by the directors.

(4) For the purposes of paragraph (b) of subsection (1) of section 263 and of this section, when a former Act company is continued under this Act, "records" includes similar registers and other records required by law to be maintained by the company before this Act came into force.

Records form.

266. All records required by this Act to be prepared and maintained may

- (a) be in a bound or loose-leaf form or in a photographic film form; or
- (b) be entered or recorded
 - (i) by any system of mechanical or electronic data processing; or
 - (ii) by any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time.

Duty of care
for records.

267. A company and its agents shall take reasonable precautions

(a) to prevent loss or destruction of,

(b) to prevent falsification of entries in, and

(c) to facilitate detection and correction of inaccuracies in,

the records required by this Act to be prepared and maintained in respect of the company.

Access to
records.

268. (1) The directors and shareholders of a company, and their agents and legal representatives, may, during the usual business hours of the company, examine the records of the company referred to in section 263 and may take extracts therefrom free of charge.

(2) A shareholder of a company is, upon request and without charge, entitled to one copy of the articles of incorporation and by-laws of the company and any unanimous shareholder agreement, and to one copy of any amendments to any of those documents.

Annual returns.

Schedule.

269. (1) A company shall, not later than the first day of April in each year after its incorporation or continuance under this Act, send to the Registrar a return in Schedule II containing the prescribed information made up to the preceding thirty-first day of December and accompanied with any fees prescribed by Regulations.

(2) A director or officer of the company shall certify the contents of every return made under this section.

(3) If default is made in complying with this section, the company and every director and officer who is in default is liable on conviction to a fine not exceeding one thousand dalasis.

CHAPTER II

FUNDAMENTAL COMPANY CHANGES

(i) Altering Articles of Incorporation

270. (1) Subject to sections 272 and 273, the articles of incorporation of a company may, by special resolution, be amended

Fundamental amendment to articles of incorporation.

- (a) to change its name;
- (b) to add, change or remove any restriction upon the business that the company can carry on;
- (c) to change any maximum number of shares that the company is authorised to issue;
- (d) to create new classes of shares;
- (e) to change the designation of all or any of its shares, and add, change or remove any rights, privileges, restrictions and conditions, including rights to accrued dividends, in respect of all or any of its shares, whether issued or unissued;
- (f) to change the shares of any class or series, whether issued or unissued, into a different number of shares of the same class or series, or into the same or a different number of shares of other classes or series;
- (g) to divide a class of shares, whether issued or unissued, into a series of shares and fix the number of shares in each series, and the rights, privileges, restrictions and conditions attached thereto;
- (h) to authorise the directors to divide any class of unissued shares into series of shares and fix the number of shares in each series, and the rights, privileges, restrictions and conditions attached thereto;

- (i) to authorise the directors to change the rights, privileges, restrictions and conditions attached to unissued shares of any series;
- (j) to revoke, diminish or enlarge any authority conferred under paragraphs (h) and (i);
- (k) to increase or decrease the number of directors or the minimum or maximum number of directors, subject to section 73;
- (l) to add, change or remove restrictions on the transfer of shares; or
- (m) to add, change or remove any other provision that is permitted by this Act to be set out in the articles of incorporation.

(2) The directors of a company may, if authorised by the shareholders in the special resolution effecting an amendment under this section, revoke the resolution before it is acted upon, without further approval of the shareholders.

(3) A provision in the articles of incorporation of a company that restricts in whole or in part the powers of the directors to manage the business and affairs of the company shall not be amended except with the consent of all the shareholders.

271. (1) Subject to subsection (2), a director or a shareholder of a company who is entitled to vote at an annual meeting of shareholders may, in accordance with section 131, make a proposal to amend the articles of incorporation of the company.

(2) Notice of a meeting of shareholders at which a proposal to amend the articles of incorporation is to be considered shall set out the proposed amendment, and, where applicable, may state that a dissenting shareholder is entitled to be paid the fair value of his shares in accordance with section 283, but failure to make that statement does not invalidate an amendment.

272. (1) The holders of shares of a class, or, subject to subsection (2), of a series, are, unless the articles of incorporation otherwise provide in the case of an amendment described in paragraph (a) or (b), entitled to vote separately, as a class or series, upon a proposal to amend the articles of incorporation

Proposal to
amend articles of
incorporation.

Class vote on
proposal.

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- (a) to increase or decrease any maximum number of authorised shares of that class, or increase any maximum number of authorised shares of a class having rights or privileges equal or superior to the shares of that class;
 - (b) to effect an exchange, reclassification or cancellation of all or part of the shares of that class;
 - (c) to add, change or remove the rights, privileges, restrictions or conditions attached to the shares of that class and, in particular,
 - (i) to remove or change prejudicially rights to accrued dividends or to cumulative dividends;
 - (ii) to add, remove or change redemption rights prejudicially;
 - (iii) to reduce or remove a dividend preference or a winding up preference; or
 - (iv) to add, remove or change prejudicially conversion privileges, options, voting transfer or pre-emptive rights, or rights to acquire shares or debentures of a company, or sinking fund provisions;
 - (d) to increase the rights or privileges of a class of shares having rights or privileges equal or superior to the shares of that class;
 - (e) to create a new class of shares equal or superior to the shares of that class;
 - (f) to make a class of shares having rights or privileges inferior to the shares of that class equal or superior to the shares of that class;
 - (g) to effect an exchange or to create a right of exchange of all or part of the shares of another class into the shares of that class; or
 - (h) to constrain the issue or transfer of the shares of that class, or extend or remove the constraint.

(2) The holders of a series of shares of a class are entitled to vote separately as a series under subsection (1) only if the series is affected by an amendment in a manner different from other shares of the same class.

(3) Subsection (1) applies whether or not shares of a class or series otherwise carry the right to vote.

(4) A proposed amendment to the articles of incorporation referred to in subsection (1) is adopted when the holders of the shares of each class or series entitled to vote separately thereon as a class or series have approved the amendment by a special resolution.

Delivery of
articles of
incorporation.

273. (1) Subject to any revocation under subsection (2) of section 270, after an amendment has been adopted under that section or section 272, articles of amendment shall be sent to the Registrar.

(2) If an amendment effects or requires a reduction of stated capital, subsections (3) and (4) of section 48 apply.

Certificate of
amendment.

274. (1) Upon receipt of articles of amendment from a company, the Registrar shall issue to the company a certificate of amendment in accordance with section 392.

(2) An amendment to the articles of incorporation of a company becomes effective on the date shown in the certificate issued by the Registrar in respect of that company.

(3) No amendment to the articles of incorporation of a company affects

(a) an existing cause of action or claim or liability to prosecution in favour of or against the company or its directors or officers; or

(b) any civil, criminal or administrative action or proceeding to which a company or any of its directors or officers is a party.

Re-stated articles
of incorporation.

275. (1) The directors of a company may at any time, and shall, when reasonably so directed by the Registrar, restate the articles of incorporation of the company as amended.

(2) Where the directors restate the articles of incorporation under subsection (1), they shall send the re-stated articles of incorporation to the Registrar.

(3) Upon receipt of re-stated articles of incorporation, the Registrar shall issue a re-stated certificate of incorporation in accordance with section 392.

4) Re-stated articles of incorporation are effective on the date shown in the re-stated certificate of incorporation, and supersede the original articles of incorporation and all amendments thereto.

(ii) Amalgamations

Amalgamation.

276. Two or more companies, including holding and subsidiary companies, may amalgamate and continue as one company.

Agreement for amalgamation.

277. (1) Each company proposing to amalgamate shall enter into an agreement setting out the terms and means of effecting the amalgamation, and in particular, setting out

- (a) the provisions that are required to be included in the articles of incorporation under section 6;
- (b) the name and address of each proposed director of the amalgamated company;
- (c) the manner in which the shares of each amalgamating company are to be converted into shares or debentures of the amalgamated company;
- (d) if any shares of an amalgamating company are not to be converted into shares or debentures of the amalgamated company, the amount of money or shares or debentures of any body corporate that the holders of those shares are to receive instead of shares or debentures of the amalgamated company;
- (e) the manner of payment of money instead of the issue of fractional shares of the amalgamated company or of any other body corporate the shares or debentures of which are to be received in the amalgamation;
- (f) whether the by-laws of the amalgamated company are to be those of one of the amalgamating companies, and, if not, a copy of the proposed by-laws; and

(g) details of any arrangements necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated company.

(2) If shares of one of the amalgamating companies are held by or on behalf of another of the amalgamating companies, the amalgamation agreement shall provide for the cancellation of those shares when the amalgamation becomes effective, without any repayment of capital in respect thereof, and no provision may be made in the agreement for the conversion of those shares into shares of the amalgamated company.

Approval by
shareholders.

278. (1) The directors of each amalgamating company shall submit the amalgamation agreement for approval to a meeting of the shareholders of the amalgamating company of which they are directors, and, subject to subsection (4), to the holders of each class or series of shares of that amalgamating company.

(2) A notice of a meeting of shareholders complying with section 128 shall be sent in accordance with that section to each shareholder of each amalgamating company and the notice

(a) shall include or be accompanied with a copy or summary of the amalgamation agreement, and

(b) shall state that a dissenting shareholder is entitled to be paid the fair value of his shares in accordance with section 283,

but failure to make the statement referred to in paragraph (b) does not invalidate an amalgamation.

(3) Each share of an amalgamating company carries the right to vote in respect of an amalgamation, whether or not the share otherwise carries the right to vote.

(4) The holders of shares of a class or series of shares of an amalgamating company are entitled to vote separately as a class or series in respect of an amalgamation when the amalgamation agreement contains a provision that, if contained in a proposed amendment to the articles of incorporation, would entitle those holders to vote as a class or series under section 272.

(5) An amalgamation agreement is adopted when the shareholders of each amalgamating company have approved of the amalgamation by

special resolution of each class or series of the shareholders entitled to vote on the amalgamation.

(6) An amalgamation agreement may provide that at any time before the issue of a certificate of amalgamation the agreement can be terminated by the directors of an amalgamating company, notwithstanding approval of the agreement by the shareholders of all or any of the amalgamating companies.

Vertical
short-form
amalgamation.

279. A holding company and one or more of its wholly-owned subsidiary companies may amalgamate and continue as one company without complying with sections 277 and 278, if

(a) the amalgamation is approved by a resolution of the directors of each amalgamating company; and

(b) the resolutions provide that

(i) the shares of each amalgamating subsidiary company will be cancelled without any repayment of capital in respect of the cancellation;

(ii) the articles of amalgamation will be the same as the articles of incorporation of the amalgamating holding company; and

(iii) no shares or debentures will be issued by the amalgamated company in connection with the amalgamation.

Horizontal
short-form
amalgamation.

280. Two or more wholly-owned subsidiary companies of the same holding body corporate may amalgamate and continue as one company without complying with sections 277 and 278 if

(a) the amalgamation is approved by a resolution of the directors of each amalgamating company; and

(b) the resolutions provide that

(i) the shares of all but one of the amalgamating subsidiary companies will be cancelled without any repayment of capital in respect of the cancellation;

- (ii) the articles of amalgamation will be the same as the articles of incorporation of the amalgamating subsidiary company whose shares are not cancelled; and
- (iii) the stated capital of the amalgamating subsidiary companies whose shares are cancelled will be added to the stated capital of the amalgamating subsidiary company whose shares are not cancelled.

Articles of
amalgamation.

281. (1) Subject to subsection (6) of section 278, after an amalgamation has been adopted under that section or approved under section 299 or 280, articles of amalgamation in the prescribed form, shall be sent to the Registrar together with the documents required by section 6.

(2) There shall be attached to the articles of amalgamation a statutory declaration of a director or an officer of each amalgamating company that establishes to the satisfaction of the Registrar

(a) that there are reasonable grounds for believing that

- (i) each amalgamating company is, and the amalgamated company will be, able to pay its liabilities as they become due; and
- (ii) the realisable value of the amalgamated company's assets will not be less than the aggregate of its liabilities and stated capital of all classes; and

(b) that there are reasonable grounds for believing that

- (i) no creditor will be prejudiced by the amalgamation; or
- (ii) adequate notice has been given to all known creditors of the amalgamating companies, and no creditor objects to the amalgamation otherwise than on grounds that are frivolous or vexatious.

(3) For the purposes of subsection (2), adequate notice is given to creditors by a company, if

- (a) a notice in writing is sent to each known creditor having a claim against the company that exceeds five thousand dalasis;

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- (b) a notice is published twice in a newspaper published in The Gambia and a radio announcement broadcast twice; and
 - (c) each notice states that the company intends to amalgamate with one or more specified companies in accordance with this Act, and that a creditor of the company can object to the amalgamation within thirty days from the date of the notice.

Certificate of
amalgamation.

282. (1) Upon receipt of articles of amalgamation, the Registrar shall issue a certificate of amalgamation in accordance with section 392.

(2) On the date shown in a certificate of amalgamation, in respect of an amalgamated company,

- (a) the amalgamation of the amalgamating companies and their continuance as one company becomes effective;
- (b) the property of each amalgamating company becomes the property of the amalgamated company;
- (c) the amalgamated company becomes liable for the obligations of each amalgamating company;
- (d) any existing cause of action, claim or liability to prosecution is unaffected;
- (e) a civil, criminal or administrative action or proceeding pending by or against an amalgamating company may be continued by or against the amalgamated company;
- (f) a conviction against, or ruling, order or judgment in favour of or against, an amalgamating company may be enforced by or against the amalgamated company; and
- (g) the articles of amalgamation are the articles of incorporation of the amalgamated company, and, except for the purposes of subsection (1) of section 199, the certificate of amalgamation is the certificate of incorporation of the amalgamated company.

(iii) Dissenters' Rights and Obligations

Dissent by
shareholder.

283. (1) Subject to sections 293 and 373, a shareholder of a class of shares of a company may dissent if the company resolves

- (a) to amend its articles of incorporation under section 270 to add, change or remove any provisions restricting the issue or transfer of shares of that class;
- (b) to amend its articles of incorporation under section 270 to add, change or remove any restriction upon the businesses that the company can carry on;
- (c) to amalgamate with another company, otherwise than under section 279 or 280; or
- (d) to sell, lease or exchange all or substantially all its property under section 166.

(2) Subject to sections 293 and 373, a shareholder of a class of shares of a company may dissent if the company is subject to an order of the court under section 294 permitting the shareholders to dissent.

(3) The articles of incorporation of a company that is not a public company may provide that a shareholder of a class or series of shares who is entitled to vote under section 272 may dissent if the company resolves to amend its articles of incorporation in a manner described in that section.

(4) In addition to any other right he has, but subject to section 292, a shareholder who complies with this section is entitled, when the action approved by the resolution from which he dissents or an order made under section 294 becomes effective, to be paid by the company the fair value of the shares held by him in respect of which he dissents, and the fair value is to be determined as of the close of business on the day before the resolution was adopted or the order made.

(5) A dissenting shareholder may not claim under this section except only with respect to all the shares of a class or series

- (a) held by him on behalf of any one beneficial owner; and
- (b) registered in the name of the dissenting shareholder.

(6) A dissenting shareholder shall send to the company, at or before any meeting of shareholders of the company at which a resolution referred to in subsection (1) or (3) is to be voted on, a written dissent from the resolution, unless the company did not give notice to the shareholder of the purpose of the meeting and of his right to dissent.

(7) When a shareholder of a company has dissented pursuant to subsection (6), the company shall, within ten days after the shareholders of the company adopt the resolution, send to the shareholder notice that the resolution has been adopted, but the notice need not be sent to the shareholder if he has voted for the resolution or has withdrawn his dissent.

Demand for
payment.

284. (1) A dissenting shareholder shall within twenty days after he receives a notice under subsection (7) of section 283, or, if he does not receive that notice, within twenty days after he learns that a resolution under that subsection has been adopted, send to the company a written notice containing

(a) his name and address;

(b) the number and class or series of shares in respect of which he dissents; and

(c) a demand for payment of the fair value of the shares.

(2) A dissenting shareholder shall within thirty days after sending a notice under subsection (1), send the certificates representing the shares in respect of which he dissents to the company or its transfer agent.

(3) A dissenting shareholder who fails to comply with subsection (2) has no right to make a claim under this section.

(4) A company or its transfer agent shall endorse on a share certificate received by it under subsection (2) a notice that the holder of the share is a dissenting shareholder under this section, and forthwith return the share certificate to the dissenting shareholder.

Suspension of
rights.

285. After sending a notice under section 284, a dissenting shareholder ceases to have any rights as a shareholder, other than the right to be paid the fair value of his shares as determined under this section, unless

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- (a) the dissenting shareholder withdraws his notice before the company makes an offer under section 286;
 - (b) the company fails to make an offer in accordance with section 286 and the dissenting shareholder withdraws his notice; or
 - (c) the directors,
 - (i) under subsection (2) of section 270, revoke a resolution to amend the articles of incorporation of the company;
 - (ii) under subsection (6) of section 278, terminate an amalgamation agreement; or
 - (iii) under subsection (7) of section 155, abandon a sale, lease or exchange of property,

in which case his rights as a shareholder are re-instated as of the date the notice mentioned in section 284 was sent.

Offer to pay
for share.

286. (1) A company shall, not later than seven days after the day on which the action approved by the resolution is effective, or the day the company received the notice referred to in section 284, whichever is the later date, send to each dissenting shareholder who has sent such a notice,

- (a) a written offer to pay for his shares in an amount considered by the directors of the company to be the fair value of those shares, which shall be accompanied with a statement showing how the fair value was determined; or
- (b) if section 292 applies, a notification that it is unable lawfully to pay dissenting shareholders for their shares.

(2) Every offer made under subsection (1) for shares of the same class or series shall be on the same terms.

(3) Subject to section 292, a company shall pay for the shares of a dissenting shareholder within ten days after an offer made under subsection (1) had been accepted, but the offer lapses if the company does not receive an acceptance of the offer within thirty days after it has been made.

Application
to court.

287. (1) If a company fails to make an offer under subsection (1) of section 286, or if a dissenting shareholder fails to accept the offer made by the company, the company may, within fifty days after the action approved by the resolution is effective, apply to the court to fix a fair value for the shares of a dissenting shareholder.

(2) If a company fails to apply to the court in the circumstances described in subsection (1), a dissenting shareholder may, within a further period of twenty days, apply to the court to fix a fair value for the shares of a dissenting shareholder.

Joined parties.

288. Upon an application to the court under section 287,

(a) all dissenting shareholders whose shares have not been purchased by the company are to be joined as parties and are bound by the decision of the court; and

(b) the company shall notify each affected dissenting shareholder of the date, place and consequences of the application and of his right to appear and be heard in person or by a legal practitioner.

Court powers.

289. (1) Upon an application to the court under section 287, the court may determine whether any other person is a dissenting shareholder who should be joined as a party, and the court shall then fix a fair value for the shares of the dissenting shareholders.

(2) The court may appoint one or more appraisers to assist the court to fix a fair value for the shares of the dissenting shareholders.

(3) The final order of the court shall be made against the company in favour of each dissenting shareholder of the company and for the amount of the shares of the dissenting shareholder as fixed by the court.

Interest.

290. The court may allow a reasonable rate of interest on the amount payable to each dissenting shareholder, from the date the action approved by the resolution is effective until the date of payment by the company.

Recourse of
dissenting
shareholder.

291. (1) If section 292 applies, the company shall within ten days after the making of an order under subsection (3) of section 289, notify each dissenting shareholder that it is unable lawfully to pay dissenting shareholders for their shares.

(2) If section 292 applies, a dissenting shareholder, by written notice delivered to the company within thirty days after receiving a notice under subsection (1),

(a) may withdraw his notice of dissent, in which case the company consents to the withdrawal and the shareholder is re-instated to his full rights as a shareholder; or

(b) may retain a status as a claimant against the company entitled to be paid as soon as the company is lawfully able to do so, or, in a dissolution, to be ranked subordinate to the rights of creditors of the company, but in priority to the company's shareholders.

Prohibition of payment.

292. A company shall not make a payment to a dissenting shareholder under section 286 if there are reasonable grounds for believing

(a) the company is or would, after the payment, be unable to pay its liabilities as they become due; or

(b) the realisable value of the company's assets would thereby be less than the aggregate of its liabilities.

(iv) Re-organisation and Arrangements

Re-organisation.

293. (1) In this section, "re-organisation" means

(a) a court order made under section 373;

(b) a court order approving a proposal under the Insolvency Act, 1992, or

(c) a court order that is made under any other enactment and that affects the rights among the company, its shareholders and creditors.

(2) If a company is subject to an order referred to in subsection (1), its articles of incorporation may be amended by the order to effect any change that might lawfully be made by an amendment under section 270.

(3) If the court makes an order referred to in subsection (1), the court may also

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- (a) authorise the issue of debentures of the company, whether or not convertible into shares of a class or series, or having attached any rights or options to acquire shares of a class or series, and fix the terms thereof; and
 - (b) appoint directors in place of, or in addition to, all or any of the directors then in office.

(4) After an order referred to in subsection (1) has been made, articles of re-organisation in the prescribed form, shall be sent by the company to the Registrar, together with the documents required by section 6, if applicable.

(5) Upon receipt of articles of re-organisation for a company, the Registrar shall issue a certificate of amendment in accordance with section 392.

(6) A re-organisation of a company becomes effective on the date shown in the certificate of amendment.

(7) A shareholder of a company is not entitled to dissent under section 283 if an amendment to the articles of incorporation of the company is effected under this section.

Arrangements.

294. (1) In this section, "arrangements" includes

- (a) an amendment of the articles of a company;
- (b) an amalgamation of two or more companies;
- (c) a division of the businesses carried on by a company;
- (d) a transfer of all or substantially all the property of a company to another body corporate in exchange for property, money or shares or debentures of the body corporate;
- (e) an exchange of shares or debentures held by shareholders or debenture holders of a company for property, money or other shares or debentures of the company, or property, money or shares or debentures of another body corporate of it is not a take-over bid within the meaning of Chapter II of Part III; and
- (f) a dissolution of a company.

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- (2) For the purposes of this section, a company is insolvent when
- (a) it is unable to pay its liabilities as they become due; or
 - (b) the realisable value of the assets of the company are less than the aggregate of its liabilities and stated capital of all classes.
- (3) Where it is not practicable for a company that is solvent to effect a fundamental change in the nature of an arrangement under any other provision of this Act, the company may apply to the court for an approval of an arrangement proposed by the company.
- (4) In connection with an application under this section, the court may make any interim or final order,
- (a) determining the notice to be given to any interested person or dispensing with notice to any person other than the Registrar;
 - (b) requiring a company, in such manner as the court directs, to call, hold and conduct a meeting of shareholders or debentureholders, or holders of options or rights to acquire shares in the company
 - (c) permitting a shareholder to dissent under section 283; or
 - (d) approving an arrangement as proposed by the company or as amended in such manner as the court may direct.
- (5) An applicant under this section shall give the Registrar notice of the application and the Registrar may appear and be heard in person or by a legal practitioner.
- (6) After an order referred to in paragraph (d) of subsection (4) has been made, articles of arrangement in the prescribed form shall be sent to the Registrar together with the documents required by sections 6 and 61, if applicable.
- (7) Upon receipt of articles of arrangement, the Registrar shall issue a certificate of amendment in accordance with section 392.
- (8) An arrangement becomes effective on the date shown in the certificate of amendment.

PART V - EXCLUSIVE PROVISIONS

CHAPTER I

GENERAL PROVISIONS APPLICABLE TO PUBLIC COMPANIES ONLY

Minimum number of directors for public company.

- 295.** A public company
- (a) incorporated after the coming into force of this Act shall have at least three directors; and
 - (b) that is in existence prior to the coming into force of this Act shall, within six months of the coming into force of this Act, have at least three directors.

Secretary of public company.

296. (1) The directors of a public company shall take all reasonable steps to ensure that each secretary and assistant secretary of the company is a person who appears to the directors to have the requisite knowledge and experience to discharge the functions of a secretary of a public company.

(2) For the purpose of this section, a person

- (a) who, on the coming into force of this Act, held the office of secretary, assistant secretary or deputy secretary of a public company,
- (b) who, for at least three years of the five years immediately preceding his appointment as secretary, held the office of secretary of a public company,
- (c) who is a member in good standing of an accounting body recognised by the Accountants' Council established under the Accountants Act, 1991,
- (d) who is a legal practitioner, or
- (e) who, by virtue of his holding or having held any other position or having been a member of any other body, appears to be capable of discharging the functions of a secretary of a public company,

may be assumed by a director of a public company to have the requisite knowledge and experience to discharge the functions of a secretary or assistant secretary of a public company, if the director does not know otherwise.

Court disqualified directors.

297. (1) When, on the application of the Registrar, it is made to appear to the court that an individual is unfit to be concerned in the management of a public company, the court may order that, without the prior leave of the court, the individual shall not be a director of the company, or, in any way, directly or indirectly, be concerned with the management of the company for such period as the court may specify in the order,

(a) beginning

(i) with the date of the order; or

(ii) if the individual is undergoing, or is to undergo a term of imprisonment and the court so directs, with the date on which he completes that term of imprisonment or is otherwise released from prison; and

(b) not exceeding five years.

(2) In determining whether or not to make an order under subsection (1), the court shall have regard to all the circumstances that it considers relevant, including any previous convictions of the individual in The Gambia or elsewhere for an offence involving fraud or dishonesty or in connection with the promotion, formation or management of a body corporate.

(3) Before making an application under this section in relation to an individual, the Registrar shall give that individual not less than ten days' notice of the Registrar's intention to make the application.

(4) On the hearing of an application made by the Registrar under this section or an application for leave under this section to be concerned with the management of a public company, the Registrar and any individual concerned with the application may appear and call attention to any matters that are relevant, and may give evidence and call witnesses.

Register of
directors'
holdings.

298. (1) A public company shall keep a register showing the required particulars with respect to any interest in shares in, or debentures of, the company or of any affiliate or associate of the company, which is vested in a director.

(2) For the purposes of this section, an interest in shares or debentures is vested in a director if

- (a) the shares or debentures are registered in the director's name, or the names of the director and other persons jointly, or in the name of a nominee for him, or for him and them;
- (b) the director has a derivative interest in the shares or debentures, or a right or power to acquire a derivative interest in them;
- (c) the director has a right to subscribe for the shares or debentures, or another person has a right to subscribe for them and the director has a right to acquire them after they have been allotted;
- (d) the shares or debentures are the subject of a voting arrangement in favour of a director, that is to say, an arrangement (whether legally enforceable or not) by which the director may require the holder of the shares or debentures to vote, or not to vote, or to vote in a particular manner, at any general meeting of the company or at any meeting of a class of shareholders or debenture holders, or by which the debenture may require the holder of the shares or debentures to appoint the director or any other person to be his proxy with power to vote in respect of the shares or debentures at any such meeting.

(3) For the purposes of subsection (1), the required particulars with respect to an interest in shares or debentures vested in a director are

- (a) the number and classes of the shares and the number, classes and the amount of the principal and premiums payable to the holder of the debentures;
- (b) the nature of the interest and its duration (if it is limited in duration);
- (c) the date of the acquisition of the interest and the consideration (if any) given by the director or any other person for the acquisition; and

(d) the date of the disposal of the interest by the director or the date of its cessation (whichever first occurs) and the consideration (if any) received by him or any other person for such disposal or cessation.

(4) A director in respect of whom an entry is required to be made in the register shall notify the company in writing within seven days after the matter occasioning the requirement of the entry occurs or arises, and shall include in the notification the particulars which the company is required to enter in the register in respect of that matter.

(5) This section extends to interest in shares and debentures vested in a director at the time when he becomes a director, and subsection (4) applies in that case with the substitution of a period of seven days after the director becomes a director for the period of seven days after the matter occasioning the requirement of an entry occurs or arises.

(6) The register shall be so made up that entries in it against the several names recorded in the register appear in chronological order.

(7) The entries which are required by this section to be made in the register shall not be removed from the register, notwithstanding the fact that the person in respect of whom they are required to be made ceases to be a director, but it shall not be necessary to make an entry in the register in respect of a matter which occurs or arises after he ceases to be a director.

(8) This section does not apply to an interest of a director which is created by the articles of incorporation of incorporating a company if the interest is one which is conferred on all the shareholders of the company or on all the shareholders of the class concerned, on the same terms and conditions, as on the director, that is to say, strictly in proportion to the shares, or shares of that class, held by them respectively.

(9) A company and every director of a company who is in default is liable to a fine not exceeding one thousand dalasis

(a) if the company fails to make an entry required by this section to be made in the register within three days after written notification of the matter required to be registered is given to it, or any of its directors (other than a person in respect of whom an entry is required to be made) acquires knowledge of the matter in relation

to which an entry is required to be made (whichever is the earlier); or

(b) if the company makes a false, misleading or incomplete entry in relation to a matter which is required to be entered in the register.

(10) A director of a company commits an offence if he fails to give a written notice of any matter in compliance with subsection (4) or (5), within the time thereby limited, to every company which is required to make an entry in relation to the matter in the register, or if he gives false, misleading or incomplete information to any such company with a view to it making an entry in its register.

(11) A director who commits an offence under subsection (10) is liable to a fine not exceeding two thousand dalasis or to a term of imprisonment not exceeding one year.

Extension of
section 298 to
associates of
directors.

299. (1) For the purposes of section 298,

(a) an interest of an associate of a director of a company (not being himself a director thereof) in shares or debentures shall be treated as being the director's interest; and

(b) a contract, assignment or right of subscription entered into, exercised or made by, or grant made to, an associate of a director of a company (not being himself a director thereof) shall be treated as having been entered into, exercised or made by, or as the case may be, as having been made to, the director.

(2) A director of a company shall be under obligation to notify the company in writing of the occurrence, while he is director, of either of the following events, namely

(a) the grant by the company to an associate of his of a right to subscribe for shares in, or debentures of, the company; and

(b) the exercise by an associate of his of a right to subscribe for shares or debentures granted by the company.

(3) A director of a company shall,

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- (a) in the case of the grant of a right as stated in paragraph (a) of subsection (2), provide the like information as is required by section 293 to be stated by the director on the grant to him by another company of a right to subscribe for shares in, or debentures of, that company; and
- (b) in the case of the exercise of a right as stated in paragraph (b) of subsection (2), provide the like information as is required by section 298 to be stated by the director on the exercise of a right granted to him by another company to subscribe for shares in, or debentures of, that other company.
- (4) An obligation imposed by subsections (2) and (3) on a director shall be fulfilled by him before the expiration of the period of five days beginning with the day next following that on which the occurrence of the event that gives rise to it comes to his knowledge.
- (5) A director commits an offence if,
- (a) he fails to give a written notice of a matter in compliance with subsections (2) and (3) within the time thereby limited, to the company concerned; or
- (b) he gives false, misleading or incomplete information to the company.
- (6) A director who commits an offence under subsection (5) is liable on conviction to a fine not exceeding two thousand dalasis or to a term of imprisonment not exceeding one year.

Substantial share-
holders' register

300. (1) A public company shall prepare and maintain a register of substantial shareholding in the company.

(2) For the purposes of sections 301 to 303,

(a) a person has a substantial shareholding in a company if he holds, by himself or by his nominee, shares in the company which entitle him to exercise at least ten *per centum* of the unrestricted voting rights at a general meeting of the company; and

(b) a person who has a substantial shareholding in a company is a substantial shareholder of the company.

Information to be given by substantial shareholder

301. (1) A person who is a substantial shareholder in a company shall give notice in writing to the company stating his name and address and giving full particulars of the shares held by him or his nominee (naming the nominee) by virtue of which he is a substantial shareholder.

(2) A person required to give notice under subsection (1) shall do so within fourteen days after he becomes aware that he is a substantial shareholder.

(3) The notice shall be so given notwithstanding that the person has ceased to be a substantial shareholder before the expiration of the period referred to in subsection (2).

(4) A person who fails to comply with this section is liable to a fine not exceeding one thousand dalasis.

Person ceasing to be substantial shareholder to notify company.

302. (1) A person who ceases to be a substantial shareholder in a company shall give notice in writing to the company stating his name and address and the date on which he ceased to be a substantial shareholder and giving full particulars of the circumstances by reason of which he ceased to be a substantial shareholder.

(2) A person required to give notice under subsection (1) shall do so within fourteen days after he becomes aware that he has ceased to be a substantial shareholder.

(3) A person who fails to comply with this section is liable to a fine not exceeding one thousand dalasis.

Company to keep register of substantial shareholders.

303. (1) A company shall enter in the substantial shareholders' register maintained under section 300,

(a) the names of persons, in alphabetical order, from whom it has received a notice under section 301; and

(b) the information given in the notice and, where it receives a notice under section 302, the information given in that notice, against each name that is entered in the register.

(2) The Registrar may at any time in writing require the company to furnish him with a copy of the register or any part of the register and the company shall furnish the copy within fourteen days after the day on which the requirement is received by the company.

(3) If default is made in complying with this section, the company and every officer of the company who is in default is liable to a fine not exceeding five hundred dalasis.

(4) A company is not, by reason of anything done under sections 301, 302 and this section, to be taken for any purpose to have notice of, or put upon inquiry as to, a right of a person to or in relation to a share in the company.

Meaning of
"approved stock
exchange".

304. (1) The Minister may, by Order published in the *Business Gazette*, declare a body corporate or association of persons operating an exchange in The Gambia on which shares, debentures and other securities are dealt in to be an approved stock exchange, and so long as the Order remains in force such body corporate or association shall be an approved stock exchange for the purposes of this Act.

(2) An approved stock exchange shall furnish to the Registrar as at the first day of January in each year, and at any other time if called upon by the Registrar to do so, a list showing,

(a) the name and business address and the style under which he carries on business of each person who at the date of the list is a member of that stock exchange, and if a body corporate, the name of each of the directors thereof; and

(b) the names of all persons who are for the time being authorised by that member to deal in securities on his behalf.

Extra-ordinary
general
meetings.

305. (1) The directors of a public company, notwithstanding anything in its articles of incorporation, shall on the requisition of members of the company holding not less than one-twentieth of the shares of the company, or, in the case of a company limited by guarantee, members of the company representing not less than one-twentieth of the total voting rights of all members of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.

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

(3) If the directors do not, within twenty-eight days from the date of receipt of the requisition at the registered office of the company, proceed duly to convene a meeting for a date not later than twenty-eight days thereafter the requisitionists, or any of them, may themselves convene a meeting but any meeting so convened shall not be held after the expiration of four months from the said date.

(4) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any fees or other remuneration of such of the directors as were in default.

(5) For the purposes of this section, the directors shall be deemed not to have proceeded duly to convene a meeting if they do not, within twenty-eight days of the receipt of the requisition at the registered office, cause notices of the meeting to transact the business specified in the requisition to be given in accordance with this Act.

Rotation of
directors of a
public company.

306. Subject to the provisions of this Act, and except as otherwise provided in the company's articles of incorporation, the following rules apply to the retirement and appointment of directors of a public company:

- (a) at the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office;
- (b) 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;
- (c) any director appointed to the office of managing director shall not, while holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors;
- (d) a retiring director shall be eligible for re-election;

- (e) the company, at the annual general meeting at which a director retires as aforesaid, may fill the vacated office by electing a person thereto, and in default the retiring director shall, if offering himself for re-election, be deemed to have been re-elected unless at such meeting it is expressly resolved not to fill such vacated office or unless a resolution for the re-election of such director shall have been put to the meeting and lost;
- (f) no person, other than a director retiring at the meeting shall, unless recommended by the directors, be eligible for election to the office of director at any general meeting unless not less than three nor more than twenty-eight days before the date appointed for the meeting there shall have been left at the registered office of the company notice in writing signed by a member entitled to attend and vote at the meeting of his intention to propose such person for election, and also notice in writing signed by that person of his willingness to be elected;
- (g) on any increase or decrease in the number of directors the company may by ordinary resolution determine in what rotation the increased or decreased number is to retire from office.

Voting for
directors of a
public company.

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

(2) A resolution moved in contravention of this section is void, whether or not its being so moved was objected to at that time.

(3) For the purposes of this section, a resolution approving appointments or nominating persons for appointment shall be treated as a resolution for appointment.

(4) This section does not apply where the company's articles of incorporation provide for cumulative voting in accordance with section 73.

Audit
Committee.

308. (1) Subject to subsection (2), a public company shall have an audit committee composed of not less than three directors of the company, a majority of whom are not officers or employees of the company or any of its affiliates.

(2) A company may apply to the Registrar for an order authorising the company to dispense with an audit committee, and the Registrar may, if he is satisfied that the shareholders will not be prejudiced by such an order, permit the company to dispense with an audit committee on such reasonable conditions as he thinks fit.

(3) An audit committee shall review the financial statements of the company before such financial statements are approved under section 213.

(4) The auditor of a company is entitled to receive notice of every meeting of the audit committee and, at the expense of the company, to attend and be heard and, if so requested by a member of the audit committee, shall attend every meeting of the committee held during the term of office of the auditor.

(5) The auditor of a company or a member of the audit committee may call a meeting of the committee.

Basic list of
shareholders.

309. (1) Upon payment of a reasonable fee and sending to a public company or its transfer agent the affidavit referred to in subsection (4), a person may upon application require the company or its transfer agent to furnish him, within fifteen days from the receipt of the affidavit, a list of members of the company, in this section referred to as the "basic list", made up to a date not more than thirty days before the date of receipt of the affidavit, which shall set out

(a) the names of the members of the company;

(b) the number of shares held by each member; and

(c) the address of each member as shown on the records of the company.

(2) When a person requiring a basic list from a public company states in the affidavit referred to in subsection (4) that he requires supplemental lists from the company, he may, upon payment of a fee, require the company or its transfer agent to furnish him with supplemental lists of the members, which shall set out any changes from the basic list

(a) in the names or addresses of the members, and

(b) in the number of shares held by each member,

for each business day following the date to which the basic list is made up.

(3) When a supplemental list has been required from a public company under subsection (2) by a person, the company, or its transfer agent, shall furnish that person with a supplemental list

(a) on the date the basic list is furnished, if the information relates to changes that took place before that date; and

(b) on the business day following the day to which the supplemental list relates if the information relates to changes that take place on or after the date the basic list is furnished.

(4) The affidavit required under subsection (1) shall state

(a) the name and address of the applicant;

(b) the name and address for service of the body corporate, if the applicant is a body corporate; and

(c) that the basic list and any supplemental list obtained pursuant to subsection (2) will not be used except as permitted under section 311.

(5) If the applicant is a body corporate, the affidavit shall be made by a director or officer of the body corporate.

Options list.

310. A person requiring under section 309 that a company supply a basic list or a supplemental list may also require the company to include in any such list the name and address of any known holder of an option or right to acquire shares of the company.

Restricted use
of list.

311. A list of members obtained under section 309 from a company shall not be used by any person except in connection with

(a) an effort to influence the voting of shareholders of the company;

(b) an offer to acquire shares in the company; or

(c) any other matter relating to the affairs of the company.

CHAPTER II

PROSPECTUSES

Definitions.

312. In this Chapter,

- (a) "issue" includes circulate or distribute;
- (b) "notice" includes circular or advertisement;
- (c) "prospectus" includes, in relation to a company, any notice, prospectus, or other document that
 - (i) invites applications from the public, or invites offers from the public, to subscribe for or purchase, or
 - (ii) offers to the public for subscription or purchase, directly or through other persons.

any shares or debentures of the company or any units of any such shares or debentures of the company.

Application of Chapter.

313. This Chapter applies whether any shares or debentures of a company are offered to the public on, or with reference to, the promotion of a company, or at any time after the company has come into existence.

(i) Prospectus Requirements

Prohibition against public issue of shares and debentures.

314. (1) Subject to subsection (2), no person shall issue any form of application for shares or debentures unless

- (a) a prospectus, as required by this Chapter, has been registered with the Registrar; and
- (b) a copy of the prospectus is issued with the form of application or the form specifies a place in The Gambia where a copy of the prospectus can be obtained.

(2) Subsection (1) does not apply if the form of application referred to is issued in connection with shares or debentures that are not offered to the public or intended for the public.

Contents of prospectus.

315. The following requirements apply to a prospectus:

- (a) the prospectus shall be dated and that date, unless there is proof to the contrary, is to be taken as the date of issue of the prospectus;
- (b) one copy of the prospectus shall be lodged with the Registrar, and the prospectus shall set out that a copy of the prospectus has been so lodged, and immediately state thereafter that the Registrar takes no responsibility as to the validity or veracity of its contents;
- (c) the prospectus shall contain a statement that no shares or debentures are to be allotted on the basis of the prospectus later than three months after the date of issue of the prospectus;
- (d) the prospectus shall, if it contains a statement by an expert made or contained in what purports to be a copy of or extract from a report, memorandum or valuation, of an expert, state the date on which the statement, report, memorandum or valuation was made, and whether or not it was prepared by the expert for incorporation in the prospectus;
- (e) the prospectus shall disclose any commission payable by virtue of section 54; and
- (f) the prospectus shall contain such other matters as may be prescribed.

Professional names.

316. A prospectus shall not contain the name of a person as a trustee for holders of debentures or as an auditor, a banker, a legal practitioner or a stockbroker of the company or proposed company, or for or in relation to the issue or proposed issue of shares or debentures, unless that person has consented in writing, before the issue of the prospectus, to act in that capacity in relation to the prospectus and a copy of the consent, verified as prescribed in subsection (2) of section 395, has been lodged with the Registrar.

No waivers.

317. A condition is void that

- (a) purports to require or bind an applicant for shares or debentures of a company to waive compliance with any requirement of this Chapter; or

(b) purports to affect the applicant with notice of any contract, document or matter not specifically referred to in the prospectus.

Certain notice
required.

318. (1) Subject to this section, no person shall issue a notice

(a) that offers, for subscription or purchase, shares or debentures of a company, or invites subscriptions for, or purchase of, any such shares or debentures;

(b) that calls attention to

(i) an offer, or intended offer, for subscription or purchase, of shares or debentures of a company;

(ii) an invitation, or intended invitation, to subscribe for, or purchase, any such shares or debentures; or

(iii) a prospectus.

(2) This section does not apply to

(a) a notice that relates to an offer or invitation not made or issued to the public, directly or indirectly;

(b) a registered prospectus within the meaning of this Chapter; or

(c) a notice

(i) that calls attention to a registered prospectus,

(ii) that states that allotments of, or contracts with respect to, the shares or debentures will be made only on the basis of one of the forms of applications referred to in, and attached to, a copy of the prospectus;

(iii) that contains no other information except that permitted pursuant to subsection (3);

(iv) that accompanies a notice referred to in sub-paragraph (i) to (iii) or would, but for the inclusion therein of a statement referred to in sub-paragraph (vi) or (vii), be a notice so referred to;

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- (v) that is issued by a person whose ordinary business is or includes advising clients in connection with their investments and is issued only to clients so advised in the course of that business;
 - (vi) that contains a statement that the investment to which it or the accompanying document relates is recommended by that person; and
 - (vii) that, if the person is an underwriter or sub-underwriter of an issue of shares or debentures to which the notice or accompanying document relates, contains a statement that the person making the recommendation is interested in the success of the issue as an underwriter or sub-underwriter, as the case may be.

(3) All or any of the following information is permitted for the purposes of subparagraph (iii) of paragraph (c) of subsection (2):

- (a) the number and description of the shares or debentures of the company to which the prospectus relates;
- (b) the name of the company, the date of its incorporation and the number of the company's issued shares and the amount paid on its issued shares;
- (c) the general nature of the company's main business, or its proposed main business;
- (d) the names, addresses and occupations of the directors of the company;
- (e) the names and addresses of the brokers or underwriters to the issue of shares or debentures, or both, and, if the prospectus relates to debentures, the name and address of the trustee for the debentureholders;
- (f) the name of any stock or securities exchange of which the brokers or underwriters to the issue are members;
- (g) the particulars of the period during which the offer is effective;

(h) the particulars of the time and place at which copies of the registered prospectus and form of application for the shares or debentures to which it relates can be obtained.

(4) This section applies to any notice issued in The Gambia by newspaper, or by radio or television broadcasting, or by cinematograph or any other means.

Responsibility for certificate.

319. (1) Where a person issues a notice in contravention of section 318 and before doing so obtains a certificate that

(a) is signed by two directors of the company or two proposed directors of the proposed company to which, or to the shares or debentures of which, the notice relates.

(b) specifies the names of those directors and of that company or of those proposed directors of that proposed company, and

(c) is to the effect that, by the operation of subsection (2) of section 318, this section does not apply to the notice,

each person who signed the certificate is deemed to have issued the notice and the person who obtained the certificate is deemed not to have done so.

(2) A person who has obtained a certificate referred to in subsection (1) shall deliver the certificate to the Registrar on being required to do so by the Registrar.

Evidence.

320. In proceedings for a contravention of section 318 or 319 a certificate that purports to be a certificate under section 319 is *prima facie* proof

(a) that, at the time the certificate was given, the persons named in the certificate were directors of the company so named, or proposed directors of the proposed company so named, as the case may be;

(b) that the signatures in the certificate purporting to be the signatures of those persons are their signatures; and

(c) that publication of the notice to which the certificate relates was authorised by those persons.

(ii) Registration of Prospectus and
Liability for Claims

Registration of
prospectus.

321. (1) No person shall issue a prospectus unless a copy thereof has first been registered by the Registrar and the prospectus states on its face the fact of the registration and the date on which it was effected.

(2) The Registrar shall not register a copy of a prospectus unless

(a) a copy of the prospectus is lodged with the Registrar on or before the date of its issue, and it is signed by every director and by every person who is named in the prospectus as a proposed director of the company, or by his agent authorised in writing;

(b) the prospectus appears to comply with the requirements of this Act;

(c) there are lodged with the Registrar copies of any consents required by section 323 to the issue of the prospectus and of all material contracts referred to in the prospectus, or, in the case of any such contract that is not reduced to writing, a memorandum giving full particulars of the contract; and

(d) the Registrar is of the opinion that the prospectus does not contain any statement or matter that is misleading in the form or context in which it is included.

(3) If the Registrar refuses to register a prospectus, he shall give notice of that fact to the person who lodged the prospectus, and give in the notice the reason for his refusal, and if the Registrar registers a prospectus he shall give notice of that fact to the person who lodged the prospectus, and give in the notice the date on which the registration was effected.

(4) A person who lodges a prospectus with the Registrar may, within thirty days after he is notified of a refusal to register pursuant to subsection (3), require in writing that the Registrar refer the matter to the court and the Registrar shall then refer the matter to the court for its determination.

(5) Where a refusal to register is referred to the court under subsection (4), the court, after hearing the person who lodged the prospectus, and, if the court so wishes, the Registrar, may order the

Registrar to register the prospectus, or it may uphold his decision to refuse registration.

(6) On the hearing under subsection (5), a party may be heard in person or by a legal practitioner.

Prospectus
presumed.

322. (1) When a company allots or agrees to allot to a person shares or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, the documents by which the offer of sale to the public is made is for all purposes deemed to be a prospectus issued by the company.

(2) With respect to subsection (1), every enactment and rules of law as to the contents of prospectuses or otherwise relating to prospectuses shall apply and have effect accordingly as if the shares or debentures had been offered to the public, and as if the persons accepting the offer in respect of the shares or debentures were subscribers for them, but without affecting the liability of the person by whom the offer is made, in respect of statements or non-disclosures in the document or otherwise.

(3) For the purposes of this Act, and unless the contrary is shown, it is proof that an allotment of, or an agreement to allot, shares or debentures of a company was made with a view to the shares or debentures being offered for sale to the public, if

(a) the offer for sale of the shares or debentures, or of any of them, to the public was made within six months after the allotment or agreement to allot; or

(b) at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(4) The requirements of this Chapter as to the prospectuses are to have effect as though the persons making an offer to which this section relates were persons named in a prospectus as directors of a company.

(5) In addition to complying with the other requirements of this Chapter the document making the offer shall set out

(a) the net amount of the consideration received, or to be received, by the company in respect of the shares or debentures to which the offer relates; and

(b) the place and time at which the contract under which the shares or debentures have been or are to be allotted can be inspected.

(6) Where an offer to which this section relates is made by a company or firm, it is sufficient if the document making the offer is signed on behalf of the company, or not less than half the members of the firm, as the case may be, and a director or member may sign by his agent authorised in writing to do so.

Expert's
consent.

323. (1) A prospectus that invites subscription for, or the purchase of shares or debentures of a company, and that includes a statement purporting to be made by an expert shall not be issued unless

(a) that expert has given, and has not before delivery of a copy of the prospectus for registration withdrawn, his written consent to the inclusion of the statement in the form and context in which it is included in the prospectus; and

(b) there appears in the prospectus a statement that the expert has given and has not withdrawn his consent.

(2) A person is not to be deemed to have authorised or caused the issue of a prospectus by reason only of his having given the consent required by this Chapter to the inclusion in the prospectus of a statement purporting to be made by him as an expert.

Liability on
prospectus.

324. (1) Subject to this section, each of the following designated persons is, for any loss or damage sustained by other persons who, on the faith of a prospectus, subscribe for, or purchase any shares or debentures, liable for any loss or damage sustained by those other persons by reason of any untrue statement in the prospectus, or by reason of the wilful non-disclosure in the prospectus of any matter of which the designated person had knowledge and that he knew to be material:

(a) a person who is a director of the company at the time of the issue of the prospectus;

(b) a person who authorised or caused himself to be named, and is named, in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time;

(c) an incorporator of the company; or

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- (d) a person who authorised or caused the issue of the prospectus.
- (2) Notwithstanding subsection (1),
- (a) where the consent of an expert is required to the issue of a prospectus and he has given that consent, he is not, by reason only of the consent, liable as a person who has authorised or caused the issue of the prospectus, except in respect of an untrue statement purporting to be made by him as an expert; and
- (b) the inclusion in the prospectus of a name of a person as a trustee for debentureholders, auditor, banker, legal practitioner, transfer agent or stockbroker may not, for that reason alone, be taken as an authorisation by him of the issue of the prospectus.
- (3) No person is liable under subsection (1),
- (a) who, having consented to become a director of the company, withdrew his consent before the issue of the prospectus and the prospectus was issued without his authority or consent;
- (b) who, when the prospectus was issued without his knowledge or consent, gave reasonable public notice of that fact forthwith after he became aware of its issue;
- (c) who, after the issue of the prospectus and before allotment or sale under it, became aware of an untrue statement in it and withdrew his consent, and gave reasonable public notice of the withdrawal of his consent and the reasons for it; or
- (d) who, as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, had reasonable ground to believe and did, up to the time of the allotment or sale of the shares or debentures, believe that the statement was true.
- (4) No person is liable under subsection (1),
- (a) if, as regards every untrue statement purporting to be a statement made by an expert or to be based on a statement made by an expert, it fairly represented the statement, or was a correct and fair copy of, or extract from, the report of valuation and that person had reasonable ground to believe and did, up to the time

of the issue of the prospectus, believe that the expert making the statement was competent to make it, and had given his consent as required under section 323 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration, nor had the expert, to that person's knowledge, withdrawn that consent before allotment or sale under the prospectus; or

(b) if, as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of, or extract from, a public official document, it was a correct and fair representation of the statement or copy of, or extract from the document.

(5) Subsections (3) and (4) do not apply in the case of a person liable, by reason of his having given a consent required of him by section 323, as a person who has authorised or caused the issue of the prospectus in respect of an untrue statement purporting to have been made by him as an expert.

(6) A person who, apart from this subsection, would be liable under subsection (1), by reason of his having given a consent required of him by section 323 as a person who has authorised or caused the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert, is not liable,

(a) if, having given his consent under that section to the issue of the prospectus, he withdrew his consent in writing before a copy of the prospectus was lodged with the Registrar;

(b) if, after a copy of the prospectus was lodged with the Registrar and before allotment or sale under the prospectus, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reasons for the withdrawal; or

(c) if he was competent to make the statement and had reasonable ground to believe, and did, up to the time of the allotment or sale of the shares or debentures, believe that the statement was true.

(7) When

- (a) a prospectus contains the name of a person as a director of the company, or as having agreed to become a director, 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 its issue, or
- (b) the consent of a person is required under section 323 to the issue of a prospectus and he either has not given the consent or has withdrawn it before the issue of the prospectus,

any person who authorised or caused the issue of the prospectus and the directors of the company, other than those directors without whose knowledge or consent the prospectus was issued, are liable to indemnify the person so named, or whose consent was so required, against all damages, costs and expenses to which he might be liable by reason of his name having been inserted in the prospectus, or of the inclusion of a statement purporting to be made by him as an expert, or in defending himself against any action or legal proceedings brought against him in respect thereof.

(iii) Subscription List and Minimum Subscription

Subscription
lists.

325. (1) No allotment shall be made of any shares or debentures of a company in pursuance of a prospectus, and no proceedings shall be taken on applications made in pursuance of a prospectus, until the beginning of the fifth day after than on which the prospectus is first issued, or any such later time as is specified in the prospectus, and the beginning of that fifth day or specified later time is referred to in this section as the "time of the opening of the subscription lists".

(2) An application for shares or debentures of a company made in pursuance of a prospectus is not revocable until after the expiration of the fifth day from the time of the opening of the subscription lists, or the giving before the expiration of that fifth day, by some person responsible under this Act for the prospectus, of a public notice having the effect of excluding or limiting the responsibility of the person giving it.

(3) An allotment made in contravention of this section is void.

(4) Notwithstanding subsection (3), an allotment void under this section does not affect any allotment of the same shares or debentures later made to the same applicant.

Minimum
subscription.

326. (1) Unless all the shares or debentures offered for subscription by a prospectus issued to the public are underwritten, the prospectus shall state the minimum amount of money required to be raised by the company by issuing the shares or debentures.

(2) No allotment shall be made of any shares or debentures of a company that are offered to the public unless

(a) the minimum subscription has been subscribed, and

(b) the sum payable on application for the shares or debentures has been received by the company,

and, if a cheque for the sum payable has been received by the company, the sum is deemed not to have been received by the company until the cheque is paid by the bank on which it is drawn.

(3) If the conditions referred to in subsection (2) have not been complied with on the expiration of forty days after the first issue of the prospectus, all moneys received from the applicants for any shares or debentures shall be forthwith repaid to them within forty-eight days after the issue of the prospectus, and the directors of the company are, subject to subsection (4), jointly and severally liable to repay that money with interest at the rate of six percent per annum from the expiration of the forty-eighth day.

(4) A director is not liable to repay moneys under subsection (3) if the default in any repayment of moneys was not due to a default or negligence on his part.

(5) A condition is void that purports to require or bind an applicant for shares or debentures to waive compliance with a requirement of this section.

(6) This section does not apply to an allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

Escrow of sub-
scription money.

327. All application money and other moneys paid prior to an allotment by an applicant on account of shares or debentures offered to the public shall, until the allotment of the shares or debentures, be held by the company, or, in the case of an intended company, by the persons named in the prospectus as proposed directors and by the incorporators, upon trust for the applicant, but there is no obligation or duty on any bank or

third person with whom any such moneys have been deposited to inquire into, or see to the proper application of those moneys so long as the bank or person acts in good faith.

(iv) Remedial Actions

Rescission of
contract.

328. (1) A shareholder or a debenture holder may bring, against a company that has allotted shares or debentures under a prospectus, an action for the rescission of all allotments and the repayment to the shareholders or debentureholders of the whole or part of the issue price that has been paid in respect of the shares or debentures, if

- (a) the prospectus contained a material statement, promise or forecast that was false, deceptive or misleading; or
- (b) the prospectus did not contain a statement, report or account required under this Act to be contained in it.

(2) In this section,

- (a) "debentureholder" means a holder of any of the debentures allotted under the prospectus whether the original allottee or a person deriving title under him;
- (b) "shareholder" means a holder of any of the shares allotted under the prospectus whether the original allottee or a person deriving title under him

(3) For the purposes of this section, a prospectus contains a material statement, promise or forecast if the statement, promise or forecast was made in such a manner or context, or in such circumstances, as to be likely to influence a reasonable man in deciding whether to invest in the shares or debentures offered for subscription, and a statement, report or accounting is omitted from a prospectus if it is omitted entirely, or if it does not contain all the information required by this Act to be given in the statement, report or account.

(4) In an action brought under this section, the plaintiff need not prove that he, or the person to whom the shares or debentures he holds were allotted, was in fact influenced by the statement, promise or forecast that he alleges to be false, deceptive or misleading, or by the omission of

any report, statement, or account required to be contained in the prospectus.

(5) If judgment is given in favour of a plaintiff under this section, the allotment of all shares or debentures under the same prospectus, whether allotted to the plaintiff, or the person under whom he derives title, or to other persons, is void.

(6) Where the allotment of shares or debentures is void under subsection (5), judgment shall be entered in favour of all such persons for the payment by the company to them severally of the amount paid in respect of the shares or debentures that they respectively hold, but if a shareholder or debentureholder at the date judgment is so entered signifies to the company in writing, whether before or after the entry of judgment, that he waives his right to rescind the allotment of shares or debentures that he holds, he is deemed not to be included among the persons in whose favour judgment is entered.

(7) The operation of this section is affected by the company's being wound up or ceasing to pay its debts as they fall due, and in the winding up of the company a repayment due under subsection (6) shall be treated as a debt of the company payable immediately before the repayment of the shares or debentures of the class in question, that is to say,

(a) in the case of a repayment in respect of shares, before repayment of the capital paid up on shares of the same class, and before any accumulated or unpaid dividends, or any premiums in respect of those shares, but after the payment of all debts of the company and the satisfaction of all claims in respect of prior ranking classes of shares; and

(b) in the case of a repayment in respect of debentures, before the repayment of the principal of the debentures of the same class, and before any unpaid interest or any premiums in respect of those debentures, but after the payment of all debts or liabilities of the company that this Act requires to be paid before those debentures, and after the satisfaction of all rights in respect of prior ranking classes of debentures.

(8) Subject to subsection (9), it is a defence to an action under this section for the company to prove that

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- (a) the plaintiff was the allottee of the shares or debentures in right of which the action was brought and that at the time they were allotted to him he knew that the statement, promise or forecast of which he complains was false, deceptive or misleading, or that he knew of the omission from the prospectus of the matter of which he complains; or
- (b) the plaintiff has received a dividend or payment of interest, or has voted at a meeting of shareholders or debenture holders since he discovered that the statement, promise or forecast of which he complains was false, deceptive or misleading, or since he discovered the omission from the prospectus of the matter of which he complains.

(9) An action may not be dismissed if there are several plaintiffs, when the company proves that it has a defence under subsection (8) against each of them, and in any case in which the company proves that it has a defence against the plaintiff or all the plaintiffs, the court may, instead of dismissing the action, substitute some other shareholder or debentureholder of the same class as plaintiff.

(10) If a company would have a defence under subsection (8) but for the fact that the allottee of the shares or debentures in right of which the action is brought has transferred or renounced them, the company may bring an action against the allottee for an indemnity against any sum that the court orders it to pay to the plaintiff in the action.

(11) Subsections (8) and (10) apply also in the case of shares and debentures of the same class as those in right of which a plaintiff obtains and enters judgment against the company under subsection (6),

- (a) with the substitution in subsection (8) of references to the shareholder or debentureholder for references to the plaintiff; and
- (b) with the substitution in subsections (8) and (10) of references to a right for the company to have the judgment set aside in respect of the shares or debentures for references to a defence to the action.

(12) This section applies

- (a) to shares and debentures allotted pursuant to an underwriting contract as if they had been allotted under the prospectus; and

(b) to shares or debentures issued under a prospectus that offers them for subscription in consideration of the transfer or surrender of other shares or debentures, whether with or without the payment of cash by or to the company, as though the issue price of the shares or debentures offered for subscription were the fair value, as ascertained by the court, of the shares or debentures to be transferred or surrendered, plus the amount of cash to be paid by the company.

(13) The rights conferred on shareholders and debentureholders by this section are in substitution for all rights to rescission and restitution in equity and all rights to sue the company at common law for deceit or for false statements made negligently, and those common law and equitable rights are hereby abolished in connection with prospectuses, but without prejudice to claims for damages or compensation against persons other than the company.

Time limit
on allotment.

329. (1) No allotment shall be made, on the basis of a prospectus, of any shares or debentures of a company that are offered to the public later than three months after the issue of the prospectus.

(2) Any allotment made in contravention of subsection (1) is void.

(v) Statements in Lieu of Prospectus

Restriction of
allotment.

330. A public company that does not issue a prospectus on, or with reference to, its formation may not allot any of its shares or debentures unless at least three days before the first allotment of either shares or debentures there has been lodged with the Registrar for registration a statement in lieu of prospectus that complies with the requirements of this Chapter.

Statements in
lieu of
prospectus.

331. To comply with the requirements of this Chapter a statement in lieu of prospectus lodged by or on behalf of a company shall

- (a) be 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;
- (b) disclose any commission payable by virtue of section 54; and
- (c) contain such matters as may be prescribed.

Refusal of registration of statement in lieu of prospectus.

332. (1) The Registrar may not accept for registration any statement in lieu of prospectus unless it appears to the Registrar that the statement complies with the requirements of this Act.

(2) Subsections (3) to (6) of section 321 apply in relation to the registration of, or refusal to register, a statement in lieu of prospectus as they apply in relation to the registration of or refusal to register a prospectus.

CHAPTER III

ADDITIONAL PROVISIONS APPLICABLE TO PRIVATE COMPANIES ONLY

Appointment and removal of directors of private companies.

333. (1) The appointment and removal of directors of a private company shall, subject to sections 61 and 66 to 70, be regulated by the company's articles of incorporation.

(2) In the absence of any contrary provision in the company's articles of incorporation, each of the existing directors shall continue to hold office until he vacates office under section 69 or is removed under section 70 and the company may at any time by ordinary resolution fill a vacancy in the number of directors and may at any time by ordinary resolution increase the number of directors, but the total number of directors shall not exceed the maximum prescribed by the articles of incorporation.

Conversion of private company to public company.

334. (1) A private company shall be converted into a public company if it alters its articles of incorporation in such a manner that they no longer include all the provisions which, under subsection (3) of section 7 are required to be included in the articles of incorporation of a company in order to constitute it a private company.

(2) Within twenty-eight days after the date of the special resolution altering the articles of incorporation, the company shall deliver to the Registrar for registration,

(a) a copy of the resolution; and

(b) unless the company is a company limited by guarantee, a prospectus complying with the provisions of Schedule III, or a

Schedule.

Schedule.

statement in lieu of prospectus complying with the provisions of Schedule IV.

(3) The Registrar shall cause notice of the conversion of the company to be published in the *Business Gazette*.

(4) If default is made in complying with subsection (1) or (2) the company and every officer of the company who is in default be liable to a fine not exceeding five thousand dalasis.

CHAPTER IV

COMPANIES WITHOUT SHARE CAPITAL

Application of Chapter.

335. (1) This Chapter applies to a non-profit company.

(2) When a provision of this Chapter is inconsistent with, or repugnant to, any other provision of this Act, the provision of this Chapter in so far as it affects a non-profit company to which this Chapter applies, supersedes and prevails over the other provisions of this Act.

(3) For the avoidance of uncertainty, but subject to subsection (2), the following provisions of this Act apply, with such modifications as the circumstances of a non-profit company require, to such a company, namely

- (a) the provisions of Chapters I, II, IV and V of Part I, Chapter II of Part II, Chapter I of Part III, Chapters I and II of Part IV, and Chapter I of Part VI and sections 35, 48, 49, 50 and 58;
- (b) the provisions of Chapters I and III of Part II and Chapter I of Part VII;
- (c) the provisions of Chapter V of this Part and Chapter II of Part VI; and
- (d) the provisions of Chapter IV of Part III, Chapter II of Part VI, Part VII and Part VIII.

"Member"
defined.

336. When used in relation to a non-profit company "member" refers to a member of the non-profit company in accordance with the provisions of this Act and the articles of incorporations and by-laws of the company.

Incorporation.

337. (1) Without the prior approval of the Registrar, no articles of incorporation shall be accepted for filing in respect of a non-profit company.

(2) In order to qualify for approval, a non-profit company shall restrict its business to one that is of a patriotic, religious, philanthropic, charitable, educational, scientific, literary, historical, artistic, social, professional, fraternal, sporting or athletic nature, or the like, or to the promotion of some other useful societal objects.

(3) Notwithstanding subsection (1), the approval of the Registrar is not required for the continuation under this Act of a former Act company that is a non-profit company that was registered under that Act.

Form of
articles of
incorporation.

338. The articles of incorporation of a non-profit company shall be in Schedule I and, in addition, shall state

- (a) the restrictions on the business that the company is to carry on;
- (b) that the company has no authorised share capital and is to be carried on without pecuniary gain to its members, and that any profits or other accretions to the company are to be used in furthering its business;
- (c) if the business of the company is of a social nature, the address in full of the clubhouse or similar building that the company is maintaining; and
- (d) that each first director becomes a member of the company upon its incorporation.

Directors
ex officio.

339. (1) A non-profit company shall have no fewer than three directors.

(2) The articles of incorporation or by-laws of a non-profit company may provide for individuals becoming directors by virtue of holding some office outside the company.

"Incorporated"
or "inc" etc.

340. (1) A non-profit company may use and be legally designated as a company limited by guarantee as prescribed in section 12.

(2) This section does not apply to a former Act company without a share capital that is continued under this Act, but applies to any such company that changes its name by amended articles of incorporation.

Members
unlimited.

341. (1) Unless the articles of incorporation or by-laws of a non-profit company otherwise provide, there is no limit on the number of members of the company.

(2) The articles or by-laws of a non-profit company may provide for more than one class of membership, but, if they do so, they shall set forth the designation of, and the terms and conditions attached to, each class of members.

Admission to
membership.

342. Subject to the articles of incorporation or by-laws of a non-profit company, a person may be admitted to membership in the company by resolution of the directors, but the articles of incorporation or by-laws may provide

(a) that the resolution is not effective until confirmed by the members in a general meeting; and

(b) that members can be admitted by virtue of holding some office outside the company.

Voting by
members.

343. (1) Subject to subsection (2), each member of each class of members of a non-profit company has one vote.

(2) The articles of incorporation of a non-profit company may provide that each member of a specified class has more than one vote, or has no vote.

Transfer of
members.

344. (1) Unless the articles of incorporation of the company otherwise provide, the interest of a member in a non-profit company is not transferable, and lapses and ceases to exist upon his death or when he ceases to be a member by resignation, or otherwise in accordance with the by-laws of the company.

(2) Where the articles of incorporation of a non-profit company provide that the interest of a member in the company is transferable, the by-law may not restrict the transfer of that interest.

By-laws.

345. (1) The directors of a non-profit company may make by-laws, not being contrary to the articles of incorporation of the company, respecting

- (a) the admission of persons and unincorporated associations as members and as *ex officio* members, and the qualifications of, and the conditions of membership;
- (b) the fees and dues of members;
- (c) the issue of membership cards and certificates;
- (d) the suspension and termination of membership by the company and by a member;
- (e) the method of transferring membership where the articles of incorporation provide that the interest of a member is transferable;
- (f) the qualifications of, and the remuneration of, the directors and the *ex officio* directors;
- (g) the time for, and manner of, election of directors;
- (h) the appointment, remuneration, functions, duties and removal of agents, officers and employees of the company, and the security, to be given by them to the company;
- (i) the time and place, and the notice to be given, for the holding of meetings of the members and of the board of directors, the quorum at meetings of members, the requirements as to proxies, and the procedure in all matters at meetings of the members and at meetings of the board of directors; and
- (j) the conduct in all other particulars of the affairs of the company;
- (k) the division of its members into groups, either into geographical areas or on the basis of common interest;
- (l) the election of some or all of the directors
 - (i) by the groups on the basis of the number of members in each group;

(ii) for the groups in a defined geographical area, by the delegates of the groups meeting together; or

(iii) by the groups on the basis of common interest;

(m) the election of delegates and alternate delegates to represent each group on the basis of the number of members in each group;

(n) the number and qualifications of delegates and the method of their election;

(o) the holding of meetings of members or delegates;

(p) the powers and authority of delegates at meetings; and

(q) the holding of meetings of members or delegates according to geographical areas or on the basis of common interest.

(2) A by-law made under paragraph (f) of subsection (1) may provide that a meeting of delegates for all purposes is a meeting of the members with all the powers of such a meeting.

(3) A by-law under subsection (1) is not effective until it is confirmed by at least two-thirds of the votes cast at a general meeting of the members duly called for that purpose.

(4) A delegate has only one vote and may not vote by proxy.

(5) A by-law passed under subsection (1) may not prohibit members from attending meetings of delegates and participating in the discussions at the meetings.

**Dissolution and
distribution.**

346. (1) The articles of incorporation of a non-profit company may provide that, upon dissolution, the remaining property of the company is to be distributed among the members, or among the members of a class or classes of members, or to one designated organisation or more, or to any combination thereof.

(2) Where the articles of incorporation of a non-profit company do not provide for a distribution of its remaining property in accordance with subsection (1), the company shall by special resolution, after payment of all debts and liabilities, distribute or dispose of the remaining property to

any organisation in The Gambia the business of which is charitable or beneficial to the community.

(3) Where the articles of incorporation of a non-profit company do not contain a provision for the distribution of remaining property to the members, the articles of incorporation may not be amended so to provide.

CHAPTER V

EXTERNAL COMPANIES

External
companies
carrying on
business.

347. An external company carries on business within The Gambia

(a) if the business of the company is regularly transacted from an office in The Gambia established or used for the purpose;

(b) if the company establishes or uses a share transfer or share registration office on The Gambia; or

(c) if the company owns, possesses or uses assets situated in The Gambia for the purpose of carrying on or pursuing its business, if it obtains or seeks to obtain from those assets, directly or indirectly, profit or gain whether realised in The Gambia or not.

Exceptions.

348. This Chapter does not apply to an external company that is exempted from this Chapter by an order of the Registrar published in the *Business Gazette*.

Prohibition.

349. (1) No external company shall begin or carry on business in The Gambia until it is registered under this Act.

(2) Every external company that was carrying on business in The Gambia immediately before the coming into force of this Act shall, within twelve months after that date apply to the Registrar for registration under this Act.

(3) An external company whose name appears on the register maintained by the Registrar pursuant to section 383 is presumed to be registered under this Act, and an external company whose name does not appear on that register is presumed not to be registered under this Act.

(4) Until the expiration of twelve months from the date of the coming into force of this Act, subsection (1) does not apply to an external company that was carrying on business in The Gambia on that date.

Requirement of registration.

350. (1) Subject to subsection (2) and to sections 404 and 405 an external company, upon payment of the prescribed fee, is entitled to be registered under this Act for any lawful business.

(2) An application for registration under this Act by an external company may be referred by the Registrar to the Minister, who may order the Registrar to refuse registration.

Restrictions on activities.

351. (1) In the prescribed circumstances, the Registrar may restrict the powers or activities that an external company can exercise or carry on in The Gambia.

(2) When any powers or activities of an external company are restricted under subsection (1), the company shall exercise those powers or carry on those activities in The Gambia.

(3) Where any powers or activities of an external company are to be restricted pursuant to subsection (1), the Registrar shall notify the company of the restrictions.

(4) A company that is aggrieved by the restrictions of the Registrar under this section may appeal to the court within thirty days from the date on which the notification from the Registrar was received by the company, and the court may confirm, vary or overrule the decision of the Registrar.

External amalgamated company.

352. An external company that has been continued from the amalgamation of two or more external companies shall comply with section 355 as though it were a new registration of an external company, irrespective of the fact that one or more of the external companies that were continued by the amalgamated company had been registered under this Act at the date of the amalgamation or thereafter.

Registering external companies.

353. (1) In order to register under this Act, an external company shall file with the Registrar a statement in the prescribed form setting out

(a) the name of the company;

(b) the jurisdiction within which the company was incorporated;

-
- (c) the date of its incorporation;
 - (d) the manner in which it was incorporated;
 - (e) the particulars of its corporate instruments;
 - (f) the period, if any, fixed by its corporate instruments for the duration of the company;
 - (g) the extent, if any, to which the liability of the shareholders or members of the company is limited;
 - (h) the business that the company will carry on in The Gambia;
 - (i) the date on which the company intends to commence any of its business in The Gambia;
 - (j) the authorised, subscribed and paid-up or stated capital of the company, and the shares that the company is authorised to issue and their nominal or par value, if any;
 - (k) the full address of the registered or head office of the company outside The Gambia;
 - (l) the full address of the principal office of the company in The Gambia; and
 - (m) the full names, addresses and occupations of the directors of the company.
- (2) The statement under subsection (1) shall be accompanied by
- (a) a statutory declaration by two directors of the company that verifies on behalf of the company the particulars set out in the statement;
 - (b) a copy of the corporate instruments of the company;
 - (c) a statutory declaration by a legal practitioner that this section has been complied with;
 - (d) the prescribed fees; and

(e) a power of attorney in accordance with section 355.

(3) The Registrar may accept the declaration referred to in paragraph (c) of subsection (2) as sufficient evidence of compliance with the requirements of this section.

Language.

354. When a document that is required to be filed under section 353 is not in the English language, a notarially certified translation of that document shall be provided unless the Registrar otherwise directs.

Power of attorney.

355. (1) An external company shall file with the Registrar a fully executed power of attorney in the prescribed form that will empower some person named in the power and resident in The Gambia to act as the attorney of the company for the purpose of receiving service of process in all suits and proceedings by or against the company in The Gambia and of receiving all lawful notices.

(2) A power of attorney under subsection (1) shall declare that service of process in respect of suits and proceedings by or against the company and of lawful notices on the attorney will be binding on the company for all purposes.

(3) An external company may, by another power of attorney executed and deposited in accordance with this section,

(a) appoint another attorney in The Gambia for the purposes set forth in the power; and

(b) replace the attorney previously appointed pursuant to this section.

Invalidity of power of attorney.

356. If an attorney named in a power of attorney executed by an external company under section 355 ceases to reside in The Gambia or if the power of attorney becomes invalid or ineffectual for any other reason, the company shall file another power of attorney pursuant to section 355.

Capacity of attorney.

357. (1) Service of process and notices on a legal practitioner for an external company appointed under a power of attorney registered under section 355 is legal and binding service on the company.

(2) When a legal practitioner for an external company appointed under a power registered under section 355 signs a deed on behalf of the company, the deed is binding on the company in The Gambia if the

company has empowered the legal practitioner to execute deeds and he executes it with the legal practitioner's own seal.

(3) A deed that is binding under subsection (2) on an external company has the same effect as if it were under the seal of the external company.

Certificate of registration.

358. (1) When the Registrar has, in respect of an external company, received the statements and other documents required under this Act together with the prescribed fees, the Registrar shall issue a certificate showing that the company has been registered as an external company under this Act.

(2) A certificate of registration issued under this section to an external company is conclusive proof of the registration of the company on the date shown in the certificate and of any other facts that the certificate purports to certify.

Effect of registration.

359. Subject to this Chapter and any other laws of The Gambia an external company that is registered under this Act may carry on its business in The Gambia in accordance with its certificate of registration and may exercise its corporate powers within The Gambia.

Suspension of registration.

360. (1) Subject to such regulations as the Minister may make in that behalf, the Registrar may suspend or revoke the registration of any external company for failing to comply with any requirements of this Chapter, or for any other prescribed cause, and the Registrar may, subject to those regulations, remove a suspension or cancel a revocation.

(2) Any company which is aggrieved by a suspension or revocation of its registration under subsection (1) may within thirty days of such suspension or revocation appeal to the Minister.

(3) The rights of the creditors of an external company are not affected by the suspension or revocation of its registration under this Act.

Cancelling registration.

361. (1) When an external company ceases to carry on its business in The Gambia, the company shall file a notice to that effect with the Registrar, who shall thereupon cancel the registration of the company under this Act.

(2) If an external company ceases to exist and the Registrar is made aware of that circumstance by evidence satisfactory to him, the Registrar may cancel the registration of the company under this Act.

Revival of
Registration.

362. (1) Where the registration of an external company has been cancelled under section 361, the Registrar may revive the registration of the external company under this Act if the company files with him such documents as he may require and pays the prescribed fee.

(2) A registration of an external company is revived when the Registrar issues a new certificate of registration to the company.

Previous
activities.

363. Registration or revival of registration under this Act of an external company retroactively authorises all previous acts of the company as though the company has been registered at the time of those acts, except for the purposes of a prosecution for any offence under this Chapter.

Fundamental
changes.

364. (1) Where, in the case of an external company registered under this Act,

(a) the name of the company has been changed,

(b) the corporate instruments of the company have been altered to reflect a fundamental change within the meaning of Chapter II of Part IV,

(c) the objects of the company have been altered or its business has been restricted; or

(d) any change is made among its directors,

the company shall, within thirty days after the change has been made, file with the Registrar duly certified copies of the instruments by which the change has been made or ordered to be made.

(2) Upon receipt of the duly certified copies referred to in subsection (1) and the prescribed fee, the Registrar shall enter the change of name in the register, and, with the approval of the Minister, enter a record of such other changes in the register as he considers to be in the public interest.

(3) The registration of an external company under this Act ceases to be valid sixty days after a change described in subsection (1) is made or

ordered unless within that period the change is filed with the Registrar pursuant to subsection (1).

(4) Upon the registration under this section of a change in respect of an external company, the Registrar shall issue to the company a certificate of the change under his hand in a form adapted to the circumstances.

(5) A certificate issued under subsection (4) is admissible in evidence as conclusive proof of the change therein set out.

Returns.

365. (1) An external company shall, not later than the first day of April in each year after the date of its registration, send to the Registrar an annual return in the prescribed form containing the prescribed information made up to the preceding thirty-first day of December and accompanied with such documents as may be prescribed and the prescribed fees.

(2) A director or officer of the external company shall certify the contents of any return made under this section.

(3) The Registrar may strike off the register an external company that neglects or refuses to file a return required under this section without reasonable excuse the proof of which shall lie on the company.

Inc capacity of
company.

366. (1) An external company that is not registered under this Act may not maintain any action, suit or other proceeding in any court in The Gambia in respect of any contract made in whole or in part within The Gambia in the course of, or in connection with, the carrying on of any business by the company in The Gambia.

(2) Notwithstanding subsection (1), when an external company described in that subsection becomes registered under this Act or had its registration restored, as the case may be, the company may then maintain an action, suit or other proceeding in respect of the contract described in subsection (1) as though the company had never been disabled under that subsection, whether or not the contract was made or proceeding instituted by the company before the date the company was registered or had its registration restored.

(3) In the case of an external company whose registration has been restored, subsection (2) is subject to the terms of any conditions imposed upon the company, or to the terms of any order of the court in respect of the restoration of the company's registration.

(4) Where an assignment of a debt or any chose in action is made by an external company described in subsection (1) to an individual or to a body corporate having the capacity to maintain any action, suit or other proceeding in a court in The Gambia

(a) that individual or body corporate, or

(b) any person claiming under the individual or body corporate,

may not maintain, in any court in The Gambia any action, suit or other proceeding that is based on the subject of the assignment unless the external company is registered under this Act during the time the action, suit or other proceeding is being proceeded with.

Resumption
of action.

367. Where an action, suit or proceeding has been dismissed or otherwise decided against an external company on the ground that an act or transaction of the company was invalid or prohibited by reason of the company's not being registered under this Act, the company may, when it becomes registered under this Act, and upon such terms as to costs as the court may order, maintain a new action, suit or other proceeding as if no judgment had been given or entered therein.

Other
provisions.

368. The provisions of sections 20 to 25, 404 and 405 and the provisions of Chapter I of Part II, Chapters III and IV of Part III, Chapter II of Part V and Chapter I of Part VII apply *mutatis mutandis* to external companies.

Powers to make
regulations under
this Chapter.

369. The Minister may make regulations for the better carrying out of the purposes of this Chapter and in particular, he may make regulations prescribing

(a) the fees payable in respect of an external company;

(b) the form of the statement to be filed under section 353;

(c) the form of the power of attorney to be filed under section 355;

(d) the form of the certificate to be issued under section 358; and

(e) such further terms and conditions which shall apply to the registration of external companies, as he may deem fit.

PART VI - REMEDIES AND ADMINISTRATION

CHAPTER I

CIVIL REMEDIES

Definitions.

- 370.** For the purposes of this Chapter, "complainant" means
- (a) a shareholder or debentureholder, or a former holder of a share or debenture of a company or any of its affiliates;
 - (b) a director or an officer or former director or officer of a company or any of its affiliates;
 - (c) the Registrar: or
 - (d) any other person who, in the discretion of the court, is a proper person to make an application under this Act.

(i) Derivative Actions

Derivative actions.

371. (1) Subject to subsection (2), a complainant may, for the purpose of prosecuting, defending or discontinuing an action on behalf of a company, apply to the court for leave to bring an action in the name and on behalf of the company or any of its subsidiaries, or intervene in an action to which the company or any of its subsidiaries is a party.

(2) No action may be brought, and no intervention in an action may be made, under subsection (1) unless the court is satisfied

- (a) that the complainant has given reasonable notice to the directors of the company or its subsidiary of his intention to apply to the court under subsection (1) if the directors of the company or its subsidiary do not bring, diligently prosecute or defend, or discontinue, the action;
- (b) that the complainant is acting in good faith; and
- (c) that it appears to be in the interests of the company or its subsidiary that the action be brought, prosecuted, defended or discontinued.

Powers of
the court.

372. In connection with an action brought or intervened in under section 371, the court may at any time make any order it thinks fit, including,

- (a) an order authorising the complainant, the Registrar or any other person to control the conduct of the action;
- (b) an order giving directions for the conduct of the action;
- (c) an order directing that any amount adjudged payable by a defendant in the action be paid, in whole or in part, directly to former and present shareholders or debentureholders of the company or its subsidiary, instead of to the company or its subsidiary; or
- (d) an order requiring the company or its subsidiary to pay reasonable legal fees incurred by the complainant in connection with the action.

(ii) Restraining Oppression

Power of court
to restrain
oppression.

373. (1) A complainant may apply to the court for an order under this section.

(2) If, upon an application under subsection (1), the court is satisfied that in respect of a company or any of its affiliates,

- (a) any act or omission of the company or any of its affiliates effects a result,
- (b) the business or affairs of the company or any of its affiliates are or have been carried on or conducted in a manner, or
- (c) the powers of the directors of the company or any of its affiliates are or have been exercised in a manner,

that is oppressive or unfairly prejudicial to, or that unfairly disregards the interests of, any shareholder or debentureholder, creditors, director or officer of the company, the court may make an order to rectify the matters complained of.

(3) In connection with an application under this section, the court may make any interim or final order it thinks fit, including

- (a) an order restraining the conduct complained of;
- (b) an order appointing a receiver or receiver-manager;
- (c) an order to regulate a company's affairs by amending its articles of incorporation or by-laws, or creating or amending a unanimous shareholder agreement;
- (d) an order directing an issue or exchange of shares or debentures;
- (e) an order appointing directors in place of, or in addition to, all or any of the directors then in office;
- (f) an order directing a company, subject to subsection (6), or any other person, to purchase shares or debentures of a holder thereof;
- (g) an order directing a company, subject to subsection (6), or any other person, to pay to a shareholder or debentureholder any part of the moneys paid by him for his shares or debentures;
- (h) an order varying or setting aside a transaction or contract to which a company is a party, and compensating the company or any other party to the transaction or contract;
- (i) an order requiring a company, within a time specified by the court, to produce to the court or an interested person financial statements in the form required by section 210 or an accounting in such other form as the court may determine;
- (j) an order compensating an aggrieved person;
- (k) an order directing rectification of the registers or other records of a company under section 376;
- (l) an order winding up and dissolving the company;
- (m) an order directing an investigation under Chapter IV of Part III to be made; or
- (n) an order requiring the trial of any issue.

(4) If an order made under this section directs the amendment of the articles of incorporation or by-laws of a company,

(a) the directors shall forthwith comply with subsection (4) of section 236; and

(b) no other amendment to the articles of incorporation or by-laws shall be made without the consent of the court, until the court otherwise orders.

(5) A shareholder is not entitled under section 283 to dissent if an amendment to the articles of incorporation is effected under this section.

(6) A company shall not make a payment to a shareholder under paragraph (f) or (g) of subsection (3) if there are reasonable grounds for believing that

(a) the company is unable or would, after the payment, be unable to pay its liabilities as they become due; or

(b) the realisable value of the company's assets would thereby be less than the aggregate of its liabilities.

(7) An applicant under this section may apply in the alternative for an order under section 438.

Staying
action.

374. (1) An application made or an action brought or intervened in under this Chapter may not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to the company or its subsidiary has been or might be approved by the shareholders of the company or its subsidiary, but evidence of approval by the shareholders may be taken into account by the court in making an order under section 372, 373 or 438.

(2) An application made or an action brought or intervened in under this Chapter shall not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the court given upon such terms as the court thinks fit, and if the court determines that the interests of a complainant could be substantially affected by the stay, discontinuance, settlement or dismissal, the court may order any party to the application or action to give notice to the complainant.

Interim
costs.

375. In an application made or an action brought or intervened in under this Chapter, the court may at any time order the company or its subsidiary to pay to the complainant interim costs, including legal fees and disbursements, but the complainant may be held accountable for those interim costs upon the final disposition of the application or action.

Rectification
of records.

376 (1) If the name of a person is alleged to be or to have been wrongly entered or retained in, or wrongly deleted or omitted from, the registers or other records of a company, the company, a shareholders or debentureholder of the company, or any aggrieved person, may apply to the court for an order that the registers or records of the company be rectified.

(2) An applicant under this section shall give the Registrar notice of the application, and the Registrar is entitled to appear and be heard in person or by a legal practitioner.

(3) In connection with an application under this section, the court may make any order it thinks fit, including

(a) an order requiring the registers or other records of the company to be rectified;

(b) an order restraining the company from calling or holding a meeting of shareholders, or paying a dividend before that rectification;

(c) an order determining the right of a party to the proceedings to have his name entered or retained in, or deleted or omitted from, the registers or records of the company, whether the issue arises between two or more shareholders or debentureholders or alleged shareholders or alleged debentureholders, or between the company and any shareholders or debentureholders or alleged shareholders or alleged debentureholders; and

(d) an order compensating a party who has incurred a loss.

(iii) Other Remedial Actions

Application by
Registrar.

377 The Registrar may apply to the court for directions in respect of any matter concerning his duties under this Act and on the application

the court may give such directions and make such further order as it thinks fit.

Refusal by Registrar.

378. (1) Where the Registrar refuses to file any articles of incorporation or other document required by this Act to be filed by him before the articles or other document become effective, he shall,

(a) within sixty days after the receipt thereof by him, or sixty days after he receives any approval required under any other Act, whichever is the later date, and,

(b) after giving the person who sent the articles of incorporation or document an opportunity to be heard,

give written notice of the refusal to that person, together with the reasons for the refusal.

(2) If the Registrar does not file or give written notice of his refusal to file any articles of incorporation or document within the time limited therefor in subsection (1), then, for the purposes of section 379, the Registrar has refused to file the articles or document.

Appeal from Registrar.

379. A person who feels aggrieved by a decision of the Registrar

(a) to refuse to file any articles of incorporation or other document required by this Act to be filed by him,

(b) to give a name, to change or revoke a name, or to refuse to reserve, accept, change or revoke a name under sections 13 to 16,

(c) to refuse to grant an exemption under subsection (2) of section 12, section 161, section 211 or subsection (2) of section 215, or

(d) to refuse under subsection (2) of section 413 to permit a continued reference to shares having a nominal or par value,

may apply to the court for an order requiring the Registrar to change his decision and upon the application the court may so order, and make any further order it thinks fit.

Restraining order.

380. If a company or any director, officer, employee, agent, auditor, trustee, receiver, receiver-manager or liquidator of a company does not comply with this Act, or any regulations made thereunder,

articles of incorporation, or any unanimous shareholder agreement of the company, a complainant or creditor of the company may, in addition to any other right he has, apply to the court for an order directing any such person to comply with, or restraining any such person from acting in breach of, any provisions of this Act or any regulations made thereunder, articles of incorporation, by-laws or unanimous shareholder agreement, as the case may be.

Summary application.

381. Where this Act states that a person may apply to the court, the application may be made in summary manner by summons, originating notice of motion, or otherwise as the rules of the court provide, but subject to any order respecting notice to interested parties or costs, or any other order the court thinks fit.

CHAPTER II

FUNCTIONS OF THE REGISTRAR

(i) Register of Companies and Service

Service upon the Registrar.

382. A document may be served upon the Registrar by leaving it at the office of the Registrar or by sending it by telex, or telefax or by prepaid post or cable addressed to the Registrar at his office.

Register of Companies.

383. The Registrar shall maintain a Register of Companies in which to keep the name of every body corporate that is

(a) incorporated under this Act;

(b) continued as a company under this Act;

(c) registered under this Act; or

(d) restored to the register pursuant to this Act.

Inspection of register.

384. (1) A person who has paid the prescribed fee is entitled, during normal business hours, to examine, and to make copies of or extracts from a document required by this Act or the regulations to be sent to the Registrar, except a report sent to him under subsection (2) of section 251.

(2) The Registrar shall upon request and payment of the prescribed fee, furnish any person with a copy or certified copy of any document

received by the Registrar under this Act, except a report received by him pursuant to subsection (2) of section 251.

(3) If the records maintained by the Registrar are prepared and maintained in other than a written form,

(a) the Registrar shall furnish a copy required to be furnished under this Act in an intelligible written form; and

(b) a report reproduced from those records, if it is certified by the Registrar, is admissible in evidence to the same extent as the original written records would be.

(ii) Notices and Documents

Notice to
directors and
shareholders.

385. (1) A notice or document required by this Act, articles of incorporation or the by-laws to be sent to a shareholder or director of a company may be sent by telex or telefax or by prepaid post or cable, addressed to, or may be delivered personally to,

(a) the shareholder at his latest address as shown in the records of the company or its transfer agent; and

(b) the director at his latest address as shown in the records of the company or in the latest notice filed under section 61.

(2) A director named in a notice sent by a company to the Registrar under section 61 and filed by the Registrar is, for the purposes of this Act, a director of the company referred to in the notice.

Presumption
of receipt.

386. A notice or document sent in accordance with section 385 to a shareholder or director of a company is, for the purpose of this Act, presumed to be received by him at the time it would be delivered in the ordinary course of mail.

Undelivered
documents.

387. If a company sends a notice or document to a shareholder in accordance with section 385 and the notice or document is returned on three consecutive occasions because the shareholder cannot be found, the company need not send any further notices or documents to the shareholder until he informs the company in writing of his new address.

Waiver of
Notice.

388. Where a notice or document is required to be sent pursuant to this Act, the sending of the notice or document may be waived, or the time for the notice or document may be waived or abridged at any time with the consent in writing of the person entitled to the notice or document.

Certificate
by company.

389. A certificate issued on behalf of a company stating a fact that is set out in the articles of incorporation, the by-laws, any unanimous shareholder agreement, the minutes of the meetings of the directors, a committee of directors or the shareholders, or in a trust deed or other contract to which the company is a party, may be signed by a director, an officer or a transfer agent of the company.

Evidentiary
value.

390. When introduced as evidence in any civil, criminal or administrative action or proceeding,

(a) a fact stated in a certificate referred to in section 389,

(b) a certified extract from a register of members or debentureholders of a company, or

(c) a certified copy of minutes or extracts from minutes of a meeting of shareholders, directors or a committee of directors of a company,

is, in the absence of evidence to the contrary, proof of the fact so stated or certified without proof of the signature or official character of the person appearing to have signed the certificate, extract or copy.

Copies of
documents.

391. Where a notice or document is required by this Act to be sent to the Registrar, he may accept a photostatic or photographic copy of the notice or document or a copy by telefax or other device.

Filed articles
of incorporation.

392. (1) Where this Act requires that articles of incorporation relating to a company be sent to the Registrar, unless otherwise specifically provided,

(a) two copies, in this section called "duplicate originals", of the articles of incorporation shall be signed by a director or an officer of the company, or, in the case of articles of incorporation, by the incorporator; and

- (b) upon receiving duplicate originals of any articles of incorporation that conform to law, and any other required documents and the prescribed fees, the Registrar shall
- (i) endorse on each of the duplicate originals the word "registered" and the date of the registration;
 - (ii) issue in duplicate the appropriate certificate and attach to each certificate one of the duplicate originals of the articles of incorporation;
 - (iii) file a copy of the certificate and attached articles of incorporation; and
 - (iv) send to the company or its representative the original certificate and attached articles of incorporation.

(2) A certificate referred to in subsection (1) and issued by the Registrar may be dated as of the day he receives the articles of incorporation, or court order pursuant to which the certificate is issued, or as of any later day specified by the court or person who signed the articles of incorporation.

(3) A signature required on a certificate referred to in subsection (1) may be printed or otherwise mechanically reproduced on the certificate.

Alteration of documents.

393. The Registrar may alter a notice or document, other than an affidavit or statutory declaration, if so authorised by the person who sent him the notice or document, or by the representative of that person.

Correction of documents.

394. (1) If a certificate that contains an error is issued to a company by the Registrar, the directors or shareholders of the company shall, upon the request of the Registrar, pass the resolutions and send to the Registrar the documents required to comply with this Act, and take such other steps as the Registrar may reasonably require and the Registrar may demand the surrender of the certificate and issue a corrected certificate.

(2) A certificate corrected under subsection (1) shall bear the date of the certificate it replaces.

Proof of documents.

395. (1) The Registrar may require that a document or a fact stated in a document required or sent to him pursuant to this Act be verified in accordance with subsection (2).

(2) A document or fact required by this Act or by the Registrar to be verified may be verified by affidavit or affirmation.

(3) The Registrar may require of a body corporate the authentication of a document, and the authentication may be signed by the secretary, or any director or authorised person or by the legal practitioner for the body corporate.

Retention of documents.

396. The Registrar need not produce a document of a prescribed class after six years from the date he received it.

Registrar's certificate.

397. (1) The Registrar may furnish a person with a certificate stating

(a) that a body corporate has or has not sent to the Registrar a document required to be sent to him pursuant to this Act;

(b) that a name, whether that of a company or not, is or is not on the register; or

(c) that a name, whether that of a company or not, was or was not on the register on a stated date.

(2) Where this Act requires or authorises the Registrar to issue a certificate or to certify a fact, the certificate or the certification shall be signed by the Registrar or by a person designated by him.

(3) A certificate or certification mentioned in subsection (2) that is introduced as evidence in any civil, criminal or administrative action or proceeding, is sufficient proof of the facts so certified, without proof of the signature or official character of the person appearing to have signed it.

Refusal power.

398. (1) The Registrar may refuse to receive, file or register a document submitted to him, if he is of the opinion that the document

(a) contains a matter contrary to law;

(b) by reason of any omission or error in description, has not been duly completed;

(c) does not comply with the requirements of this Act;

- (d) contains an error, alteration or erasure;
- (e) is not sufficiently legible; or
- (f) is not sufficiently permanent for his records.

(2) The Registrar may request that a document refused under subsection (1), be amended or completed and re-submitted, or that a new document be submitted in its place.

(3) If a document that is submitted to the Registrar is accompanied with a statutory declaration by a legal practitioner that the document contains no matter contrary to law and has been duly completed in accordance with the requirements of this Act, the Registrar may accept the declaration as sufficient proof of the facts therein declared.

Filing form.

399. Every document sent to the Registrar shall be in typed or printed form.

(iii) Removal from Register

Striking off
from register.

400. (1) The Registrar may strike off the Register a company or other body corporate, if

- (a) the company or other body corporate fails to send a return, notice, document or prescribed fee to the Registrar as required pursuant to this Act;
- (b) the company is dissolved;
- (c) the company or other body corporate is amalgamated with one or more other companies or bodies corporate;
- (d) the company does not carry out an undertaking given under sub paragraph (i) of paragraph (a) of section 404; or
- (e) the registration of the body corporate is revoked pursuant to this Act.

(2) Where the Registrar is of the opinion that a company or other body corporate is in default under paragraph (a) of subsection (1), he shall send it a notice advising it of the default and stating that, unless the

default is remedied within thirty days after the date of the notice, the company or other body corporate will be struck off the register.

(3) Section 402 applies *mutatis mutandis* to the notice mentioned in subsection (2).

(4) After the expiration of the time mentioned in the notice, the Registrar may strike the company or other body corporate off the register and publish a notice thereof in the *Business Gazette*.

(5) Where a company or other body corporate is struck off the register, the Registrar may, upon receipt of an application in the prescribed form and upon payment of the prescribed fee, restore it to the register and issue a certificate in a form adapted to the circumstances.

Liability
continues.

401. Where a body corporate is struck off the register, the liability of the body corporate and of every director, officer or shareholder of the body corporate continues and may be enforced as if it had not been struck off the register.

(iv) Service and Company Names

Service on
company.

402. A notice or document may be served on a company

(a) by leaving it at, or sending it by telex or telefax or by prepaid post or cable addressed to, the registered office of the company;
or

(b) by personally serving any director, officer, receiver, receiver-manager or liquidator of the company.

Reservation
of name.

403. The Registrar may, upon request and upon payment of the prescribed fee, reserve for ninety days a name for an intended company or for a company about to change its name.

Prohibited
name.

404. The name of a company

(a) shall not be the same as or similar to the name or business name of any other person or of any association, partnership or firm, if the use of that name would be likely to confuse or mislead, unless the person, association, partnership or firm consents in writing to the use of that name in whole or in part, and

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- (i) if required by the Registrar in the case of any person, undertakes to dissolve or change his or its name to a dissimilar name within six months after the filing of the articles by which the name is acquired; or
 - (ii) if required by the Registrar in the case of an association, partnership or firm, undertakes to cease to carry on its business or activities, or undertakes to change its name to a dissimilar name, within six months after the filing of the articles by which the name is acquired;
- (b) shall not be identical to the name of a body corporate incorporated under the laws of The Gambia before the coming into force of this Act;
- (c) shall not suggest or imply a connection with the State or the Government or of any Ministry, department, branch, bureau, service, agency or activity of the Government, unless consent in writing to the proposed name is duly obtained from the appropriate Minister;
- (d) shall not suggest or imply a connection with a political party or a leader of a political party;
- (e) shall not suggest or imply a connection with an educational institution or a professional association recognised by the laws of The Gambia unless the educational institution or professional association concerned consents in writing to the use of the proposed name; and
- (f) shall not be a name that is prohibited by regulations made under this Act.

Refusal of
articles of
incorporation.

405. The Registrar may refuse to accept articles of incorporation or continuation for a company or to register articles amending the name of a company if,

- (a) the name is not distinctive because
- (i) it is too general,

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- (ii) it is descriptive only of the quality, function or other characteristic of the goods or services in which the company deals or intends to deal, or
 - (iii) primarily it is only a geographic name used also unless the applicant establishes that the name has through use acquired and continues to have a secondary meaning;

(b) the name is inaccurate in describing

- (i) the business, goods or services in association with which it is proposed to be used;
- (ii) the conditions under which the goods or services will be produced or supplied;
- (iii) the persons to be employed in the production or supply of those goods or services; or
- (iv) the place of origin of those goods and services;

(c) it is likely to be confused with that of a company that was dissolved;

(d) it contains the word or words "credit union", "co-operative", or "co-op" when it connotes a co-operative venture; or

(e) it is, in the opinion of the Registrar, for any reason, objectionable.

Amalgamated
company.

406. If two or more companies amalgamate, the amalgamated company may have

- (a)* the name of one of the amalgamating companies;
- (b)* a distinctive combination that is not likely to be confused with the amalgamating companies; or
- (c)* a distinctive new name that is not confusing.

CHAPTER III

FORMER ACT COMPANIES

Former Act
company.

407. (1) Upon the coming into force of this Act,

(a) all corporate instruments of a former-Act company, and

(b) all cancellations, suspensions, proceedings, acts, registrations and things,

lawfully done under a provision of the former Act continue in effect under this Act as though they had been lawfully done under this Act.

(2) For the purposes of this section, "lawfully done" means to have been lawfully granted, issued, imposed, taken, done, commenced, filed, or passed, as the circumstances require.

Effect of
corporate
instrument.

408. (1) Notwithstanding any provision of this Act, but subject to subsection (3), if a provision of a corporate instrument of a former Act company lawfully in force immediately before the coming into force of this Act is inconsistent with, repugnant to, or not in compliance with, this Act, that provision is not illegal or invalid by reason only of that inconsistency, repugnancy or non-compliance.

(2) An act, matter or proceeding or thing done or taken by the former Act company or any director, shareholder, member or officer of the company under a provision of a corporate instrument of that company is not illegal or invalid by reason only of the inconsistency, repugnancy or non-compliance with this Act, or by reason of being prohibited or not authorised by the law as it is after the coming into force of this Act.

(3) Section 100 applies to a former Act company immediately upon the coming into force of this Act.

Continuation
as company.

409. A former Act company shall, within two years after the coming into force of this Act, apply to the Registrar for a certificate of continuance under this Act upon the payment of the prescribed fee.

Amending
instrument.

410. Within the period referred to in section 409, an amendment to, or replacement of, the corporate instrument of a former Act company shall be made in accordance with this Act.

Articles of
continuance.

411. (1) Articles of continuance may, without so stating in the articles of incorporation, effect an amendment to the corporate instruments of a former Act company if the amendment is an amendment that a company incorporated under this Act can make in its articles of incorporation.

(2) Articles of continuance in the prescribed form shall be sent to the Registrar together with the documents required by section 6.

(3) A shareholder or member may not dissent under section 283 in respect of an amendment made under subsection (1).

Certificate of
continuance.

412. (1) Upon receipt of an application under this Chapter the Registrar may, and, if the applicant complies with all reasonable requirements of the Registrar to have the continued company accord with the requirements of this Act, the Registrar shall issue a certificate of continuance to the former Act company, in accordance with section 392.

(2) On the date shown in the certificate of continuance,

(a) the former Act company becomes a company to which this Act applies as if it had been incorporated under this Act;

(b) the articles of continuance are the articles of incorporation of the continued company; and

(c) except for the purposes of subsection (4) of section 90, the certificate of continuance is the certificate of incorporation of the continued company.

Preservation
of company.

413. (1) When a former Act company is continued as a company under this Act,

(a) the property of the former Act company continues to be the property of the company;

(b) the company continues to be liable for the obligations of the former Act company;

(c) an existing cause of action, claim or liability to prosecute is unaffected;

(d) a civil, criminal or administrative action or proceeding pending by or against the former Act company and may be continued by or against the company; and

(e) a conviction against, or ruling, order or judgment in favour of or against, the former Act company may be enforced by or against the company.

(2) When the Registrar determines, on the application of a former Act company, that it is not practicable to change a reference to the nominal or par value of shares of class or series that the former Act company was authorised to issue before it was continued as a company under this Act, the Registrar may, notwithstanding section 30, permit the company to continue to refer in its articles of incorporation to those shares, whether issued or non-issued as shares having a nominal or par value.

(3) A company shall set out in its articles of incorporation the maximum number of shares of a class or series referred to in subsection (2), and it may not amend its articles of incorporation to increase that maximum number of shares or to change the nominal or par value of the shares.

Previous
shares.

414. (1) A share of a former Act company issued before the company was continued under this Act is presumed to have been issued in compliance with this Act and with the provisions of the articles of continuance, irrespective of whether the share is fully paid, and irrespective of any designation, rights, privileges, restrictions or conditions attached to the share, or set out on, or referred to in, the certificate representing the share.

(2) The continuance of a company under this Act does not deprive a shareholder of a right or privilege that he claims under an issued share of the company, nor does it relieve him of a liability in respect of an issued share of the company.

(3) For the purposes of this section, "share" includes an instrument issued pursuant to subsection (1) of section 39.

Continuance not
applied for
within prescribed
time.

415. (1) Subject to this section, a former Act company that does not apply to the Registrar for a certificate of continuance within the time limited therefor by section 409 shall, on the expiration of the time so limited be deemed to be continued under this Act.

(2) The court may, on the application of a company deemed to be continued pursuant to subsection (1) or of the Registrar, make such order as it thinks fit for the purpose of securing the company's compliance with this Act or otherwise in respect of its continuance under this Act.

(3) Where a company makes an application under this section it shall give the Registrar notice of the application and where the Registrar is the applicant under this section he shall give the company notice of the application and on any application the company and the Registrar are entitled to appear and be heard in person or by a legal practitioner.

(4) The cost of an application under this section shall, unless the court otherwise orders, be paid by the company.

Effect of earlier references.

416. (1) A reference in a corporate instrument of a body corporate to the former Act or a procedure under the former Act is, in relation to a former Act company continued under this Act, to be construed as a reference to the provisions of this Act or procedure thereunder that is the equivalent provision or procedure under this Act.

(2) When there is no equivalent provision in this Act to the provision or procedure in or under the former Act referred to in the corporate instrument of a body corporate, the provision or proceeding of the former Act is to be applied, and stands unrepealed to the extent necessary to give effect to that reference in the corporate instrument.

PART VII - WINDING UP

CHAPTER I

RECEIVERS AND RECEIVER-MANAGERS

Disqualified receivers.

417. (1) A person shall not be appointed or act as a receiver or receiver-manager of any assets of a company if that person

(a) is a body corporate;

(b) is an undischarged bankrupt;

(c) is disqualified from being a trustee under a trust deed executed by the company, or would be so disqualified if a trust deed had been executed by the company; or

(d) is disqualified to act as an insolvency practitioner under Part IV of the Insolvency Act, 1992.

(2) Where a person is disqualified under subsection (1), another person may be appointed in his place by the persons who are entitled to make the appointment, or by the court, but a receivership is not terminated or interrupted by the occurrence of the disqualification.

(3) This section applies to a person appointed to be a receiver or receiver-manager whether so appointed before or after the coming into force of this Act.

Functions of receivers.

418. A receiver of any property of a company may, subject to the rights of secured creditors, receive the income from the property, pay the liabilities connected with the property, and realise the security interest of those on behalf of whom he is appointed, but, except to the extent permitted by the court, he may not carry on the business of the company.

Functions of receiver-managers.

419. A receiver of a company may, if he is also appointed manager of the company, carry on any business of the company to protect the security interest of those on behalf of whom he is appointed.

Directors' powers stopped.

420. When a receiver-manager of a company is appointed by the court or under an instrument, the powers of the directors of the company that the receiver-manager is authorised to exercise shall not be exercised by the directors until the receiver-manager is discharged.

Duty under court direction.

421. A receiver or receiver-manager of a company appointed by the court shall act in accordance with the directions of the court.

Duty under instrument.

422. A receiver or receiver-manager of a company appointed under an instrument shall act in accordance with that instrument and any directions of the court given under section 424.

Duty of care.

423. A receiver or receiver-manager of a company appointed under an instrument shall

(a) act honestly and in good faith; and

(b) deal with any property of the company in his possession or control in a commercially reasonable manner.

Directions
by court.

424. Upon an application by a receiver or receiver-manager of a company, whether appointed by the court or under an instrument, or upon an application by an interested person, the court may make any order it thinks fit, including

- (a) an order appointing, replacing or discharging a receiver or receiver-manager, and approving his accounts;
- (b) an order determining the notice to be given by a person, or dispensing with notice to a person;
- (c) an order declaring the rights of persons before the court or otherwise, or directing a person to do, or abstain from doing, anything;
- (d) an order fixing the remuneration of the receiver or receiver-manager;
- (e) an order requiring the receiver or receiver-manager, or a person by or on behalf of whom he is appointed,
 - (i) to make good any default in connection with the receiver's or receiver-manager's custody or management of the property or business of the company;
 - (ii) to relieve any such person from any default on such terms as the court thinks fit; and
 - (iii) to confirm any act of the receiver or receiver-manager; and
- (f) an order giving directions on any matter relating to the duties of the receiver or receiver-manager.

Duties of
receivers.

425. A receiver or receiver-manager of a company shall

- (a) immediately give notice of his appointment to the Registrar, and of his discharge;
- (b) take into his custody and control the property of the company in accordance with the court order or instrument under which he is appointed;

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- (c) open and maintain a bank account in his name as receiver or receiver-manager of the company for the moneys of the company coming under his control;
 - (d) keep detailed accounts of all transactions carried out by him as receiver or receiver-manager;
 - (e) keep accounts of his administration, which shall be available during usual business hours for inspection by the directors of the company.
 - (f) prepare financial statements of his administration at such intervals and in such form as may be prescribed;
 - (g) upon completion of his duties, render a final account of his administration, in the form adopted for interim accounts under paragraph (f); and
 - (h) file with the Registrar a copy of any financial statement mentioned in paragraph (f) and any final account mentioned in paragraph (g) within fifteen days of the preparation of the financial statement or rendering of the final account, as the circumstances require.

Liability of receivers.

426. (1) A receiver of assets of a company appointed under subsection (3) of section 187 or under powers contained in any instrument

- (a) is personally liable on any contract entered into by him in the performance of his functions, except to the extent that the contract otherwise provides; and
- (b) is entitled in respect of that liability to an indemnity out of the assets of which he was appointed to be receiver.

(2) Nothing contained in subsection (1) limits any right to an indemnity that a receiver would have, apart from that subsection, or limits his liability on contracts entered into without authority, or confers any right to indemnity in respect of that liability.

(3) When the purported appointment of a receiver out of court is invalid because the charge under which the appointment purported to be made is invalid, or because, in the circumstances of the case, the power of appointment under the charge was not exercisable or not wholly exercisable, the court may, on application being made to it,

(a) wholly or to such extent as it thinks fit, exempt the receiver from personal liability in respect of anything done or omitted to be done by him that, if the appointment had been valid, would have been properly done or omitted to be done; and

(b) order that the person by whom the purported appointment was made, be personally liable to the extent to which that relief has been granted.

(4) Subsection (1) applies to a receiver appointed before or after the coming into force of this Act, but does not apply to contracts entered into before the Act came into force.

Notice of receivership.

427. Where a receiver or a receiver-manager of any assets of a company has been appointed for the benefit of debentureholders, every invoice, order of goods or business letter issued by or on behalf of the company or the receiver, being a document on or in which the name of the company appears, shall contain a notice that a receiver or a receiver-manager has been appointed.

Floating charges priorities.

428. (1) Where a receiver is appointed on behalf of the holders of any debentures of a company that are secured by a floating charge or where possession is taken, by or on behalf of any debentureholders of a company, of any property of the company that is subject to a floating charge, then, if the company is not at the time in the course of being wound up, the debts that in every winding up are under this Part and the regulations relating to preferential payments to be paid in order of priority to all other debts shall be paid in order of priority forthwith out of any assets coming into the hands of the receiver or person taking possession of that property, as the circumstances require, in priority to any claim for principal or interest in respect of the debentures of the company secured by the floating charge.

(2) Any period of time mentioned in the provisions referred to in subsection (1) is to be reckoned, as the circumstances require, from the date of the appointment of the receiver in respect of the debentureholders secured by the floating charge or from the date possession is taken of any property that is subject to the floating charge.

(3) Payments made pursuant to this section may be recouped as far as can be out of the assets of the company that are available for the payment of general creditors.

Statement of affairs.

429. (1) Where a receiver of the whole, or substantially the whole, of the assets of a company, in this section and section 428 referred to as the "receiver", is appointed under subsection (3) of section 187 or under the powers contained in any trust deed, for the benefit of the holders of any debentures of the company secured by a general floating charge, then, subject to this section and section 428,

(a) the receiver shall forthwith send notice to the company of his appointment;

(b) within fourteen days after receipt of the notice by the company, or such longer period as may be allowed by the receiver, there shall be made out by the company and submitted to the receiver a statement as to the affairs of the company;

(c) the receiver shall, within two months after receipt of the statement, send

(i) to the Registrar, and, if the receiver was appointed by the court, to the court, a copy of the statement and of any comments he sees fit to make thereon, and, in the case of the Registrar, also a summary of the statement and of the receiver's comments thereon;

(ii) to the company, a copy of those comments, or, if the receiver does not see fit to make any comments, a notice to that effect;

(iii) to the trustee of the trust deed, a copy of the statement and those comments; and

(iv) to the holders of all debentures belonging to the same class as the debentures in respect of which he was appointed, a copy of that summary.

(2) The receiver shall,

(a) within two months or such longer period as the court may allow, after the expiration of the period of twelve months from the date of his appointment, and after every subsequent period of twelve months, and

(b) within twelve months or such longer period as the court may allow after he ceases to act as receiver of the assets of the company,

send to the Registrar, to the trustee of the trust deed, and to the holders of all debentures belonging to the same class as the debentures in respect of which the receiver was appointed, an abstract in a form approved by the Registrar.

(3) The abstract shall show

(a) the receiver's receipts and payments during the period of twelve months, or, if the receiver ceases so to act, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing to act; and

(b) the aggregate amounts of his receipts and of his payments during all preceding periods since his appointment.

(4) Subsection (1) does not apply in relation to the appointment of a receiver to act with an existing receiver, or in place of a receiver who dies or ceases to act, except that, where that subsection applies to a receiver who dies or ceases to act before the subsection has been fully complied with, the references in paragraphs (b) and (c) of that subsection to the receiver include, subject to subsection (5), references to his successor and to any continuing receiver.

(5) If the company is being wound up, this section and section 430 apply notwithstanding that the receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.

(6) Nothing in subsection (2) affects the duty of the receiver to render proper accounts of his receipts and payments to the persons to whom, and at the times that, he is required to do so apart from that subsection.

Contents of
statement.

430. (1) The statement as to the affairs of a company required by section 429 to be submitted to the receiver or his successor shall show, as at the date of the receiver's appointment,

(a) the particulars of the company's assets, debts and liabilities;

(b) the names, addresses and occupations of the company's creditors;

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- (c) the security interests held by the company's creditors;
 - (d) the dates when the security interests were created; and
 - (e) such further or other information as may be prescribed.

(2) The statement of affairs of the company shall be submitted and verified by, the signed declaration of at least one person who is, at the date of the receiver's appointment, a director, and by the secretary of the company at that date, or by such persons, as the receiver or his successor, subject to the direction of the Registrar, may require to submit and verify the statement, namely persons who

- (a) are or have been officers of the company;
- (b) have taken part in the formation of the company at any time within one year before the date of the receiver's appointment;
- (c) are in the employment of the company, or have been in the employment of the company within that year, and, in the opinion of the receiver, are capable of giving the information required; or
- (d) are, or have been within that year officers of, or in the employment of, an affiliated company.

(3) A person making or verifying the statement of affairs of a company, or any part of it, shall be allowed and paid by the receiver or his successor out of the receiver's receipts, such costs and expenses incurred in and about the making or verifying of the statement as the receiver or his successor considers reasonable.

CHAPTER II

WINDING UP

Modes of
winding up.

- 431.** (1) The winding up of a company may be
- (a) by the court; or
 - (b) voluntary.

(2) The provisions of this Act with respect to winding up apply, unless the contrary intention appears, to the winding up of a company.

Liability of
members.

432. (1) In the event of a company being wound up every present or past member is liable to contribute to the assets of the company to an amount sufficient for payment of its debts and expenses of the winding up, and the adjustment of the rights of the members and past members among themselves.

(2) Subsection (1) is subject to the following limitations, namely,

- (a) a past member is not 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 is not liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this section;
- (c) no contribution is required from a member or past member exceeding the amount unpaid on the shares in respect of which he is liable as a present or past member, or, as the case may be, the amount undertaken to be contributed by him to the assets of the company in the event of the company being bound up;
- (d) a sum due from the company to a member or past member, in his character of member, by way of dividend or otherwise, shall not be set-off against the amounts for which he is liable to contribute in accordance with this section, but any such sum shall be taken into account for the purposes of final adjustment of the rights of the members and past members amongst themselves.

(3) For the purposes of this section, "member" in relation to a company means an incorporator of the company and any other person who agrees to become a member of the company and whose name is entered in the company's register of members; and "past member" includes the estate of a deceased member and, where a person dies after becoming liable as a member or past member, the liability is enforceable against his estate.

(4) Except as provided in subsections (1) to (3), a member or past member of a company is not liable as such for any of the debts or liabilities of the company.

(5) In the event of a company being wound up any part of the issue price of a share remaining to be paid shall, with effect from the commencement of the winding up, be treated as an amount unpaid on the share whether or not the due date for the payment has occurred.

Saving.

433. Nothing in this Act shall invalidate a provision contained in a 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.

Definition of contributory.

434. The term "contributory" means liable to contribute to the assets of a company in the event of it being wound up, and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes a person alleged to be a contributory.

Nature of liability of contributory.

435. The liability of a contributory creates a debt in the nature of a specialty accruing due from the contributory at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

Contributories in case of death of member.

436. (1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representative is liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be a contributory accordingly.

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(2) If the personal representative makes a default in paying any money ordered to be paid by him, then notwithstanding the Intestate Estates Act, proceedings may be taken for administering the estate of the deceased contributory, and for compelling payment from the estate of the money due.

Contributories in case of bankruptcy of members.

437. If a contributory become bankrupt, either before or after he has been placed on the list of contributories,

(a) his trustee in bankruptcy shall represent him for all the purposes of the winding up, and shall be a contributory accordingly, and may be called on to admit proof against the estate of the bankrupt, or otherwise to allow to be paid out of his assets in due course of

law, any money due from the bankrupt in respect of his liability to contribute to the assets of the company; and

- (b) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

CHAPTER III

WINDING UP BY THE COURT

(i) Winding-up Petitions and Orders

Circumstances in which company may be wound up by court.

438. A company may be wound up by the Court if

- (a) the company has, by special resolution, resolved that the company be wound up by the Court;
- (b) the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
- (c) the company is unable to pay its debts;
- (d) an inspector appointed under Chapter IV of Part III has reported that he is of the opinion
- (i) that the company cannot pay its debts and should be wound up; or
 - (ii) that it is in the interests of the public or of the shareholders or of the creditors that the company should be wound up; or
- (e) the Court is of the opinion that it is just and equitable that the company should be wound up.

Definition of inability to pay debts.

439. (1) A company is unable to pay its debts if

- (a) a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five thousand dalasis then due, has served on the company, by leaving it at the registered office of the

company, a demand under his hand or under the hand of his agent lawfully authorised 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 compound for it to the reasonable satisfaction of the creditor;

- (b) execution or other process issued on a judgment decree or order of a court in favour of a creditor of the company is returned unsatisfied in whole or in part;
- (c) it is proved to the satisfaction of the court that the company is unable to pay its debts as they become due; or
- (d) it is proved to the satisfaction of the court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.

(2) The money sum specified in subsection (1) is subject to increase or reduction by regulations made under this Act.

Petition for winding up.

440. (1) Subject to this section, an application to the court for the winding up of a company shall be by petition presented by

- (a) the company;
- (b) a creditor, including a contingent or prospective creditor, of the company;
- (c) a contributory; or
- (d) the trustee in bankruptcy to, or personal representative of, a creditor or contributory.

(2) A contributory is not entitled to present a winding up petition unless the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder.

(3) The court shall not hear a winding up petition presented by a contingent or prospective creditor until such security for costs has been

given as the court thinks reasonable and until a *prima facie* case for winding up has been established to the satisfaction of the court.

(4) Where a company is being wound up voluntarily, a winding up petition may be presented by the Official Receiver as well as by any other person authorised in that behalf under the provisions of this section, but the court shall not make a winding up order on the petition unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories.

(5) A contributory is entitled to present a winding up petition notwithstanding that there may not be assets available on the winding up for distribution to contributories.

Powers of court
on hearing
petition.

441. (1) On hearing a winding up petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it thinks fit, but the court shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) Where the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the court, if it is of the opinion

(a) that the petitioners are entitled to relief either by winding up the company or by some other means; and

(b) that in the absence of any other remedy it would be just and equitable that the company should be wound up,

shall make a winding up order, unless some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

Power to stay or
restrain pro-
ceedings against
company.

442. At any time after the presentation of a winding up petition, and before a winding up order has been made, the company, or a creditor or contributory, may, where any action or proceeding is pending against the company, apply to the court to stay or restrain further proceedings, and the court may stay or restrain the proceedings accordingly on such terms as it thinks fit.

Avoidance of disposition of property after commencement of winding up

443. In a winding up by the court, a disposition of the property of the company, including things in action, and a transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding up, is, unless the court otherwise orders, void.

Avoidance of attachments.

444. Where a company is being wound up by the court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding up is void.

Commencement of winding up by the court.

445. (1) Where before the presentation of a petition for the winding up of a company by the court a resolution has been passed by the company for voluntary winding up, the winding up of the company is deemed to have commenced at the time of the passing of the resolution, and unless the court, on proof of fraud or mistake, thinks fit otherwise to direct, all proceedings taken in the voluntary winding up are deemed to have been validly taken.

(2) In any other case, the winding up of a company by the court is deemed to commence at the time of the presentation of the petition for winding up.

Copy of order to be forwarded to Registrar.

446. (1) On the making of a winding up order, a copy of the order shall forthwith be lodged by the company, or otherwise as may be prescribed, with the Registrar, who shall make an entry thereof in his records relating to the company.

(2) If default is made in lodging a copy of a winding up order with the Registrar as required by subsection (1), every officer of the company or other person who knowingly authorises or permits the default commits an offence.

(3) A person who commits an offence under subsection (2) is liable on conviction to a fine not exceeding two thousand dalasis or to a term of imprisonment not exceeding twelve months or both.

Actions stayed on winding up order.

447. When a winding-up order is made, or a provisional liquidator appointed, 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.

Effect of winding up order.

448. An order for winding up a company shall operate in favour of the creditors and the contributories of the company, as if made on the joint petition of a creditor and a contributory.

(ii) Official Receiver

Statement of company's affairs.

449. (1) Where the court makes a winding up order or appoints a provisional liquidator, the company shall, unless the court otherwise orders, prepare and submit to the Official Receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts and liabilities; the names, residences, and occupation of its creditors; the securities held by them respectively; the dates when the securities were respectively given; and such further or other information as may be prescribed, or as the Official Receiver may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the secretary of the company, or subject to the direction of the court, such of the following persons as the Official Receiver may require to submit and verify the statement:

- (a) persons who are or have been officers, other than employees, of the company;
- (b) persons who have taken part in the formation of the company at any time within one year before the relevant date;
- (c) persons who are in the employment of the company, or have been in the employment of the company within that year, and are in the opinion of the Official Receiver capable of giving the information required; and
- (d) persons who are or have been within that year officers of or in the employment of a company, which is, or within that year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within fourteen days from the relevant date, or within such extended time as the Official Receiver or the court may for special reasons allow.

(4) A person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the Official Receiver or provisional liquidator, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the Official Receiver considers reasonable, subject to an appeal to the court.

(5) A person who, without reasonable excuse, makes default in complying with the requirements of this section commits an offence.

(6) A person stating himself in writing to be a creditor or contributory of the company is 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 receive a copy or extract of the statement.

(7) A person who untruthfully states himself to be a creditor or contributory commits the offence of contempt of court and shall, on the application of the liquidator or of the Official Receiver, be punishable accordingly.

(8) In this section, "the relevant date" means in a case where a provisional liquidator is appointed, the date of his appointment and, in a case where no such appointment is made, the date of the winding up order.

Report by
Official
Receiver.

450. (1) In a case where a winding up order is made the Official Receiver shall, as soon as practicable after receipt of the statement to be submitted under section 449, or, in a case where the court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the court,

- (a) as to the amount of capital issued, and subscribed, and the estimated amount of assets and liabilities;
- (b) if the company has failed, as to the causes of the failure; and
- (c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company, or the conduct of the business of the company.

(2) The Official Receiver may, if he thinks fit, make a further report stating the manner in which the company was formed and whether in his

opinion any fraud has been committed by a person in its promotion or formation, or by an officer of the company in relation to the company since the formation of the company and any other matter which in his opinion it is desirable to bring to the notice of the court.

(iii) Liquidators

Power of Court to appoint liquidators.

451. For the purposes 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.

Appointment and powers of provisional liquidator.

452. (1) Subject to the provisions of this section, the court may appoint a liquidator provisionally at any time after the presentation of a winding up petition, and either the Official Receiver or any other fit person may be appointed.

(2) Where a liquidator is previously appointed by the court, the court may limit and restrict his powers by the order appointing him.

Appointment and style of liquidators.

453. Subject to subsection (2) of section 452 the following provisions with respect to a liquidator have effect on a winding up order being made:

- (a) the Official Receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such;
- (b) the Official Receiver shall summon separate meetings of the creditors and contributories of the company for the purposes of determining whether or not an application is to be made to the Court for appointing a liquidator in the place of the Official Receiver;
- (c) the court may make any appointment and order required to give effect to a determination made pursuant to paragraph (b) and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of any such matter, the court shall decide the difference and make such order thereon as the court may think fit;
- (d) in a case where a liquidator is not appointed by the court, the Official Receiver shall be the liquidator of the company;

- (e) the Official Receiver shall by virtue of his office be the liquidator during a vacancy; and
- (f) a liquidator shall be described, where a person other than the Official Receiver is liquidator, by the style of "the liquidator" and, where the Official Receiver is liquidator, by the style of "the Official Receiver and liquidator", of the particular company in respect of which he is appointed, and not by his individual name.

Provisions where person other than Official Receiver is appointed liquidator.

454. (1) Where in the winding up of a company by the court a person other than the Official Receiver is appointed liquidator, that person shall

- (a) not be capable of acting as liquidator until he has notified his appointment to the Registrar and given security in such manner as the court may direct; and
- (b) give the Official Receiver 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 the Official Receiver to perform his duties under this Act.

(2) A liquidator who contravenes paragraph (b) of subsection (1) commits an offence.

General provisions as to liquidators.

455. (1) A liquidator appointed by the court may resign or, on cause shown be removed by the court.

(2) Where a person other than the Official Receiver is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the court may direct and, if more persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportions as the court directs.

(3) A vacancy in the office of a liquidator appointed by the court shall be filled by the court.

(4) If more than one liquidator is appointed by the court, the court shall declare whether an act required or authorised to be done under this Act by the liquidator is to be done by all or any one or more of the persons appointed.

(5) Subject to this Act, the acts of a liquidator are valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

Custody of company's property.

456. Where a winding up order has been made or a provisional liquidator has been appointed, the liquidator, or the provisional liquidator, as the case may be, shall take into his custody, or under his control, the property and things in action to which the company is or appears to be entitled.

Vesting of property of company in liquidator.

457. Where a company is being wound up by the court, the court may on the application of the liquidator by order direct that all or any part of the property of any description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name, and thereupon the property to which the order relates shall vest accordingly, and the liquidator may, after giving such indemnity as the court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding-up the company and recovering its assets.

Powers of liquidator.

458. (1) The liquidator in a winding up by the court may, with the sanction either of the court or of the committee of inspection,

- (a) bring or defend an action or other legal 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 of the company;
- (c) appoint a legal practitioner or other agent to assist him in the performance of his duties;
- (d) pay any classes of creditors in full if the assets of the company remaining in his hands will suffice to pay in full the debts and liabilities of the company which rank for payment before, or equally with, the debts or claims of the first mentioned creditors;
- (e) make a compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have a claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;

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- (f) compromise on calls and liabilities to calls, debts and liabilities capable or resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as are agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.
- (2) The liquidator in a winding up by the court may
- (a) sell the real and personal property and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or to sell the same in parcels;
- (b) do all acts and execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal;
- (c) prove, rank, and claim in the bankruptcy, insolvency, or sequestration of a contributory, for any balance against his estate, and receive dividends in the bankruptcy, insolvency, or sequestration in respect of that balance as a separate debt due from the bankrupt or insolvent, and ratably with the other separate creditors;
- (d) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;
- (e) raise on the security of the assets of the company any requisite money;
- (f) take out in his official name letters of administration to a deceased contributory, and do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company; and in all such cases the money due is,

for the purpose of enabling the liquidator to take out the letters of administration or recover the money, deemed to be due to the liquidator himself.

(g) appoint an agent to do any business which the liquidator is unable to do himself; and

(h) do all such other things as may be necessary for winding-up the affairs of the company and distributing its assets.

(3) The exercise by 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 a creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

Exercise and control of liquidator's powers.

459. (1) Subject to this Part, the liquidator of a company which is being wound up by the court shall, in the administration of the assets of the company and in the distribution of those assets among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at a general meeting, or by the committee of inspection, and any directions so given by the creditors or contributories shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and he shall summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, direct, or whenever requested in writing to do so by not less than one-tenth in value of the creditors or contributories.

(3) The liquidator may apply to the court in the prescribed manner for directions in relation to any particular matter arising under the winding-up.

(4) Subject to this Part, the liquidator shall use his own discretion in the management of the company's estate and its distribution among the creditors.

(5) Where a 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 as it thinks fit.

Books to be kept by liquidator.

460. (1) A liquidator of a company which is being wound up by the court shall keep, in the prescribed manner, 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 creditor or contributory may, subject to the control of the court, personally or by his agent inspect those books and make copies or extracts from them.

(2) A liquidator who fails to keep proper books as required by subsection (1) or refuses to allow an inspection permitted thereunder commits an offence.

Payments by liquidator into bank.

461. (1) A liquidator of a company which is being wound up by the court shall pay the money received by him into such bank as the court may direct.

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

(4) A liquidator who contravenes the provisions of subsection (3) commits an offence.

Audit of liquidator's accounts.

462. (1) A 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 Registrar an account of his receipts and payments as liquidator.

(2) The account shall be in a prescribed form, made in duplicate, and shall be verified by an affidavit or a statutory declaration.

(3) The Registrar shall cause the account to be audited by an auditor eligible for appointment as auditor of a company under section 217 and for the purpose of the audit the liquidator shall furnish the auditor with

such vouchers and information as the auditor may require, and the auditor 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 Registrar and the other copy shall be delivered to the court for filing, and each copy shall be open to the inspection of a creditor or any person interested.

(5) A liquidator who fails to comply with any of the duties imposed on him by this section commits an offence.

Control by
Registrar over
liquidators.

463. (1) The Registrar shall take cognizance of the conduct of liquidators of companies which are being wound up by the court, and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules, or otherwise with respect to the performance of his duties, or if a complaint is made to the Registrar by a creditor or contributory in regard thereto, the Registrar shall inquire into the matter, and take such action thereon as he may think expedient.

(2) The Registrar may at any time require a liquidator of a company which is being wound up by the court to answer any inquiry in relation to a winding up in which he is engaged and may, if the Registrar thinks fit, apply to the court to examine him or any other person on oath concerning the winding up.

(3) The Registrar may direct an investigation to be made of the books and vouchers of the liquidator.

Release of
liquidator.

464. (1) When the liquidator of a company which is being wound up by the court has realised all the assets of the company, or so much of the assets as can, in his opinion, be realised without needlessly protracting the liquidation, and has distributed a final dividend to the creditors, and adjusted the rights of the contributories among themselves, and made a final return to the contributories, or has resigned, or has been removed from his office, the Registrar shall, on the liquidator's application, cause a report on the liquidator's accounts to be prepared.

(2) Where the liquidator complies with the requirements of the Registrar, the Registrar shall take into consideration the report, and any objection which may be urged by a creditor or contributory or person interested against the release of the liquidator, and shall either grant or

withhold the release accordingly, subject nevertheless to an appeal to the court.

(3) Where the release of a liquidator is withheld, the court may, on application of a 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.

(4) An order of the Registrar releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as 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.

(iv) Committees of Inspection

Meetings to determine appointment of committees of inspection.

465. (1) When a winding up order has been made by the court, it shall be the business of the separate meetings of creditors and contributories summoned for the purpose of determining whether or not an application should be made to the court for appointing a liquidator other than the Official Receiver, to determine further whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator and who are to be members of the committee if appointed.

(2) The court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determination of the meetings of the creditors and contributories the court shall decide the difference and make such order as the court thinks fit.

Constitution and proceedings of committee of inspection.

466. (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 are agreed on by the meetings of the creditors and contributories, or as, in the case of a difference, may be determined by the court.

(2) The committee shall meet at such times as they 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 their members present at a meeting, but shall not act unless a majority of the committee is present.

(4) A 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 bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories of which seven days' notice has been given, stating the object of the meeting.

(7) Subject to subsection (8), 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, re-appoint the same or appoint another creditor or contributory to fill the vacancy.

(8) Where the liquidator, having regard to the position in the winding up, is of the opinion that it is unnecessary for a vacancy to be filled, he may apply to the court and the court may make an order that the vacancy shall not be filled, or shall not be filled except in such circumstances as may be specified in the order.

(9) The continuing members of the committee, if not less than two, may act notwithstanding a vacancy in the committee.

Powers of court where there is no committee of inspection.

467. Where in the case of a winding up there is no committee of inspection, the court may on the application of the liquidator, do any act or thing or give any direction or permission which is by this Act authorised or required to be done or given by the committee.

(v) General Powers of Court

Power to stay winding up.

468. (1) The court may at any time after an order for winding up, on the application

(a) of the liquidator or the Official Receiver or any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation to the winding-up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit; and

(b) of the liquidator or a creditor, and after having regard to the wishes of the creditors and contributories, make an order directing that the winding up, ordered by the court, shall be conducted as a creditors' voluntary winding up, and, if the court does so the winding up shall be so conducted.

(2) On an application under paragraph (a) of subsection (1) the court may, before making an order, require the Official Receiver to furnish to the court a report with respect to any facts or matters which are in his opinion relevant to the application.

(3) A copy of an order made under this section shall forthwith be lodged by the company, or otherwise as may be prescribed, with the Registrar, who shall make an entry of the order in his records relating to the company.

(4) If default is made in lodging a copy of an order made under this section with the Registrar as required by subsection (3) every officer of the company or other person who knowingly authorises or permits the default commits an offence.

Settlement of list of contributories and application of assets.

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

(2) Notwithstanding subsection (1), where it appears to the court that it will not be necessary to make calls on or adjust the rights of contributories, the court may dispense with the settlement of a list of contributories.

(3) 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.

(4) The list of contributories when settled shall be *prima facie* evidence of the liabilities of the persons named therein as contributories.

Delivery of
property to
liquidator.

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

Payment of debts
due by contribu-
tory to company
and extent to
which set-off
allowed.

471. (1) The court may, at any time after making a winding up order, make an order directing a contributory for the time being on the list of contributories to pay, in the 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) In the case of a company, when all the creditors are paid in full, any money due on account to a contributory from the company may be allowed to him by way of set-off against a subsequent call.

Power of
court to
make calls.

472. (1) The court may, at any time after making a winding up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding up, and for the adjustment of the rights of the contributories, among themselves, and make an order for payment of any calls so made.

(2) In making a call, the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

Payment into
bank of moneys
due to company.

473. (1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into a bank to the account of the liquidator instead of to the liquidator, and such order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) All moneys and securities paid or delivered into a bank in the event of a winding up by the court shall be subject in all respect to the orders of the court.

Order on contributory is conclusive evidence.

474. An order made by the court on a contributory is, subject to any right of appeal, conclusive evidence that the money appearing to be due or ordered to be paid is due, and all other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings.

Appointment of special manager.

475. (1) Where in any proceedings the Official Receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court, and the court may on the application appoint a special manager of the estate or business to act during such time as the court directs, with such powers, including any of the powers of a receiver or manager, as are entrusted to him by the court.

(2) The special manager shall give such security and account in such manner as the court directs.

(3) The special manager shall receive such remuneration as may be fixed by the court.

Power to exclude creditors not proving in time.

476. The court may fix a time or times within which creditors are to prove their debts or claims or after which they will be excluded from the benefit of any distribution made before those debts are proved.

Adjustment of rights of contributories.

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

Inspection of books by creditors or contributories.

478. (1) The court may, at any time after making a winding up order, make such order for inspection of the books and papers of the company by creditors and contributories as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors and contributories accordingly, but not further or otherwise.

(2) Nothing in this section shall be taken as excluding or restricting any statutory rights of a Government Department or a person under the authority of a Government Department or the Minister.

Power to order costs of winding up to be paid out of assets.

479. The court may, in the event of the assets of a company being insufficient to satisfy its 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 fit.

Power to summon persons suspected of having property of company.

480. (1) The court may, at any time after the appointment of a provisional liquidator or the making of a winding up order, summon before it any officer of the company or person known or suspected to have in his possession a property of the company, or supposed to be indebted to the company, or a person whom the court considers capable of giving information concerning the promotion, formation, trade, dealings, affairs, or property of the company.

(2) The court may examine a person on oath concerning the matters mentioned in subsection (1), either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them, and any writing so signed may be used in evidence in any legal proceedings against him.

(3) The court may require a person to produce any books and papers in his custody or power relating to the company, but where he claims a lien on books or papers produced by him, the production shall be without prejudice to that lien, and the court shall have jurisdiction in the winding-up to determine all questions relating to that lien.

(4) If a person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having a lawful impediment (made known to the court at the time of its sitting, and allowed by it), the court may cause him to be apprehended and brought before the court for examination.

Power to order public examination of promoters, directors and officers.

481. (1) Where an order has been made for winding up a company by the court, and the Official Receiver has made a further report under this Act stating that in his opinion a fraud or improper conduct has been committed, or engaged in, by any person in the promotion or formation of the company, or by any officer of the company in relation to the company since its formation, the court may, after consideration of the report, direct that

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- (a) the person or officer or any other person who was previously an officer of the company, including any banker, legal practitioner or auditor, or who is known or suspected to have in his possession a property of the company or is supposed to be indebted to the company, or
- (b) any person who the court considers capable of giving information concerning the promotion, formation, trade dealings, affairs or property 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 in the case of an officer or former officer as to his conduct and dealings as officer of the company.

(2) The Official Receiver shall take part in the examination, and for that purpose may, if specially authorised by the court in that behalf, employ a legal practitioner.

(3) The liquidator, where the Official Receiver is not the liquidator, and a creditor or contributory, may also take part in the examination either personally or by a legal practitioner.

(4) The court may put such questions to the person examined as the court thinks fit.

(5) The examination of a person under this section shall be on oath and the person is not excused from answering any questions put to him on the ground that the answer might tend to incriminate him but, where he claims before answering the question, that the answer might tend to incriminate him, neither the question nor the answer is admissible in evidence against him in criminal proceedings other than proceedings under subsection (10) or in relation to a charge of perjury in respect of the answer.

(6) A person ordered to be examined shall at his own cost, before his examination, be furnished with a copy of the Official Receiver's report, and may at his own cost employ a legal practitioner who may 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.

(7) When a person directed to attend before the court under subsection (1) applies to the court to be exculpated from any charge made

or suggested against him, the Official Receiver shall appear on the hearing of the application and call the attention of the court to any matters which appear to the Official Receiver to be relevant, and if the court, after hearing any evidence given or witnesses called by the Official Receiver, grants the application, the court may allow the applicant such costs as in its discretion it may think fit.

(8) Notes of the examination shall be taken down in writing and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of a creditor or contributory at all reasonable times.

(9) The court may, if it thinks fit, adjourn the examination from to time.

(10) A person being examined under this section who makes a statement that is false or misleading in a material particular commits an offence.

(11) For the purpose of this section, conduct is improper if it is of such a nature as to render a person unfit to be concerned in the management of a company.

Power to arrest absconding contributory

482. The court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to leave The Gambia or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls, or of avoiding examination respecting the affairs of a company, may cause the contributory to be arrested, and his books and papers and movable personal property to be seized, and he and the books and the papers to be kept until such time as the court may order.

Powers of court cumulative.

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

Delegation to liquidator of certain powers of court.

484. Provision may be made by rules made under section 549 for enabling or requiring all or any of the powers and duties conferred and imposed on the court by this Act in respect of

(a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;

- (b) the settling of lists of contributories and the rectifying of the register of members, where required, and the collecting and applying of the assets;
- (c) the paying, delivering, conveyance, surrender or transfer of any money, property, books or papers to the liquidator;
- (d) the making of calls and the adjusting of the rights of contributories; and
- (e) the fixing of the time within which debts and claims shall be proved,

to be exercised or performed by the liquidator as an officer of the court, and subject to the control of the court, but the liquidator shall not, without the 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.

Dissolution of
company.

485. (1) When the affairs of a company have been completely wound up, the court, if the liquidator makes an application in that behalf, shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) A copy of the order shall within fourteen days from the date it was made be lodged by the liquidator with the Registrar who shall enter in his records a minute of the dissolution of the company.

(3) A liquidator who defaults in complying with the requirements of this section, commits an offence.

Power to enforce
orders and
appeals from
orders.

486. (1) Orders made by the court under this Act may be enforced in the same manner as orders made in any action pending before the court.

(2) Subject to rules of court, an appeal from any order or decision made or given 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.

Penalty for offence committed by liquidator or Official Receiver.

487. A liquidator or Official Receiver who commits an offence under this Chapter is liable on conviction to a fine not exceeding ten thousand dalasis or to a term of imprisonment not exceeding five years, or both.

CHAPTER IV

VOLUNTARY WINDING UP

(i) Winding up Resolutions and Effect

Winding up resolutions.

488. (1) A company shall be wound up voluntarily if a general meeting of members of the company so resolves

(a) by special resolution; or

(b) by an ordinary resolution which states that the company is unable to pay its debts.

(2) In this Act, "a resolution for voluntary winding up" means a resolution passed under subsection (1).

Notice of resolution to wind up voluntarily.

489. (1) When a company passes a resolution for voluntary winding up, it shall, within resolution, give notice of the resolution by advertisement in the *Business Gazette* and in writing to the Registrar.

(2) If default is made in complying with this section, the company and every officer of the company in default commits an offence.

Commencement of voluntary winding up.

490. A voluntary winding up is deemed to commence at the time of passing of the resolution for voluntary winding up.

Effect of voluntary winding up on business and status of company.

491. In case of a voluntary winding up, the company shall, from the commencement of the winding up cease to carry on its business except so far as is in the opinion of the liquidator required for the beneficial winding up of the company but the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles of incorporation, continue until it is dissolved.

Avoidance of transfers after commencement of voluntary winding up.

492. A transfer of shares not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding up, is void.

Statutory declaration of solvency in case of proposal of winding up voluntarily.

493. (1) Where it is proposed to wind up a company voluntarily, a director or, in the case of a company having more than two directors, the majority of the directors, may, at a meeting of the directors make a statutory declaration to the effect that they have made a full enquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within such period not exceeding twelve months from the commencement of the winding-up as may be specified in the declaration.

(2) A declaration made under subsection (1) shall have no effect for the purposes of this Act unless

- (a) it is made within the five weeks immediately preceding the date of the passing of the resolution for winding up the company and is lodged with the Registrar for registration before that date; and
- (b) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.

(3) A director of a company who makes a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration commits an offence.

(4) If the company is wound up in pursuance of a resolution passed within the period of five weeks after the making of the declaration, but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion.

(5) A winding up in the case of which a declaration has been made and delivered in accordance with this section is in this Act referred to as "a member's voluntary winding up", and a winding up in the case of which a declaration has not been so made and delivered is in this Act referred to as "a creditors' voluntary winding up".

(ii) Provisions Applicable Only to Members'
Voluntary Winding up

Power of company to appoint and fix remuneration of liquidators.

494. (1) A company in a general meeting shall appoint one, or more than one, liquidator 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.

(2) Subject to subsections (3) and (4), a company may by special resolution remove a liquidator and appoint another liquidator, but the removal or appointment does not have effect

(a) until after the expiration of the period of fourteen days after the date on which the resolution is passed; or

(b) if, within that period an application is made to the court under subsection (4), unless the court dismisses the application or the application is withdrawn.

(3) In addition to the other requirements of this Act with respect to the giving of notice of meetings, the company shall give to all creditors and contributories of the company notice of a meeting at which a resolution under subsection (2) will be proposed, giving in the notice particulars of the proposals.

(4) A creditor or contributory of the company may, within the period of fourteen days after the date on which a resolution under subsection (2) is passed, apply to the court for an order cancelling the resolution and the court may, if it is satisfied that it is fair and reasonable to do so, allow the application, but if not so satisfied shall dismiss the application.

(5) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the company in a general meeting or the liquidator, sanctions the continuance of their powers.

Power to fill vacancy in office of liquidator.

495. (1) If a vacancy occurs by death, resignation or otherwise in the office of a liquidator appointed by the company, the company in a general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For the purpose of subsection (1), a general meeting may be convened by a contributory or, if there are more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in the manner provided by this Act or by the by-laws or in such manner as may, on application by a contributory or by the continuing liquidators, be determined by the court.

Power of liquidator to accept shares as consideration for sale of property of company.

496. (1) Where a company is proposed to be, or is in the course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to a corporation, (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 a particular arrangement,

- (a) receive in compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the transferor company; or
- (b) 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, and where the whole or part of the compensation or benefit accruing to the members of the transferor company in respect of any such sale or arrangement consists of fully paid shares in the transferee company each such member is deemed to have agreed with the transferee company for the acceptance of the fully paid shares to which he is entitled under the distribution referred to in subsection (1).

(3) If a member of the transferor company who did not vote in favour of the special resolution expresses his dissent from the resolution in writing addressed to the liquidator and left at the registered office of the company within seven days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in a manner provided by the Arbitration Act.

(4) If the liquidator elects to purchase the member's interest, the purchase money shall be raised by the liquidator in such manner as may

be determined by special resolution, and be paid before the company is dissolved.

(5) A special resolution shall not be invalid for the purposes of this section by reason only that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but if an order is made within a year for winding up the company by the court, the special resolution is not valid unless sanctioned by the court.

Duty of liquidator to call creditors' meeting in case of insolvency.

497. (1) If, in the case of a winding up commenced after the commencement of this Act, the liquidator is at any time of the opinion that the company will not be able to pay its debts in full within the period stated in the declaration under section 493, he shall forthwith summon a meeting of the creditors and lay before the meeting a statement of the assets and liabilities of the company.

(2) Unless the meeting of the creditors resolve that the winding-up shall continue as a members' voluntary winding up, the winding-up shall as from the date when the liquidator calls the meeting of creditors become a creditors' voluntary winding up, and the meeting of creditors shall have the same powers as a meeting of creditors held under section 503.

(3) A liquidator who fails to comply with subsection (1) commits an offence.

Duty of liquidator to call general meeting at end of each year.

498. (1) Subject to section 500, in the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up and of each succeeding year, or at the first convenient date within three months (or such longer period as the court may allow) from the end of the year, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) A liquidator who fails to comply with subsection (1) commits an offence.

Final meeting and dissolution.

499. (1) Subject to section 500, 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 shall cause the account to be audited and when that has been done shall call a general meeting of

the company for the purpose of laying before it the audited account and giving any necessary explanation in respect of the account.

(2) The general meeting of the company shall be called by advertisement in the *Business Gazette* and once in a newspaper printed and circulating in The Gambia, specifying the time, place and object of the meeting and published at least one month before the meeting.

(3) Within one week after the meeting, the liquidator shall lodge with the Registrar a copy of the audited account, and shall make a return to him of the holding of the meeting and of its date, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator commits an offence.

(4) Notwithstanding anything in subsection (3), if a quorum is not present at the meeting, the liquidator shall, in lieu of the return referred to in subsection (3), make a return that the meeting was duly summoned and that no quorum was present at the meeting, and upon such a return being made the provisions of this subsection as to the making of the return are deemed to have been complied with.

(5) The Registrar on receiving the account and either of the returns mentioned in subsection (3) or (4) shall forthwith register them, and on the expiration of three months from the registration of the return the company is deemed to be dissolved by the court may, on 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.

(6) The person on whose application an order of the court under this section is made shall, within seven days after the making of the order, lodge with the Registrar a copy of the order for registration, and if that person fails to do so he commits an offence.

(7) A liquidator who fails to call a general meeting of the company as required by this section, commits an offence.

Alternative provisions as to annual and final meetings in case of insolvency.

500. Where section 497 has effect, sections 507 and 508 shall apply to the winding up to the exclusion of sections 498 and 499 as if the winding up were a creditors' voluntary winding-up and not a members' voluntary winding up, but the liquidator shall not be required to summon a meeting of creditors under section 507 at the end of the first year from the commencement of the winding-up, unless the meeting held under section 497 is held more than three months before the end of that year.

(iii) Provisions Applicable to a Creditors'
Voluntary Winding Up

Meeting of creditors.

501. (1) A company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised once in the *Business Gazette* and once at least in one newspaper printed and circulating in The Gambia.

(3) The directors of the company shall

(a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of creditors; and

(b) appoint one of their number to preside at the meeting.

(4) The director appointed to preside at the meeting of creditors shall attend and preside at the meeting.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, a resolution passed at the meeting of the creditors held in pursuance of subsection (1) has effect as if it had been passed immediately after the passing of the resolution for winding up the company.

(6) If default is made

(a) by the company in complying with subsection (1) or (2),

(b) by the directors of the company in complying with subsection (3), or

(c) by a director of the company in complying with subsection (4),

the company or, as the case may be, each of the directors commits an offence, and, in the case of default by the company, every officer of the company who is in default commits an offence.

Appointment of
liquidator.

502. (1) The creditors and the company at their respective meetings mentioned in section 439 may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person nominated by the company shall be liquidator.

(2) Notwithstanding the provisions of subsection (1), when different persons are nominated any director, member, or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the court for an order directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person nominated by the creditors.

Appointment of
committee of
inspection.

503. (1) The creditors at the meeting to be held in pursuance of section 497 or at a subsequent meeting, may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in a general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number.

(2) Notwithstanding the provisions of subsection (1), the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection, and, if the creditors so resolve, the persons mentioned in the resolution

shall not, unless the court otherwise directs, be qualified to act as members of the committee, and on an application to the court under this provision the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(3) Subject to the provisions of this section and to rules made under section 549, the provisions of section 466 (except subsection (1) thereof) apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the court.

Fixing of liquidators' remuneration and cesser of directors' powers.

504. (1) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

(2) On the appointment of a liquidator, all the powers of the directors shall cease except so far as the committee of inspection, or if there is no such committee, the creditors, sanction the continuance of the powers.

Power to fill vacancy in office of liquidator.

505. If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by, or by the direction of, the court, the creditors may fill the vacancy.

Application of section 496 to a creditors' winding up.

506. The provisions of section 496 apply in the case of a creditors' voluntary winding up as in the case of the members' voluntary winding up, with the modification that the powers of the liquidator under that section shall not be exercised except with the sanction of the court or of the committee of inspection.

Duty of liquidator to call meetings of company and of creditors at end of each year

507. (1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of creditors at the end of the first year from the commencement of the winding up, and of each succeeding year or at the first convenient date within three months (or such longer period as the court may allow) from the end of the year, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) A liquidator who fails to comply with subsection (1) commits an offence.

Final meeting and dissolution.

508. (1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding-up, showing how

the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors, for the purpose of laying the account before the meetings, and giving any explanation in respect of the accounts.

(2) Each such meeting shall be called by advertisement in the *Business Gazette* and once in a newspaper printed and circulating in The Gambia specifying the time, place and object of the meeting and published at least one month before the meeting.

(3) Within one week after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meetings and of their dates, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator commits an offence.

(4) Notwithstanding anything in subsection (3), if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return referred to in subsection (3), make a return that the meeting was duly summoned and that no quorum was present at the meeting, and upon such a return being made the provisions of this subsection as to the making of the return are, in respect of that meeting, deemed to have been complied with.

(5) The Registrar on receiving the account and in respect of each such meeting either of the returns mentioned in subsection (3) or (4) shall forthwith register them, and on the expiration of three months from the registration thereof the company is deemed to be dissolved, but 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.

(6) The person on whose application an order of the court under this section is made, shall, within seven days after the making of the order, lodge with the Registrar a copy of the order for registration, and if that person fails to do so he commits an offence.

(7) A liquidator who fails to call a general meeting of the company or a meeting of the creditors as required by this section, commits an offence.

(iv) Provisions Applicable to Every Voluntary Winding Up

Distribution of
property of
company.

509. Subject to the provisions of this Act as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities equally, and subject to that application, shall, unless the articles of the company otherwise provide, be distributed among the members according to their rights and interests in the company.

Powers and
duties of
liquidator in
voluntary
winding up.

510. (1) The liquidator may,

(a) in the case of a members' voluntary winding up, with the sanction of a special resolution of the company and, in the case of a creditors' voluntary winding up, with the sanction of either the court or the committee of inspection, exercise any of the powers given by paragraphs (d), (e) and (f) of subsection 1 of section 458 to a liquidator in a winding up by the court;

(b) exercise any of the other powers by this Act given to the liquidator in a winding-up by the court;

(c) exercise the power of the court under this Act of settling a list of contributories, and the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories;

(d) exercise the power of the court of making calls; and

(e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or for any other purpose he may think fit.

(2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(3) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two.

(4) Unless the committee of inspection determines, or, as the case may be, the members otherwise determine, section 462 applies in the case of a liquidator in a voluntary winding up as it applies in the case of a liquidator of a company being wound up by the court.

Power of court to appoint and remove liquidator in voluntary winding up.

511. (1) If from any cause whatever there is no liquidator acting, the court may appoint a liquidator.

(2) The court may, on cause shown, remove a liquidator and appoint another liquidator.

Notice by liquidator of his appointment.

512. (1) The liquidator shall, within twenty-one days after his appointment, publish in the *Business Gazette* and once in a newspaper printed and circulating in The Gambia, and deliver to the Registrar for registration a notice of his appointment in the prescribed form.

(2) A liquidator who fails to comply with the requirements of subsection (1) commits an offence.

Arrangement when binding on creditors.

513. (1) An arrangement entered into between a company about to be, or in the cause of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by a special resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors.

(2) A creditor or contributory may, within three weeks from the completion of the arrangement appeal to the court against the arrangement and the court may thereupon, as it thinks just, amend, vary, or confirm the arrangement.

Power to apply to court to have questions determined or powers exercised.

514. (1) The liquidator or a contributory or creditor may apply to the court to determine any question arising in the winding up of a company, or to exercise as respects the enforcing of call, 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 the power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks fit.

(3) A copy of an order made by virtue of this section staying the proceedings in the winding up shall forthwith be lodged by the company, or otherwise as may be prescribed, with the Registrar, who shall enter a minute of the order in his records relating to the company.

Costs of
voluntary
winding up.

515. All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

Saving for
rights of
creditors and
contributories.

516. The winding up of a company shall not bar the right of a creditor or contributory to have the company wound up by the court, but in the case of an application by a contributory the court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

Penalty for
offence committed
under this
Chapter.

517. A person who commits an offence under this Chapter is liable on conviction to a fine not exceeding ten thousand dalasis or to a term of imprisonment not exceeding five years, or both.

CHAPTER V

PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP

(i) Proof and Ranking of Claims

Debts of all
descriptions to
be proved.

518. (1) In every winding up, subject in the case of insolvent companies to the application in accordance with the provisions of the Insolvency Act, 1992, 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 are subject to any contingency or sound only in damages or for some other reason do not bear a certain value.

(2) Subject to section 519, in the winding up of a company, the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the Insolvency Act, 1992 with respect to the estates of persons adjudged bankrupt, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up and make such claims against the company as they respectively are entitled to by virtue of this section.

Preferential
payments.

519. (1) In a winding up of a company there shall be paid in priority to all other debts

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- (a) all rates, charges, taxes, assessments or impositions, whether imposed or made by the Government or by a public authority under the provisions of an enactment and having become due and payable within twelve months next before the relevant date;
 - (b) all wages or salary (whether or not earned wholly or in part by way of commission or for time or piece work) of an employee, not being a director, in respect of services rendered to the company during four months next before the relevant date; or
 - (c) all severance benefits, not exceeding the equivalent of forty-five days basic wages or salary, due or accruing to an employee, not being a director, whether retrenched by an employer, a receiver, a liquidator or some other person.

(2) Where a payment on account of wages, salary or severance benefits has been made to an employee of a company out of money advanced by some person for that purpose, that person shall in a winding up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which that employee would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

(3) The debts and claims to which priority is given by subsection (1) shall

- (a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and
- (b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under a floating charge created by the company, and paid accordingly out of any property comprised in or subject to that charge.

(4) Subject to the retention of such sums as are necessary for the costs and expenses of the winding up, the debts and claims to which priority is given by subsection (1) shall be discharged forthwith so far as the assets are sufficient to meet them.

(5) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months

next before the date of a winding up order, the debts to which priority is given by subsection (1) shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof, but in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(6) In this section, "the relevant date" means,

(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.

(ii) Effect of Winding Up On Antecedent and Other Transactions

Fraudulent preference.

520. (1) Any conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property which would, if made or done by or against an individual, be deemed in his bankruptcy or insolvency a fraudulent preference, or a fraudulent conveyance, assignment, transfer, sale or disposition, shall, if made or done by or against a company, be deemed in the event of its being wound up, a fraudulent preference of its creditors, or a fraudulent conveyance, assignment, transfer, sale or disposition, as the case may be, and be invalid accordingly.

(2) For the purposes of this section, the commencement of the winding up is deemed to correspond with the presentation of the bankruptcy or insolvency petition in the case of an individual.

(3) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors is void.

Liabilities and rights of certain fraudulently preferred persons.

521. (1) Where, in the case of a company wound up in The Gambia, anything made or done after the commencement of this Act is void under section 520 as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then (without prejudice to any rights or liabilities arising apart from this provision) the person preferred is subject to the same liabilities, and has the same rights, as if he had undertaken to be personally liable as surety for the debt to the extent of the charge on the property or the value of his interest, whichever is the less.

(2) The value of the interest of a person referred to in subsection (1) shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all incumbrances other than those to which the charge for the company's debt was then subject.

(3) On any application made to the court with respect to a payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the court shall have jurisdiction to determine any question with respect to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up, and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of an action for the recovery of the sum paid.

(4) Subsection (3) applies, with the necessary modifications, in relation to transactions other than the payment of money as it applies in relation to payments.

Effect of
floating charge.

522. Where a company is being wound up, a floating charge on the undertaking or property of the company created within twelve months of the commencement of the winding up is, unless it is proved that the company immediately after the creation of the charge was solvent, invalid, except to the amount of any cash paid to the company at the time of, or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of six per centum per annum or such other rate as may be prescribed.

Disclaimer of
onerous
property.

523. (1) Where a part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, of shares or stock in corporations, or unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the liquidator of the company, notwithstanding that he had endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, may, with the leave of the court and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the court, disclaim the property.

(2) Where a property referred to in subsection (1) has not come to the knowledge of the liquidator within one month after the commencement

of the winding up, the power under this section of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the court.

(3) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest, and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(4) The court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the court thinks just.

(5) The liquidator shall not be entitled to disclaim a property under this section in a case where an application in writing has been made to him by a person interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such further period as may be allowed by the court, given notice to the applicant that he intends to apply to the court for leave to disclaim, and, in the case of a contract, if the liquidator, after such an application, does not within the said period or further period disclaim the contract, the company shall be deemed to have adopted it.

(6) The court, may, on the application of a person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with a company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the court thinks just, and any damages payable under the order to such person may be proved by him as a debt in the winding-up.

(7) The court may, on an application by a person who either claims an interest in a disclaimed property or is under a liability not discharged by this Act in respect of any disclaimed property and on hearing such person as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any persons entitled to it, or to whom it may seem just that the property should be delivered by way of

compensation for such liability, or a trustee for him and on such terms as the court thinks just.

(8) Where the court makes a vesting order under subsection (7), the property comprised in the order shall vest accordingly in the person therein named without any conveyance or assignment for the purpose.

(9) Notwithstanding anything in subsection (7), where the property disclaimed is of a leasehold nature, the court shall not make a vesting order in favour of a person claiming under the company, whether as under-lessee or as mortgagee by demise, except upon terms of making that person

(a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up, or

(b) if the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

and in either event, if the case so requires, as if the lease had comprised only the property comprised in the vesting order.

(10) Where a mortgagee or under-lessee declines to accept a vesting order upon the terms in subsection (9), he shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the court may vest the estate and interest of the company in the property in any person liable personally or in a representative character, and either alone or jointly with the company to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company.

(11) A person injured by the operation of a disclaimer under this section is deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.

Definition
applicable to
sections 525 and
526.

524. For the purposes of sections 525 and 526, "goods" includes all chattels personal.

Restriction of rights of creditor as to execution or attachment.

525. (1) Where a creditor has issued execution against the goods or lands of a company or has attached a debt due to the company, and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the company unless he has completed the execution or attachment before the commencement of the winding up, but

- (a) where a creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice shall be substituted for the date of the commencement of the winding up;
- (b) a person who purchases in good faith under a sale by the Sheriff any goods of a company on which an execution has been levied shall in all cases acquire a good title to them against the liquidator; and
- (c) the rights conferred by this subsection on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court may think fit.

(2) For the purposes of this section,

- (a) an execution against goods shall be taken to be completed by seizure and sale;
- (b) an attachment of a debt is deemed to be completed by receipt of the debt; and
- (c) an execution against land is deemed to be completed from the date of the order for sale or by seizure, as the case may be, and, in the case of an equitable interest, by the appointment of a receiver.

Duties of Sheriff as to goods taken in execution.

526. (1) Subject to subsection (3), where any goods of a company are taken in execution and, before the sale of the goods or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the Sheriff that a provisional liquidator has been appointed or that a winding up order has been made or that a resolution for voluntary winding up has been passed, the Sheriff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or money so delivered and

the liquidator may sell the goods, or a sufficient part of the goods, for the purpose of satisfying that charge.

(2) Subject to subsection (3), where under an execution in respect of a judgment for a sum exceeding five thousand dalasis the goods of a company are sold or money is paid in order to avoid sale, the Sheriff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for fourteen days, and if within that time notice is served on him of a petition for the winding up of the company having been called at which there is to be proposed a resolution for the voluntary winding up of the company and an order is made or a resolution is passed, as the case may be, for the winding up of the company, the Sheriff shall pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor.

(3) The rights conferred by this section on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit.

(ii) Offences

Offences by
officers of
companies in
liquidation.

527. (1) A person commits an offence if he, being a past or present officer of a company which, at the time of the commission of the offence, is being wound up, whether by the court or voluntarily, or is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up,

- (a) does not to the best of his knowledge and belief fully and truly reveal to the liquidator all the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company;
- (b) does not deliver up to the liquidator, or as the liquidator directs, all such part of the real and personal property of the company as is in his custody or under his control, and which he is required by law to deliver up;
- (c) does not deliver up to the liquidator, or as the liquidator directs, all books and papers in his custody or under his control

belonging to the company and which he is required by law to deliver up;

- (d) within twelve months next before the commencement of the winding-up or at any time thereafter, conceals any part of the property of the company to the value of one thousand dalasis or upwards, or conceals a debt due to or from the company;
- (e) within twelve months next before the commencement of the winding-up or at any time thereafter, fraudulently removes a part of the property of the company to the value of one thousand dalasis or upwards;
- (f) makes a material omission in a statement relating to the affairs of the company;
- (g) knowing or believing that a false debt has been proved by a person under the winding up, fails for the period of one month to inform the liquidator thereof;
- (h) after the commencement of the winding up, prevents the production of a book or paper affecting or relating to the property or affairs of the company;
- (i) within twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of, a book or paper affecting or relating to the property or affairs of the company;
- (j) within twelve months next before the commencement of the winding up or at any time thereafter, makes or is privy to the making of a false entry in a book or paper affecting or relating to the property or affairs of the company;
- (k) within twelve months next before the commencement of the winding up or at any time thereafter, fraudulently parts with, alters or makes an omission in, or is privy to the fraudulent parting with, altering or making an omission in, a document affecting or relating to the property or affairs of the company;
- (l) after the commencement of the winding up or at any meeting of the creditors of the company within twelve months next before

the commencement of the winding up, attempts to account for a part of the property of the company by fictitious losses or expenses;

- (m) has within twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained a property for or on behalf of the company on credit which the company does not subsequently pay for;
- (n) within twelve months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, a property which the company does not subsequently pay for;
- (o) within twelve months next before the commencement of the winding up or at any time thereafter pawns, pledges or disposes of a property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing is in the ordinary way of the business of the company; or
- (p) makes a false representation or commits a fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up.

(2) It is a sufficient defence in proceedings for an offence under paragraph (a), (b), (c), (d), (f), (n), or (o) of subsection (1) if the accused proves that he had no intent to defraud, and in proceedings for an offence under paragraph (h), (i) or (j) of subsection (1) if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(3) Where a person pawns, pledges or disposes of a property in circumstances which amount to an offence under paragraph (o) of subsection (1), every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances commits an offence.

(4) For the purposes of this section, "officer" includes a person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

Penalty for falsification of books.

528. Any officer or contributory of a company being wound up who destroys, mutilates, alters or falsifies any books, papers, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the company with intent to defraud or deceive any person, commits an offence.

Frauds by officers of companies which have gone into liquidation.

529. A person commits an offence if he, being at the time of the commission of the offence an officer of a company which is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up,

- (a) has by false pretences or by means of any other fraud induced another person to give credit to the company;
- (b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of an execution against, the property of the company; or
- (c) with intent to defraud creditors of the company, has concealed or removed a part of the property of the company since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against the company.

Liability where paper accounts not kept.

530. (1) If, upon a company being wound up, it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, or the period between the incorporation of the company and the commencement of the winding up, whichever is the shorter, every officer of the company who was knowingly a party to the default of the company commits an offence, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on the fault was excusable.

(2) For the purposes of this section, proper books of account are deemed not to have been kept in the case of a company if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day-to-day in sufficient

detail of all cash received and cash paid, and, where the trade or business has involved dealing in goods, statements of the annual stocktakings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

Fraudulent trading.

531. (1) If in the course of the winding up of a company it appears that any business of the company has been carried on

- (a) with intent to defraud creditors of the company or the creditors of any other person or for any fraudulent purpose,
- (b) with reckless disregard of the company's obligation to pay its debts and liabilities, or
- (c) with reckless disregard of the insufficiency of the company's assets to satisfy its debts and liabilities,

the court, on the application of the Official Receiver or the liquidator or a creditor or contributory of the company may, if it thinks proper to do so, declare that any of the officers, whether past or present, of the company, or any other persons who were knowingly parties to the carrying on of the business in that manner, are personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company, as far as the court may direct.

(2) Where the court makes a declaration under subsection (1), it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular it may make any provision for making the liability of a person under the declaration a charge on any debt or obligation due from the company to him or on a mortgage or charge or an interest in a mortgage or charge, on any assets of the company held by or vested in him, or any company or persons on his behalf or any person claiming as assignee from or through the person liable or any person acting on his behalf, and may from time to time make such further order as may be necessary for the purpose of enforcing a charge imposed under this subsection.

(3) For the purposes of subsection (2), "assignee" includes a person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable

consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(4) Where a business of a company is carried on with such intent or for such purpose as is mentioned in subsection (1), every person who was knowingly a party to the carrying on of the business in that manner commits an offence.

(5) The provisions of this section have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made.

Power of court
to assess
damages against
delinquent
directors.

532. (1) If in the course of winding-up a company it appears that a person who has taken part in the formation or promotion of the company, or a past or present officer or liquidator of the company, has misapplied or retained or become liable or accountable for any money or property of the company or has committed a misfeasance or breach of trust in relation to the company, the court may, on the application of the Official Receiver or of the liquidator, or of a creditor or contributory, examine into the conduct of the promotor, 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, retainer, misfeasance or breach of trust as the court thinks just.

(2) The provisions of this section have effect notwithstanding that the offence is one for which the offender may be criminally liable.

Prosecution of
delinquent
officers and
members of a
company.

533. (1) If it appears to the court in the course of a winding up by the court, that a past or present officer, or a member, of the company has committed an offence in relation to the company for which he is criminally liable the court may, either on the application of a person interested in the winding up or on its own motion, direct the liquidator to refer the matter to the Director of Public Prosecutions.

(2) If it appears to the liquidator in the course of a voluntary winding up that a past or present officer, or a member, of a company has committed an offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the Director of Public Prosecutions and shall furnish to the Director such information and give to him such access to and facilities for inspecting and taking copies

of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as the Director may require.

(3) If it appears to the court in the course of a voluntary winding up that a past or present officer, or a member, of the company has committed an offence in relation to the company for which he is criminally liable, and that no report with respect to the matter has been made by the liquidator to the Director of Public Prosecutions under subsection (2), the court may, on the application of a person interested in the winding up or on its own motion direct the liquidator to make such a report, and on a report being made accordingly the provisions of this section have effect as though the report had been made in pursuance of subsection (2).

(4) Where a matter is reported or referred to the Director of Public Prosecutions under this section which he considers to be a case in which a prosecution ought to be instituted, the liquidator and every officer and agent of the company past and present (other than the defendant in the proceedings) shall give the Director of Public Prosecutions all assistance in connection with the prosecution, which the liquidator, officer or agent is reasonably able to give.

(5) For the purpose of subsection (4), "agent", in relation to a company, includes a banker or legal practitioner of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(6) If a person fails or neglects to give assistance in the manner required by subsection (4), the court may, on the application of the Director of Public Prosecutions, direct that person to comply with the requirements of that subsection, and where any such application is made with respect to a liquidator the court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application be borne by the liquidator personally.

(iii) Supplementary Provisions as to Winding Up

Disqualification
for appointment
as liquidator.

534. A corporation or an undischarged bankrupt is not qualified for appointment as liquidator of a company, whether in a winding up by the court or in a voluntary winding up, and

(a) any appointment made in contravention of this provision is void; and

(b) any corporation which or an undischarged bankrupt who, acts as liquidator of a company commits an offence.

Notification that a company is in liquidation.

535. Where a company is being wound up, whether by the court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

Failure to comply with section 535.

536. If default is made in complying with section 535, the company and every officer of the company and every liquidator of the company and every receiver or manager, who knowingly authorises or permits the default, commits an offence.

Exemption of certain documents from stamp duty on winding up of companies.

537. (1) In the case of a winding up by the court, or of a creditors' voluntary winding up, of a company,

(a) every assurance relating solely to freehold or leasehold property, or to any mortgage, charge or other incumbrance on, or any estate, right or interest in, any real or personal property, which forms part of the assets of the company and which, after the execution of the assurance, either at law or in equity, is or remains part of the assets of the company, and

(b) every power of attorney, proxy, writ, order, certificate, affidavit, bond or other instrument or writing relating solely to the property of a company which is being so wound up or to a proceeding under any such winding-up,

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is exempt from duties chargeable under the Stamp Act.

(2) In subsection (1), "assurance" includes deed, conveyance, assignment, transfer and surrender.

Books of company to be evidence.

538. Where a company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be recorded in such books and papers.

Disposal of books and papers of companies.

539. (1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of,

- (a) in the case of a winding up by the court, in such manner as the court directs;
- (b) in the case of a members' voluntary winding up, in such manner as a general meeting of the company by ordinary resolution directs; and
- (c) in the case of a creditors' voluntary winding-up, in such manner as the committee of inspection or, if there is no such committee, as a meeting of the creditors of the company, by resolution directs.

(2) After five years from the dissolution of the company no responsibility rests on the company, the liquidators or a person to whom the custody of the books and papers has been committed, by reason of a book or paper not being forthcoming to a person claiming to be interested therein.

(3) Provision may be made by rules made under section 549 for enabling the court to prevent, for such period (not exceeding five years from the dissolution of the company) as the court thinks proper, the destruction of the books and papers of a company which has been wound up, and for enabling a creditor or contributory of the company to make representations to the court.

(4) If a person acts in contravention of any rules made under section 549 for the purposes of this section or of any direction of the court thereunder, he commits an offence.

Information as to pending liquidations.

540. (1) Where a company is being wound up and 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, send to the Registrar a statement in the prescribed form containing the prescribed particulars with respect to the proceedings in the winding up and the position of the liquidator.

(2) A person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent,

at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy or extract of the statement.

(3) A liquidator who fails to comply with this section, commits an offence and a person untruthfully stating himself as provided in subsection (2) to be a creditor or contributory commits the offence of contempt of court, and is, on the application of the liquidator or of the Official Receiver, punishable accordingly.

Unclaimed assets.

541. (1) If it appears from a statement sent to the Registrar under section 540 or otherwise that a liquidator has in his hands or under his control any money

- (a) representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt, or
- (b) held by the company in trust in respect of dividends or other sums due to a person as a member of the company,

the liquidator shall forthwith pay that money into court, and shall be entitled to the prescribed certificate of receipt for the money so paid, and that certificate shall be an effectual discharge to him in respect of the payment.

(2) A person claiming to be entitled to any money paid into court in pursuance of this section may apply to the court for payment thereof, and the court 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.

(iv) Supplementary Powers of Court

Meetings to ascertain wishes of creditors or contributories.

542. The court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any sufficient evidence, and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court.

Affidavits.

543. (1) Any affidavit required to be sworn under the provisions or for the purposes of this Part may be sworn in the Gambia or elsewhere

before any court, judge, magistrate, or person lawfully authorised to take and receive affidavits.

(2) All courts, judges, magistrates, justices of the peace, commissioners and person acting judicially shall take judicial notice of the seal or stamp or signature, as the case may be, of any such court, judge, magistrate or person attached, appended, or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part.

(v) Provisions as to Dissolution

Power of court to declare dissolution of company void.

544. (1) Where a company has been dissolved (otherwise than pursuant to section 545) 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) The person on whose application the order was made shall, within seven days after the making of the order, or such further time as the court allows, lodge with the Registrar a copy of the court order, and if that person fails so to do he commits an offence.

Registrar may strike defunct company off register.

545. (1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he may send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the Registrar does not within one month of sending the letter receive any answer to his letter he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the *Business Gazette* with a view to striking the name of the company off the register.

(3) If the Registrar receives an answer to the effect that the company is not carrying on business or in operation, or does to within one month

after sending the second letter receive any answer, he may publish in the *Business Gazette*, 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 that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months, the Registrar shall publish in the *Business Gazette* and send to the company or the liquidator 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 *Business Gazette*, and on the publication of the notice the company shall be dissolved, but

- (a) the liability of every director, officer, and member of the company continues and may be enforced as if the company had not been dissolved; and
- (b) nothing in this subsection affects the power of the court to wind-up a company the name of which has been struck off the register.

(6) If the company or a member or creditor the company feels aggrieved by the company having been struck off the register, the court on an application made by the company or member or creditor before the expiration of twenty years from the publication in the *Business Gazette* of the notice may, if satisfied that the company was at the time of the striking off carrying on business or in operation or otherwise that it is just that the company should be restored to the register, order the name of the company to be restored to the register, and upon a copy of the order being delivered to the Registrar for registration the company is deemed to have continued in existence as if its name had not been struck off.

(7) Where the court makes an order under subsection (6) it may by that order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(8) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director or other officer of the company or if there is no director or other officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the articles of incorporation, addressed to him at the address mentioned in the articles of incorporation.

Outstanding
assets of
defunct
company to
vest in
Official
Receiver.

546. (1) Where, after a company has been dissolved, there remains any outstanding property, real or personal, including things in action and whether within or outside The Gambia, which was vested in the company or to which it was entitled, or over which it had a disposing power at the time it was dissolved, but which has not been realised or otherwise disposed of or dealt with by the company or its liquidator, such property shall, for the purpose of this section and notwithstanding any enactment or rule of law to the contrary, by the operation of this section be and become vested in the Official Receiver for all the estate and interest therein, legal or equitable, of the company or its liquidator at the date the company was dissolved, together with all claims, rights and remedies which the company or its liquidator then had in respect thereof.

(2) Where a claim, right or remedy of the liquidator may under this Act be made, exercised or availed of only with the approval or concurrence of the court or some other person, the Official Receiver may for the purposes of this section make, exercise or avail himself of that claim, right or remedy without such approval or concurrence.

(3) Subject to subsection (4), property vested in the Official Receiver by operation of this section is liable and subject to all charges, claims and liabilities imposed thereon or affecting such property by reason of any statutory provision as to rates, taxes, charges or any other matter or thing to which such property would have been liable or subject had such property continued in the possession, ownership or occupation of the company.

(4) There shall not be imposed on the Official Receiver or the State any duty, obligation or liability to do or suffer any act or thing required by a statutory provision to be done or suffered by the owner or occupier other than the satisfaction or payment of any charges, claims, or liabilities out of the assets of the company so far as they are, in the opinion of the Official Receiver, properly available for and applicable to such payment.

Disposal of
moneys.

547. (1) Upon proof to the satisfaction of the Official Receiver that there is vested in the Official Receiver by operation of section 548 or in accordance with the provisions similar to the provisions of section 555, any estate or interest in property, whether solely or together with any other person, of a beneficial nature and not merely held in trust, the Official Receiver may get in, sell or otherwise dispose of or deal with the estate or interest or any part thereof as he sees fit.

(2) The Official Receiver may sell or otherwise dispose of or deal with any property solely or in concurrence with any other person in such manner for such consideration, by public auction, public tender or private contract upon such terms and conditions as the Official Receiver thinks fit, with power to rescind any contract and resell or otherwise dispose of or deal with any such property as he thinks expedient, and may make, execute and give such contracts, instruments and documents as he thinks necessary.

(3) The Official Receiver shall be remunerated by such commission, whether by way of percentage or otherwise as is prescribed in respect of the exercise of powers conferred by section (1).

(4) The moneys received by the Official Receiver in the exercise of any of the powers conferred on him by this section shall be applied in defraying all costs, expenses, commission and fees incidental thereto and thereafter to any payment authorised by section 546 or this section and the surplus, if any, shall be paid into such account as may be prescribed, and the same shall, subject to the rules made under section 549, be dealt with according to orders of the court.

(5) Any claim, suit, or action for or in respect of any moneys paid into the prescribed account shall be presented, made, or instituted within twenty years next after the dissolution of the company, after the expiration of which period of time all moneys then or at any time thereafter standing to the credit of the prescribed account shall, if there be no such claim, suit, or action pending, or any order of the court to the contrary, be paid into the Consolidation Revenue Fund.

Penalty for
offences
committed
under this
Chapter.

548. A person who commits an offence under the provisions of this Act is liable on conviction to a fine not exceeding ten thousand dalasis or to a term of imprisonment not exceeding five years, or both.

(vi) Rules

Rules.

549. Rules for carrying this Part into effect as far as relates to procedure, winding up and fees and costs in connection therewith, may be made in like manner as rules may be made under and for the purposes of the court's Act.

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CHAPTER VI

WINDING UP OF UNREGISTERED COMPANIES

"Unregistered company."

550. (1) For the purposes of this Chapter, "unregistered company" includes

- (a) an external company;
- (b) any partnership, whether limited or not, or association consisting of more than seven members; or
- (c) a body corporate not incorporated or continued under this Act, and any unincorporated body.

(2) An unregistered company under subsection (1) does not include

- (a) a company incorporated or continued under this Act; or
- (b) any society or association established under an enactment and designated by the Minister by order published in the *Business Gazette*.

(3) The provisions of this Chapter are in addition to and not in restriction of any provisions contained in this Act with respect to the winding up of 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 the winding up of companies.

(4) The Minister may make an order for the purposes of paragraph (b) of subsection (2).

Winding up of
unregistered
companies.

551. (1) Subject to this Chapter, an unregistered company may be wound up under this Part, which Part shall apply to an unregistered company with the following adaptations:

- (a) the principal place of business of the company in The Gambia is for all the purposes of the winding-up the registered office of the company;
- (b) no such company shall be wound up voluntarily;
- (c) the circumstances in which the company may be wound up are:
 - (i) if the company is dissolved or has ceased to have a place of business in The Gambia or has a place of business only for the purpose of winding-up its affairs or has ceased to carry on business;
 - (ii) if the company is unable to pay its debts;
 - (iii) if the court is of the opinion that it is just and equitable that the company should be wound up; or
 - (iv) in the case of an external company, in such a case as is referred to in paragraph (d) of section 438.

(2) An unregistered company is deemed to be unable to pay its debts if

- (a) a creditor to whom the company is indebted in a sum exceeding five thousand dalasis 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 on a person authorised by an external company to accept service of process, or by otherwise serving in such manner as the court approves or directs, a written demand 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 compound for it to the satisfaction of the creditor;
- (b) any action or other proceeding has been instituted against a member for 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 of business or by delivering it to the secretary or some director, manager or principal officer of the company, or on a person authorised by an external company to accept service of process, or by otherwise serving it in such manner as the court approves or directs, the company has not within three weeks 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 thereof;

- (c) execution or other process issued on a judgment, decree or order obtained in any court in favour of a creditor against a company or a member thereof as such or a person authorised to be sued as nominal defendant on behalf of the company is returned unsatisfied;
- (d) it is proved to the satisfaction of the court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities; or
- (e) it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts as they fall due.

(3) A company incorporated outside The Gambia may be wound up as an unregistered company under this Chapter notwithstanding that it is being wound up or has been dissolved or had otherwise ceased to exist as a company under or by virtue of the laws of the place under which it was incorporated.

(4) The money sum for the time being specified in subsection (2) is subject to increase or reduction by regulation under section 564, but no increase in the sum so specified affects any case in which the winding up petition was presented before the coming into force of the increase.

552. (1) On an unregistered company being wound up every person is a contributory

- (a) who is liable to pay or contribute to the payment of
 - (i) a debt or liability of the company,

Contributories
in winding up
of unregistered
company.

- (ii) a sum for the adjustment of the rights of the members among themselves, or
 - (iii) the costs and expenses of winding up, or
- (b) where the company has been dissolved in the place in which it is formed or incorporated, who immediately before the dissolution was so liable,

and every contributory is liable to contribute to the assets of the company all sums due from him in respect of any such liability.

(2) On the death or bankruptcy of a contributory the provisions of this Act with respect to the personal representatives of deceased contributories and the trustees of bankrupt contributories respectively apply.

Power of court to stay or restrain proceedings.

553. (1) 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 a contributory of the company.

(2) Where an order has been made for winding up an unregistered company no action or proceeding shall be proceeded with or commenced against a contributory of the company in respect of a debt of the company except by leave of the court and subject to such terms as the court imposes.

Effect of earlier references.

554. (1) A reference in a corporate instrument of a body corporate to the former Act or a procedure under the former Act is, in relation to a former Act company continued under this Act, to be construed as a reference to the provisions of this Act or procedure thereunder.

(2) When there is no equivalent provision in this Act to the provision in this Act to the provision or procedure in or under the former Act referred to in the corporate instrument of a body corporate, the provision or proceeding of the former Act is to be applied, and stands unrepealed to the extent necessary to give effect to that reference in the corporate instrument.

Outstanding
assets of defunct
unregistered
company.

555. (1) Where an unregistered company has been dissolved and there remains in The Gambia an outstanding property which was vested in the company or to which it was entitled or over which it had a disposing power at the time it was dissolved, but which was not got in, realised, or otherwise disposed of or dealt with, by the company or its liquidator before the dissolution, the property shall, by the operation of this section become vested for all the estate and interest therein, legal or equitable, of the company or its liquidator at the date the company was dissolved, in such person as is entitled thereto according to the law of the place of incorporation or origin of the company.

(2) Where the place of origin of an unregistered company is The Gambia, the provisions of sections 546 and 547 apply with such adaptations as may be necessary in respect of that company.

PART VIII - MISCELLANEOUS

General
penalties.

556. (1) A person who commits an offence under this Act is, if no penalty is provided for that offence, liable on conviction to a fine not exceeding ten thousand dalasis and in default of payment of the fine, to a term of imprisonment not exceeding five years.

(2) A person who fails to comply with a provision made or direction given under this Act, for which a penalty is not prescribed, is liable to a fine not exceeding ten thousand dalasis and in default of payment of the fine, to a term of imprisonment not exceeding five years.

Defence with
respect to
prospectuses.

557. In a prosecution for an offence under this Act arising out of an untrue statement or wilful non-disclosure in a prospectus, it is a defence for the person charged to prove that the statement or non-disclosure was immaterial, or that he had reasonable grounds to believe, and did, up to the time of the issue of the prospectus, believe that the statement was true or non-disclosure was immaterial.

Order to
comply.

558. When a person is convicted of an offence under this Act in which proceedings in respect of the offence are taken, the court may, in addition to any punishment it may impose, order that person to comply with the provision of this Act for the contravention of which he has been convicted.

Civil remedies
unaffected.

559. No civil remedy for an act or omission is affected by reason that the act or omission is an offence under this Act.

References to former Act.

560. (1) A reference in an unrepealed enactment to the former Act is, as regards a transaction, matter or things subsequent to the coming into force of this Act to be construed and applied, unless the context otherwise requires, as a reference to the provisions of this Act that relate to the same subject-matter as the provisions of the former Act.

(2) Where there are no provisions in this Act that relate to the same subject-matter as referred to in subsection (1), the former Act is to be construed and applied as unrepealed so far as is necessary to do so to maintain or give effect to the unrepealed provision.

Transitional.

561. (1) Where in any enactment the expression "registered under the Companies Act" occurs, the expression, unless the context otherwise requires, refers to incorporation, continuation or registration under this Act in respect of all transactions, matters or things subsequent to the coming into force of this Act.

(2) Where in any enactment the expression "memorandum of association" or "articles of association" occur, those expressions, unless the context otherwise requires, refer respectively to articles of incorporation and by-laws within the meaning of this Act.

(3) Where in any enactment a reference is made to winding up under, or to the winding up provisions of, the former Act, then, unless the context otherwise requires, it refers, in respect of all transactions, matters or things subsequent to the commencement date, to winding up or dissolution under this Act.

Security of costs.

562. Where a company is plaintiff in any action or other legal proceeding any judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs and may stay all proceedings until the security is given.

Power of court to grant relief in certain cases.

563. (1) If in any proceeding for negligence, default, breach of duty or breach of trust against person to whom this section applies it appears to the court hearing the case that that person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty

or breach of trust, that court may relieve him, either wholly or partly, from his liability on such terms as the court may think fit.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the court for relief, and the court on any such application shall have the same power to relieve him as under this section it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

(3) Where any case to which subsection (1) applies is being tried by a judge, the judge, after hearing the evidence, may, if he is satisfied that the defendant ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, enter judgment for the defendant on such terms as to costs or otherwise as the judge may think proper.

(4) The persons to whom this section applies are

- (a) the directors, managers or officers of a company; and
- (b) the persons employed by a company as auditors.

Regulations.

564. The Minister may make regulations for the better administration of this Act, and, in particular, he may make regulations

- (a) prescribing any matter required or authorised by this Act to be prescribed;
- (b) requiring the payment of a fee in respect of the filing, examination or copying of any documents or in respect of any action that the Registrar is required or authorised to take under this Act, and prescribing the amount thereof;
- (c) prescribing the fee payable for documents issued by companies;
- (d) prescribing the format and contents of returns, notices or other documents required to be sent to the Registrar or to be issued by him;
- (e) prescribing the rules with respect to exemptions permitted by this Act;

-
- (f) respecting the names of companies or classes thereof;
 - (g) respecting the authorised capital of companies;
 - (h) respecting the preferences, rights, conditions, restrictions, limitations or prohibitions attaching to shares or classes or series of shares of companies;
 - (i) respecting the designation of classes of shares; and
 - (j) prescribing the ineligibility of a person to be appointed as an auditor as provided in subsection (2) of section 219;
 - (k) respecting any other matter required for the efficient administration of this Act.

Repeal.
Cap. 95:01

565. (1) The Companies Act is repealed.

(2) Notwithstanding subsection (1),

- (a) the provisions of the Companies Act continue to apply so far as is necessary to enable a former Act company lawfully to function until it is continued under this Act or wound up.
- (b) if on the coming into force of this Act, any proceedings under the former Act are pending in respect of the winding-up of a body corporate under that Act, those proceedings may be continued under that Act as if this Act had not been enacted.

(3) When, on the coming into force of this Act, an amalgamation agreement entered under the former Act and approved by the court under that Act is in the course of being filed with the Registrar General or is in his hands, the amalgamation may be continued and effected under that Act as if this Act had not been enacted, unless the parties to the amalgamation withdraw the amalgamation agreement by notice in writing.

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FIRST SCHEDULE

PART I

Articles of Incorporation for a Private Company Limited by Shares

1. The name of the company is John Ceesay & Co., Limited.

2. The nature of the businesses which the company is authorised to carry on are,

(a) to acquire and take over as a going concern the business of storekeeper now carried on at 1116 High Street, Banjul under the style of John Ceesay & Co., and all or any of that business used in connection therewith or belonging thereto and with a view thereto to enter into an agreement a draft of which has for the purposes of identification been signed by the subscriber of these Regulations, and to carry the same into effect with or without modifications;

(b) to carry on the business of a storekeeper in all its branches at 1116 High Street, Banjul or elsewhere and, in particular, to buy, sell and deal in goods, stores, consumable articles and effects of all kinds, both wholesale and retail.

3. Pursuant to section 19 of the Companies Act, 1994 the company has, for the furtherance of its authorised businesses, all the powers of a natural person of full capacity except in so far as such powers are expressly excluded by these Articles of Incorporation.

4. The first directors of the company are John Brown and Moussa Jallow.

5. The powers of the board of directors are limited in accordance with section 98 of the Companies Act.

6. The liability of the members of the company is limited.

7. The company is to be registered with 1000 shares of no par value.

8. The company is a private company and accordingly,
- (a) the right to transfer shares is restricted in manner following, that is to say, the directors may, in their absolute discretion and without assigning any reason therefore, decline to register any transfer of any share;
 - (b) the number of members and debentureholders of the company, exclusive of persons who are **bona fide** in the employment of the company and of persons who having been formerly **bona fide** in the employment of the company were while in such employment, and have continued after the determination of such employment to be, members or debentureholders of the company, is limited to fifty:

Provided that where two or more persons hold one or more shares or debentures jointly they shall for the purposes of this regulation be treated as a single member;

- (c) the company is prohibited from making any invitation to the public to acquire any of its shares or debentures;
- (d) the company is prohibited from making any invitation to the public to deposit money for fixed periods or payable at call, whether bearing or not bearing interest.

Shares and Variation of Rights

9. The company may, by special resolution altering these Articles,

- (a) increase the number of its shares by creating new shares;
- (b) reduce the number of its shares by cancelling shares which have not been taken or agreed to be taken by any person, or by consolidating its existing shares, whether issued or not, into a smaller number of shares;
- (c) provide for different classes of shares by attaching to certain of the share preferred, deferred or other special rights or restrictions whether in regard to dividend, voting, repayment, or otherwise;

- (d) in accordance with section 45 of the Act create redeemable shares which are, or at the option of the company are liable, to be redeemed on such terms and in such manner as may be provided, but subject to compliance with the provisions of sections 43 to 45 of the Act.

10. (1) The Company shall not issue any new or unissued shares for cash unless the same are offered in the first instance to all the shareholders or to all the shareholders of the class or classes being issued in proportion as nearly as may be to their existing holdings.

(2) The offer to the existing shareholders shall be by notice specifying the number of shares to which the shareholder is entitled to subscribe and limiting a time, not being less than twenty-eight days after the date of service of the notice, after the expiration of which the offer, if not accepted, will be deemed to be declined.

(3) After the expiration of such time, or on receipt of an intimation from the shareholder that he declines to accept the shares offered, the board of directors may, subject to the terms of any resolution of the company and to the provisions of section 98 of the Act, dispose of the same at a price not less than that specified in the offer in such manner as they think most beneficial to the company.

(4) This article shall not be alterable except with the unanimous consent of all the members of the company.

11. If at any time the shares are divided into different classes, the rights attached to any class may be varied with the written consent of the holders of at least three-fourths of the issued shares of that class or the sanction of a special resolution of the holders of the shares of that class.

12. Subject to compliance with the provisions of sections 43 to 45 of the Act the company may exercise the powers conferred by section 43 of the Act to,

- (a) purchase its own shares;
- (b) acquire its own shares by voluntary transfer to it or nominees for it;
- (c) forfeit in manner hereinafter appearing any shares issued with an unpaid liability for non-payment of calls or other sums payable in respect thereof.

13. The company may pay commission or brokerage to any person in consideration of his subscribing or agreeing to subscribe or agreeing to procure subscriptions for any shares in the company provided that the payment does not exceed ten **per centum** of the price at which the shares are issued.

14. The company shall issue share certificates to its shareholders.

Calls on Shares

15. (1) Where shares are issued upon the terms that any part of the price payable therefor is not payable at a fixed time, the board of directors may from time to time make calls upon the shareholders in respect of any moneys unpaid on their shares, provided that no call shall be payable less than twenty-eight days from the date fixed for the payment of the last proceeding call, and each shareholder shall, subject to receiving not less than fourteen days notice specifying the time or times and place of payment, pay to the company at the time or times and place so specified the amount called upon his shares.

(2) A call may be revoked or postponed as the directors may determine.

16. A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed and may be required to be paid by instalments.

17. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

18. If a sum called in respect of a share is not paid before or on the day appointed for payment, the person from whom the sum is due shall pay interest thereon from the date appointed for payment to the time of actual payment at such rate not exceeding five **per centum per annum** as the board of directors may determine, but the board of directors shall be at liberty to waive payment of such interest wholly or in part.

19. Any sum which by the terms of issue of a share becomes payable on application therefor or on allotment or at any fixed date shall for the purposes of these articles be deemed to be a call duly made and payable on the date on which by the terms of issue the same becomes payable, and in the case of non-payment all the relevant provisions of these articles as to payment of interest and expenses, forfeiture, sale or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.

20. As between shares of the same class the company shall not differentiate between the holders as to the amount of calls to be paid or the times of payment.

21. If the company shall receive from any shareholder all or any part of the moneys not presently payable or called upon any shares held by him the sum shall not be treated as a payment in respect of the shares until such sum becomes due and payable on such shares and in the mean time shall be deemed to be a loan to the company upon which the company may pay interest at such rate not exceeding five **per centum per annum** as may be agreed between the board of directors and such shareholder.

Forfeiture of Shares

22. If a shareholder fails to pay any call or instalment of a call, including any sum deemed to be called under article 19 hereof, the board of directors may at any time thereafter during such time as any part of the 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.

23. The notice shall name a further day not earlier than the expiration of fourteen days from the date of service of the notice on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the times appointed the shares in respect of which the call was made will be liable to be forfeited.

24. If the requirements of such notice 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.

25. A forfeited share may either be cancelled by alteration of these Articles, or may be retained as a treasury share until sold or otherwise disposed of on such terms and in such manner as the board of directors think fit.

26. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares and shall be bound to surrender to the company for cancellation the share certificate or certificates in respect of the shares so forfeited but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of the forfeiture, were payable by him to the company in respect of the shares, but his liability shall cease if and when the

company shall have received payment in full of all such moneys in respect of the shares.

27. A statutory declaration in writing that the declarant is a director or the secretary of the company and that a share in the company has been duly forfeited on the 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.

Lien

28. (1) The company shall have a first and paramount lien on all shares issued with an unpaid liability for all moneys, whether presently payable or not, called or payable at a fixed time in respect of that share.

(2) The company's lien shall extend to all dividends payable thereon.

29. If any sum in respect of which the company has a lien is presently payable, the board of directors, after serving the notice required by articles 22 and 23 hereof, may, at any time before the payment required by such notice has been made, sell any share on which the company has such lien instead of forfeiting it in accordance with article 24 hereof.

30. (1) To give effect to any such sale the board of directors may authorise some person to transfer the shares sold to the purchaser thereof.

(2) The purchaser shall be registered as the holder of the share comprised in such transfer and he shall not be bound to see to the application of the purchase money nor shall the title to his shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

31. The proceeds of such sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue, if any, shall, subject to a like lien for sums not presently payable as existed upon the shares before the sale, be paid to the person entitled to the share at the date of the sale but the company shall not be bound to make such payment unless and until such person has surrendered to the company for cancellation his share certificate or certificates relating to the shares so sold.

Transfer and Transmission of Shares

32. Subject to Article 8 (a) hereof shares shall be transferable and transfers shall be registered in the manner provided by sections 188 and 192 of the Act.

33. In the event of the death of any shareholder or in the event of the ownership of any share devolving upon any person by reason of his being the legal personal representative, receiver, or trustee in bankruptcy of the holder, or by operation of law, the provisions of the Act shall apply.

Dividends

34. The company may, by ordinary resolution, declare dividends in respect of any year or other period but no dividend shall exceed the amount recommended by the board of directors.

35. No dividend shall be paid unless,

- (a) the company will, after such payments, be able to pay its debts as they fall due;
- (b) the amount of such payment does not exceed the amount of the company's income surplus immediately prior to the making of such payment.

36. The board of directors may, before recommending any dividend, set aside out of the profits or income surplus of the company such sums as they think proper in order to provide for a known liability, including a disputed or contingent liability, or as a depreciation or replacement provision and may carry forward any profits or income surplus which they may think prudent not to distribute.

37. All dividends shall be declared and paid as a fixed sum **per** share and not as a proportion of the amount paid in respect of a share.

38. The board of directors may deduct from any dividend payable to any shareholder all sums of money presently payable by him to the company in respect of his shares.

39. (1) Any dividend payable in cash may be paid by cheque or warrant sent by post directed to the registered address of the shareholder or, in the case of joint holders, to the registered address of that one who is first named on the register of members, or to such person and to such address as the holder or joint holders may in writing direct. Every

such cheque or warrant shall be made payable to the order of the person to whom it is sent.

(2) Any one of two or more joint holders may give effectual receipts for the dividends.

(3) Every dividend payment shall be accompanied by a statement showing the gross amount of the dividend, and any tax deducted or deemed to be deducted therefrom.

40. No dividend shall bear interest against the company.

Capitalisation Issues and Non-Cash Dividends

41. The company, upon the recommendation of the directors, may exercise the powers conferred by section 48 of the Act

- (a) to make capitalisation issues of shares;
- (b) to resolve that any sum standing to the credit of the company's income surplus and which could have been distributed by way of dividend shall be applied in paying up amounts for the time being unpaid on shares;
- (c) to direct that payment of a dividend shall be wholly or partly by distribution of securities for money or fully paid shares or debentures of another body corporate or of fully paid debentures of the company.

Accounts and Audit

42. The board of directors shall cause proper books of account to be kept and prepare financial statements in accordance with Chapter I of Part III of the Act.

43. Auditors, qualified in accordance with section 217 of the Act, shall be appointed under section 221 and their duties regulated in accordance with sections 227 to 233 of the Act.

General Meetings and Resolutions

44. The powers of the members in general meeting shall be as stated in section 120 of the Act.

45. Annual general meetings shall be held in accordance with section 124 of the Act.

46. Extraordinary general meetings may be convened by the directors whenever they think fit and shall be convened by the directors on a requisition of members in accordance with section 148 of the Act.

47. Notice of general meetings shall be given in accordance with sections 127 and 128 of the Act and accompanied by any statements required to be circulated therewith.

48. Meetings may be attended by every member, director, secretary and auditor of the company but a member shall not be entitled to attend unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

49. The quorum required for any general meeting shall be as stated in section 142 of the Act.

50. (1) In accordance with section 155 of the Act any member entitled to attend and vote at a meeting of the company shall be entitled to appoint another person, whether a member of the company or not, as his proxy to attend and vote instead of him and such proxy shall have the same rights as the member to speak at the meeting.

(2) An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit:

"John Ceesay & Co., Limited"

" I/We being a member/members of the above-named company hereby appoint of or failing him of as my/our proxy to vote for me/us on my/our behalf at the annual/extraordinary general meeting of the company to be held on the day of19 and at any adjournment thereof.

Signed this day of 19...

This form is to be used:-

*in favour of resolution numbered 1
against

*in favour of resolution numbered 2.
against

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[Delete if only one resolution is to be proposed; add further instructions if more than two resolutions are to be proposed.]

Unless otherwise instructed, the proxy will vote as he thinks fit.

Strike out whichever is not desired.

51. A body corporate which is a member of the company may attend and vote either by proxy or by a representative appointed in accordance with section 155 of the Act.

52. Meetings shall be conducted in accordance with section 146 of the act and on a poll being demanded the Chairman of the meeting shall not be required to direct a postal ballot unless he thinks fit or an ordinary resolution to that effect is moved at the meeting and passed on a show of hands.

53. In accordance with section 147 of the Act a resolution in writing signed by all the members for the time being entitled to attend and vote at general meetings, or being bodies corporate by their duly authorised representatives, and if the company has only one such member by that member shall be as valid and effective for all purposes, except as provided by that section, as if the same had been passed at a general meeting of the company duly convened and held, and if described as a special resolution shall be deemed to be a special resolution within the meaning of the Act.

54. The company shall keep minutes of its general meetings.

55. If at any time the shares of the company are divided into different classes the foregoing articles shall apply to a meeting of any class of members in like manner as they apply to general meetings.

Votes of Members

56. Subject to any rights or restrictions for the time being attached to any class of redeemable shares,

- (a) on a show of hands each member and each proxy lawfully present at the meeting shall have one vote, and on a poll each member present in person or by proxy shall have one vote for each share held by him;
- (b) in the event of a postal ballot being directed, each member entitled to attend and

vote at the meeting shall have one vote for each share held by him.

Directors

57. The number of directors, not being less than two or more than five shall be determined by ordinary resolution of the members in general meeting and until so determined shall be two.

58. The continuing directors may act notwithstanding any vacancy in their body but if and so long as their number is reduced below two or below the number fixed by the directors as the necessary quorum they may act for four weeks after the number is so reduced, but thereafter may act only for the purpose of increasing their number to that number or of summoning a general meeting of the company and for no other purpose.

59. The appointment of directors shall be regulated by sections 66 and 333 of the Act.

60. The persons referred to in section 67 of the Act shall not be competent to be appointed directors of the company.

61. A director need not be a member of the company or hold any shares therein.

62. The office of director shall be vacated in accordance with section 69 of the Act and any director may be removed from office in accordance with section 70 of the Act.

63. (1) The company may appoint alternative directors in accordance with section 72 of the Act.

(2) An alternative director shall not be entitled to be remunerated otherwise than in the manner prescribed by the shareholders appointing him.

64. At least one director of the company shall at all times be present in The Gambia.

65. The remuneration payable to any director in whatsoever capacity shall be determined or approved by the directors in accordance with section 78 of the Act.

66. The proceedings of the directors shall be regulated by section 90 of the Act and the board of directors may delegate any of their powers to committees of the directors in accordance with that section.

67. Minutes of meetings of the board of directors and of any committee of directors shall be kept in accordance with section 97 of the Act.

Powers and Duties of Directors

68. (1) The business of the company shall be managed by the directors who may pay all expenses incurred in promoting and registering the company.

(2) Subject to section 98 of the Act, the board of directors may exercise all such powers of the company, including power to borrow money and to mortgage or charge its property and undertaking or any part thereof and to issue debentures, as are not by the Act or these Articles required to be exercised by the members in general meeting.

69. In any transaction with the company or on its behalf and in the exercise of their powers the directors shall observe the duties and obligations imposed on them by section 100 and 101 of the Act.

70. Subject to compliance with section 103 of the Act, a director may enter into any contract with the company and such contract or any other contract of the company in which any director is in any way interested shall not be liable to be avoided nor shall any director be liable to account for any profit made thereby by reason of the director holding the office of director or of the fiduciary relationship thereby established.

71. Any director may act by himself or his firm in a professional capacity for the company, except as auditor, and he or his firm shall be entitled to proper remuneration for professional services as if he were not a director.

Executive and Managing Directors

72. The board of directors may exercise the powers conferred by section 76 of the Act to appoint one or more of their body to any other office or place of profit under the company, other than the office of auditor, for such period and on such terms as they may determine and, subject to the terms of any agreement entered into in any particular case, may revoke such appointment.

73. (1) The board of directors may exercise the power conferred by section 77 of the Act to appoint one or more of their body to the office of managing director for such period and on such terms as they may determine and, subject to the terms of any agreement entered into in any particular case, may revoke such appointment and such appointment shall be

automatically determined if the holder of the office ceases from any cause to be a director.

(2) The directors may entrust to and confer upon a managing director any of the powers exercisable by them upon such terms and with such restrictions as they think fit, and either collaterally with, or on the exclusion of, their own powers, and subject to the terms of any agreement entered into in any particular case, may from time to time revoke or vary all or any of such powers.

74. No remuneration shall be payable to any director in respect of any office or place of profit to which he is appointed under the foregoing regulations unless and until the terms of his appointment have been approved by ordinary resolution of the company in general meeting in accordance with section 78 of the Act.

Secretary and Officers and Agents

75. The Secretary shall be appointed by the board of directors for such time, at such remuneration, and upon such conditions as they think fit; and any secretary so appointed may be removed by them, subject however to his right to claim damages if removed in breach of contract.

76. A provision in the Act or these Articles requiring or authorising a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the secretary.

77. (1) The board of directors may from time to time appoint officers and agents of the company and may appoint any body corporate, firm, or body of persons, whether nominated directly or indirectly, by the board of directors, to be the attorney or attorneys of the company for such purposes and with such powers, authorities and discretions, not exceeding those vested in or exercisable by the directors under these articles, and for such period and subject to such conditions as they may think fit.

(2) Any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors may think fit and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

The Seal

78. The directors shall provide for the safe custody of the seal, which shall only be used by the authority of the

board of directors or of a committee of the directors authorised by the board of directors in that behalf, and every instrument to which the seal shall be affixed shall be signed by a director, and shall be countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.

Service of Documents

79. Any document may be served by the company on any member, debentureholder or director of the company.

Winding up

80. (1) If the company is wound up the liquidator may, with the sanction of a special resolution of the company and any other sanction required by the Insolvency Act, 1992 and the Act, divide amongst the members in specie or kind the whole or any part of the assets of the company, whether they shall consist of property of the same kind or not, and may for such purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members.

(2) The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the members as the liquidator, with the like sanction, shall think fit.

(3) Notwithstanding the foregoing no member shall be compelled to accept any securities whereon there is any liability.

Interpretation

81. In these articles, unless the context otherwise requires,

- (a) "Act" means the Companies Act, 1994; or any statutory modification or re-enactment thereof;
- (b) words or expressions shall have the same meaning as in the Act.
- (c) references to sections of the Act shall mean such sections as modified or re-enacted from time to time.

I the undersigned am desirous of forming an incorporated company in pursuance of these articles and I agree to take the number of shares in the company set opposite my name and to pay therefor in cash the consideration stated.

Name, Address and Description or Occupation of Subscriber	Number of Shares	Consideration Payable in Cash
John Ceesay of 1116, High Street Banjul, Storekeeper	100	D100.00
Dated the 22nd day of June 1994		
Witness to the above signature:		
Name: John Brown		
Address: #16 Apple Street, Banjul		
Description or Occupation: Legal Practitioner		

PART II

**Articles of Incorporation for a Public Company
Limited by Shares**

1. The name of the company is Fair Trade Investments, PLC.
2. The nature of the businesses which the company is authorised to carry on are,
 - (a) to purchase, take concessions of, lease, or otherwise acquire any mines, mining rights, and metalliferous land in The Gambia or elsewhere and any interest therein, and to explore, work, exercise, develop, and turn the same to account;
 - (b) to crush, win, get, quarry, smelt, calcine, refine, dress, amalgamate, manipulate, and prepare for market, ore, metal and mineral substances of all kinds.
3. Pursuant to section 19 of the Companies Act, 1994, the company has, for the furtherance of its authorised businesses all the powers of a natural person of full capacity except in so far as such powers are expressly excluded by these articles.

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4. The first directors of the company are,
John Ceesay
Moussa Jallow
Mamoudou Njie
John Brown
Harry Doe
Babatunde Lagos, and
Henry Smith.

5. The powers of the board of directors are limited in accordance with section 98 of the Act.

6. The liability of the members of the company is limited.

7. The company is to be registered with 500,000 shares of no par value.

Shares and Variations of Rights

8. The company may, by special resolution altering these articles,

- (a) increase the number of its shares by creating new shares;
- (b) reduce the number of its shares by cancelling shares which have not been taken or agreed to be taken by any person or by consolidating its existing shares, whether issued or not, into a smaller number of shares;
- (c) provide for different classes of shares by attaching to certain of the shares preferred, deferred or other special rights or restrictions whether in regard to dividend, voting, repayment, or otherwise;
- (d) in accordance with section 45 of the Act, create redeemable shares which are or at the option of the company are liable, to be redeemed on such terms and in such manner as may be provided, but subject to compliance with the provisions of section 43 to 45 of the Act.

9. On the issue of any new or unissued shares in the company the directors shall comply with the provisions of section 98 of the Act.

10. If at any time the shares are divided into different classes, the rights attached to any class may be varied with the written consent of the holders of at least three-fourths of the issued shares of that class or the sanction of a special resolution of the holders of the shares of that class.

11. Subject to compliance with the provisions of sections 43 to 45 of the Act, the company may exercise the powers conferred by section 43 of the Act to,

- (a) purchase its own shares
- (b) acquire its own shares by a voluntary transfer to it or to nominees for it;
- (c) forfeit in manner hereinafter appearing any shares issued with an unpaid liability for non-payment of calls or other sums payable in respect thereof.

12. The company may pay commission or brokerage to any person in consideration of his subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares in the company provided that the payment does not exceed ten **per centum** of the price at which the shares are issued.

13. The company shall issue share certificates to its shareholders.

Calls on Shares

14. (1) Where shares are issued upon the terms that any part of the price payable therefor is not payable at a fixed time the board of directors may from time to time make calls upon the shareholders in respect of any moneys unpaid on their shares, provided that no call shall be payable less than twenty-eight days from the date fixed for the payment of the last preceding call, and each shareholder shall, subject to receiving not less than fourteen days notice specifying the time or times and place of payment, pay to the company at the time or times and place so specified the amount called upon his shares.

(2) A call may be revoked or postponed as the directors may determine.

15. A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed and may be required to be paid by instalments.

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, the person from whom the sum is due shall pay interest thereon from the date appointed for payment to the time of actual payment at such rate not exceeding five **per centum per annum** as the board of directors may determine, but the board of directors shall be at liberty to waive payment of such interest wholly or in part.

18. Any sum which by the terms of issue of a share becomes payable on application therefor or on allotment, or at any fixed date shall for the purposes of these articles be deemed to be a call duly made and payable on the date on which by the terms of issue the same becomes payable, and in the case of non-payment all the relevant provisions of these articles as to payment of interest and expenses, forfeiture, sale or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.

19. As between shares of the same class the company shall not differentiate between the holders as to the amount of calls to be paid or the times of payment.

20. If the company shall receive from any shareholder all or any part of the moneys not presently payable or called upon any shares held by him the sum shall not be treated as a payment in respect of the shares until such sum becomes due and payable on such shares and in the meantime shall be deemed to be a loan to the company upon which the company may pay interest at such rate not exceeding five **per centum per annum** as may be agreed between the board of directors and such shareholder.

Forfeiture of Shares

21. If a shareholder fails to pay any call or instalment of a call, including any sum deemed to be a call under article 18 hereof, the board of directors may at any time thereafter during such time as any part of the 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.

22. The notice shall name a further day, not earlier than the expiration of fourteen days from the date of service of the notice, on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the times appointed the shares in

respect of which the call was made will be liable to be forfeited.

23. If the requirements of such notice 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.

24. A forfeited share may either be cancelled by alterations of these articles or may be retained as a treasury share until sold or otherwise disposed of on such terms and in such manner as the board of directors think fit.

25. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares and shall be bound to surrender to the company for cancellation the share certificate or certificates in respect of the shares so forfeited but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of the forfeiture, were payable by him to the company in respect of the shares, but his liability shall cease if and when the company shall have received payment in full of all such moneys in respect of the shares.

26. A statutory declaration in writing that the declarant is a director or the secretary of the company and that a share in the company has been duly forfeited on the 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.

Lien

27. (1) The company shall have a first and paramount lien on all shares issued with an unpaid liability for all moneys, whether presently payable or not, called or payable at a fixed time in respect of that share.

(2) The company's lien shall extend to all dividends payable thereon.

28. If any sum in respect of which the company has a lien is presently payable the board of directors, after serving the notice required by articles 21 and 22 hereof, may, at any time before the payment required by such notice has been made, sell any share on which the company has such lien instead of forfeiting it in accordance with article 23 hereof.

29. (1) To give effect to any such sale the board of directors may authorise some person to transfer the shares sold to the purchaser thereof.

(2) The purchaser shall be registered as the holder of the shares comprised in such transfer and he shall not be bound to see to the application of the purchase money nor shall the title to his shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

30. The proceeds of such sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue, if any, shall, subject to a like lien for sums not presently payable as existed upon the shares before the sale, be paid to the person entitled to the share at the date of the sale but the company shall not be bound to make such payment unless and until such person has surrendered to the company for cancellation his share certificate or certificates relating to the shares so sold.

Transfer and Transmission of Shares

31. (1) The board of directors may decline to register,
- (a) the transfer of any share on which there is an unpaid liability to a person of whom they shall not approve;
 - (b) the transfer of any share to any person who is an infant or to anyone found by a competent court in The Gambia to be a lunatic or of unsound mind.

(2) Subject as aforesaid there shall be no restriction on the right to transfer any shares in the company.

32. Shares shall be transferable and transfers shall be registered in the manner provided by sections 188 and 192 of the Act.

33. In the event of the death of any shareholder or in the event of the ownership of any share devolving upon any person by reason of his being the legal personal representative, receiver, administrator or trustee in bankruptcy of the holder, or by operation of law, the provisions of the Act shall apply.

Dividends

34. The company may by ordinary resolution declare dividends in respect of any year or other period but no dividend shall exceed the amount recommended by the board of directors.

35. The board of directors may exercise the power to pay interim dividends.

36. No dividends shall be paid unless,

- (a) the company will, after such payment, be able to pay its debts as they fall due;
- (b) the amount of such payment does not exceed the amount of the company's income surr immediately prior to the making of payment.

37. The board of directors may, before recommending any dividend, set aside out of the profits or income surplus of the company such sums as they think proper in order to provide for a known liability, including a disputed or contingent liability, or as a depreciation or replacement provision and may carry forward any profits or income surplus which they think prudent not to distribute.

38. All dividends shall be declared and paid as a fixed sum per share and not as a proportion of the amount paid in respect of a share.

39. The board of directors may deduct from any dividend payable to any shareholder all sums of money presently payable by him to the company in respect of his shares.

40. (1) Any dividend payable in cash may be paid by cheque or warrant sent by post directed to the registered address of the shareholder or, in the case of joint holders, to the registered address of that one who is first named on the register of members, or to such person and to such address as the holder or joint holders may in writing direct.

(2) Every such cheque or warrant shall be made payable to the order of the person to whom it is sent.

(3) Any one of two or more joint holders may give effectual receipts for any dividends.

(4) Every dividend payment shall be accompanied by a statement showing the gross amount of the dividend, and any tax deducted or deemed to be deducted therefrom.

41. No dividend shall bear interest against the company.

Capitalisation Issues and Non-Cash Dividends

42. The company, upon the recommendation of the directors, may exercise the powers conferred by section 48 of the Act,

- (a) to make capitalisation issues of shares;
- (b) to resolve that any sum standing to the credit of the company's income surplus and which could have been distributed by way of dividend shall be applied in paying up amounts for the time being unpaid on shares;
- (c) to direct that payment of a dividend shall be wholly or partly by distribution of securities for money or fully paid shares or debentures of another body corporate or of fully paid debentures of the company.

Branch Registers

43. The company may exercise powers with respect to the keeping of branch registers and the board of directors may, subject to the provisions of the Act, make such regulations as they think fit respecting the keeping of any such register and may, subject as aforesaid, vary such regulations.

Accounts and Audit

44. The board of directors shall cause proper books of account to be kept and prepare financial statements in accordance with Chapter I of Part II of the Act.

45. Auditors, qualified in accordance with section 217 of the Act shall be appointed and their duties regulated in accordance with sections 227 to 233 of the Act.

General Meetings and Resolutions

46. The powers of the members in general meeting shall be as stated in section 120 of the Act.

47. Annual general meetings shall be held in accordance with section 124 of the Act.

48. Extraordinary general meetings may be convened by the directors whenever they think fit and shall be convened by the directors on a requisition of members in accordance with section 148 of the Act.

49. Notice of general meetings shall be given in accordance with sections 127 and 128 of the Act and accompanied by any statements required to be circulated therewith.

50. Meetings may be attended by every member, director, secretary and auditor of the company but a member shall not be entitled to attend unless the calls or other sums presently payable by him in respect of shares in the company have been paid.

51. The quorum required for any general meeting shall be as stated in section 142 of the Act.

52. (1) In accordance with section 145 of the Act any member entitled to attend and vote at a meeting of the company shall be entitled to appoint another person, whether a member of the company or not, as his proxy to attend and vote instead of him and such proxy shall have the same rights as the member to speak at the meeting.

(2) An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit:

"Fair Trade Investments, PLC"

" I/We being a member/members of the above-named company hereby appoint of or failing him of as my/our proxy to vote for me/us on my/our behalf at the annual/extraordinary general meeting of the company to be held on the day of19 and at any adjournment thereof.

Signed this day of 19...

This form is to be used:-

*in favour of resolution numbered 1
against

*in favour of resolution numbered 2.
against

[Delete if only one resolution is to be produced; add further instructions if more than two resolutions are to be proposed]

Unless otherwise instructed, the proxy will vote as he thinks fit.

* Strike out whichever is not desired."

53. A body corporate which is a member of the company may attend and vote either by proxy or by a representative appointed in accordance with section 155 of the Act.

54. (1) Meetings shall be conducted in accordance with section 146 of the Act.

(2) On a poll being demanded the Chairman of the meeting shall not be required to direct a postal ballot unless he thinks fit or an ordinary resolution to that effect is moved at the meeting and passed on a show of hands.

55. In accordance with section 147 of the Act a resolution in writing signed by all the members for the time being entitled to attend and vote at general meetings, or being bodies corporate by their duly authorised representatives, and if the company has only one such member by that member, shall be as valid and effective for all purposes, except as provided by that section, as if the same had been passed at a general meeting of the company duly convened and held, and if described as a special resolution, shall be deemed to be a special resolution within the meaning of the Act.

56. The company shall keep minutes of its general meetings.

57. If at any time the shares of the company are divided into different classes the foregoing articles shall apply to meetings of any class of members in like manner as they apply to general meetings.

Votes of Members

58. Subject to any rights or restrictions for the time being attached to any class of redeemable shares,

- (a) on a show of hands each member and each proxy lawfully present at the meeting shall have one vote and on a poll each member present in person or by proxy shall have one vote for each share held by him;
- (b) in the event of a postal ballot being directed, each member entitled to attend and vote at the meeting shall have one vote for each share held by him.

Directors

59. The number of directors, not being less than five or more than twelve, shall be determined by ordinary resolution

of the members in general meeting and until so determined shall be seven.

60. The continuing directors may act notwithstanding any vacancy in their body but if and so long as their number is reduced below two or below the number fixed by the directors as the necessary quorum they may act for four weeks after the number is so reduced, but thereafter may act only for the purpose of increasing their number to that number or of summoning a general meeting of the company and for no other purpose.

61. The appointment of directors shall be regulated by sections 66 and 333 of the Act.

62. The persons referred to in section 67 of the Act shall not be competent to be appointed directors of the company.

63. A director need not be a member of the company or hold any shares therein.

64. The office of director shall be vacated in accordance with sections 69 and 306 of the Act and any director may be removed from office in accordance with section 70 of the Act.

65. (1) The company may appoint alternative directors in accordance with section 72 of the Act.

(2) An alternative director shall not be entitled to be remunerated otherwise than in the manner prescribed by the shareholders appointing him.

66. At least one director of the company shall at all times be present in The Gambia.

67. The remuneration payable to any director in whatsoever capacity shall be determined or approved by the directors in accordance with section 78 of the Act.

68. The proceedings of the directors shall be regulated by section 90 of the Act and the board of directors may delegate any of their powers to committees of the directors in accordance with that section.

69. Minutes of meetings of the board of directors and of any committee of directors shall be kept in accordance with section 97 of the Act.

Powers and Duties of Directors

70. (1) The business of the company shall be managed by the directors who may pay all expenses incurred in promoting and registering the company.

(2) Subject to section 98 of the Act, the board of directors may exercise all such powers of the company, including power to borrow money and to mortgage or charge its property and undertaking or any part thereof and to issue debentures, as are not by the Act or these articles required to be exercised by the members in general meeting.

71. In any transactions with the company or on its behalf and in the exercise of their powers the directors shall observe the duties and obligations on them by sections 100 and 101 of the Act.

72. Subject to compliance with section 103 of the Act, a director may enter into any contract with the company and such contract or any other contract of the company in which any director is in any way interested shall not be liable to be avoided nor shall any director be liable to account for any profit made thereby by reason of the director holding the office of director or of the fiduciary relationship thereby established.

73. Any director may act by himself or his firm in a professional capacity for the company, except as auditor, and he or his firm shall be entitled to proper remuneration for professional services as if he were not a director.

Executive and Managing Directors

74. The board of directors may exercise the powers conferred by section 76 of the Act to appoint one or more of their body to any other office or place of profit under the company, other than the office of auditor, for such period and on such terms as they may determine and, subject to the terms of any agreement entered into in any particular case, may revoke such appointment.

75. (1) The board of directors may exercise the power conferred by section 77 of the Act to appoint one or more of their body to the office of managing director for such period and on such terms as they may determine and, subject to the terms of any agreement entered into in any particular case, may revoke such appointment and such appointment shall be automatically determined if the holder of the office ceases from any cause to be a director.

(2) The directors may entrust to and confer upon a managing director any of the powers exercisable by them upon such terms and with such restrictions as they think fit, and either collaterally with, or to the exclusion of, their own powers, and subject to the terms of any agreement entered into in any particular case, may from time to time revoke or vary all or any of such powers.

76. No remuneration shall be payable to any director in respect of any office or place of profit to which he is appointed under the foregoing regulations unless and until the terms of his appointment have been approved by ordinary resolution of the company in general meeting in accordance with section 78 of the Act.

Secretary and Officers and Agents

77. The secretary shall be appointed by the board of directors for such time, at such remuneration, and upon such conditions as they think fit; and any secretary so appointed may be removed by them, subject however to his right to claim damages if removed in breach of contract.

78. A provision in the Act or these articles requiring or authorising a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the secretary.

79. (1) The board of directors may from time to time appoint officers and agents of the company and may appoint any body corporate, firm, or body of persons, whether nominated directly or indirectly, by the board of directors, to be the attorney or attorneys of the company for such purposes and with such powers, authorities and discretions, not exceeding those vested in or exercisable by the directors under these articles, and for such period and subject to such conditions as they may think fit.

(2) Any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors may think fit and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

The Seal

80. The directors shall provide for the safe custody of the seal, which shall be used by the authority of the board of directors or of a committee of the directors authorised by the board of directors in that behalf, and every instrument to which the seal shall be affixed shall be signed by a director,

and shall be countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.

Service of Documents

81. Any document may be served by the company on any member, debentureholder or director of the company.

Winding up

82. (1) If the company is wound up, the liquidator may, with the sanction of a special resolution of the company and any other sanction required by the Insolvency Act, 1992 and the Act, divide amongst the members in specie or kind the whole or part of the assets of the company, whether they shall consist of property of the same kind or not, and may for such purpose set such value as he deems fair upon the property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members.

(2) The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the members as the liquidator, with the like sanction, shall think fit.

(3) Notwithstanding the foregoing no member shall be compelled to accept any securities whereon there is any liability.

Interpretation

83. In these articles, unless the context requires,

- (a) "Act" means the Companies Act, 1994, or any statutory modification or re-enactment thereof;
- (b) words or expressions shall have the same meaning as in the Act;
- (c) references to sections of the Act shall mean such sections as modified or re-enacted from time to time.

We the undersigned are desirous of forming an incorporated company in pursuance of these articles and we respectively agree to take the number of shares in the company set opposite our respective names and to pay therefor in cash the consideration respectively stated.

Name, Address and Description or Occupation of Subscriber	Number of Shares	Consideration Payable in Cash
John Ceesay of 1116 High Street Banjul, Mining Engineer ..	1000	D500
Moussa Jallow of 500 Buckle Street, Banjul, Chartered Accountant	1000	D500

Dated the 22nd day of June, 1994
Witness to the above signature:
Name: John Brown
Address: #16, Apple Street, Banjul
Description or
Occupation: Legal Practitioner

PART III

**Articles of Incorporation of a Company
Limited by Guarantee (Non-Profit Company)**

1. The name of the company is The Gambia Historical Society (hereinafter called the "Society").
2. The objects for which the Society is formed are,
 - (a) to promote the study of history and in particular the history of The Gambia and of the African continent;
 - (b) to provide a central organisation in The Gambia for teachers, students and research workers in historical studies;
 - (c) to provide opportunities for the reading of papers, the delivering of lectures, and for the acquisition and dissemination of historical information;
 - (d) to sponsor historical research and to provide fellowships, grants, scholarships and bursaries for students of history;
 - (e) to publish or assist in the publication of the proceedings of the Society and of books, articles and papers on historical subjects.
3. The income and property of the Society, shall be applied solely towards the promotion of the objects of the

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Society as set forth in the immediately preceding regulation and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or profit to any person who is a member of the Society or of its Council:

Provided that,

- (a) nothing herein contained shall prevent the payment in good faith, of reasonable and proper remuneration to any officer of the Society, or to any member of the Society in return for any services actually rendered to the Society nor prevent the payment of interest at a rate not exceeding six **per centum per annum** on money lent, or reasonable and proper rent for premises let to the Society;
- (b) no member of the Council of the Society shall be appointed to any salaried office of the Society or office of the Society paid by fees;
- (c) no remuneration or other benefit in money or moneys worth shall be given by the Society to any member of the Council except repayment of out-of-pocket expenses and interest at the rate aforesaid on money lent or reasonable and proper rent for premises let to the Society.

4. Pursuant to section 19 of the Companies Act, 1994, the Society has, for the furtherance of its authorised objects, all the powers of a natural person of full capacity except in so far as such powers are expressly excluded by these articles.

5. (1) The board of directors of the Society shall be known as the Council.

(2) The first members of the Council are,

John Ceesay
Moussa Jallow
Mamoudou Njie
John Brown
Henry Doe
Babatunde Lagos
Henry Smith
Lamim Bitaye, and
Kebba Jobe

6. The powers of the Council are limited in accordance with section 98 of the Act.

7. The liability of the members is limited.

8. Each member of the Society undertakes to contribute to the assets of the Society in the event of its being wound up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the Society and of the costs of winding up such amount as may be required not exceeding D500.00

9. If upon the winding up or dissolution of the Society there remains after the discharge of its debts and liabilities any property of the Society, the same shall not be distributed among the members but shall be transferred to some other company limited by guarantee having objects similar to the objects of the Society or applied to some charitable object, such other company or charity to be determined by ordinary resolution of the members in general meeting prior to the dissolution of the Society.

Ordinary Members

10. (1) The subscribers of the articles and such other persons as the Council shall admit to ordinary membership shall be members of the Society.

(2) The members in general meeting may by ordinary resolution prescribe qualifications for membership of the Society and unless the resolution otherwise provides no person shall thereafter be admitted to membership by the Council unless he has the prescribed qualifications.

Associate Members

11. (1) The Society in general meeting may resolve by ordinary resolution that the Council may admit to associate membership of the Society and may prescribe qualifications for such associate membership.

(2) Associate members shall be permitted to take part in such proceedings and functions of the Society as the resolution shall prescribe or, in default of prescription, as the Council shall think fit, but shall not be members of the Society in its corporate capacity and shall not have any vote on any resolution at any general meeting of the Society, or be counted towards a quorum.

Honorary Membership

12. (1) The Society in general meeting may resolve by ordinary resolution that the Council may admit to honorary membership of the Society any person, whether or not an ordinary or associate member of the Society, who in the

opinion of the Council has rendered signal service to the Society or to any of the objects which the Society is formed to promote.

(2) As an honorary member, unless also admitted as an ordinary member of the Society, shall have the same rights as an associate member and if also admitted as an ordinary member shall have the same rights as an ordinary member but shall not be liable to pay any subscription to the Society.

Resignation or Exclusion of Members

13. Subject, in the case of ordinary members of the Society, to compliance with section 337 of the Act,

- (a) any ordinary, associate or honorary member may resign his membership by notice in writing to the Council;
- (b) the Council may in its discretion exclude from membership of the Society any ordinary or associate member,
 - (i) if the subscription payable to the Society by such ordinary or associate member shall be unpaid six months after the same shall have become due and payable; or
 - (ii) if in the opinion of the Council the continued membership of such person would be detrimental to the interests of the Society or to the furtherance of its objects.

Subscriptions

14. (1) Ordinary and associate members shall pay such annual subscriptions as the members in general meeting on the recommendation of the Council shall determine by ordinary resolution from time to time.

(2) The subscription shall be due and payable on admission to membership and thereafter on the first day of January in each year or on such other date as the resolution shall provide.

(3) The subscription may differ as between ordinary and associate members and a different subscription may be prescribed in the case of corporate bodies admitted to membership or in the case of any person admitted to membership as representing any institution or unincorporated association.

Accounts and Audit

15. The Council shall cause proper books of account to be kept and prepare financial statements in accordance with Chapter I of Part III of the Act.

16. Auditors, qualified in accordance with section 217 of the Act, shall be appointed and their duties regulated in accordance with sections 227 to 233 of the Act.

General Meetings and Resolutions

17. Annual general meetings shall be held in accordance with section 124 of the Act.

18. Extraordinary general meetings may be convened by the Council whenever they think fit and shall be convened on the requisition of ordinary members in accordance with section 148 of the Act.

19. Notice of general meetings shall be given in accordance with sections 127 and 128 of the Act and accompanied by any statements required to be circulated therewith.

20. General meetings may be attended by every member, secretary and auditor of the Society and the quorum required shall be as stated in section 142 of the Act.

21. A member shall not be entitled to attend or vote at any general meeting by proxy.

22. A body corporate which is a member of the Society may attend and vote at any general meeting by a representative appointed in accordance with section 155 of the Act.

23. (1) General meetings shall be conducted in accordance with section 146 of the Act.

(2) The President, or in his absence the Vice-President of the Society, shall preside as chairman at every general meeting but if neither is present within five minutes after the time appointed for holding the meeting the members present shall choose one of their number to be chairman of the meeting.

(3) On a poll being demanded on any resolution at a general meeting the chairman of the meeting may direct a postal ballot of the ordinary members and shall so direct if any ordinary resolution to that effect is moved at the meeting and passed on a show of hands or if the resolution concerned is,

- (a) a special resolution; or
- (b) any such resolution as is referred to in article 9, 10, 11, 12 or 14 of these articles.

24. In accordance with section 147 of the Act, a resolution in writing signed by all the members, or being bodies corporate by their duly authorised representatives, shall be as valid and effective for all purposes, except as provided by that section as if the same had been passed at a general meeting of the Society duly convened and held, and if described as a special resolution shall be deemed to be a special resolution within the meaning of the Act and these articles.

25. The Society shall keep minutes of its general meetings.

Votes of Members

26. Each ordinary member present at any general meeting shall have one vote on a show of hands or a poll and if a postal ballot is directed each ordinary member, whether or not present at the meeting, shall have one vote.

The Council

27. The number of members of the Council, not being less than two or more than twelve, shall be determined by ordinary resolution of the members in general meeting and until so determined shall be nine.

28. The continuing members of the Council may act notwithstanding any vacancy in their body; but if and so long as their number is reduced below two or below the number fixed by the Council as the necessary quorum, they may act for four weeks after the number is so reduced, but thereafter may act only for the purpose of increasing their number to that number or of summoning a general meeting of the Society and for no other purpose.

29. Members of the Council shall be appointed from among the ordinary members of the Society in manner following, that is to say,

- (a) at the first annual general meeting of the Society all the members of the Council shall retire from office and at the annual general meeting in any subsequent year one-third of their number or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office;

- (b) the members of the Council to retire in every year shall be those who have been longest in office since their last election, but as between persons who became members on the same day those to retire shall, unless they otherwise agree among themselves, be determined by lot;
- (c) election to the Council shall be by secret ballot which shall be conducted in the following manner, that is to say,
 - (i) any ordinary member wishing to nominate another ordinary member or members for election to the Council shall notify the Secretary in writing, accompanied by the nominee's consent in writing at least twenty-one days before the date of the annual general meeting of the Society. A retiring member shall be eligible for re-election without nomination and shall be deemed to offer himself for re-election unless he notifies the Secretary in writing at least twenty-one days before the date of the annual general meeting, that he does not wish to stand for re-election.
 - (ii) if the number of nominees competent for appointment as members of the Council and retiring members offering themselves for re-election exceeds the number of vacancies to be filled, the Secretary shall, at least fourteen days before the date of the annual general meeting, send to each ordinary member a ballot paper containing a list of the names of such nominees and retiring members offering themselves for re-election requesting him to indicate by means of a distinctive mark on the ballot paper the names of the persons for whom he votes. Each member may vote for one or more persons not exceeding in number the number of vacancies to be filled;
 - (iii) no ballot paper shall be valid unless returned to the registered office of the Society not less than twenty-four hours before the time appointed for the annual general meeting and shall be counted by scrutineers appointed at the meeting who

shall inform the chairman of the meeting of the votes obtained by each candidate. The chairman shall then announce the names of the successful candidates to the meeting. No ballot paper shall be valid on which votes have been cast in excess of the number of vacancies, and in case of doubt as to the validity of a ballot paper or the intention of the voter the decision of the chairman of the meeting shall be final and conclusive;

(iv) if the number of competent nominees and retiring members offering themselves for re-election does not exceed the number of vacancies, the chairman of the meeting shall declare the candidates duly elected. If the number so elected is less than the number of vacancies, the remaining vacancies may be filled as casual vacancies.

(d) any casual vacancy in the number of members of the Council may be filled by the Council or by ordinary resolution of the members in general meeting.

30. The persons referred to in section 67 of the Act shall not be competent to be appointed members of the Council.

31. Membership of the Council shall be vacated in accordance with section 69 of the Act and any members may be removed from the Council in accordance with section 70 of the Act.

32. (1) The proceedings of the Council shall be regulated by section 90 of the Act.

(2) At all meetings of the Council the President, or in his absence, the Vice-President if present, shall be chairman.

33. Minutes of meetings of the Council and of any committee of the Council shall be kept in accordance with section 97 of the Act.

Powers and Duties of the Council

34, (1) The activities of the Society shall be managed by the Council who may pay all expenses incurred in promoting and registering the Society.

(2) Subject to section 98 of the Act, the Council may exercise all such powers of the Society, including power to borrow money and to mortgage or charge its property and to issue debentures as are not by the Act or these articles required to be exercised by the members in general meeting.

35. In any transaction of the Society or on its behalf and in the exercise of their powers the members of the Council shall observe the duties and obligations imposed on them by sections 100 and 101 of the Act.

36. To the extent permitted by article 3 of these articles and subject to compliance with section 103 of the Act, a member of the Council may enter into a contract with the Society and such contract or any other contract of the Society in which any member of the Council is in any way interested shall not be liable to be avoided, nor shall any member of the Council be liable to account for any profit made thereby by reason of his being a member of the Council or of the fiduciary relationship thereby established.

President and Vice-President

37. (1) The Council at their first meeting and at their first meeting held after each annual general meeting shall elect from their members a President and Vice-President of the Society who shall hold office for the ensuing year or until their successors are elected.

(2) Any vacancy occurring in these offices shall be filled in like manner at the next meeting of the Council held after the occurrence of the vacancy.

Committees

38. (1) The Council may appoint committees from among their own members or from the members of the Society or from a combination of both.

(2) The President, or if he is unable or unwilling to act, the Vice-President, shall **ex officio** be a member of every committee.

(3) The terms of reference and duration of office of all committees shall be prescribed by the Council and all such committees shall be deemed to be committees of the Council for the purposes of the Act.

Secretary and Treasurer and Officers

39. (1) The Council shall appoint a Secretary and a Treasurer or a Secretary/Treasurer who may be one of their own members or a member of the Society or neither.

(2) If one of their own number is appointed the office shall be a honorary one without remuneration.

(3) The Council may also appoint such other officers and agents as may be necessary or expedient.

The Seal

40. (1) The Council shall be empowered to adopt a common seal for use by the Society and shall provide for the safe custody thereof.

(2) The seal shall only be used by the authority of the Council or of a committee of the Council authorised by the Council in that behalf, and every instrument to which the seal shall be affixed shall be signed by a member of the Council and shall be countersigned by the Secretary or a second member of the Council or by some other person appointed by the Council for the purpose.

Service of Documents

41. Any document may be served by the Society on any ordinary member, debentureholder or member of the Council and may be served in like manner on any associate or honorary member either personally or at the address supplied by him to the Society for the purpose of service of notices.

Interpretation

42. In these articles, unless the context otherwise requires,

- (a) "Act" means the Companies Act, 1994, or any statutory modification or re-enactment thereof;
- (b) words or expressions shall have the same meaning as in the Act;
- (c) references to sections of the Act shall mean such sections as modified or re-enacted from time to time.

We the undersigned are desirous of forming an incorporated company in pursuance of these articles and we

agree to become members thereof and to accept liability in accordance with article 8 of these articles.

**Names, Addresses and Descriptions or Occupation
of Subscribers**

Peter Njie of the Gambia College, Brikama, Lecturer.
Musu Sey of the Gambia College, Brikama, Lecturer.
Tuma Thorpe of the Gambia College, Brikama, Lecturer.
Musa Ceesay of the Gambia College, Brikama, Lecturer.
Daddy Faal of Armitage High School, Georgetown, School
Teacher.
Alieu Manneh of Armitage High School, Georgetown, School
Teacher.
Binta Dukureh of St. Augustine's High School, Banjul,
School Teacher.
Hawa Bolong of Marina School, Fajara, School Teacher.
Modou Baldeh of #200 A. Sutusinjang Street, Banjul,
Author.
Minteh Ngum of Berending School, Berending, School
Teacher.

Dated the 22nd day of June, 1994.

Witness to the above signatures:

Name: John Brown
Address: #16 Apple Street, Banjul.
Description or Occupation: Legal practitioner

SECOND SCHEDULE

PART I

CONTENTS OF ANNUAL RETURN

1. The name of the company.
2. The nature of the authorised business or businesses of the company or, if the company is not formed for the purpose of carrying on a business, the nature of its objects.
3. The address of the company's registered office and the number of the post office box of such registered office.
4. The address of the company's principal place of business in The Gambia.
5. All such particulars with respect to the persons who at the date of the return are the directors and secretary of the company as are required by section 89 of this Act to be contained in the register of directors and secretary.
6. The present forenames and surnames and any former forename and surname of every member of the company, the nationality, residential postal addresses and the business occupation of every such member of the company, the number of shares held by every such member at the date of the return, particulars of shares transferred since the last return by persons who are still members of the company, that is to say, the number of the shares and the date of registration of the transfer; particulars of shares transferred since the last return by persons who have ceased to be members of the company, that is to say, the number of such shares and the date of registration of the transfer and the folio of the register containing particulars of every such member.
7. If the company's register of members is kept and maintained elsewhere than at the registered office of the company, the address at which it is kept.
8. If the company maintains a register of debenture-holders elsewhere than at the registered office of the company, the address at which it is kept.
9. Particulars of the total amount of the indebtedness of the company in respect of all charges, particulars of which are required to be registered with the Registrar pursuant to Chapter III of Part II of this Act.

10. The names, countries of incorporation, and nature of the businesses of all subsidiaries of the company and of all bodies corporate in which the company is beneficially entitled to equity shares conferring the right to exercise more than twenty-five **per centum** of the votes exercisable at a general meeting of the body corporate;

Provided that the information required by this paragraph need not be given if, and to the extent that, such information would conflict with any direction given by the Registrar under this Act.

11. If the company has shares,

- (a) the number of its authorised shares of each class;
- (b) the number of its issued shares of each class;
- (c) the number of its treasury shares of each class;
- (d) the total amount of any unpaid instalments or calls which are due and payable and the number and class of shares concerned;
- (e) the total number of shares of each class which have been forfeited;
- (f) in the case of a company limited by shares,
 - (i) the total amount of any unpaid liability, on its shares of each class, which is not yet due for payment, and
 - (ii) the amount, if any, of such unpaid liability on its shares which the company has resolved shall not be capable of being called up except in the event and for the purpose of the company being wound up.

PART II

ACCOUNTS

(i) PROVISIONS AS TO PROFIT AND LOSS ACCOUNT

1 There shall be separately shown,

- (a) gross sales, less discounts, returns, and allowances, or, where appropriate, the amount of operating or other equivalent revenues;
- (b) the cost of goods sold as normally computed under the system of accounting followed or,

where appropriate, the operating or other equivalent expenses;

- (c) selling, general and administrative expenses, and any other expenses that under the system of accounting followed would normally be deducted in arriving at the trading profit;
- (d) income from investments distinguishing between
 - (i) income from associated companies,
 - (ii) income from other trade investments,
 - (iii) income from other investments;
- (e) income from any other sources, distinguishing between each significant source of income;
- (f) the amount charged to revenue by way of provision for the loss, diminution in value, depreciation, renewal or replacement of assets, hereinafter referred to as depreciation or replacement provision, in respect of fixed assets;
- (g) interest on the company's debentures and other loans other than those classified in the balance sheet as current liabilities;
- (h) interest in respect of other loans and indebtedness of the company;
- (i) the aggregate of all amounts paid or payable by the company to the directors of the company for the financial year together with a statement, by way of note, of any such amounts paid or payable by other persons than the company;
- (j) the remuneration of the auditors of the company including any sums paid by the company in respect of the auditors' expenses;
- (k) the amounts of the charges and credits, if any, for income tax showing, by way of note or otherwise, the amounts of each distinct tax with a description thereof and a statement of the period in respect of which it is payable;
- (l) the amounts of charges and credits, if any, in respect of discount or premiums on debentures;

- (m) any profit or loss arising on the sale, realisation or disposal of fixed assets;
- (n) any preliminary expenses, and expenses incurred on the issue of shares or debentures, including any sums paid by way of commission or brokerage on the issue of shares or debentures;
- (o) the amount of any voluntary contributions to any charitable or other funds, other than pension funds for the benefit of employees of the company or any associated company;
- (p) any other expenses distinguishing between each significant class of expense.

2. If any of the items shown in the profit and loss account are stated net of income tax relating thereto this shall be indicated.

3. There shall be stated by way of note or otherwise any material respects in which any items shown in the profit and loss account are affected by,

- (a) transactions of a sort not usually undertaken by the company or other circumstances of an exceptional or non-recurrent nature;
- (b) any change in the basis of accounting;
- (c) any amount relating to an earlier financial year;
- (d) any adjustment arising from the over or under statement of revenue or expenses in the profit and loss account of an earlier financial year;

and any statement made under this paragraph shall indicate the amount by which the profit and loss account has been affected and whether this represents an addition to or a deduction from the profit that would otherwise have been shown.

4. If any item in the profit and loss includes an amount in respect of money provided under section 80 of this Act this fact shall be indicated by way of note or otherwise and the amount thereof stated.

5. The balance of the profit and loss account after the inclusion of the items required by the foregoing paragraphs, so far as those are relevant to the figures in the account,

shall be transferred to an account to be called the income surplus account.

6. No amount shall be credited to the profit and loss account that cannot properly enter into the composition of the income surplus.

7. No amount shall be debited to the profit and loss account in respect of an addition to a reserve other than by way of transfer of the balance of the profit and loss account for the financial year to the income surplus account, shown as such, and in particular no amount shall be debited to the profit and loss account other than as a transfer to the income surplus account unless it is either the amount of an actual money outlay or is in the opinion of the directors reasonably necessary in order to provide for a known future expenditure or for a known liability, which term shall include a disputed or contingent liability, or for a known or estimated loss in value of current assets, or as a depreciation or replacement provision.

8. No amount shall be credited to the profit and loss account in respect of a withdrawal from a reserve other than by way of transfer of the balance of the profit and loss account for the financial year to the income surplus account, shown as such.

9. If a company is under any obligation to transfer or set aside a sum to reserve out of its profits this obligation shall be deemed to have been fulfilled if such has been transferred to stated capital or if a note is made upon the balance sheet in accordance with paragraph 34 of this Schedule to the effect that the company is under an obligation to withhold from distribution as dividend a corresponding part of the income surplus.

10. Except in the case of the first profit and loss account drawn up after the commencement of this Act there shall be shown the corresponding amount of each item for the immediately preceding financial year.

11. Where the amount of any item shown in the profit and loss account or included in any amount shown therein cannot be determined with substantial accuracy, an estimated amount described as such shall be included in respect of that item and shall be distinguished by way of note or otherwise, together with a description of the item.

12. No provision of this Schedule with respect to the information to be shown in the profit and loss account shall be deemed to require the amount of any item that is of no material significance to be shown separately.

(ii) PROVISIONS AS TO BALANCE SHEET

General

13. The assets and liabilities shall be classified under headings appropriate to the company's business, distinguishing between current and fixed assets, and between current and other liabilities, and each class shall be described in a way adequate to indicate the general nature of the assets or liabilities included therein.

Assets

14. Without prejudice to the generality of the last foregoing paragraph, the following classes of assets shall, so far as they are appropriate to the company's affairs, be distinguished, namely,

- (a) interests in land, distinguishing between land owned absolutely and land held for a term of years or other period;
- (b) goodwill, patents, trademarks, development expenditures, and other intangible assets of a like nature;
- (c) trade investments;
- (d) loans and advances;
- (e) trading stocks, distinguishing where practicable between,
 - (i) stocks of raw materials and components;
 - (ii) work-in-progress;
 - (iii) stocks of finished products;
 - (iv) other stocks;
- (f) trade debtors;
- (g) bills of exchange and promissory notes;
- (h) payments-in-advance;
- (i) marketable securities;
- (j) cash in hand and in the bank.

15. No class of assets shall stand in the balance sheet at a value, which, after deduction of the aggregate

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depreciation or replacement provision relating thereto, if any, is in the opinion of the directors greater than either,

- (a) the value which those assets could reasonably be expected to realise in the market after deduction of any expenses incurred in order to realise them; and
- (b) the value which is reasonably justified by the expected contribution of those assets to the business, whether by sale in the ordinary course of business or otherwise:

Provided that in the case of a company whose sole or main object is that of carrying on the business of extracting any mineral deposit the Registrar may, on the application of the company, and on such conditions as he considers appropriate, authorise any wasting asset held for the purpose of the business in question to be shown in the balance sheet at cost.

16. (1) Assets shall either be shown at a value after deduction of the aggregate depreciation or replacement provision relating thereto if any, or at a value before this deduction, hereinafter described as the gross value.

(2) If shown at the gross value the aggregate depreciation or replacement provision relating thereto, if any, shall be shown as a separate item and shall be so described as to identify it with the class of assets to which it refers.

17. (1) There shall be included in or attached to the balance sheet in respect of each class of fixed assets shown therein a statement containing the following information, that is to say,

- (a) the gross value;
- (b) the original cost, if this differs from the gross value;
- (c) the aggregate depreciation or replacement provision, if any;
- (d) if the gross value differs from the original cost, a statement explaining how the gross value has been calculated, and as at what date;

(e) whether the depreciation or replacement provision, if any, has been calculated on the basis of,

- (i) the original cost of the assets;
- (ii) the replacement value of the assets;
- (iii) some other basis;

and when the depreciation or replacement provision is not based on original cost, the general principle used in calculating the replacement cost or other valuation on which it is based shall be stated;

(f) a statement reconciling both the gross value and the aggregate depreciation or replacement provision with the equivalent figures at the end of the immediately preceding financial year, and in particular showing

(i) the amount of any addition to the gross value and to any depreciation or replacement provision relating thereto, indicating the nature thereof; and

(ii) the amount of any deduction from the gross value and from the aggregate depreciation or replacement provision relating thereto arising from sale or otherwise, indicating the reason for the deduction and showing any profit or loss arising therefrom.

(2) So far as information required to be shown by this paragraph relating to matters arising before the commencement of this Act cannot be ascertained without unreasonable delay or expense, the said provisions may be modified with respect to that information as the directors shall consider appropriate, and in each such case the statement in or attached to the balance sheet in accordance with the provisions of this paragraph shall indicate in what respects the information shown has been modified as the result of the operation of this provision.

18. There shall be included in or attached to the balance sheet statements reconciling respectively the amounts stated in accordance with paragraph 17(1)(f) of this Schedule in respect of additions to and deductions from the depreciation or replacement provision with the amount stated in the profit and loss account for depreciation or replacement provision in accordance with paragraph 1(f) of Part II of this Schedule, and reconciling any profit or loss on the sale,

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realisation or disposal of any fixed assets stated in accordance with the said paragraph 17 with the amount stated in the profit and loss account in accordance with paragraph 1 (m) of Part II of this Schedule.

19. For each class of current assets there shall be provided, by way of note or otherwise, information sufficient to indicate the basis of valuation and in particular the nature of the valuation procedure followed in arriving at the balance sheet value.

20. Assets in respect of which different methods or bases of valuation or of provision for depreciation or replacement are used shall for the purposes of this Schedule be regarded as assets of different classes.

21. There shall be shown the aggregate of all amounts due to the company at the end of the financial year together with a statement, by way of note, of any other information required to be disclosed by this Act.

22. There shall be shown the aggregate of all amounts due to the company in respect of advances made by the company.

23. The amount of any preliminary expenses, and expenses incurred on the issue of shares or debentures, including any sums paid by way of commission or brokerage on the issue of shares or debentures, shall be debited to the profit and loss account and shall not be treated as an asset.

Liabilities

24. For the purposes of this Act, current liabilities are liabilities due and payable, other than liabilities the payment of which may, at the company's option, be postponed, within twelve months of the date of the balance sheet together with such other liabilities as are under normal accounting principles appropriately so classified.

25. Without prejudice to the generality of paragraph 13 of this Schedule each of the following classes of liabilities shall, so far as they are applicable to the company's business, be distinguished, namely,

- (a) bank borrowings and overdrafts;
- (b) bills of exchange and promissory notes payable;
- (c) trade creditors;

- (d) the net amount payable to members in respect of dividends declared or recommended;
- (e) any amounts due to directors and other officers of the company other than items arising in the ordinary course of business;
- (f) income tax, distinguishing between different taxes and between amounts due in respect of different fiscal periods;
- (g) debts secured by debentures, other than those shown under sub-paragraph (a), stating in respect of each class thereof, the date or dates on or after which the company has the option of redemption, and the date or dates on or before which the company is under the obligation finally to redeem the loans or debentures or any part thereof, specifying in each case the proportion of the total issue that may or must be redeemed, as the case may be, and the redemption price;
- (h) any borrowings other than the foregoing;
- (i) other accrued liabilities.

26. No liability shall stand in the balance sheet at a value less than the amount at which it is repayable, other than at the company's option, at the balance sheet date or, if it is not then repayable, at the amount at which it will first become so repayable thereafter, less, where appropriate, a reasonable deduction for discount until that date.

27. If any liability of the company is secured otherwise than by the operation of law on any assets of the company, the fact that the liability is so secured shall be stated, together with a statement of the assets upon which it is secured, and, where more than one class of liabilities is so secured, their relative priorities with respect to payment of interest and redemption.

28. If any of the company's debentures have been beneficially acquired by the company, or by a nominee acting on behalf of the company, the amount of these, calculated on the same basis as the total amount standing in the balance sheet in respect of the debentures of that class, shall, unless and until the debentures so purchased are cancelled, be shown as a deduction from that total; and if the said amount of the debentures purchased is less than the amount expended upon purchase, the difference shall be shown in the profit and

loss account as if it were a premium or discount on debentures, as the case may be.

29. There shall be stated by way of note or otherwise, particulars of any debentures of the company that have been redeemed or purchased by or on behalf of the company which the company has power to re-issue.

30. There shall be included in or attached to the balance sheet in respect of each class of liabilities referred to in sub-paragraph (f) and (g) of paragraph 25 of this Schedule that is shown in the balance sheet, or in the balance sheet at the end of the immediately preceding financial year, a statement containing the following information, namely,

- (a) the balance, if any, shown at the end of the immediately preceding financial year;
- (b) the amounts of additions thereto and deductions therefrom during the financial year ending on the balance sheet date, with particulars thereof sufficient to identify clearly the source of each item; and
- (c) the balance, if any, at the date of the balance sheet.

Surplus

31. There shall be recorded in an account, to be called the capital surplus account, the amount, if any, by which the surplus exceeds the credit balance, if any, on the share deals account **plus** the balance on the income surplus account if a credit or **minus** that balance if a debit.

32. (1) There shall be shown,
- (a) the stated capital of the company distinguishing between amounts relating to different classes of shares;
 - (b) the amount, if any, standing to the credit of the capital surplus account,
 - (c) the amount, if any, standing to the credit of the share deals account;
 - (d) the balance of the income surplus account, and if the said balance is a debit balance it shall be deducted from the sum of the three preceding amounts.

(2) There shall be included in or attached to the balance sheet in respect of each item referred to in subparagraph (1) of this paragraph that is shown in the balance sheet or in the balance sheet at the end of the immediately preceding financial year, a statement containing the following information, namely,

- (a) the balance, if any, shown at the end of the immediately preceding financial year;
- (b) the amounts of any additions thereto and deductions therefrom during the financial year, with particulars thereof sufficient to identify clearly the source of each item; and
- (c) the balance, if any, at the date of the balance sheet.

(3) The aggregate amounts of dividends paid or recommended, net of any tax deductible therefrom, distinguishing between dividends on different classes of shares, shall be debited to the income surplus account.

33. There shall be shown in the balance sheet, or in a schedule attached thereto,

- (a) the amount of stated capital, distinguishing between different classes of shares;
- (b) the number of authorised shares of each class;
- (c) the number of issued shares of each class;
- (d) the number of treasury shares of each class;
- (e) the amount of any unpaid instalments or calls on shares which are due and payable and the number and class of shares concerned;
- (f) in the case of a company limited by shares,
 - (i) the amount of any unpaid liability, on its shares of each class, which is not yet due for payment; and
 - (ii) the amount, if any, of such unpaid liability which the company has resolved shall not be capable of being called up except in the event and for the purpose of the company being wound up;

- (g) in respect of any shares on which there are any arrears of fixed dividends, the total amount of the arrears, stating whether the amount is net or gross of any tax that may be deducted;
- (h) if any issue of shares has been made in contemplation of the redemption of preference shares out of the proceeds of the issue, a statement to that effect and of the total amount thereby made available for use in the redemption;
- (i) the number of shares which any person has an option to subscribe for, distinguishing those in respect of which the option can be exercised by directors of the company, together with the following particulars of each option, that is to say,
 - (i) the period or periods during which it is exercisable;
 - (ii) the price or prices during each period to be paid for shares subscribed for under the option.

34. There shall be stated by way of note any amount standing to the credit of the income surplus account which the company is, in accordance with the provisions of paragraph 9 of this Schedule or otherwise, under an obligation not to distribute by way of dividend.

Supplementary

35. There shall be stated by way of note or otherwise,
- (a) the basis on which foreign currencies have been converted into Gambian money;
 - (b) particulars of any charge on the assets of the company to secure the liabilities of any other person, including a statement of the amount or estimated amount secured;
 - (c) the general nature of any contingent liabilities not provided for and not otherwise disclosed and the amount or estimated amount of those liabilities;

- (d) the general nature of contracts for capital expenditure not provided for and the amount or estimated amount thereof;
- (e) the general nature of any credit facilities available to the company under any contract, other than trade credit available in the ordinary course of business, and not taken up at the end of the financial year.

36. Except in the case of the first balance sheet drawn up after the commencement of this Act there shall be shown the corresponding amount of each item for the immediately preceding financial year.

37. Where any item shown in the balance sheet or included in amounts shown therein cannot be determined with substantial accuracy, an estimated amount described as such shall be included in respect of that item and shall be distinguished, by way of note or otherwise, together with a description of the item.

38. No provision of Part II of this Schedule with respect to the information to be shown in the balance sheet shall be deemed to require the amount of any item that is of no material significance to be shown separately.

(iii) PROVISIONS APPLICABLE TO HOLDING COMPANIES

39. Paragraphs 40 to 49 apply to a holding company.

40. There shall be stated by way of note or otherwise, the total number of shares held by or on behalf of the company in each of its associated companies, and the total number of the shares and amount of debentures of the company, if any, held by or on behalf of subsidiaries, but excluding in both cases shares and debentures held as personal representative or as trustee of any trust in which neither the company nor any of its associated companies is beneficially interested otherwise than by way of security in the ordinary course of business, distinguishing shares and debentures of different classes, and stating the total number of shares and the amount of debentures of each class in issue at the date of the balance sheet.

41. Where it is reasonably practicable the amount included under each head of revenue or expense shown in the profit and loss account that is received or receivable from or paid or payable to, an associated company shall be distinguished.

42. The amount included in each class of assets shown in the balance sheet in respect of financial interests in associated companies shall be distinguished.

43. The amount included, in each class of liabilities shown in the balance sheet in respect of indebtedness to associated companies shall be distinguished.

44. Where a group accounts are not prepared, there shall be attached to the balance sheet a statement showing,

(a) the reasons why subsidiaries are not dealt with in group accounts;

(b) the net aggregate amount, so far as it concerns the interests of the holding company, of the balances transferred from the profit and loss accounts, or the equivalent amount in the case of foreign or other subsidiaries not having income surplus accounts,

(i) for the respective financial years of the subsidiaries ending with or during the financial year of the company giving, so far as is practicable the same information with respect to the said amount as is required by paragraph 3 of this Schedule to be given with respect to the company's profit and loss account;

(ii) for the total period covered by their previous financial years since they respectively became the holding company's subsidiaries so far as it has not been dealt with in the company's accounts of a previous financial year;

(c) the net aggregate amount so transferred so far as this amount is dealt with in the company's accounts for the financial year;

(d) any qualifications contained in the report of the auditors of the subsidiaries on their accounts for their respective financial years ending as aforesaid, and any note or saving contained in those accounts to call attention to a matter which, apart from the note or saving, would properly have been referred to in such a qualification, in so far as the matter which is the subject of the qualification or note is not covered by the

company's own accounts and is material from the point of view of the company's interest, or, in so far as the information required by this paragraph is not obtainable, a statement that it is not obtainable.

45. Items (b) and (c) of paragraph 44 shall apply only to such amounts as could properly enter into the composition of the holding company's income surplus.

46. There shall be stated by way of note in relation to subsidiaries, if any, whose financial years do not coincide with that of the company,

- (a) the reasons why the company's directors consider that the subsidiaries' financial year should not so coincide; and
- (b) the name of each subsidiary whose financial year does not coincide with that of the holding company and the date on which its relevant financial year ended.

47. The group accounts, if prepared as consolidated accounts, shall combine the information contained in the separate balance sheets and profit and loss accounts of the holding company and of these subsidiaries dealt with by the consolidated accounts with such adjustments, if any, as the directors consider appropriate, and the consolidated accounts shall, in giving the said information comply, so far as is practicable, with the requirements of this Act as if they were the accounts of a single company.

48. Where group accounts are prepared and the accounts of some subsidiaries are not incorporated therein, the group accounts shall incorporate with respect to those subsidiaries information equivalent to that required to be given in the holding company's accounts when group accounts are not prepared.

(iv) EXEMPTIONS FOR SPECIAL CLASSES OF COMPANIES

50. The provisions of paragraphs 4, 5, 6, 9, 22, 31, 32, 33 and 34 of Part II of this Schedule shall not apply to a company limited by guarantee.

51. (1) A company licensed under the Financial Institutions Act, 1992 to carry on the business of banking shall not be subject to the provisions of sub-part (i) or (ii) of Part II of this Schedule other than paragraphs 1(f), (i),

(j) and (o), 2, 3 (a) and (b), 4, 5, 9, 10, 11, 12, 13, 15, 16, 21, 22, 23, 26, 28, 29, 33, 34, 36, 37 and 38

(2) Where such a banking company as is referred to in the immediately preceding sub-paragraph has reserves which are not separately stated in its balance sheet and a heading in its balance sheet stating an amount arrived at after taking into account such a reserve or a transfer thereto or therefrom shall be so framed or marked as to indicate that fact, and its profit and loss account shall indicate by appropriate words the manner in which the amount stated for the company's profit and loss has been arrived at.

52. (1) If it appears to the Minister to be desirable in the national interest, the Minister may, by legislative instrument, prescribe that companies of a class described in the instrument shall be exempt from any of the provisions of Part II of this Schedule, but a company taking advantage of this paragraph shall be subject to any conditions prescribed in the instrument as to matters to be stated in the accounts or by way of note thereto and as regards information to be furnished to the Minister or to the Registrar.

(2) If the Minister is satisfied that any of the said conditions has not been complied with in the case of any company, he may at any time direct that so long as the direction remains in force such company shall be excluded from such exemption, either wholly or to the extent specified in the direction, notwithstanding that such company is a company of the class prescribed in the instrument.

53. Notwithstanding any exemption conferred by or under this sub-part, the accounts of a company shall give the true and fair view required by this Act, but such accounts shall not be deemed not to give such a true and fair view by reason only of the fact that they do not comply with such of the provisions of this Schedule from which the company is exempt by reasons of this Part of this Schedule or any instrument made hereunder.

54. Where the company entitled to an exemption under this Part of this Schedule is a holding company, the group accounts, if prepared as consolidated accounts, shall be deemed to comply with the requirements of this Act if they comply with the requirements applying to the separate accounts of the company.

PART III

MATTERS TO BE EXPRESSLY STATED IN AUDITOR'S REPORT

1. Whether they have obtained all the information and explanations which to the best of their knowledge and belief were necessary for the purposes of their audit.

2. Whether, in their opinion, proper books of account have been kept by the company, so far as appears from their examination of these books, and proper returns adequate for the purposes of their audit have been received from branches not visited by them.

3. Whether the company's balance sheet and, unless it is framed as a consolidated profit and loss account, profit and loss account dealt with by the report are in agreement with the books of account and returns.

4. Whether, in their opinion and to the best of their information and according to the explanations given them, the said accounts give all the information required by this Act in the manner required and give a true and fair view,

- (a) in the case of the balance sheet, of the state of the company's affairs at the end of its financial year, and
- (b) in the case of the profit and loss account, of the profit or loss for its financial year,

or, as the case may be, give a true and fair view thereof subject to the non-disclosure of any matters, to be indicated in the report, which by virtue of sub-part (iv) of Part II of this Schedule are not required to be disclosed.

5. In the case of a holding company submitting group accounts, whether, in their opinion, the group accounts have been properly prepared in accordance with the provisions of this Act, so as to give a true and fair view of the state of affairs and profit or loss of the company and its subsidiaries dealt with thereby so far as concerns the interests of the company or, as the case may be, so as to give a true and fair view thereof subject to the non-disclosure of any matters, to be indicated in the report, which by virtue of sub-part (iv) of Part II of this Schedule are not required to be disclosed.

THIRD SCHEDULE

CONTENTS OF PROSPECTUS ON GENERAL INVITATIONS

Pursuant to Chapter II (i) and (ii) and section 334 (2) (8) of this Act, the prospectus shall state at its head:

A copy of this prospectus has been delivered to the Registrar of Companies, The Gambia, for registration. The Registrar has not checked and will not check the accuracy of any statements made and accepts no responsibility therefor or for the financial soundness of the company or the value of the securities concerned.

PART I

MATTERS TO BE SPECIFIED

1. The full name of the company.

2. (1) A full description of the securities which the public are being invited to acquire, and of the terms on which they are being invited to acquire the same, including

(a) the date prior to the expiration of which applications will not be accepted or treated as binding;

(b) if securities are being offered for subscription or purchase, the total amount payable for each share or debenture and the amount thereof payable on application, allotment, and otherwise;

(c) the policy which will be adopted if application exceed the shares or debentures on offer.

(2) Where the securities are unsecured debentures they shall be described as "unsecured loan stock", "unsecured notes" or the like, and not as "debentures" or bonds.

3. Whether application has been or is being made to a stock exchange for permission to deal in the securities concerned.

4. If so, whether the stock exchange is an approved stock exchange within the meaning of section 304 of this Act.

5. If not, a statement that there will not be a market for the securities and that any holder wishing to dispose of his securities may be unable to do so.

6. The full name, address and business occupations of every person making the invitation, if other than the company.

7. The address and the number of the Post Office Box of the company's registered office.

8. The full name, address and business occupation of every director and proposed director and of the secretary or proposed secretary of the company.

9. The name, address and professional qualification of the company's auditors.

10. The name and address of the registration officer, if any.

11. The name and address of any underwriter of the invitation.

12. The names and addresses of the company's bankers, stockbrokers and legal practitioners.

13. If the invitation relates to debentures, the name and addresses of any trustees for debentureholders, the date of the resolutions creating the debentures, and short particulars of the security therefor or, if the debentures are unsecured, a statement to that effect.

14. The authorised business or businesses of the company.

15. A brief summary of the history of the company and of any businesses to which it has succeeded.

16. (a) The names, countries of incorporation, and nature of the business of all subsidiaries of the company and of all bodies corporate in which the company is beneficially entitled to equity shares conferring the right to exercise more than twenty-five per centum of the votes exercisable at a general meeting of the body corporate.

(b) If the company is a subsidiary, the name, country of incorporation and nature of the business of the holding company and the number of each class of shares of the company held by the holding company.

17. Where the company is proposing to acquire securities in any body corporate, hereinafter in this Schedule called a

proposed subsidiary, which, by reason of the acquisition or anything to be done in consequence thereof or in connection therewith, will become a subsidiary of the company, the name, country of incorporation, and nature of the business of that proposed subsidiary.

18. Where the company is proposing to acquire a business, a full description of the nature of that business.

19. The situation, area, and tenure, including where appropriate, the rent and unexpired term of any lease or concession, of the main places of business of the company and its subsidiaries and proposed subsidiaries.

20. A statement as to,

- (a) the financial and trading prospects of the company together with any material information which may be relevant thereto; and
- (b) any material changes in the financial or trading position of the company which may have occurred since the end of the last completed financial year of the company.

21. A statement by the directors of the company that in their opinion the company's working capital is sufficient or, if not, it is proposed to provide the additional working capital thought by the directors to be necessary.

22. The amount or estimated amount of the expenses incidental and preliminary to the invitation, including the expenses of any application to a stock exchange for permission to deal in the securities concerned in the invitation, and by whom the same are payable.

23. Particulars of any commissions paid within the two preceding years, or payable, as commission for acquiring any shares or debentures of the company or of any of its subsidiaries and proposed subsidiaries.

24. Where the company is inviting or, under section 322 of this Act is deemed to be inviting the public to subscribe for any of its shares or debentures,

- (a) a statement or an estimate of the net proceeds of the issue and a statement as to how such proceeds were or are to be applied;
- (b) the minimum amount which in the opinion of the company's directors must be raised by the issue in order to provide the sums, or, if

part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters, namely,

- (i) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;
 - (ii) any expenses incidental and preliminary to the invitation and issue, including the expenses of any application to a stock exchange for permission to deal in the shares or debentures, payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares or debentures of the company;
 - (iii) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters; and
 - (iv) working capital; and
- (c) the amounts to be provided in respect of the matters stated in sub-paragraph (b) of this paragraph otherwise than out of the proceeds of the issue and the sources out of which these amounts are to be provided.

25. Where a person other than the company is inviting the public to purchase any shares or debentures of the company, whether or not, under section 322 of this Act, the invitation is also deemed to be made by the company,

- (a) if such shares or debentures were issued by the company for cash, a statement of the price **per** share or debenture at which those shares or debentures were issued, and of the total net proceeds of the issue;
- (b) if such shares or debentures were issued by the company for a consideration other than cash, a statement of the nature of the consideration and an estimate by the directors of its fair value and of the price **per** share or debenture which it represents;

- (c) if the person making the invitation did not acquire the shares or debentures directly from the company on their issues,
 - (i) if he purchased them for cash, a statement of the price **per** share or debenture at which he purchased the same or, if purchased over a period of time at different prices, the lowest and highest prices, and the total purchase price paid by him;
 - (ii) if he acquired them for a consideration other than cash, a statement of the nature of the consideration and an estimate by him of its fair value and of the price **per** share or debenture which it represents.

26. The stated capital of the company, distinguishing between different classes of shares.

27. The number and description of the company's authorised shares of each class, issued shares of each class, and treasury shares of each class.

28. The amount paid on the issued shares of each class

(a) in cash,

(b) otherwise than in cash.

29. The amount, if any, remaining payable on the issued shares of each class, distinguishing between the amount presently due for payment and the amount not yet due for payment and, in the latter case, stating what amount, if any, the company has resolved shall not be capable of being called up except in the event and for the purpose of the company being wound up.

30. The number of unissued shares of each class agreed to be issued and the amount payable therefor distinguishing between the amount payable in cash and the amount payable otherwise than in cash.

31. If the company's shares are divided into different classes, the rights in respect of voting, repayment, and dividends and any other special rights attached to the several classes and a statement as to the consents necessary for the variation of such rights.

32. The amounts of the dividends, if any, **per** share paid by the company in respect of each class of share in each of the ten completed financial years of the company immediately preceding the date of publication of the prospectus and particulars of any cases in which no dividends have been paid in respect of any class of shares in any of those years.

33. If any of the company's shares are redeemable preference shares, the earliest date on which the company has power to redeem the same.

34. The name of every holder and beneficial owner of more than twenty-five **per centum** of the company's shares or any class of shares and the number and description of the shares held or owned.

35. The amount of the outstanding debentures issued or agreed to be issued by the company and any of its subsidiaries and proposed subsidiaries or, if none, a statement to that effect.

36. Particulars of any bank overdrafts of the company and any of its subsidiaries and proposed subsidiaries as at the latest practicable date, which shall be stated, or if there are no bank overdrafts, a statement to that effect.

37. The nature of the consideration for the issue of any of the company's shares or debentures issued or proposed to be issued otherwise than for cash.

38. Particulars of any shares or debentures of any of the company's subsidiaries and proposed subsidiaries which have, within two years immediately preceding the publication of the prospectus, been issued, or which are proposed to be issued, otherwise than for cash and the nature of the consideration.

39. Particulars of any shares or debentures of the company or any of its subsidiaries and proposed subsidiaries which have, within two years immediately preceding the publication of the prospectus, been issued, or which are proposed to be issued, for cash, the price and terms upon which the same have been or are to be issued and, if not already fully paid, the dates when any instalments are payable.

40. Particulars of any shares or debentures of the company or any of its subsidiaries and proposed subsidiaries which are under option, or agreed conditionally or unconditionally to be put under option, with the price to be paid for the securities under option, the duration of the

option, the consideration for which the option was granted, and the name and address of the grantee:

Provided that where the option is to all the shareholders or debentureholders or any class thereof, it shall be sufficient, so far as names are concerned, to record that fact without giving the names and addresses of the grantees.

41. Where the property has been acquired or is proposed to be acquired by the company or any of its subsidiaries and proposed subsidiaries, except where the contract for its acquisition was either

- (i) completed and any purchase money fully paid, more than two years before the date of publication of the prospectus; or
- (ii) entered into in the ordinary course of business and there is no connection between the contract and the invitation,
 - (a) the names and addresses of the vendors;
 - (b) the amount paid or to be paid in cash, shares, debentures or otherwise to the vendor and, where there is more than one separate vendor or the company or subsidiary or proposed subsidiary is a sub-purchaser, the amount so paid or to be paid to each vendor, distinguishing between the amounts paid or to be paid,
 - (i) in cash,
 - (ii) in shares,
 - (iii) in debentures,
 - (iv) the nature of, and value attributed to, any other consideration, and
 - (v) the amount, if any, paid or payable for goodwill;
- (c) full particulars of the nature and extent of the interest, direct or indirect, of every director or proposed director of the company or any of its subsidiaries and proposed subsidiaries in any such property;
- (d) short particulars of all transactions relating to any such property which were entered into

or completed within the two years immediately preceding the date of publication of the prospectus.

42. Unless more than two years have elapsed since the registration of the company,

- (a) the amount or estimated amount of the expenses incidental or preliminary to the promotion and registration of the company and by whom those expenses have been paid or are payable;
- (b) the names of the promoters of the company;
- (c) the amount of any cash or securities paid, or benefit given or proposed to be given, to any promoter and the consideration for such payment or benefit;
- (d) full particulars of the nature and extent of the interest of every director and proposed director in the promotion of the company.

43. Where the prospectus includes a statement purporting to be made by an expert, a statement that the expert has given and has not withdrawn his written consent to the publication of the prospectus with the statement included in the form and context in which it is included.

44. The dates of, parties to, and general nature of, every material contract, other than contracts entered into in the ordinary course of business or completed more than two years before the date of publication of the prospectus.

45. A reasonable time, not being less than twenty-eight days during which, and place at which, the following documents, or certified copies thereof, may be inspected, namely,

- (a) the company's articles of incorporation;
- (b) where the invitation relates to debenture, the debenture trust deed, if any;
- (c) each contract disclosed pursuant to paragraph 44 hereof or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof;
- (d) the profit and loss account, balance sheet, group accounts and reports required to be circulated to the members and debentureholders

of the company for the five financial years of the company immediately preceding the date of publication of the prospectus or, if the company has been incorporated for less than five years, for the number of years in respect of which it has and should have circulated such accounts and reports;

- (c) the profit and loss account and balance sheet of every subsidiary and proposed subsidiary of the company and of every business acquired or to be acquired by the company for each of its five financial years immediately preceding the date of publication of the prospectus, or, if any subsidiary or proposed subsidiary has been incorporated or any business has been carried on for less than five years, for the number of financial years completed since its incorporation or commencement:

Provided that this sub-paragraph shall not apply to the profit and loss accounts and balance sheets of a subsidiary or business in respect of any financial years in which the profits or losses and assets and liabilities of the subsidiary or business are dealt with in the accounts or group accounts of the company;

- (f) all other reports, letters, balance sheets, valuations and statements by any expert any part of which is extracted or referred to in the prospectus;
- (g) a written statement, signed by the accountants making the reports required under Part II of this Schedule, setting out the adjustments made by them in arriving at the figures shown in their report and giving the reasons therefor:

Provided that if the whole or any part of any of the above-mentioned documents is in any other language, a certified translation of such document or of the parts thereof shall be made available in the English language to the Registrar for inspection instead of the original or a certified copy.

46. The names and addresses of the accountants making the reports required under Part II of the Schedule.

PART II

REPORTS TO BE SET OUT

47. (1) A report by accountants duly qualified under section 217 of this Act to be appointed auditors of the company,

- (a) with respect to the profits or losses of the company in respect of each of the ten completed financial years immediately preceding the publication of the prospectus, or in respect of each of the financial years since the incorporation of the company if this occurred less than ten years before such publication; and if the last financial year of the company ended more than three months before the date of the publication of the prospectus, with respect to the profits or losses from the end of the last financial year to the latest practicable date not being less than three months before the date of the publication of the prospectus;
- (b) where the company is a holding company, in lieu of the report required by sub-paragraph (a) of this paragraph, a like report with respect to the profits or losses of the company and of its subsidiaries, so far as such profits or losses can properly be regarded as attributable to the interest of the company;
- (c) with respect to the assets and liabilities of the company as at the end of its last financial year or, if the financial year ended more than three months before the date of publication of the prospectus, as at the latest practicable date not being less than three months before the date of publication of the prospectus;
- (d) where the company is a holding company, in lieu of the report required by sub-paragraph (c) of this paragraph, a like report with respect to the assets and liabilities of the company, and of its subsidiaries so far as such assets can properly be regarded as attributable to the interest of the company;

- (e) with respect to the aggregate emoluments paid by the company to the directors of the company or any associated company during the last period for which the accounts have been made up, and the amount, if any, by which such emoluments would differ from the amounts payable under any arrangements in force at the date of publication of the prospectus;
- (f) with respect to any other matters which appear to the accountants to be relevant having regard to the purpose of the report.

(2) In making any such report the accountants shall make such adjustments, if any, as are in their opinion appropriate for the purposes of the prospectus.

48. (1) Where at any time within the ten years immediately preceding the publication of the prospectus the company has acquired any business or any subsidiary, or where at the date of the publication of the prospectus the company proposes to acquire any business or any proposed subsidiary, a report in manner hereinafter appearing by accountants duly qualified under section 217 of this Act to be appointed auditors of the company,

- (a) with respect to the profits or losses of that business or subsidiary or proposed subsidiary in respect of each of the ten financial years immediately preceding the publication of the prospectus, or in respect of each of the financial years since the commencement of that business or the incorporation of that subsidiary or proposed subsidiary if that occurred less than ten years before the publication of the prospectus; and if the last financial year of that business, subsidiary or proposed subsidiary ended more than three months before the date of the publication of the prospectus, with respect to the profits or losses from the end of the last financial year to the latest practicable date not being less than three months before the date of the publication of the prospectus:

Provided that,

- (i) such report shall deal with such of the profits or losses of a subsidiary or proposed subsidiary as can properly be regarded as attributable to the interests of the company;

- (ii) where the report relates to any financial year before the subsidiary became a subsidiary of the company or relates to a proposed subsidiary, only such of its profits or losses shall be regarded as attributable to the interest of the company as would have been properly so attributable if the company had held the securities in the subsidiary or proposed subsidiary which it holds at the date of publication of the prospectus or proposes to acquire;
 - (iii) where any such subsidiary or proposed subsidiary itself has subsidiaries the report shall be extended to the profits or losses of the subsidiary or proposed subsidiary and its subsidiaries so far as the same can properly be regarded as attributable to the interest of the company;
 - (iv) the report required by this paragraph need not extend to any period in respect of which the profits and losses of that business or the appropriate part of the profits or losses of that subsidiary are dealt with in the report required under paragraph 47;
- (b) where a business or subsidiary has been acquired since the latest date to which the accounts of the company have been made up, or where the company proposes to acquire a business or a proposed subsidiary, with respect to the assets and liabilities of that business or that subsidiary or proposed subsidiary as at the end of its last financial year or, if the financial year ended more than three months before the date of publication of the prospectus, as at the latest practicable date not being less than three months before the date of publication of the prospectus:

Provided that,

- (i) such report shall deal with the assets and liabilities of the subsidiary or proposed subsidiary so far as such assets and liabilities can properly be regarded as attributable to the interests of the company;

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- (ii) in relation to a proposed subsidiary only such assets and liabilities shall be regarded as attributable to the interests of the company as would have been properly so attributable if the company had held the securities in the proposed subsidiary which it proposes to acquire;
 - (iii) where any such subsidiary or proposed subsidiary itself has subsidiaries the report shall be extended to the assets and liabilities of that subsidiary or proposed subsidiary and its subsidiaries so far as the same can properly be attributable to the interest of the company;
- (c) with respect to any other matters which appear to the accountants to be relevant having regard to the purpose of the report.
- (2) In making any such report the accountants shall make such adjustments, if any, as are in their opinion appropriate for the purposes of the prospectus.

FOURTH SCHEDULE

FORM OF STATEMENT IN LIEU OF PROSPECTUS AND ACCOUNTS
AND REPORTS TO ACCOMPANY THE STATEMENT

PART I

FORM OF STATEMENT AND PARTICULARS TO BE CONTAINED THEREIN

Statement in Lieu of Prospectus delivered for registration by
[insert full name of Company]

- | | | | |
|--------|---|--------|--|
| 1. | Unless more than two years have elapsed since the registration of the company | 1. | |
| (a) | The amount or estimated amount of the expenses incidental or preliminary to the promotion and registration of the company | (a) | D |
| (b) | By whom these expenses have been paid or are payable | (b) | |
| (c) | The names of the promoters. | (c) | |
| (d) | The amount paid or intended to be paid to any promoter | (d) | Name of Promoter
.....
Amount D..... |
| (e) | The consideration for the payment | (e) | |
| (f) | Any other benefit given or intended to be given to any Promoter | (f) | Name of Promoter
.....
Nature and value of benefit.
..... |
| (g) | The consideration for the giving of that benefit. | (g) | |
| (h) | Full particulars of the nature and extent of the interest of every director and proposed director of the company in the promotion of the company | (h) | |
| 2. | The name, address and professional qualification of the company's auditors, and if no auditors have yet been appointed a statement to that effect | 2. | |
| 3. | The names and addresses of the company's bankers and legal practitioners | 3. | |
| 4. (a) | The names, countries of incorporation, and nature of the business of all the subsidiaries of the company and of all | 4. (a) | |

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bodies corporate in which the company is beneficially entitled to equity shares conferring the right to exercise more than twenty-five per centum of the votes exercisable at a general meeting of the body corporate:

Provided that, if, on the application of the directors of the company, the Registrar is satisfied that mention of any of the matters referred to in this paragraph would be harmful to the business of the company or any of its associated companies he may direct that such matter need not be stated.

- (b) If the company is a subsidiary, the name, country of incorporation and nature of the business of the holding company and the number of each class of shares of the company held by the holding company (b)
- 5 Where the company is proposing to acquire securities in any body corporate hereinafter in this Schedule called a proposed subsidiary which, by reason of the acquisition or anything to be done in consequence thereof or in connection therewith, will become a subsidiary of the company, the name, country of incorporation, and nature of the business of that proposed subsidiary 5.
- 6 Where the company is proposing to acquire a business, a full description of the nature of that business. 6.
- 7 Whether in the opinion of the directors the company's working capital is sufficient and, if not, how it is proposed to provide the additional working capital thought by the directors to be necessary 7.
- 8 The amount of the company's stated capital, distinguishing between different classes of shares 8.
- 9 The number and description of the company's, 9.
- (a) authorised shares of each class (a)
- (b) issued shares of each class (b)
- (c) treasury shares of each class (c)
- 10 The amount paid on the issued shares of each class 10.
- (a) in cash (a)
- (b) otherwise than in cash (b)

- | | | | |
|-----|---|--------|---------|
| 11 | The amount, if any, remaining payable on the issued shares of each class: | 11. | |
| | (a) presently due for payment | (a) | |
| | (b) not yet due for payment | (b) | |
| | (c) which the company has resolved shall not be capable of being called up except in the event and for the purposes of the company being wound up | (c) | |
| 12 | (a) The amounts of the dividends, if any, per share paid by the company in respect of each class of share in each of the five completed financial years of the company immediately preceding the date of the statement, and | 12.(a) | |
| | (b) particulars of any cases in which no dividends have been paid in respect of any class in any of those years. | (b) | |
| 13. | (a) The number of unissued shares of each class agreed to be issued and the amount payable therefor | 13.(a) | |
| | (b) in cash | (b) | D |
| | (c) otherwise than in cash | (c) | D |
| 14 | (a) The name of every holder and, if known, beneficial owner of more than twenty-five per centum of the company's shares or any class of share, and | 14.(a) | |
| | (b) The number and description of the shares held or owned | (b) | |
| 15 | The amount of the outstanding debentures issued or agreed to be issued by | 15.(a) | D |
| | (a) the company and | | |
| | (b) any of its subsidiaries and proposed subsidiaries | (b) | D |
| 16. | The amount of any bank overdrafts of | 16.(a) | D |
| | (a) the company and | | |
| | (b) any of its subsidiaries and proposed subsidiaries | (b) | D |
| 17. | The nature of the consideration for the issue of any of the company's shares or debentures issued or agreed to be issued otherwise than for cash. | 17. | |

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- | | | | |
|-----|---|---------|---------|
| 18. | Particulars of any shares or debentures of any of the company's subsidiaries and proposed subsidiaries which have, within the two years immediately preceding the date of the statement, been issued or which are proposed to be issued otherwise than for cash and the nature of the consideration | 18. | |
| 19. | (a) Particulars of any shares or debentures of the company or any of its subsidiaries and proposed subsidiaries which have, within two years immediately preceding the date of the statement, been issued for cash, stating | 19. (a) | |
| | (b) the price, and | (b) | |
| | (c) if not already fully paid, the dates when any instalments are payable | (c) | |
| 20. | Where any shares or debentures of the company or any of its subsidiaries and proposed subsidiaries are under option, or agreed conditionally or unconditionally to be put under option. | 20. | |
| | (a) the number and description of such shares, | (a) | |
| | (b) the amount and description of such debentures, | (b) | |
| | (c) the period during which the option is exercisable, | (c) | |
| | (d) the price to be paid for such shares or debentures, | (d) | D |
| | (e) the consideration for the grant of the option, | (e) | |
| | (f) the person to whom the option was given, or, if given to existing shareholders or debentureholders as such, the relevant shares or debentures | (f) | |
| 21 | Where any property has been acquired or is proposed to be acquired by the company or any of its subsidiaries and proposed subsidiaries, except where the contract for its acquisition was either | 21. | |
| | (i) completed and any purchase money fully paid more than two years before the date of the statements, or | | |

(ii) entered into in the ordinary course of business and there is no connection between the contract and the incorporation of the company or its conversion from a private to a public company,

(a)	The names and addresses of the vendors	(a)	
(b)	the amount paid or to be paid in cash, shares, debentures or otherwise to each vendor stating	(b)	Name of vendor
	(i) the total purchase price paid or to be paid,	(i)	D
	(ii) the amount paid or to be paid in cash,	(ii)	D
	(iii) the amount paid or to be paid in shares,	(iii)	Amount D Shares
	(iv) the amount paid or to be paid in debentures and the number and denomination of such debentures	(iv)	Amount D Debentures
	(v) the nature of, and value attributed to, other consideration	(v)	Nature Value
(c)	The total amount paid or to be paid in,	(c)	
	(i) cash	(i)	D
	(ii) shares	(ii)	D
	(iii) debentures	(iii)	D
	(iv) other consideration	(iv)	D
		Total <hr/>
	specifying (v) the amount paid or to be paid for good will.	(v)	D
(d)	Full particulars of the nature and extent of the interest, direct or indirect, of every director or proposed director of the company or any of its subsidiaries and proposed subsidiaries in any such property.	(d)	

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- (e) Short particulars of all transactions relating to any such property which were entered into or completed within the two years immediately preceding the date of the statement (e)
- 22 (a) The dates of, parties to, and general nature of every material contract, other than contracts entered into in the ordinary course of business, or completed more than two years before the date of this statement 22.(a)
- (b) The place and time, not being less than twenty-eight days at which such contracts or copies thereof or, in the case of any contract not reduced into writing, a memorandum giving full particulars thereof in a language acceptable to the Registrar, may be inspected. (b) Address
Between the hours of
and
from
until
(Sundays and public holidays
excepted)
- 23 Names, and any former names, and addresses and business occupations of the company's directors or proposed directors and secretary, or proposed secretary, and particulars of any other directorships held by the directors or proposed directors, in the manner prescribed by section 89 of the Act.

DIRECTORS AND PROPOSED DIRECTORS

Name	Former Names	Address	Business Occupation	Other Directorships	Whether yet appointed not

SECRETARY OR PROPOSED SECRETARY

Name	Former Names	Address	Business Occupation	Whether yet appointed or not

24. Names and addresses of accountants making the reports, if any, delivered for registration with this statement.

24.

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

.....

Date

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PART II

ACCOUNTS AND REPORTS TO ACCOMPANY STATEMENT

25. Where the company has been incorporated for more than fifteen months,

- (a) copies of the profit and loss account, balance sheet, group accounts and reports required to be circulated to the members and debenture-holders of the company for each of the five completed financial years immediately preceding the date of the statement, or in respect of each of the financial years since the incorporation of the company if this occurred less than five years before such date:

Provided that such accounts and reports shall not be required for any financial year in respect of which copies of such accounts and reports shall have been annexed to the annual return of the company;

- (b) unless the auditors' reports on the accounts for all such financial years have been made by auditors duly qualified under section 217 of this Act, to be appointed auditors of the company if it had been a public company at the date of each auditors' report, a report by accountants duly qualified under section 217 of this Act, to be appointed auditors of the company with respect to the profits or losses of the company in each of such financial years and with respect to the assets and liabilities of the company as at the end of the last financial year, or, if the company is a holding company, a like report with respect to the profits or losses and assets and liabilities of the company and its subsidiaries, so far as such profits or losses and assets can be properly be regarded as attributable to the interests of the company.

26. Where the company, whether or not incorporated for more than fifteen months, at any time within the five years immediately preceding the date of the statement has acquired any business or any subsidiary, or where at the date of the statement, the company proposes to acquire any business or any proposed subsidiary,

- (a) copies of the profit and loss account and balance sheet of the business, or subsidiary or proposed subsidiary in respect of each of the five financial years immediately preceding the date of the statement, or in respect of each of the financial years since the commencement of that business or the incorporation of that subsidiary proposed subsidiary, if that occurred less than five years before the date of the statement:

Provided that it shall not be necessary to deliver for registration copies of a profit and loss account and balance sheet of a business or subsidiary for any financial year in respect of which the profits or losses and assets and liabilities of the business or subsidiary are dealt with in the accounts or group accounts of the company for the financial year;

- (b) a report by accountants duly qualified under section 217 of this Act to be appointed auditors of the company with respect to the profits or losses of that business or subsidiary or proposed subsidiary in respect of each of the financial years for which a profit and loss account shall have been delivered for registration pursuant to subparagraph (a) hereof and with respect to the assets and liabilities of that business or subsidiary or proposed subsidiary as at the end of its last financial year:

Provided that,

- (i) such report shall deal with such of the profits or losses and assets and liabilities of a subsidiary or proposed subsidiary as can properly be regarded as attributable to the interests of the company;
- (ii) when the report relates to any financial year before the subsidiary became a subsidiary of the company or relates to a proposed subsidiary, only such of its profits or losses and assets and liabilities shall be regarded as attributable to the interests of the company as would have been properly attributable if the company had held the

securities in the subsidiary or proposed subsidiary which it holds at the date of the statement or proposes to acquire;

- (iii) where any such subsidiary itself has subsidiaries, the report shall be extended to the profits or losses and assets and liabilities of that subsidiary or proposed subsidiary and its subsidiaries so far as the same can properly be regarded as attributable to the interests of the company;
- (iv) the report required by this paragraph need not extend to any period in respect of which the profits or losses of that business or the appropriate part of the profits or losses of that subsidiary are dealt with in the accounts or group accounts of the company;
- (v) the report required by this paragraph need not extend to the assets and liabilities of any business or subsidiary if the same or the appropriate part thereof are dealt with in the last balance sheet of the company.

27. (1) In making any such report as is required by paragraph 25 or 26 of this Schedule the accountants shall make such adjustments, if any, as are in their opinion appropriate.

(2) Where any such adjustments are made, the statement shall have endorsed thereon or attached thereto a written statement signed by the accountants setting out the adjustments and giving the reasons therefor.

PARTNERSHIP BILL

PARTNERSHIP BILL

Arrangement of Clauses

Clause

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PARTNERSHIP BILL, 1994

A BILL ENTITLED

An Act to declare the Law of Partnership and to make provisions for matters connected therewith.

Enacted by the Parliament of The Gambia

Short title.

1. This Act may be cited as the Partnership Act, 1994.

Interpretation.

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

"business" means any form of trade, commerce, craftsmanship, profession, calling or other activity carried on for the purpose of gain;

"Business Gazette" means the gazette published by the Registrar under the Business Registration Act;

Act 95:02

"certificate of registration" means the certificate issued by the Registrar General to a business under the Business Registration Act.

"charge" means an incumbrance by way of security on property and includes a mortgage legal or equitable;

"court" means the Supreme Court;

"firm" means the partnership as a business entity;

"Minister" means the Minister responsible for the administration of this Act;

"partner" includes a sole surviving or continuing member of the firm;

"partnership" bears the meaning assigned to it by section 3;

"prescribed form" means a form prescribed by the Registrar for the purposes of this Act;

"register" means the register of partnerships; and

"Registrar" means the person appointed to register businesses under the Business Registration Act, 1994 and shall include any other person authorised by him to act as Registrar under this Act;

PART I. - NATURE AND REQUIREMENTS OF PARTNERSHIP

Meaning of
partnership

3. (1) Partnership means the association of two or more individuals carrying on business jointly for the purpose of making profit.

(2) An association of individuals under subsection (1) shall not be a partnership within the meaning of this Act if it is

(a) a company registered under the Companies Act, 1994 or any other enactment for the time being in force and relating to the registration of incorporated companies;

(b) a company, body corporate, or unincorporated association formed under any other enactment;

(c) a body corporate formed in accordance with the law of any foreign country whether or not carrying on business in The Gambia; or

(d) a joint venture without a firm name for one or more specific operations.

(3) Family ownership or co-ownership of property shall not of itself create a partnership whether or not the family or co-owners share any profits made by the use of that property.

(4) Subject to subsection (3) the sharing of the net profits of a business shall be *prima facie* evidence of a partnership, but

- (a) the remuneration of a servant or agent of a person engaged in business by a share of profits of the business shall not of itself make the servant or agent a partner; and
- (b) a person shall not be deemed to be a partner if it is shown that he did not participate in the carrying on of the business and was not authorised to do so.

Partnerships to be
in writing and
registered

4. (1) No partnership agreement shall be enforceable by a partner or anyone claiming through a partner unless,

- (a) it is evidenced by writing signed by each partner or by his agent authorised in writing to sign on his behalf; or
- (b) it is excused from the necessity of a writing by any enactment.

(2) After the expiration of three months from the commencement of this Act no partnership shall carry on business in The Gambia unless the partnership is registered in accordance with section 5 and not struck off the register under section 51, 52 or 53. The Registrar shall have power to waive the fees payable on a fresh registration by a partnership already in existence at the commencement of this Act which has paid fees for registration under the law applicable at the time of its registration.

(3) No partnership consisting of more than 20 persons or of which a body corporate is a member shall be registered under this Act.

Method of
registration.

5. (1) Registration under this Act shall be effected by the presentation to the Registrar for registration a certified copy of the partnership agreement accompanied by a statement in the prescribed form signed by all the partners containing

- (a) the firm name of the partnership;
- (b) the general nature of the business;
- (c) the address and Post Office number, if any, of
 - (i) the principal place of business of the partnership in The Gambia; and
 - (ii) all other places in The Gambia at which the business is carried on;

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- (d) the full names and any former names, the nationality, residential addresses and other business occupation, if any, of the partners;
 - (e) the tax identification number of each partner;
 - (f) the date of commencement of the partnership except where the partnership has commenced more than 12 months prior to the date of the statement; and
 - (g) particulars of any charges requiring registration under section 25 or a statement that there are no such charges.

(2) For the purposes of paragraph (g) of subsection (1) where particulars of a charge require registration under section 25 the statement shall be accompanied by the documents required by that section.

(3) Upon payment of the prescribed fee, the Registrar shall register the partnership agreement and statement, unless in his opinion

- (a) the partnership is not registrable under this Act;
- (b) any of the businesses which the partnership has been carrying on or is to carry on is unlawful;
- (c) the name of the firm is misleading or undesirable;
- (d) any of the partners is an infant or is of unsound mind or a person who within the preceding 5 years has been guilty of fraud or dishonesty (whether convicted or not) in connection with any trade or business or is an undischarged bankrupt or is insolvent; or
- (e) the statement is incomplete, illegible, inaccurate, irregular, or on paper insufficiently durable to be suitable for registration.

(4) For the purpose of forming an opinion in accordance with subsection (3) the Registrar may call upon a partner to supply such information as he thinks fit and may require the books and accounts of the partnership to be produced for inspection and an explanation of provisions of the partnership agreement.

(5) Where the Registrar refuses registration on any of the grounds specified in paragraphs (a), (b) or (d) of subsection (3) a partner or person

claiming to be a partner may appeal to the court against the decision of the Registrar in accordance with subsection (2) of section 56.

(6) In addition to the registration of the firm the partners shall also register the firm as a business and obtain a certificate of registration in accordance with the provisions of the Business Registration Act, 1994 and section 9 of that Act which requires annual renewal of a business registration certificate, shall apply to the firm.

Issue and effect of certificate of registration.

6. (1) Upon registration of a firm, the Registrar shall certify that the firm has been registered and the certificate of registration shall state the names of the partners.

(2) The Registrar shall publish a notice in the *Business Gazette* of the issue of the certificate of registration and the particulars of the firm and the names and addresses of each of the partners.

(3) A certificate of registration, or a copy thereof, certified correct under the hand of the Registrar, or in the *Business Gazette* containing the notice referred to in subsection (2) shall be conclusive evidence that the firm has been duly registered.

Registration of changes.

7. (1) Where a change occurs in the particulars registered under this Act, the partners shall, within 28 days after the change, deliver to the Registrar for registration a statement in the prescribed form signed by all the partners or their agents authorised in writing, containing particulars of the change.

(2) Subsections (3), (4) and (5) of section 5 shall apply as if such statement were a statement delivered for registration under that section.

(3) Where a change is of the firm name or of the identity of the partners, the Registrar upon registration of the statement shall issue an amended certificate of registration and shall insert a notice in the *Business Gazette* of the issue of such certificate and the terms thereof.

Penalties and disabilities for breach of sections 4, 5, and 7.

8. (1) In the event of default in complying with subsection (2) or (3) of section 4 or section 5 or 7,

(a) every partner is liable to a fine not exceeding 50 dalasis for each day during which the default continues;

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(b) the rights of the firm concerned and of the partners therein arising out of any contract made during such time as the default continues shall not be enforceable by action or other legal proceedings.

(2) Notwithstanding paragraph (b) of subsection (1),

(a) a firm may apply to the court for relief against the disability therein imposed and the court, on being satisfied that it is just and equitable to grant relief may grant such relief either generally or as respects any particular contract and on such conditions as the court may deem fit;

(b) nothing done by the firm shall prejudice the rights of any other parties as against the firm or the partners, or any other person, in respect of a contract; and

(c) where an action or proceeding is commenced by a person against the firm or the partners to enforce the rights of that person in respect of a contract, nothing shall preclude the firm or the partners from enforcing in that action or proceeding by way of counterclaim, set-off or otherwise, such rights as it or they may have against that person in respect of that contract.

(3) If there is a material error or omission made in a statement or notice delivered to the Registrar in accordance with section 5 or 7, every partner in the firm concerned shall be liable to a fine not exceeding 1,000 dalasis.

Maintenance of register.

9. (1) The Registrar shall maintain a register into which shall be entered

(a) the name of the firm;

(b) the general nature of the business of the firm;

(c) the principal place of business of the firm;

(d) the full names and any former names, nationality, residential addresses and other business occupation, if any, of each partner;

(e) the date of commencement of the business if the firm commenced business after the commencement of this Act;

- (f) the tax identification number of each partner;
- (g) any other particulars which the Minister may by regulation require; and
- (h) any change in any of the particulars specified in paragraphs (a) to (g) which is reported to the Registrar.

(2) A person shall not be deemed to have knowledge of any particulars merely because the particulars are stated or referred to in a statement or notice registered in accordance with this Act.

Publicity.

10. (1) A firm shall

- (a) carry on business under the registered firm name, and shall paint or affix, and keep painted or affixed, the registered firm name on the outside of every office or place in which its business is carried on, in a conspicuous position in easily legible characters;
- (b) have the registered firm name and the present forenames or the initials thereof, the present surname, and any former forenames or surnames of all the partners in the firm accurately mentioned in legible characters at the head of all trade circulars and business letters of the firm; and
- (c) keep exhibited in a conspicuous position at the principal place of business of the firm in The Gambia the firm's latest certificate of registration issued under section 6 or 7.

(2) Where a default is made in complying with this section the firm is liable to a fine not exceeding 1,000 dalasis.

PART II. - RELATIONS OF PARTNERS TO PERSONS DEALING WITH THEM

Power of partners
to bind the firm

11. (1) Every partner is an agent of the firm for the purpose of the business of the firm.

(2) The acts of a partner bind the firm if

- (a) such acts were authorised, expressly or impliedly, by the other partners or were subsequently ratified by them; or

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(b) such acts were done for carrying on in the usual way business of the kind carried on by the firm, unless the partner so acting has in fact no authority to act for the firm in the particular matter and the person with whom he is dealing knows that he has no authority.

(3) Where the acts of a partner are for a purpose apparently not connected with the firm's ordinary course of business, the firm is not bound unless he is in fact authorised by his other partners or his act is subsequently ratified by them.

(4) Subject to subsection (5), if it has been agreed between the partners that any restriction shall be placed on the power of any one or more of them to bind the firm, no act done in contravention of the agreement is binding on the firm with respect to persons having notice of the agreement.

(5) An agreement purporting to limit the extent of the liability of the firm or the partners in respect of an act binding the firm shall not be effective except as between the actual parties to the agreement.

Acts on behalf of the firm.

12. (1) An act or instrument relating to the business of the firm and done or executed in the firm name, or any other manner showing an intention to bind the firm by a person authorised in that respect, whether a partner or not, is binding on the firm.

(2) Subsection (1) shall not affect a general rule of law relating to the execution of deeds or negotiable instruments.

Nature of liability of firm and partners.

13. Every partner in a firm is jointly and severally liable with the firm and the other partners for all debts and obligations of the firm incurred while he is partner.

Liability of incoming and outgoing partners.

14. (1) A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before he became a partner.

(2) A partner who retires from a firm does not thereby cease to be liable for the debts or obligations of the firm incurred before his retirement.

(3) A retiring partner may be discharged from an existing liability by an agreement to that effect between himself and the firm and the creditor,

and this agreement may be either express or inferred as a fact from the course of dealing between the creditor and the firm as newly constituted.

(4) Where a person deals with a firm after the retirement of a partner whom he knew to be a partner in the firm he is entitled to treat the retired partner as still being a partner until he has notice of the retirement and the retired partner shall be liable accordingly.

(5) Where a person has dealings with the firm prior to the retirement of a partner, that person shall not be deemed to have notice of the retirement unless he has actual knowledge thereof, except that an advertisement in a newspaper circulating in the district in which is situated the principal office of business of the firm in The Gambia shall be notice to persons who had dealings with the firm prior to the retirement.

(6) The estate of a partner who dies or has a bankruptcy or insolvency order made against him under the Insolvency Act 1992 or, subject as provided by subsections (4) and (5), a partner who retires, is not liable for any debts or obligations of the firm contracted or incurred after the date of death, bankruptcy or insolvency order, or retirement.

Persons liable by holding out

15. (1) A person who by words spoken or written or by conduct represents himself, or who knowingly suffers himself to be represented, as a partner in a firm, is liable as a partner to any one who has on the faith of such representation allowed the firm to incur debts or obligations to him, whether the representation has or has not been made or communicated to the person by or with the knowledge of the apparent partner making the representation or suffering it to be made.

(2) Where after a partner's death or retirement the firm continues to do business in the same firm name, the continued use of that name or of the former partner's name as part thereof shall not of itself make his estate or him liable for any debts or obligations of the firm contracted or incurred after his death or retirement.

Revocation of continuing guarantees.

16. (1) A guarantee given to a third person in respect of the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by a change in the partners who are members of the firm.

(2) A guarantee given to a firm in respect of transactions of a third person is not, in the absence of agreement to the contrary, revoked as to

future transactions by a change in the partners who are members of the firm.

Procedure against firm for a partner's separate judgment debt.

17. (1) A writ of execution shall not issue against the property of the firm except on a judgment against the firm.

(2) Where a judgment has been recovered against a partner, the court may, on the application of the judgment creditor, make an order

(a) charging the partner's interest in the firm with payment of the amount of the judgment debt and interest;

(b) appointing a receiver of that partner's share of profits, whether already declared or accruing, and of any other money that may be coming to him in respect of the partnership; and

(c) directing all accounts and inquiries, and giving all other orders and directions which might have been directed or given if the charge had been made in favour of the judgment creditor by the partner, or which the circumstances of the case may require.

(3) The other partner or partners may at any time redeem the interest charged or, where a sale is being directed, may purchase the same.

PART III. - RELATIONS OF PARTNERS TO ONE ANOTHER

Fiduciary relationship of partners.

18. (1) Partners stand in a fiduciary relationship towards the firm and their co-partners.

(2) Without prejudice to the generality of subsection (1),

(a) every partner is bound to render to every other partner full information of all things affecting the firm;

(b) every partner must account to the firm for any benefit derived by him without the consent of the other partners from a transaction concerning the firm or from any use by him of the property, name or business connection of the firm;

(c) if a partner, without the consent of the other partners, directly or indirectly, carries on a business of the same nature as, and

competing with that of the firm, he must account for and pay over to the firm all profits made by him in that business.

Rules applying in the absence of contrary agreement.

19. (1) Subject to the provisions of this Act, the mutual rights and duties of partners whether ascertained by agreement or by the provisions of this section may be varied by the consent of all the partners and the consent may be either express or inferred from the partners' course of dealing.

(2) Subject to any agreement, express or implied, the following rules shall apply to a firm:

- (a) all the partners are entitled to share equally in the capital and profits of the firm and must contribute equally towards the losses sustained by the firm;
- (b) the firm must indemnify every partner in respect of payments made and personal liabilities incurred by him
 - (i) in the ordinary and proper conduct of the business of the firm; or
 - (ii) in or about anything necessarily done for the preservation of the business or property of the firm;
- (c) a partner making, for the purpose of the firm, any actual payment or advance beyond the amount of capital which he has agreed to subscribe, is entitled to interest at the rate of 5 *per cent per annum* from the date of the payment or advance;
- (d) notwithstanding that the partnership agreement provides for payment of interest on the capital subscribed by a partner, a partner is not entitled to payment of that interest before the ascertainment of the profits of the firm;
- (e) every partner may take part in the management of the business of the firm;
- (f) no partner shall be entitled to remuneration for acting in the business of the firm;
- (g) no person may be introduced as a partner without his consent and the consent of all existing partners;

- (h) any difference arising as to ordinary matters connected with the business of the firm may be decided by a majority of the partners, but no change may be made in the nature of the business of the firm without the consent of all the existing partners; and
- (i) the partnership books shall be kept in The Gambia at the place of business of the firm or the principal place of business if there is more than one.

Presumed
continuance of
terms of
partnership.

20. Where a partnership is expressed to be for a fixed term, and, after the expiration of that term, the partners or some of them expressly or impliedly agree to remain partners in the firm, the rights and duties of those partners, in the absence of an agreement to the contrary, remain the same as they were at the expiration of the term so far as is consistent with the incidents of a partnership at will.

Partnership
property.

21. (1) All property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, shall be partnership property, and shall be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.

(2) Unless the contrary intention appears, property bought with money belonging to the firm is deemed to have been bought on account of the firm.

(3) Where co-owners of an interest in immovable property, which is not itself partnership property, are partners as to profits made by the use of that property, and purchase other property out of the profits to be used in like manner, the property purchased belongs to them, in the absence of an agreement to the contrary, not as partners but as co-owners in the same manner as they hold the immovable property first mentioned at the date of the purchase.

Nature of interests
of partners.

22. The interests of the partners in the firm, including interest in immovable property brought into the partnership stock, shall be personal estate and shall not be in the nature of real or immovable property.

Rights of assignee
of partner's
interest in firm.

23. (1) An assignment by a partner of his interest in the firm, either absolute or by way of a charge, does not, as against the other partners, entitle the assignee to interfere in the management or administration of the firm or to require any accounts of the transactions of the firm or to inspect

the partnership books, but entitles the assignee only to receive the share of profits to which the assigning partner would otherwise be entitled, and the assignee must accept the account of profits agreed to by the partners.

(2) In the event of the assigning partner ceasing to be a partner in the firm, the assignee shall be entitled to receive the amount which the assigning partner or his estate would be entitled to receive as between himself and the other partners and, for the purpose of ascertaining that amount, to an account as from the date of his ceasing to be a partner.

PART IV. - MORTGAGES AND CHARGES

Power to grant
floating charges.

24. (1) A firm may grant a floating charge over the whole or a specified part of its undertaking and assets.

(2) A floating charge granted under subsection (1) shall be an equitable charge on the whole or a specified part of the undertaking and assets both present and future of the firm, but the charge shall not preclude the firm from dealing with the assets unless and until

- (a) the security becomes enforceable in accordance with the terms of the charge and the chargee, pursuant to a power in that behalf in the instrument of charge, appoints a receiver or manager or enters into possession of the assets;
- (b) the court appoints a receiver or manager of the assets on the application of the chargee; or
- (c) the firm is dissolved.

(3) On the happening of any of the events in paragraphs (a) to (c) of subsection (2), the charge shall be deemed to crystallise and to become a fixed equitable charge on such of the assets of the firm as are subject to the charge.

(4) Where a receiver or manager is withdrawn with the consent of the chargee or the chargee withdraws from possession before the charge has been fully discharged, the charge shall thereupon cease to be a fixed charge and become a floating charge.

(5) A fixed charge on a property has priority over a floating charge affecting that property unless the terms on which the floating charge was

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granted prohibited the firm from granting a later charge having priority over the floating charge and the person in whose favour the fixed charge was granted had actual notice of that prohibition at the time when the charge was granted to him.

(6) Where a floating charge has been granted over a part of the undertaking and assets of a firm, no payment or return shall be made to a partner by the firm out of any assets subject to the charge, except to the extent agreed by the chargee, and if the payment or return is made without an agreement the security of the chargee shall become immediately enforceable.

Registration of particulars of charges.

25. (1) A charge, other than a charge specified in subsection (3), created by a firm or partner in the firm, after the date of registration of the firm pursuant to section 5 to secure any debt or obligation of the firm, shall be void so far as a security on the property of the firm or partner therein is thereby conferred, unless the particulars prescribed in this section, together with the original and a certified copy of the instrument, if any, by which the charge is created or evidenced, are delivered in the prescribed form to the Registrar for registration within 28 days after its creation.

(2) For the purposes of this subsection (1), a certified copy of an instrument is one which has endorsed thereon a certificate to the effect that it is a true and complete copy of the original signed by a person interested therein otherwise than on behalf of the firm or the partners.

(3) Where the original of an instrument is in a language other than English the copy shall also contain an English translation similarly certified to the effect that it is an accurate translation of the original.

(4) This section shall not prejudice any contract or obligation for repayment of the money thereby secured and when a charge becomes void under this section the money secured thereby shall immediately become payable notwithstanding any provision to the contrary in a contract.

(5) This section shall not apply to a pledge or possessory lien on goods, or to a charge by way of pledge, deposit, letter of hypothecation or trust receipt, bills of lading, dock warrants or other documents of title to goods, or bills of exchange, promissory notes or other negotiable securities for money.

(6) The particulars requiring delivery for registration under this section are,

- (a) the date of creation of the charge;
- (b) the nature of the charge;
- (c) the amount secured by the charge, or the maximum sum deemed to be secured by the charge in accordance with section 26;
- (d) short description of the property charged;
- (e) the grantor of the charge;
- (f) the person entitled to the charge;
- (g) in the case of a floating charge, the nature of a restriction on the power of the firm to grant further charges, ranking in priority to or *pari passu* with the charge thereby created.

(7) Nothing in this section contained shall affect the provisions of any other enactment relating to the registration of charges.

Charges to secure
fluctuating
amounts.

26. (1) Subject to subsection (2), where a charge, particulars of which require registration under section 25, is expressed to secure all sums due or to become due or some other uncertain or fluctuating amount, the particulars required under paragraph (c) of subsection (6) of section 25 shall state the maximum sum deemed to be secured by the charge, being the maximum sum covered by the stamp duty thereon, and the charge shall be void, so far as a security on the property of the firm or a partner is thereby conferred, as respects an excess over the stated maximum.

(2) Where

- (a) additional stamp duty is paid on a charge, and
- (b) at any time after the payment of the stamp duty but prior to the commencement of the dissolution of the firm, amended particulars of the charge stating the increased maximum sum deemed to be secured thereby, together with the original instrument by which the charge was created or evidenced, are delivered to the Registrar for registration.

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then as from the date of delivery the charge, if otherwise valid, shall be effective to the extent of the increased maximum sum except as regards a person who, prior to the date of the delivery, has acquired proprietary rights in, or a floating charge on, the property subject to the charge.

Charges on property acquired.

27. (1) Where a firm acquires property which is subject to a charge of such kind that particulars of it would, if it had been created by the firm after the acquisition of the property, have been required to be registered under section 25, the firm shall cause particulars of the charge together with the document, if any, by which the charge is created or evidenced or a copy thereof, certified as provided in subsection (2) and (3) of section 25, to be delivered to the Registrar for registration within 28 days after the date on which the acquisition is completed.

(2) The particulars requiring registration under this section shall be those specified in subsection (6) of section 25 with the addition of the date of the acquisition of the property.

(3) Failure to comply with this section shall not affect the validity of the charge.

Existing charges.

28. (1) Where, at the date of first registration of a firm in accordance with section 5, the firm or any of the partners of the firm has property on which there is a charge, particulars of which would require registration if it had been created after the date of registration of the firm, the firm shall cause particulars of the charge as required by section 25, together with the document, if any, by which the charge was created or a copy thereof certified as required by that section, to be delivered to the Registrar for registration in accordance with section 5.

(2) Failure to comply with this section shall not affect the validity of the charge.

Duty to send particulars for registration.

29. (1) Every firm shall send to the Registrar for registration the particulars required to be sent under sections 25 to 28, but registration may be effected on the application of a person interested therein.

(2) If a firm makes default in sending to the Registrar particulars requiring registration, unless the particulars have been duly delivered for registration by some other person, the firm is liable to a fine not exceeding 500 dalasis.

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Register of particulars of charges.

30. (1) The Registrar shall keep, with respect to each firm, a register of the particulars duly delivered to him pursuant to sections 25 to 28 and shall enter the particulars in the register.

(2) The Registrar shall give a certificate of the registration of particulars of a charge registered in pursuance of sections 25 to 28 and the certificate shall be conclusive evidence, except in favour of the firm or of any other person who has delivered false or incomplete particulars or an incorrect copy of a document, that the requirements of those sections have been complied with.

(3) In the case of a charge of the type referred to in section 26 the certificate shall state the maximum sum deemed secured by the charge.

(4) The original or certified copy of the instrument of charge delivered with the particulars shall not be registered or retained by the Registrar.

Entry of satisfaction on discharge.

31. The Registrar shall, on application in the prescribed form and on evidence being given to his satisfaction with respect to a charge of which particulars have been registered that

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

(b) the whole or part of the property has been released from the charge,

enter on the register a memorandum of satisfaction in whole or in part or of the fact that the whole or part of the property has been released from the charge, as the case may be.

Rectification of register of particulars of charges.

32. (1) The court, on being satisfied that the omission to register particulars of a charge within the time required by this Act or that the omission or misstatement of particulars of a charge with respect to such charge was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors of the firm, or that on other grounds it is just and equitable to grant relief, may, on the application of the firm or a person interested, and on such terms as seen: to the court just and expedient, make an order extending the time for registration, or for the omission or misstatement to be corrected.

(2) Where the court grants an extension of time for registration the charge shall not, unless the court otherwise orders, adversely affect a person who prior to the date of actual registration of particulars of the charge, has acquired a proprietary right in, or a fixed or floating charge on, the property subject to the charge, and shall be ineffective against the Public Trustee and any creditors of the firm if the dissolution of the firm commences before the date of actual registration.

Registration of enforcement of security.

33. (1) Where a person obtains an order for the appointment of a receiver of a property subject to a charge, particulars of which are required to be delivered for registration pursuant to sections 25 to 28, or appoints a receiver or enters into possession of the property under any powers contained in the charge, notice of the fact in the prescribed form shall within 10 days from the date of the order of appointment or entry into possession, be given to the Registrar, who shall enter the fact in the register of the particulars of charges relating to the firm.

(2) If default is made in giving the notice required under subsection (1), the receiver, the person entering into possession, the firm, and any partner of the firm who is in default is liable to a fine not exceeding 50 dalasis for every day during which the default continues.

(3) Where a person appointed receiver of the property of the firm ceases to act as such receiver or where a person having entered into possession goes out of possession, he shall, within 10 days of so ceasing to act or to remain in possession, give notice to that effect in the prescribed form to the Registrar, who shall enter the notice in the register of particulars of charges.

(4) If a person makes default in complying with the requirements of subsection (3) he is liable to a fine not exceeding 50 dalasis for every day during which the default continues.

(5) The Registrar shall cause a copy of the notice given under this section to be published in the *Business Gazette*.

Registration constituting notice.

34. The registration of any particulars on the register of particulars of charges shall constitute actual notice of those particulars, but not of the contents of any documents referred to therein or delivered therewith, to all persons and for all purposes as from the date of registration.

PART V - ACCOUNTS

Keeping of
accounts.

35. (1) A firm shall cause to be kept in The Gambia proper accounts with respect to its financial position and changes therein, and with respect to the control of and accounting for all property acquired whether for resale or for use in the business of the firm and in particular with respect to

- (a) all sums of money received and expended by or on behalf of the firm and the matters in respect of which the receipt and expenditure takes place;
- (b) all sales and purchases by the firm of property and goods and services; and
- (c) the assets and liabilities of the firm and the interests of the partners therein.

(2) A firm shall, at intervals of not more than 15 months, cause to be prepared

- (a) a profit and loss account giving a true and fair view of the profit and loss of the firm for the period for which it relates; and
- (b) a balance sheet giving a true and fair view of the assets and liabilities and state of affairs of the firm and of the value of the interest of each of the partners therein as of the end of the period to which the profit and loss account relates.

(3) The Registrar may, by order published in the *Business Gazette*, prescribe the form of, or minimum information to be given in, accounts and balance sheets to be kept and prepared in accordance with this section and may require accounts and balance sheets to be audited and may prescribe the qualification of auditors.

(4) If there is default in maintaining or preparing the accounts and balance sheets required by this section each partner is liable to a fine not exceeding 2,000 dalasis.

Partners' access to
accounts.

36. Notwithstanding an agreement to the contrary, each partner in a firm shall have a right of access to the accounts of the firm and may inspect and make copies thereof, and each partner or former partner, and the personal representative of the deceased partner shall be supplied with

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a copy of the profit and loss account and the balance sheet prepared in accordance with section 35 and relating to any period for which he was a partner in the firm.

**PART VI. - WITHDRAWAL FROM THE FIRM
AND CONSEQUENCES**

Cessation of
membership.

37. (1) A partner ceases to be a partner in the firm in the event of

(a) his death;

(b) his becoming an alien enemy during time of war; or

(c) a bankruptcy or insolvency order being made against him under the Insolvency Act 1992.

(2) If the other partners so elect in writing, a partner shall cease to be a partner in the firm if he suffers his interest in the partnership to be charged under section 17 for his separate debt.

(3) The partnership agreement may provide that on the occurrence of an event specified in the agreement a partner shall cease to be a partner either automatically or at the option of the other partners.

(4) On application by a partner, the court may order that any other partner shall cease to be a partner,

(a) if that other partner is shown to the satisfaction of the court to be of permanently unsound mind;

(b) if that other partner is shown to the satisfaction of the court to have become in any other way permanently incapable of performing his part of the partnership agreement;

(c) if that other partner has been guilty of such conduct as, in the opinion of the court, regard being had to the nature of the business of the firm, is calculated prejudicially to affect the carrying on of the business;

(d) if that other partner wilfully or persistently commits a breach of the partnership agreement or otherwise so conducts himself in matters relating to the business of the firm that it is not

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reasonably practicable for the other partner or partners to carry on the business in partnership with him;

- (e) if the business of the partnership can only be carried on at a loss;
- (f) if circumstances have arisen which, in the opinion of the court, render it just and equitable that the other partner should cease to be a partner of the firm.

(5) An application to the court

- (a) on any of the grounds specified in paragraphs (a), (b), (e) and (f) may be made by any partner;
- (b) however, such application on any of the grounds specified in paragraphs (c) and (d) shall not be made by the partner whose conduct is alleged to justify the making of an order that he shall cease to be a partner.

(6) Subject to any agreement between the partners, if the partnership is for an undefined time or has become a partnership at will in accordance with section 20, a partner may at any time retire from the firm by giving notice in writing to the other partner or partners of his intention to retire, and thereupon the partner shall cease to be a partner in the firm as from the date of the communication of the notice.

(7) The partnership agreement may validly provide that a partner may retire from the partnership in the manner specified in the agreement and on retirement in accordance with such provision the partner shall cease to be a member of the firm.

Withdrawal of a partner not to affect the others

38. Unless the firm was constituted by two partners, the fact that a partner has ceased to be a partner in the firm does not affect the existence of the firm or the mutual rights and duties of the other partners.

Right of outgoing partner to share of profits made after departure.

39. (1) Where a member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with its capital or assets without a final settlement of accounts as between the firm and the outgoing or deceased partner or his estate, then in the absence of an agreement to the contrary, the outgoing or deceased partner or his estate is entitled at the option of himself or his representatives to interest at the rate of five *per cent per annum* on the amount of his share of the partnership assets.

(2) Subject to subsection (2), where by the partnership agreement an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits.

(3) Where a partner assuming to act in exercise of an option does not in all material respects comply with the terms of the option, he is liable to pay the amount of interest provided under subsection (1) to the estate of the deceased or the outgoing partner or his estate as the case may be.

Retiring or
deceased partner's
share to be a debt

40. Subject to an agreement between the partners, the amount due from surviving or continuing partners to an outgoing partner or the representatives of a deceased partner in respect of the outgoing or deceased partner's share is a debt accruing at the date of the dissolution or death.

PART VII. - DISSOLUTION OF PARTNERSHIP AND ITS CONSEQUENCES

Dissolution by
death, bankruptcy,
expiration or
notice

41. (1) Subject to an agreement between the partners, a firm shall be dissolved,

(a) if entered into for a fixed period, by the expiration of that period;

(b) if entered into for a single adventure or undertaking, by the termination of that adventure or undertaking; or

(c) if entered into for an undefined period,

(i) by the death, bankruptcy, insolvency or other physical or legal impossibility to continue with the partnership on the part of either partner in a partnership with only two members; and

(ii) by a partner giving notice to the other partner of his intention to retire or to dissolve the partnership.

(2) In the case of sub-paragraph 2 of paragraph (c) of subsection (1), the partnership shall be dissolved as from the date mentioned in the notice as the date of retirement or dissolution, or, if no date is so mentioned, as from the date of the communication of the notice.

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(3) A firm shall in any case be dissolved where upon one partner ceasing to be a partner in accordance with section 37 only one other partner remains.

Dissolution by
illegality of
partnership.

42. A partnership shall in every case be dissolved by the happening of an event which makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry it on in partnership.

Dissolution by the
court.

43. (1) A firm, notwithstanding that it is being dissolved voluntarily, may be dissolved under an order of the court on the application of

- (a) a partner in the firm;
- (b) a creditor of the firm, including a former partner or his legal representative who has not been paid the amount due in respect of that former partner's interest in the firm; or
- (c) the Registrar.

(2) The court shall not give a hearing to an application for dissolution presented by a contingent or prospective creditor of the firm until

- (a) such security for costs has been given as the court thinks reasonable, and
- (b) until a *prima facie* case for the dissolution has been established to the satisfaction of the court.

(3) The court may order the dissolution of a firm on application if,

- (a) the firm does not commence business within a year from its registration or suspends its business for a whole year;
- (b) the firm is unable to pay its debts; or
- (c) the court is of the opinion that it is just and equitable that the firm should be dissolved in accordance with the provisions of the Insolvency Act 1992.

(4) Notwithstanding the provisions of the Insolvency Act 1992, a firm shall be deemed to be unable to pay its debts.

(a) if a creditor to whom the firm is indebted, by assignment or otherwise, in the sum of at least 5,000 dalasis, has sent by registered post to the firm at its last registered principal place of business a written demand requiring the firm to pay the sum so due and the firm has for 28 days thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor;

(b) if in The Gambia execution or other process issues on a judgment, decree or order of a court in favour of a creditor of the firm in returned unsatisfied in whole or in part; or

(c) if it is proved to the satisfaction of the court that the firm is unable to pay its debts.

(5) For the purposes of paragraph (c) of subsection 4, the court shall, in determining whether a firm is unable to pay its debts, take into account the contingent and prospective liabilities of the firm.

(6) The court may also on the application of the Registrar order the dissolution

(a) of a firm on the ground that the business of the firm is unlawful or that the firm is being operated for an illegal purpose or has for a period of more than 3 months carried on business without renewing its business registration certificate; or

(b) of an unregistered partnership as if it was a firm if the court is of the opinion that the partnership is carrying on business unlawfully by reason of the fact that it is not duly registered under this Act.

(7) Notwithstanding subsections (1), (4) and (5), upon an application being made to the court on any of the grounds in subsection (4) of section 37, the court may, if it is of the opinion that the grounds of the application have been established and that the court of justice is served thereby, instead of making an order under that subsection, dissolve the partnership.

(8) Where, before an application for the dissolution of a firm or partnership by the court, the partners have commenced to dissolve voluntarily, the dissolution by the court of the firm or partnership shall be deemed to have commenced at the date of commencement of the voluntary

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dissolution and, unless the court otherwise directs, all proceedings taken in the voluntary dissolution shall be deemed to have been validly taken.

(9) In any other case not falling under subsection 8, the dissolution by the court shall be deemed to commence at the time of the application.

(10) On the making of a dissolution order, a copy of the order shall forthwith be delivered by the firm or partnership to the Registrar for registration and notice thereof shall be published in the *Business Gazette*.

(11) In the event of a default by the firm or partnership to comply with subsection 10, each partner is liable to a fine not exceeding 1,000 dalasis.

Rights of persons dealing with firm against apparent members of firm.

44. (1) Where a person deals with a firm after a change in its constitution he is entitled to treat all apparent members of the old firm as still being members of the firm until he has notice of the change.

(2) For the purposes of subsection (1), a publication of a notice in the *Business Gazette* shall be notice as to persons who had no dealings with the firm before the date of the dissolution or change so notified.

(3) The estate of a deceased, bankrupt or insolvent partner, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of the death, bankruptcy, insolvency or retirement.

Right of partners to notify dissolution or retirement.

45. On the dissolution of a partnership or retirement of a partner any partner may publicly notify the same, and may require the other partner or partners to concur for that purpose in all necessary or proper acts, if any, which cannot be done without his or their concurrence.

Continuing authority of partners for purposes of winding up.

46. (1) After the dissolution of a partnership the authority of each partner to bind the firm, and the other rights and obligations of the partners, continue notwithstanding the dissolution so far as may be necessary to wind up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise.

(2) Notwithstanding subsection (1), the firm is not bound by the acts of a partner who has become bankrupt or insolvent; but this subsection does not affect the liability of any person who has after the bankruptcy or

insolvency represented himself or knowingly suffered himself to be represented as a partner of the bankrupt or insolvent.

Rights of partners as to application of partnership property.

47. (1) On the dissolution of a partnership every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after the payment, applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm.

(2) For the purposes of subsection (1), a partner or his representative may, on the termination of the partnership apply to the court to wind up the business and affairs of the firm.

Apportionment of premium.

48. Where one partner has paid a premium to another on entering into a partnership agreement for a fixed term and the partnership is dissolved or the partner paying the premium ceases to be a partner in the firm, before the expiration of that term, the court may order the return of the premium, or of such part of the premium as it thinks just, having regard to the terms of the partnership agreement to the length of time during which the partnership has continued or the partner had continued with the firm, unless

- (a) the dissolution is, in the judgment of the court, wholly or chiefly due to the misconduct of the partner who paid the premium; or
- (b) the partnership has been dissolved by an agreement which contained no provision for a return of any part of the premium.

Rights where partnership agreement rescinded for misrepresentation.

49. Notwithstanding the provisions of the Contract Act, 1994, where a partnership agreement is rescinded on the ground of the fraud or misrepresentation of one of the parties to the agreement, the party entitled to rescind is, without prejudice to any other right, entitled

- (a) to a lien on the assets of the firm, after satisfying the firm's liabilities, for any sum of money paid by him for the purchase of his interest in the firm and for any capital contributed by him;
- (b) to stand in the place of the creditors of the firm for any payments made by him in respect of the liabilities of the firm: and

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(c) to be indemnified by the person who committed the fraud or made the representation against all the liabilities of the firm.

Rule for
distribution of
assets on final
settlement of
accounts.

50. (1) In settling accounts between the partners after a dissolution of partnership, the following rules shall, subject to any agreement, be observed:

(a) losses, other than deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits;

(b) deficiencies of capital shall not be made up but shall be borne by the partners in the proportion in which the partners were entitled to capital; and

(c) the assets of the firm including the sums, if any, contributed by the partners to make up losses or deficiencies of capital, shall be applied:

(i) in paying the debts and liabilities of the firm to persons who are not partners of the firm;

(ii) in paying to each partner rateably what is due from the firm to him for advances as distinguished from capital; and

(iii) in paying to each partner rateably what is due from the firm to him in respect of capital.

(2) The payments in subparagraphs (i) - (iii) of paragraph (c) of subsection (1) shall be made in the order in which they are listed and the ultimate residue, if any, shall be divided among the partners in the proportion in which the profits are divisible.

Striking off firm
from register upon
dissolution.

51. (1) Where the Registrar is satisfied that the winding up of a firm is complete, he shall strike the firm off the register and publish a notice to that effect in the *Business Gazette* and the business of the firm and partnership shall thereupon be deemed to have ceased as at the date of the publication of the notification in the *Business Gazette*.

(2) If a property of the firm has not been effectually disposed of in the winding up the property shall be deemed to have vested, in the case

of a dissolution order made by the court, in the Public Trustee, and, in the case of a voluntary winding up, in the partners upon trust to apply the property in accordance with section 50.

Dissolution of moribund firms.

52. (1) Where the Registrar of his own knowledge or upon information supplied by a partner or creditor of a firm has reasonable cause to believe that the firm is not carrying on business whether by reason of the fact that the business, has ceased or has been transferred to a company incorporated under the Companies Act, 1994 or to some other person, he may send to the last registered principal place of business of the firm a letter by registered post enquiring whether the firm is carrying on business in The Gambia, and stating that if it is not so carrying on business or if no reply is received within two months of the date thereof a notice will be published in the *Business Gazette* with a view to striking off the business from the register.

(2) If the Registrar either receives a reply from the firm to the effect that it is not so carrying on business or he does not within the specified time receive an answer he may publish in the *Business Gazette* and send by registered post to the last registered principal place of business of the firm a notice that at the expiration of two months from the date of that notice the firm will, unless cause be shown to the contrary, be struck off the register.

(3) At or after the expiration of the time mentioned in the notice the Registrar may, unless reasonable cause is shown, strike the firm off the register and public notice in the *Business Gazette* and on such publication in the *Business Gazette* the firm shall be dissolved.

(4) Nothing in this section shall affect the power of the court to order the dissolution of the firm.

(5) Where the Registrar is satisfied that a firm dissolved in accordance with this section is carrying on business as a firm, he may at any time restore the firm to the register and publish a notice in the *Business Gazette* and thereupon the firm shall be deemed never to have been dissolved, but for the purpose of section 8 the partners shall be deemed to remain in default until the date of publication of the notice in the *Business Gazette*.

Dissolution of defaulting firm.

53. (1) The Registrar may strike a firm off the register if, in his opinion

(a) the business of the firm is unlawful or the firm is being operated for any illegal purpose; or

(b) the firm has breached a provision of this Act.

(2) The Registrar shall not strike a firm off the register on the grounds specified in paragraph (b) of subsection (1) unless,

(a) he sends by registered post to the last registered principal place of business of the firm a letter specifying the breach and requiring it to be remedied or ended to his satisfaction within the time therein specified and stating that if not so remedied or ended the firm may be struck off the register; and

(b) the breach is not, within the time specified, remedied or ended to his satisfaction.

(3) On striking the firm off the register the Registrar shall publish in the *Business Gazette* and send by registered post to the last registered principal place of business of the firm notice that the firm has been struck off the register and on such publication in the *Business Gazette* the firm shall be dissolved.

(4) Nothing in this section shall affect the power of the court to order the dissolution of the firm.

Partner's liability for firm's debts and obligations after dissolution.

54. Where a firm is dissolved the joint and several liability of every partner for the debts and obligations of the firm, in so far as these have not been fully discharged in the winding up or otherwise, shall continue and may be enforced as if the firm had not been dissolved.

Appeal to the court against dissolution.

55. (1) A firm struck off the register under section 52 or 53 may appeal to the court against the decision of the Registrar in accordance with subsection (2) of section 56.

(2) Where the court allows an appeal under subsection (1), the firm shall, subject to compliance with any terms and conditions the court may specify, be restored to the register and be deemed never to have been dissolved and the Registrar shall public notice thereof in the *Business Gazette* but, unless the court otherwise orders, the partners shall, for the purposes of section 8, be deemed to remain in default until the publication of the notice in the *Business Gazette*.

PART VIII. - SUPPLEMENTAL

Applications and
appeals to the
court.

56. (1) The Registrar may apply to the court for directions in relation to a matter arising in connection with his functions under this Act, and on such application the court may give such directions or make such orders as the court thinks fit.

(2) Where a section of this Act provides a right of appeal to the court against a decision of the Registrar written notice of an appeal shall be given by the appellant to the Registrar at least 28 days prior to the hearing and the Registrar may appear at the hearing and give evidence and call witnesses and draw the attention of the court to any relevant matters.

(3) On an appeal the court may make such order as it thinks fit confirming or rescinding or varying a decision of the Registrar on such terms and conditions as it thinks fit.

Fees.
Schedule.

57. (1) In respect of the several matters set out in the first column of the Table to the Schedule there shall be paid to the Registrar the fees specified in the second column of that Table.

(2) Where a fee is payable on the registration of a document that document shall not be deemed to have been delivered to the Registrar for registration until the appropriate fee has been paid to the Registrar.

(3) The Registrar may, with approval of the Minister, by notice published in the *Business Gazette* amend the Schedule.

Inspection and
copies of
registered
documents.

58. A person may inspect the register for particulars of charges and any document registered by the Registrar and may obtain a copy of, or extract therefrom, upon payment of the prescribed fee.

Saving for the
rules of equity and
common law.

59. The rules of equity and common law applicable to partnership shall continue in force except so far as they are inconsistent with the express provisions of this Act.

Regulations.

60. The Minister may make regulations generally for the carrying into effect of the provisions of the Act.

SCHEDULE

(Section 57)

Table of Fees to be Paid to the Registrar

Matter in respect of which fee is payable	Amount of Fee
For registration of partnership under section 5	500 dalasis
For restoration of a firm to the register under section 52(5)	500 dalasis

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NOTES ON THE DRAFT PARTNERSHIP ACT

Section 3 - Meaning of Partnership

This is a simplified version of sections 1 and 2 of the UK Partnership Act, 1890 (the UK Act), which in turn was declaratory of the common law. The details in section 2 of the UK Act have been omitted because they add little to the basic definition and merely cause confusion by their inclusion. Subsection 2 (c) and (d) do not appear in the UK Act but seem necessary. In The Gambian context it seems desirable expressly to exclude associations falling within subsection (2). Subsection (3) summarises the effect of section 2(3) of the UK Act.

Sections 4 to 10 - Partnership to be in writing and registered / Method of Registration / Issue and effect of certificate of registration / Registration of changes / Penalties and disabilities for breach of sections 4, 5 and 7 / Maintenance of register

Subsection (1) of section 4 provides that partnership agreements should be in writing, otherwise they will not be enforceable by the partners. Subsections (2) and (3) of section 4 provide for the registration of partnerships. As a business enterprise, a partnership should, unless exempted, be registered under the Business Registration Act (Cap. 95:02). But a registration provision is inserted here because it is desirable that partnerships should be registrable just in the same way as incorporated companies, which have to register as companies. The question, however, arises as to whether the annual renewal of a certificate to entitle the partnership to continue business is better made as a renewal of the partnership registration or as a business certificate registration. It seems better that once a partnership is registered it should continue with that registration until the partnership is dissolved or is struck off the register of partnerships, with its annual capability to continue operation as a business being regulated by the Business Registration Act. The solution chosen, therefore, is to have the partnership registrable as a business under the Business Registration Act, with its obligation to obtain a renewal certificate being governed by that Act.

The particulars requiring registration have been made as simple as possible but they are sufficient to give any interested person adequate information about the persons involved in the partnership, the nature of their business and the period during which the firm has been operating. The tax identification number which is being introduced for all transactions with the revenue collecting authorities is one of the particulars included.

Note should be taken that there is no right of appeal where registration is refused on the ground that the name of the firm is misleading or undesirable. Nor is there one when the document is incomplete. This is because an appellate tribunal's decision on such a matter is not likely to be better than the Registrar's. But in other cases specified it is appropriate to allow for an appeal. In practice it is likely that in cases of real doubt the Registrar would apply to the court for directions under section 56.

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The other sections deal with various aspects of registration, with section 8 imposing penalties for breaches. Section 9 requires the Registrar to maintain a register into which specified particulars must be recorded. To make retrieval and research easier, the provision requires that the register be indexed.

Section 10 - Publicity

The section provides for the publicity needed at the office(s) of the firm and on its business letters, etc. The manner of display of the registration certificate is also covered.

Section 11 - Power of partners to bind the firm

This section restates, rather more succinctly, the effect of sections 5, 7, 8, 10 and 11 of the UK Act. The only modification of substance is the omission from the end of subsection (2) of the words "or does not know or believe him to be a partner." These latter words appear to be inconsistent with the decision in *Watteau v. Fenwick* [1893] 1 Q.B. 346, which is generally regarded as sound and which should be followed. The position in that case was adopted in the recent Supreme court of New South Wales case of *Hexyl Pty Ltd. v. Construction Engineers (Aust.) Pty Ltd* [1983] 2 NSWLR 624 which was based on a provision of the new South Wales Act identical to one in the UK Act. Doubt is avoided by omitting the words. Subsection (5) is not in the UK Act but restates the existing legal position: *Re Sea, Fire and Life Assurance Co.* (1844) 18 Jur. 387.

Section 12 - Acts on behalf of the firm

This is identical with section 6 of the UK Act.

Section 13 - Nature of liability of firm and partners

The UK Act draws a distinction between contractual obligations for which liability in England is joint only (see UK Act section 9) and wrongs for which liability is joint and several (see UK Act section 12). In Scotland the liability has always been joint and several (section 9) and it is generally accepted that the Scots rule is preferable. Accordingly, this section follows the Scots law. The result is that third parties can sue either the firm or any partner or all or some of them. And an unsatisfied judgment against some or one will not be a bar to an action against the others: i.e., the rule in *Kendall v. Hamilton* (1897) 4 App. Cas. 504, H.L. is reversed.

Having regard to the terms of sections 11, 12 and 13 of this Act, sections 11, 13, 15 and 16 of the UK Act have not been repeated. The rules stated in the UK provisions agree with the general principles in these sections of this Act.

Section 14 - Liability of incoming and outgoing partners

This section is equivalent to sections 17 and 36 of the UK Act. It seems more logical and convenient to deal in one section with the whole question of the liability of incoming and outgoing partners rather than to split them into two widely separated sections as does the UK Act.

Subsections (1), (2) and (3) are virtually identical with section 17 of the UK Act. Subsections (4), (5) and (6) are a reworded version of section 36. The decision in *Tower Cabinet Co. v. Ingram* (1949) 2 K.B. 397 showed that the wording of section 36 was far from clear and subsections (4) and (5) attempt to express more clearly the existing law as laid down in that case. As subsection (4) states, it is only a person who knew that the retired partner was a partner who is entitled to notice of the retirement. If such a person had previous dealings with the firm, notice means actual knowledge. If, however, he merely knew the firm by repute, notice by newspaper advertisement suffices, for the firm cannot notify him personally since it will not know of him. If he has neither previous dealings with, nor prior knowledge of, the firm, he cannot hold a retired partner liable for debts incurred by the firm after the retirement: subsection (5). And no notice need be given if a partner ceases to be a partner because of death or bankruptcy *ibid*.

Section 15 - Persons liable by holding out

This section is in substance identical with section 14 of the UK Act. Subsection (2) is a rewording of the proviso to that Act which is designed to make it clear that mere continued use of the firm name is never a holding out of a particular individual partner. The expression "gives credit to the firm" which is used in the UK Act is also omitted as it has been criticised as too narrow.

Section 16 - Revocation of continuing guarantees

Section 18 of the UK Act provides that, in the absence of agreement to the contrary, a continuing guarantee of either of the types referred to in this section is revoked by a change in the constitution of the firm. That provision has been followed as regards guarantees of the firm (see subsection (1)) but not as regards guarantees to the firm (see subsection (2)). In the first instance, a change in the partnership may materially change the burden of the partnership's obligations and hence it seems fairer to the guarantor to provide that, in the absence of agreement, he should be discharged as a result of the change. But there is no obvious reason why the same should apply where the guarantee is given to the firm, for a change in its constitution in no way affects the nature of the guarantor's obligation.

Section 17 - Procedure against firm for a partner's separate judgment debt

This is the same as section 23 of the UK Act. It deals with the problem of levying execution on a partner's share when a judgment has been obtained against him alone - i.e., normally for a separate (non-partnership) debt.

Section 18 - Fiduciary relationship of partners

This section is equivalent to sections 28, 29 and 30 of the UK Act. The relationship is stated as fiduciary following the Indian Partnership Act. The words "directly or indirectly" have also been inserted to make it clear that the obligation covers carrying on business through, e.g., a company.

Section 19 - Rules applying in the absence of contrary agreement

Subsection (1) of this section is in substance identical with section 19 of the UK Act, and subsection (2) with section 24 of that Act. A few verbal alterations have been made, notably in subsection (2)(d), where the English Act equivalent is apt to mislead by suggesting that partners are automatically entitled to interest on capital. The final words of section 24(9) of the UK Act have been omitted from subsection (2)(i), as they are to be found in section 36 in that Part of this Act which deals with Accounts. The reason for the alteration to the wording of subsection (2)(a) is explained in the opening paragraph of the comment to section 50, *infra*. Subsection (3) has been inserted to draw attention to the implied obligations under section 40, which will govern the position when a partner dies or retires unless contrary provision is made.

Section 20 - Presumed continuance of terms of partnership

This is in substance identical with section 27 of the UK Act.

Section 21 - Partnership property

Subsections (1) and (3) are in substance identical to the provisions of section 20 of the UK Act that apply to England. The provisions applicable to Scotland have been removed. Subsection (2) is identical to section 21 of the UK Act.

Section 22 - Nature of interests of partners

This is to the same effect as section 19 of the UK Act.

Section 23 - Rights of assignee of partner's interest in firm

This is in substance identical to section 31 of the UK Act.

Section 24 - Power to grant floating charges

One of the great advantages of an incorporated company is that it is easier to raise capital by granting a floating charge over its undertaking. This has generally not been possible in the case of partnerships under English law. But the UK Agricultural Credits Act 1928 (see sections 5 and 7) shows that it is possible to grant an agricultural floating charge over partnership property. The present section makes it possible for floating charges to be granted generally in The Gambia over partnership property.

It is clearly essential, however, that the partners should not be able to destroy the efficacy of the security by withdrawing assets from the firm. The charge should therefore define the extent to which partners are entitled to make drawings from the firm. Subsection (6) is intended to draw the attention of the chargee to this question and to give protection to his interest.

Section 25 - Registration of particulars of charges

This section introduces a system of registration of charges similar to that which applies to charges granted by incorporated companies, which is clearly desirable if the power to grant floating charges over property were to be extended to partnership property as has been done under section 24.

The section covers not only charges by the firm but charges by the partners on their individual property to secure obligations of the firm: subsection (1). This extension appears desirable having regard to the fact that creditors of the firm look to the assets of the partners as well as to those of the firm. Paragraph (e) of subsection (6) has been inserted to ensure the particulars supplied cover the extension referred to.

Section 26 - Charges to secure fluctuating amounts

This section has been inserted because the Act has granted to partnerships the power which is normally exercised by companies to grant floating charges on their property. It is not uncommon for companies to grant charges to their bankers and others to secure "all sums due or to become due". Under the English practice the registered particulars merely repeat this formula with the result that the register gives no inkling of the amount secured by the charge. The object of this section is to ensure that the sums due or to become due represent the maximum sum deemed to be secured by the charge and any excess over the stated maximum is void.

If, however, the original maximum is subsequently increased it is the practice to stamp the original charge for an additional amount, and this practice is both simpler and safer than having a completely new charge. Subsection 2 is designed to cover this practice of banks to extend charges on partnership property.

Sections 27 to 34 - Charges on property acquired / Existing charges / Duty to send particulars for registration / Register of particulars of charges / Entry of satisfaction or discharge / Rectification of register of particulars of charges / Registration of enforcement of security / Registration constituting notice

There are necessary sections which regulate a system which allows firms to grant floating charges in respect of partnership property. There is no need to provide penalties for failure to comply with section 28(2) since an error or omission will result in a breach of section 5(1)(g) giving rise to the penalties prescribed in section 8.

Section 35 - Keeping of accounts

One of the most serious charges laid against the present operation of partnerships is that however large they are, and some of them are very large indeed, they are neither required by law to keep accounts nor do they actually make any effort to do so as a matter of business prudence. To correct this defect, this section has been included. It would be inappropriate to require the accounts to be anything as elaborate as the requirements of the Companies Act (Cap. 95:01), especially in respect of small partnerships. Power is therefore given to the Registrar to prescribe the form of, or minimum information to be given in, accounts to be kept by partnerships. This would enable the Registrar to prescribe accounts of differing degree of detail for large or small partnerships, as the case may be. Large partnerships may according to such prescription be required to have their accounts audited while small partnerships are not. Provision has been made in subsection (2)(b) requiring the balance sheet to place a value on the interest of each partner. This links up with later provisions relating to the purchase of a retired partner's share: see section 39(2). Paragraphs (a), (b) and (c) of subsection 1 have been put in to draw specific attention to these matters.

Section 36 - Partners' access to accounts

Sections 24 and 28 of the UK Act merely afford rights equivalent to those in this section in the absence of agreement to the contrary. As a matter of principle, and having regard to the penalties which may be incurred under section 35(4), it seems essential that there should be no contracting-out of the right to inspect the accounts.

Section 37 - Cessation of membership

This section brings together the various ways in which a partner may cease to be a member of the firm. Subsections (1), (2) and (3) correspond to sections 33, 34 and 35 of the UK Act. The final words of subsection (4) enable a partner who is incapable on any ground (i.e. under either (a) or (b)) to apply; under the UK Act he can only do so if his incapacity is insanity. Subsection (6) corresponds to section 32 of the UK Act. Subsections (3) and (7) do not appear in the UK Act, but are in accordance with the existing law.

Section 38 - Withdrawal of a partner not to affect the others

This section deals with the position of the remaining partners when one partner retires.

Section 39 - Right of outgoing partner to share of profits made after departure

This section is in substance identical with section 42 of the UK Act. Under the UK Act the outgoing partner is entitled at his option to 5% interest or such share of the profits as the court may find to be attributable to the use of his share of partnership assets. The task of deciding what share of profits is attributable is in practice a very difficult if not impossible one. That option has therefore been dropped

Section 40 - Retiring or deceased partner's share to be a debt

This section is identical to section 43 of the UK Act.

Section 41 - Dissolution by death, bankruptcy, expiration of notice, etc.

This section is a combination of sections 32 and 33 of the UK Act. Subsection (3) states the obvious fact that where there is only one partner left, there is no more an association of persons pursuing a business objective together, and therefore there cannot be a partnership.

Section 42 - Dissolution by illegality of partnership

This section is identical to section 34 of the UK Act.

Section 43 - Dissolution by the court

This section should be compared with section 35 of the UK Act. Attention is drawn to subsection (6)(b), which provides for compulsory dissolution of partnerships which are unlawful under section 4 by reason of non-registration. The interest of creditors demands that there should be a provision for dissolving them. Subsection 3(c) and (4) should relate to the Insolvency Act 1992.

Section 44 - Rights of persons dealing with firm against apparent members of firm

This section is substantially identical to section 36 of the UK Act.

Section 45 - Right of partners to notify dissolution or retirement

This section is identical to section 37 of the UK Act.

Section 46 - Continuing authority of partners for purposes of winding up

This section is in substance identical to section 38 of the UK Act.

Section 47 - Rights of partners as to application of partnership property

This section is in substance identical to section 39 of the UK Act.

Section 48 - Apportionment of premium

This section is in substance identical to section 40 of the UK Act. As this Act makes provision to cover the continuation of the partnership in case of one of several members of a firm withdrawing, the section is drafted to cover such a situation. Section 40 of the UK Act is expressed not to apply when the partnership ceases as a result of death. That seems to be an unnecessary and undesirable restriction on the discretion of the court and the present section is not so limited.

Section 49 - Rights where partnership agreement rescinded for misrepresentation

This section follows section 41 of the UK Act.

Section 50 - Rule for distribution of assets on final settlement of accounts

This section is based on section 44 of the UK Act. The only alteration of substance is the insertion of paragraph (b) and the consequential amendment arising therefrom in paragraph (a). Under the UK Act losses of capital have to be made up by the partners in the proportion in which they share profits. If that is the result desired, under this section the partnership agreement can so provide. But the normal position desired, had the partners directed their minds to it when the partnership was being formed, would be to base any contribution on the proportion of their original contribution of capital, which may well be different from the proportion in which the profits had been shared. The following example illustrates the point: partners A, B and C contribute to capital 10,000 dalasis, 5,000 dalasis and 2,500 dalasis respectively, but share equally in the profits. On dissolution, after the debts have been paid, 8,500 dalasis are left, so that there is a 9,000 dalasi deficiency of capital. Under the rule in the UK Act, because the profits had been shared equally, each partner has to contribute equally to the deficiency in capital, i.e., 3,000 dalasis each. Hence A receives 7,000 dalasis net, B 2,000 dalasis net and C is a further 5,000 dalasis out of pocket. To this there is a corollary known as the rule in *Garner v. Maori* [1904] 1 C. 57 which states that if any partner (say C) is unable to contribute, his contribution is ignored and the 8,500 dalasis plus A and B's contributions are divided between A and B (also see *Lindley & Banks on Partnership*, 16th ed., p. 642 to 644).

This does not appear to give effect to normal expectations. Under the present section, the 8,500 dalasis would be divided among A, B and C in the proportions (4:2:1) in which they contributed capital. That appears to be what they would normally have expected.

Section 51 - Striking off register upon dissolution

This section provides for the striking off from the register after the whole winding up proceedings have been completed. The property of the firm not disposed of falls to the Public Trustee.

Section 52 - Dissolution of moribund firms

This section gives power to the Registrar to take steps to have moribund firms struck off the register. The section would be used where, for example, the business is converted into a company under the Companies Act (Cap. 95:01). The *modus operandi* should then be for a company to be registered by the partners in the normal way and the business transferred from the firm to the new company. Application should then be made to strike off the name of the firm under the present section.

As regards appeals to the court, see section 55.

Section 53 - Dissolution of defaulting firms

The previous section has dealt with firms which are registered but are not carrying on business. This section deals with firms which ought never to have been registered or which ought not to be allowed to continue to do business.

Section 54 - Partner's liability for firm's debts and obligations after dissolution

This section makes it clear that the joint and several liability of the partners is not affected by the dissolution of the partnership. If, however, the partners have had insolvency orders made against them under the Insolvency Act (1992) and have received their discharge, they will be freed from liability for provable debts.

Section 55 - Appeal to the court against dissolution

This section protects firms by affording them a right of appeal against a decision to strike them off under sections 52 and 53. In some cases the Register may have applied for the court's directions under section 56(1) for striking off, but this should be exceptional.

Section 56 - Applications and appeals to the court

This section gives a right to the Registrar to apply to the court for directions, which would enable him to act with greater confidence in cases where he is in doubt.

Subsection (2) deals with appeals against the Registrar's decision when these are permitted under the Act, i.e., under sections 5(5), 7(2) and 55. The subsection ensures that the Registrar has notice of the appeal and can defend his decision. It is necessary to treat him more in the nature of a respondent to the appeal than as the judge of a lower court, since otherwise the appeal may not be defended.

Section 57 - Fees

It is necessary that reasonable fees be fixed. But it should not be set so high as to discourage the use of the partnership medium for business. The Registrar is given the power to alter the Schedule, with the approval of the Minister.

Section 58 - Inspection and copies of registered documents

This is necessary where information is required.

Section 59 - Saving for the rules of equity and common law

This is identical to section 46 of the UK Act.

Section 60

This section empowers the Minister to make Regulations for better carrying into effect the provisions of the Act.