

THE SOMALILAND COMPANIES LAW
(LAW NO: 25/2004)

Arrangements of the sections

Preamble	13
PART I PRELIMINARY	13
Section 1- Short title.....	13
Section 2 - Interpretation	13
Section 3 - Register of Companies	14
PART I (<i>PART II</i>) FORMATION AND REGISTRATION OF COMPANIES,	14
Chapter 1 Registered Company Formation.....	14
<i>Memorandum of association</i>	14
Section 4 - Mode of forming incorporated company	14
Section 5 - Requirements with respect to memorandum.....	15
Section 6 - Statement of company's object: general commercial company.....	16
Section 7 - Alteration of company's object by special resolution	16
<i>Articles of association</i>	16
Section 8 - Articles prescribing regulations for companies.....	16
Section 9 - Alteration of Articles by special resolution	17
<i>Form of Memorandum and Articles</i>	17
Section 10 - Statutory Form of Memorandum and Articles.....	17
<i>Registration and its consequences</i>	17
Section 11 - Documents to be sent to the Registrar of Companies.....	17
Section 12 - Minimum authorized capital (public companies)	18
Section 13 - Duty of registrar.....	18
Section 14 - Effect of registration	18
Section 15 - Effect of memorandum and articles	19
Section 16 - Effects of alteration on company's members.....	19
Section 17 - Power to alter conditions in memorandum	19
Section 18 - Copies of memorandum and articles to be given to members.....	19
Section 19 - Issued copies of memorandum to embody alterations.....	20
<i>A company's membership</i>	20
Section 20 - Definition of "member".....	20
<i>Provision with Respect to Names of Companies</i>	20
Section 21- Reservation of names and prohibition of undesirable name	20

Section 22 - Change of name	20
Chapter II Alteration of Objects	21
Section 23 - Resolution to alter objects.....	21
Section 24 - Procedure for objecting to alteration	21
Section 25 - Provisions supplementing sections 23, 24.....	22
Chapter III Private Companies	22
Section 26 - Meaning of private company.....	22
Chapter 4 A Company's Capacity, Formalities of Carrying on Business	23
Section 29 - A company's capacity not limited by its memorandum	23
Section 30 - Power of directors to bind the company	24
Section 31- Events affecting a company's status	24
<i>Reduction of Numbers of Members Below legal Minimum</i>	24
Section 32 - Minimum membership for carrying on business	24
PART III CAPITAL ISSUES	25
Chapter I The Prospectus	25
Section 33 - Document offering shares for sale deemed a prospectus.....	25
Section 34 - Matters to be stated and reports to be set out in prospectus	25
Section 35 - Expert's consent to issue of prospectus containing statement by him/her	26
Section 36 - Registration of prospectus	26
Section 38 - Civil liability for mis-statements in prospectus	27
Section 39 - Expert's Liability	27
Section 40 - Criminal liability for mis-statements in prospectus.....	27
Section 41- Interpretation of provisions relating to prospectuses.....	28
PART IV ALLOTMENT OF SHARES AND DEBENTURES	28
Chapter I General Provisions as to Allotment.....	28
Section 42 - Authority of company required for certain allotment.....	28
Section 43 - Prohibition of allotment unless minimum subscription is received.....	28
Section 45 - Effect of irregular allotment	29
Section 46 - Applications for and allotment of shares and debentures.....	29
Section 47 - Return as to allotments	30
Chapter II Amount to be paid as to payment for shares on allotment	30
Section 48 - General rules as to payment for shares on allotment	30
Section 49 - Prohibition on allotment of shares at a discount	31
Section 50 - Shares to be allotted as at least one-quarter paid up.....	31
Section 51- Restriction on payment by long term undertaking.....	31
Section 52 - Non-cash consideration to be valued before allotment.....	31

Chapter III Valuation Provisions	32
Section 53 - Valuation and Report.....	32
Section 54 - Entitlement of valuer to full disclosure.....	32
Section 55 - Matters to be communicated to registrar.....	33
Chapter IV Commissions and Discounts	33
PART V SHARE CAPITAL, ITS INCREASE, MAINTENANCE AND REDUCTION	34
Chapter I General Provisions about Share Capital	34
Section 57 - Public company share capital requirements	34
Section 58 - The authorized minimum	35
Section 59 - Alteration of share capital (limited companies).....	35
Section 60 - Notice to registrar of alteration	35
Section 61 - Notice to registrar of increased share capital	36
Chapter II Class Rights.....	36
Section 62 - Variation of class rights	36
Section 63 - Shareholders' rights to object to variation	37
Chapter III Shares at Premium, at Discount and Redeemable Preference Shares	38
Section 64 - Application of share premiums.....	38
Section 65 - Application of share at a discount	38
Section 66 - Power of company to arrange for different amount being paid on shares	39
Section 67 - Reserve liability of limited company	39
Section 68 - Power of a company limited by shares to alter its share capital.....	39
Section 69 - Notice to registrar of consolidation of share capital	39
Section 70 - Notice of increase of share capital	40
Section 71 - Power of a company to pay interest out of capital in certain cases	40
Chapter IV Reduction of Share Capital.....	40
Section 72 - Special resolution for reduction of share capital	40
Section 73 - Application to court for order of confirmation.....	41
Section 74 - Court order confirming reduction.....	42
Section 75 - Public company reducing capital below authorized minimum	42
Chapter V Maintenance of Capital.....	43
Section 76 - Duty of directors on serious loss of capital.....	43
Section 77- General rule against company acquiring own shares.....	43
Chapter VI Maintenance of Capital	43
Section 78 Prohibition of provision of financial assistance by a company for purchase of or subscription for its own shares.....	43
Chapter VII Redeemable Shares	44

Section 79 - Power to issue redeemable preference shares	44
Section 80 - Financing of redemption	44
<i>Purchase by a Company of its own Shares</i>	45
Section 81 - Power of company to purchase own shares.....	45
Section 82 - The capital redemption reserve	45
<i>Redemption or purchase of own shares out of capital</i>	46
Section 84 - Objections by company's members or creditors	46
Section 85 - Powers of court on application under section 84.....	47
Chapter VIII Miscellaneous Provisions about Shares and Debentures	47
<i>Share and debentures certificates</i>	47
Section 86 - Nature, transfer and numbering of shares	47
Section 87 - Transfer and registration.....	47
Section 88 - Certification of transfers	48
Section 89 - Duty of company as to issue of certificates	48
Section 90 - Certificate to be evidence of title	49
<i>Debentures</i>	49
Section 91- Register of debenture holders.....	49
Section 92 - Right to inspect register.....	49
PART VI ACCOUNTS AND AUDIT	50
Chapter I Provisions Applying To Companies Generally.....	50
<i>Accounting records</i>	50
Section 93 - Duty to keep accounting record	50
Section 94 - where and for how long records be kept.....	51
Section 95 - A company's financial year	51
Section 96 - Accounting reference period and accounting reference date.....	51
Section 97 - Alteration of accounting reference date	52
<i>Annual accounts</i>	52
Section 98 - Duty to prepare company accounts	52
<i>Approval and signing of accounts</i>	52
Section 99 - Approval and signing of accounts.....	52
Chapter II Director's report.....	53
Section 100 - Duty to prepare directors' report.....	53
Section 101- Approval and signing of director's report.....	53
Chapter III Auditors' report.....	53
Section 102 - Auditors' report	53
Section 103 - Signature of auditors' report.....	54

Section 104 - Duties of auditors.....	54
Chapter IV Publication of accounts and reports.....	54
Section 105 - Persons entitled to receive copies of accounts and reports.....	54
Section 106 - Right to demand copies of accounts and reports.....	55
Chapter V Laying and delivering of accounts and reports.....	55
Section 107 - Accounts and reports to be laid before company in general meeting.....	55
Section 108 - Accounts and reports to be delivered to the registrar	56
Section 109 - Civil penalty for failure to deliver accounts.....	56
Section 110 - Period allowed for laying and delivering account and reports.....	57
PART VII DISTRIBUTION OF PROFITS AND ASSETS	57
<i>Limits of company's power of distribution</i>	<i>57</i>
Section 111 – Certain distribution prohibited.....	57
Section 112 - Restriction on distribution of assets.....	58
Section 113 - Distribution to be justified by reference to company's accounts	58
PART VIII A COMPANY'S MANAGEMENT: DIRECTORS AND SECRETARIES:.....	58
<i>Officers and registered office</i>	<i>58</i>
Section 114- Directors	59
Section 115 - Secretary.....	59
Section 116 - Validity of acts of directors	59
Section 117 - Registered office	59
Section 118 - Register of directors and secretaries	59
<i>Provisions governing appointment of directors.....</i>	<i>60</i>
Section 119 - Share qualification of directors.....	60
Section 120 - Appointment of directors to be voted individually.....	60
Section 121 - Age limit for directors	60
<i>Removal of directors.....</i>	<i>61</i>
Section 122 - Resolution to remove director.....	61
Section 123 - Director's right to protest removal	61
Section 124 - Directors' name on company correspondence	61
PART IX ENFORCEMENT OF FAIR DEALING BY DIRECTORS	62
<i>Restrictions on directors taking financial advantage.....</i>	<i>62</i>
Section 125 - Payment to director for loss of office	62
Section 126 - Director's duty of disclosure on takeover, etc.....	62
Section 127 - Directors to disclose interest in contracts	62
Section 128 – Directors' services contracts to be open to inspection.....	63
Section 129 - Contracts with sole members who are directors.....	63

<i>Restriction on a company's power to make loans, etc</i>	64
Section 131 - Definitions for section 130	64
Section 132 - Short term quasi-loans.....	65
PART X COMPANY MANAGEMENT, ADMINISTRATION AND PROCEDURE	65
Chapter I Company Identification.....	65
Section 133 - Company's name to appear in its correspondence	65
Section 134 - Particulars in correspondence etc.....	66
<i>Statement of Amount of Paid up Capital</i>	66
Section 135 - Statement of Amount of Paid up Capital.....	66
<i>Register of Members</i>	67
Section 136 - Obligation to keep and enter up register	67
Section 137 - Statement that company has only one member.....	67
Section 138 - Inspection of registrar and index.....	67
Section 139 - Register to be evidence.....	68
<i>Annual Return</i>	68
Section 141 - Contents of annual return: general	69
Chapter II Meetings and Resolution	70
<i>Meetings</i>	70
Section 143 - Statutory meeting and Annual general meeting	70
Section 144 - Election by private company to dispense with annual general meetings.....	71
Section 145 - Attorney General's power to call meeting in default	71
Section 146 - Extraordinary general meeting on member's requisition	72
Section 147 - Length of notice for calling meetings	72
Section 148 - General provision as to meeting and votes	73
Section 149 - Quorum at meetings of the sole member	73
Section 150 - Power of Court to order meeting.....	73
Section 151 - Proxies	74
Section 152 - Right to demand a poll.....	74
<i>Resolutions</i>	74
Section 153 - Circulation of members' resolutions	75
Section 154 - Extraordinary and special resolution.....	75
Section 155 - Resolution requiring special note	76
Section 156 - Elective resolution of private company	76
Section 157 - Registration, etc. of resolutions and agreements.....	77
<i>Written resolutions of private companies</i>	77
Section 158 - Written resolutions of private companies	77

<i>Records of proceedings</i>	78
Section 159 - Minutes of meetings.....	78
Section 160 - Recording of written resolutions.....	78
Section 161- Recording of decisions by the sole member.....	78
Section 162 - Inspection of minutes' books.....	79
Chapter III Auditors.....	79
<i>Appointment of auditors</i>	79
Section 163 - Duty to appoint auditors.....	79
Section 164 - Appointment at general meeting at which accounts are laid.....	79
Section 165 - Appointment by private company which is not obliged to lay accounts.....	80
Section 166 - Election by private company to dispense with annual appointment.....	80
<i>Rights of auditors</i>	81
Section 167- Right to information.....	81
Section 168 - Right to attend company meeting.....	81
Section 169 - Remuneration of auditors.....	81
Section 170 - Removal of auditors.....	81
Section 171 - Rights of auditors who are removed or not re-appointed.....	82
Section 172 - Resignation of auditors.....	82
Section 173 - Rights of resigning auditors.....	83
Section 174 - Statement by person ceasing to hold office as auditor.....	83
PART XI ARRANGEMENTS AND RECONSTRUCTIONS.....	84
Section 175 - Power of company to compromise with creditors and members.....	84
Section 176 - Provisions for facilitating company reconstruction or amalgamation.....	84
PART XII INVESTIGATION OF COMPANIES AND THEIR AFFAIRS.....	85
<i>Appointment and functions of inspectors</i>	85
Section 177 - Investigation of a company on its own application or that of its members.....	85
Section 178 - Production of documents and evidence to inspectors.....	86
Section 179 - Obstruction of inspectors treated as contempt of court.....	86
Section 180 - Inspectors' report to be evidence.....	87
Section 181 - Power to investigate company ownership.....	87
Section 182 - Provisions applicable on investigation under 181.....	87
Section 183 - Power to obtain information as those interested in shares, etc.....	88
Section 184 - Attorney General's power to require production of documents.....	88
Section 185 - Provision for security of information obtained.....	89
Section 186 - Punishment for destroying, mutilating etc. company documents.....	89
Section 187 - Disclosure of information by Attorney General.....	89

PART XIII FRAUDULENT TRADING BY A COMPANY	90
Section 188 - Punishment for fraudulent trading.....	90
PART XIV PROTECTION OF COMPANY'S MEMBER AGAINST UNFAIR PREJUDICE	90
Section 189 - Order on application of company member	90
Section 190 - Provisions as to petition and order under this part.....	90
PART XV WINDING UP OF COMPANIES	91
Chapter I. Preliminary.....	91
Section 191 - Modes of winding up	91
Section 192 - Liabilities as contributories.....	91
Section 193 - Definition of contributory	92
Section 194 - Nature of liability of contributory	92
Section 195 - Contributories in case of death of member	92
Chapter II - Winding up by the court jurisdiction	92
Section 196 - Jurisdiction to wind up companies registered in Somaliland	92
<i>Cases in which Company may be wound up by Court.....</i>	92
Section 197 - Circumstances in which company may be wound up by the court.....	92
Section 198 - Definition of inability to pay debts	93
<i>Petition for Winding Up and Effects Thereof.....</i>	93
Section 199 - Provisions as to applications for winding up	93
Section 200 - Power of the court on hearing petition.....	94
Section 202 - Avoidance of attachment.....	94
<i>Commencement of Winding-Up.....</i>	94
Section 203 - Commencement of winding up by the court.....	94
<i>Consequences of Winding up Order.....</i>	95
Section 204 - Copies of order to be forwarded to registrar	95
Section 205 - Actions stayed on winding up order	95
Section 206 - Effect of winding up order.....	95
<i>Official Receiver in Winding-Up.....</i>	95
Section 207 - Official receiver in bankruptcy	95
Section 208 - Appointment of official receiver by court in certain cases.....	95
Section 209 - Statement of company's affair to be submitted to official receiver	95
Section 210 - Report by official receiver	96
<i>Liquidators.....</i>	97
Section 211 - Power of court to appoint liquidators	97
Section 212 - Appointment and powers of interim liquidator	97
Section 213 - Appointment of liquidator.....	97

Section 215 - General provision as to liquidator	98
Section 216 - Custody of company's property	98
Section 217 - Vesting of property of company in liquidator.....	98
Section 218 - Powers of liquidator	98
Section 219 - Exercise and control of liquidators powers	99
Section 220 - Books to be kept by the liquidator	100
Section 221 - Payments by liquidator to official receiver.....	100
Section 222 - Audit of liquidator's account.....	100
Section 223 - Control over liquidators	100
Section 224 - Release of liquidators.....	100
<i>Committee of Inspection</i>	101
Section 226 - Constitution and proceedings of committee of inspection	101
Section 227 - Powers of court where no committee of inspection	102
<i>General Powers of Court in Case of Winding Up by Court</i>	102
Section 228 - Powers to stay winding up.....	102
Section 229 - Settlement of list of contributories and application of assets	102
Section 230 - Delivery of property to liquidator	102
Section 231 - Payment of debts due by contributory to company.....	102
Section 232 - Power of court to make calls	102
Section 233 - Payment into bank of money due to company	103
Section 234 - Appointment of special manager	103
Section 235 - Power to exclude creditors not proving in time	103
Section 236 - Inspection of books by creditors and contributories	103
Section 237 - Power to order cost of winding up to be paid out of assets.....	103
Section 238 - Power to summon persons suspected of having property of company	103
Section 239 - Attendance of officers of company at meeting of creditors.....	104
Section 240 - Power to order public examination of promoters and officers.....	104
Section 241- Dissolution of a company	104
<i>Appeals</i>	104
Section 242 - Appeals	104
Chapter III - Voluntary Winding Up.....	105
<i>Resolutions for, and commencement of, Voluntary Winding up</i>	105
Section 243 - Circumstances in which company may be wound up voluntarily.....	105
Section 244 - Notice of resolution	105
Section 245 - Commencement of voluntary winding up	105
<i>Consequences of Voluntary Winding Up</i>	105

Section 246 - Effects of voluntary winding up on business and status of company	105
<i>Declaration of solvency</i>	106
<i>Provisions Applicable to a Members' Voluntary Winding</i>	106
Section 249 - Power of company to appoint and fix remuneration of liquidators.....	106
Section 250 - Power to fill vacancy in office of liquidator	106
Section 251- Power of liquidator for sale of property of company	106
Section 252 - Duty of liquidator to call creditors' meeting in case of insolvency	107
Section 253 - Duty of liquidator to call general meeting at the end of each year.....	107
Section 254 - Final meeting and dissolution	107
<i>Provisions Applicable to a Creditors' Voluntary Winding Up</i>	108
Section 255 - Provisions applicable to a creditors' winding up.....	108
Section 256 - Meeting of creditors.....	108
Section 257 - Appointment of liquidator.....	109
Section 258 - appointment of committee of inspection.....	109
Section 259 - Fixing of liquidators' remuneration	109
Section 260 - Termination of directors powers on appointment of liquidators.....	109
Section 262 - Final Meeting and dissolution.....	110
<i>Provisions Applicable to every Voluntary Winding Up</i>	110
Section 263 - Provision applicable to every voluntary winding up	110
Section 264 - Distribution of property of company.....	111
Section 265 - Powers and duties of the liquidator in voluntary winding up.....	111
Section 267 - Notice by liquidator of his appointment.....	111
Section 268 - Arrangement when binding on creditors	111
Section 270 - Costs of voluntary winding up.....	112
Section 271 - Saving for rights of creditors and contributories.....	112
Chapter IV - Winding Up Subject to Supervision of Court.....	112
Section 272 - Power in order winding up subject to supervision.....	112
Section 273 - Effect of petition for winding up subject to supervision	112
Section 274 - Application of sections 201 and 202 to winding up subject to supervision.....	113
Section 275 - Power of court to appoint or remove liquidators.....	113
Section 276 - Effect of supervision order	113
Chapter V - Provisions Applicable to Every Mode of Winding Up.....	113
<i>Proof and Ranking of Claims</i>	113
Section 277 - Debts of all description may be proved.....	113
Section 278 - Application of bankruptcy rules in winding up of insolvent companies.....	114
Section 279 - Preferential payments.....	114

<i>Effect of Winding Up on Antecedent and other transactions</i>	114
Section 280 - Fraudulent preference	114
Section 281 - Liabilities and rights of certain fraudulently preferred persons	114
Section 282 - Disclaim of onerous property in case of company wound up.....	114
Chapter VI -Matters Arising Subsequent To Winding Up	115
Section 283 - Power of court to declare dissolution of company void	115
Section 284 - Registrar may strike defunct company off register	115
Section 285 - Registrar may strike private company off register on application	116
Section 286 - Property of dissolved company	117
Section 287 - Power of Government to disclaim title of property	117
<i>Companies Liquidation Account</i>	117
Section 288 - Companies Liquidation Account.....	117
Section 289- Investment of surplus funds	118
<i>Rules and Fees</i>	118
Section 290 - Rules and fees for winding up.....	118
PART XVI COMPANIES INCORPORATED OUTSIDE SOMALILAND	118
Chapter I. Provisions as to Establishment of Place of Business in Somaliland.....	118
Section 291 - Application of sections 292-300	118
Section 293 - Certificate of registration and power to hold land.....	119
Section 294 - Returns to be delivered to registrar by foreign company	119
Section 295 - Accounts of foreign company	120
Section 297 - Service on foreign company	121
Section 298 - Cessation of business by foreign company and striking off register.....	121
Section 299 - Penalties	121
Section 300 - Interpretation of sections 292 to 299.....	122
Chapter II - Prospectuses.....	122
Section 301- Dating of prospectus and particulars to be contained therein.....	122
Section 302 - Provision as to expert's consent and allotment.....	123
Section 303 - Registration of Prospectus	124
Section 304 - Penalty for contravention of sections 301, 302 and 303	124
Section 305 - Civil liability for mis-statement in prospectus	124
Section 306 - Interpretation of provisions as to prospectus.....	125
PART XVII GENERAL PROVISION AS TO REGISTRATION	125
Chapter I - The Registrar of Companies, His Functions And Offices	125
Section 307 - Inspection of records kept by the registrar	125
Section 308 - Public notice by registrar of receipt and issue of certain documents.....	125

Section 309 – Regulations 126

Section 310 – Entry into force..... 126

THIRD SCHEDULE..... 127

PART I. MATTERS TO BE SPECIFIED..... 127

PART II REPORTS TO BE SET OUT IN THE PROSPECTUS..... 128

EDITOR'S NOTE: Missing Schedules referred to in the Law but were not issued at the time of the promulgation of the Law. 130

REPUBLIC OF SOMALILAND

THE COMPANIES LAW OF SOMALILAND (Law No. 25/2004)

THE HOUSE OF REPRESENTATIVES

Having seen: Articles 11th, 38th and 39th of the Constitution;

Having heard: The proposal of the Minister of Commerce and Industry,

ENACTED THIS LAW:

A law to amend and consolidate the Law relating to the incorporation, regulation and winding up of companies limited by shares or by guarantee

**PART I
PRELIMINARY**

Section 1- Short title

This Law may be cited as the Companies Law.

Section 2 - Interpretation

In this Law, except where the context otherwise requires –

“Articles” means the articles of association of a company as generally framed or as altered by special resolution, including so far as they apply to the company, *the regulations contained in table A of the first Schedule*¹.

“certificate of incorporation” means a certificate delivered by the registrar of companies which certify that the company has been duly registered under this Law and that the company is limited.

“company” means a company formed and registered under this Law, or an existing company;

“company limited by guarantee” and “company limited by shares” have the meaning assigned to them respectively by subsection (2)(a) and (b) of section 4 of this Law.

“court” used in relation to a company means the court having jurisdiction to wind up the company;

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

“director” includes any person occupying the position of director by whatever name called;

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

“existing company” means a company formed and registered under any of the former Companies Law.

“financial year” means, in relation to anybody corporate, the period in respect of which any profit and loss account of the body corporate laid before it in general meeting is made

¹ Italics added. Table A referred to in this definition was not attached to the Law as finally passed.

up, whether that period is a year or not;

“foreign company” means a company incorporated elsewhere than in Somaliland which after the commencement of this Law or before that commencement, establishes or has established a place of business in Somaliland;

“limited company” means a company limited by shares or a company limited by guarantee;

“memorandum” means the memorandum of association of a company as generally framed or as altered from time to time;

“minimum subscription” has the meaning assigned to it by subsection (2) of section 43 of this Law.

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

“public company” and “private company” have the meaning given by section 4 (3) of this Law, unless the context otherwise requires;

“prospectus” means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of a company;

“registrar of companies” and the “registrar” mean the registrar of companies or other officer² performing under this Law the duty of registration of companies in Somaliland;

“share” means share in the share capital of a company and includes stock except where a distinction between stocks and shares is expressed or implied. Shares represent a shareholder’s ownership of a company;

“statutory meeting” means the meeting required to be held by subsection (1) of section 140 (1) of this Law;

“statutory report” has the meaning assigned to it by subsection (2) of section 140 of this Law;

“undistributable reserves” has the meaning given in section 112 (3) of this Law.

(2) Any provision of this Law overriding or interpreting a company’s articles shall, except as provided by this Law, apply in relation to articles in force at the commencement of this Law, as well as to articles coming into force thereafter, and shall apply also in relation to a company’s memorandum as it applies in relation to its articles.

Section 3 - Register of Companies

There shall be kept by the registrar a record called “the Register of Companies” wherein shall be entered all the matters prescribed by this Law.

PART I (*should read PART II*) FORMATION AND REGISTRATION OF COMPANIES, JURIDICAL STATUS AND MEMBERSHIP

Chapter 1 Registered Company Formation

Memorandum of association

Section 4 - Mode of forming incorporated company

² The Officer undertaking Companies Registrar’s functions is currently the Somaliland Attorney General (see s. 11 below).

(1) Any two or more persons associated for a lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Law in respect of registration, form an incorporated company with or without liability.

(2) A company so formed may be either –

- A company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (“a company limited by shares”);
- A company having the liability of its members limited by the memorandum to such amount as the members respectively thereby to contribute to the assets of the company in the event of its being wound up (“a company limited by guarantee”);
- A company not having any limit on the liability of its members (“an unlimited company”).

(3) Being a company –

- a public company is a company limited by share or limited by guarantee having a share capital and formed by any seven or more persons;
- A private company is a company limited by share or limited by guarantee having a share capital and formed by any two or more persons.
- A company cannot be formed as, or become, a company limited by guarantee with a share capital.

(4) Notwithstanding subsection (1), one person may, for lawful purpose, by subscribing his name to a memorandum of association and otherwise complying with the requirement of this Law in respect of registration, form an incorporated company limited by shares or by guarantee.

Section 5 - Requirements with respect to memorandum

(1) The memorandum of every company shall be in English language to constitute the original. A certified translation into Somali language will be attached for purpose of facilitating understanding and comprehension.

(2) The memorandum shall be printed and shall state –

- The name of the company. The name of the company shall be as agreed by the subscribers but shall not offend the rights of third parties and shall include the words “Company limited by shares” which may be abbreviated to “Ltd” for a private limited company or “plc” or “limited” for a public company limited by shares.
- The registered office of the company or principal place of business and its full address in Somaliland;
- The object of the company. A company, which has been incorporated under the Act [Law] cannot be engaged in activities, which are not expressly or implicitly authorized by the Memorandum.

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

(4) The memorandum of company limited by guarantee must also state that each member undertakes to contribute to the assets of the company it should be wound up while he is a member, for payment of the debts and liabilities of the company contracted

before he ceases to be a member, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(5) In the case of a company having a share capital –

- The memorandum shall also state the amount of share capital with which the company proposes to be registered and the division of the share capital into shares of a fixed amount.
- no subscriber of the memorandum may take less than one share;
- There must be shown in the memorandum against the name of each subscriber the number of shares he takes.

(6) The memorandum must be dated and signed by each subscriber before the Attorney General in the presence of at least one attesting witness, who must attest his occupation, postal address and the signature.

(7) Opposite the signature of every subscriber there shall be written in legible roman characters his full name, his occupation and postal address.

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

Section 6 - Statement of company's object: general commercial company

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

- the object of the company is to carry on any trade or business whatsoever,
- The company has power to do all such things as are incidental or conducive to the carrying on of any trade or business.
- The company should apply for commercial licence to the Ministry of Commerce, when required.

Section 7 - Alteration of company's object by special resolution

(1) A company may by special resolution alter its memorandum with respect to the statements of the company's object as specified under section 23.

(2) If an application is made under section 24, alteration does not have effect except in so far as it is confirmed by the court.

Articles of association

Section 8 - Articles prescribing regulations for companies

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

(2) Articles must be –

- in the English language constituting the text original with a certified translation in

Somali attached;

- printed;
- divided into paragraphs numbered consecutively;
- dated;
- Signed by each subscriber of the memorandum before the Attorney General in the presence of at least one witness who must attest the signature.

Section 9 - Alteration of Articles by special resolution

(1) Subject to the provisions of this Act [Law] and to the conditions contained in its memorandum, a company may alter by special resolution alter or add to its articles. Alterations so made in the articles are (subject to this Law) as valid as if originally contained in them, and are subject in like manner to alteration by special resolution.

Form of Memorandum and Articles

Section 10 - Statutory Form of Memorandum and Articles

(1) Being limited by shares, the company needs not³ submit Company Articles of association and may adopt all or any of the regulations for the management contained in:

- **Table A part I in the first Schedule⁴** for a Company limited by shares, not being a private company;
- **Table A part II in the first Schedule** for a Private Company limited by shares.

(2) The form of the memorandum and articles of a company limited by guarantee and not having a share capital shall be in accordance with the forms set out in **Table C in the first Schedule**, or as near thereto as circumstances admit.

Registration and its consequences

Section 11 - Documents to be sent to the Registrar of Companies

(1) The company's memorandum and articles, if any, shall be delivered to the Registrar of Companies at the office of the Attorney General⁵, in Hargeysa.

(2) With the memorandum there shall be delivered a statement in the prescribed form containing the names and requisite particulars of -

- the person who is, or the persons who are, to be the first director or directors of the

³ This optional requirement applies only to the Articles of Association of companies limited by shares – see also s. 8(1) above.

⁴ Italics added.

⁵ No separate Registrar of Companies has been set up and, following earlier practice, the Office of the Attorney General acts the Registrar. Prior to Somaliland's independence on 26 June 1960, the Attorney General's office was responsible for the registration of companies (as well as trademarks and patents), but this was not an onerous duty as very companies were registered. During the union with Somalia, the role of the Attorney General's Office was limited to checking that the registration documents submitted with the application conform to requirement of the law and then a judge of the Regional Court issued an order of 'convalidation' of the company and its entry into the Companies Registry. The Somaliland AG's Office currently deals with these roles and issues a confirmation of the registration which is published in the Somaliland Official Gazette. The next revision of this Law will probably involve the setting up of a dedicated Companies Registrar Office.

company; and

- the person who is, or the persons who are, to be the first secretary of the company.

(3) The statement shall be signed by or on behalf of the subscribers of the memorandum and shall contain a consent signed by each of the persons named in it as a director, as secretary, to act in the relevant capacity

Section 12 - Minimum authorized capital (public companies)

When a memorandum delivered to the registrar of companies under section 11 states that the association to be registered is to be a public company, the amount of the share capital stated in the memorandum to be that with which the company proposes to be registered must not be less than the authorised minimum defined in section 58.

Section 13 - Duty of Registrar

(1) The Registrar of Companies shall not register a company's memorandum delivered under section 11 unless he is satisfied that all the requirements of the Law in respect of registration have been complied with.

(2) Subject to this, the Registrar of Companies shall retain and register the memorandum and articles delivered to him under that section.

(3) A statutory declaration in the prescribed form by –

- a solicitor⁶ engaged in the formation of a company, or
- a person named as a director or secretary of the company in the statement delivered under section 11(2), that those requirements have been complied with shall be delivered to the registrar of companies, and the registrar may accept such a declaration as sufficient evidence of compliance.

Section 14 - Effect of registration

(1) On the registration of a company's memorandum, the registrar of companies shall give a certificate – the certificate of incorporation. The certificate of incorporation shall be conclusive evidence that all the requirements of this Act [*Law*] in respect of registration have been complied with and that the association is a company authorized to be registered, duly registered under this Law and that the company is limited.

(2) The certificate may be signed by the Registrar or authenticated by his official seal.

(3) From the date of incorporation mentioned in the certificate, the subscribers of the

⁶ Lawyers in Somaliland are known as Advocates and are qualified and registered under the Somaliland Advocates Law (Law No. 30/2004 as amended in 2013) and a different law deals with a Notaries who are qualified and registered under the Somaliland Notary Law (Law No.18/2001) as Somaliland laws in this area still follow the Italian based laws extended to Somaliland after the union with Somalia. Notaries (and not Advocates) usually deal with authentication and certification of documents. Although it is possible that the term 'solicitor' was simply left here as it was in the original Act on which this Law was based, the fact remains that Advocates act Somaliland 'solicitors' and 'barristers' combined and it cannot be said that the legislature meant 'Notaries' and not 'advocates'. Nonetheless statutory declarations often requires authentication which can only be undertaken by a Notary (or in some cases by a judge).

memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company, with power to hold land and having perpetual succession.

(4) The persons named in the statement under section 11 as directors, secretary are, on the company's incorporation, deemed to have been respectively appointed as its first directors, secretary.

Section 15 - Effect of memorandum and articles

(1) The memorandum and articles, when registered, bind the company and its members to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member to observe all the provisions of the memorandum and of the articles.

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

Section 16 - Effects of alteration on company's members

(1) A member of a company is not bound by an alteration made in the memorandum or articles after the date on which he became a member, if and so far as the alteration –

- requires him/her to take or subscribe for more than the number held by him/her at the date on which the alteration is made; or,
- In any way increases his liabilities as at the date to contribute to the company's share capital or otherwise to pay money to the company.

(2) Subsection (1) operates notwithstanding anything in the memorandum or articles; but it does not apply in a case where the member agree in writing, either before or after the alteration is made , to be bound by the alteration.

Section 17 - Power to alter conditions in memorandum

(1) Subject to the provisions of section 13, any condition contained in a company's memorandum which could lawfully have been contained in articles of association instead of in the memorandum may, subject to the provisions of this section, be altered by special resolution.

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

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

Section 18 - Copies of memorandum and articles to be given to members

(1) A company shall, on being so required by any member, send to him a copy of the memorandum and of the articles, if any, and a copy of any written law which alters the memorandum, subject to payment as the company may prescribe.

(2) If a company makes default in complying with this section, the company and every officer of the company who is in default shall be liable for each offence to a fine⁷.

Section 19 - Issued copies of memorandum to embody alterations

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

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

A company's membership

Section 20 - Definition of "member"

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

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

Provision with Respect to Names of Companies

Section 21- Reservation of names and prohibition of undesirable name

(1) The Registrar may, on written application, reserve a name pending registration of a company or a change of name by a company.

(2) Any such reservation shall remain in force for a period of thirty days or such longer period, not exceeding sixty days, as the registrar may, for special reasons, allow, and during such period no other company shall be entitled to be registered with that name.

(3) No name shall be reserved, and no company shall be registered by a name which, in the opinion of the registrar, is undesirable.

Section 22 - Change of name

(1) A company may, by special resolution and with the approval of the registrar signified in writing, change its name.

(2) Where a company changes its name under this section, it shall within fourteen days give to the registrar notice thereof and the Registrar shall enter the new name on the register in place of the former name, and shall issue to the company a certificate of

⁷ The extent of the fine is not set out in this Law.

name, and shall notify such change of name in the Official Gazette⁸.

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

Chapter II **Alteration of objects**

Section 23 - Resolution to alter objects

(1) A company may by special resolution alter its memorandum with respect to the statement of the company's objects if the alteration would enable the company:

- to carry on its business more economically or more efficiently; or
- to attain its main purpose by new or improved means; or
- To enlarge or change the local areas of its operation; or
- To carry on some business which under existing circumstances may conveniently be combined with the business of the company; or
- To restrict or to abandon any of the objects specified in the memorandum; or
- To sell or dispose of the whole or any part of the undertaking of the company; or
- To amalgamate with any other company or body of persons.

(2) The resolution would be effective immediately if it was voted for by the holders of at least 86% in nominal value of the company's issued share capital.

Section 24 - Procedure for objecting to alteration

(1) Where a company's memorandum has been altered by special resolution under section 23, application may be made to the court for the alteration to be cancelled.

(2) Such an application can be made –

- by the holders of not less in the aggregate than 15 per cent in nominal value of the company's issued share capital or any class of it.
- by the holders of not less than 15 per cent of the company's debentures entitling the holders to object to an alteration of its objects,⁹ but an application shall not be made by any person who has consented to or voted in favour of the alteration.

(3) The application, under this section, must be made within thirty days after the date on which the resolution altering the company's objects was passed, and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(4) The court may on such an application make an order confirming the alteration either wholly or in part on such terms and conditions as it thinks fit and may –

- if it thinks fit, adjourn the proceedings in order that an arrangement may be made to its satisfaction for the purchase of the interests of dissentient members, and
- give such directions and make such orders as it thinks expedient for facilitating or

⁸ The Somaliland Republic Official Gazette is published by the Chief State Counsel.

⁹ Substituted the full stop with a comma.

carrying into effect any such arrangement.

(5) The court's order may (if the court thinks fit) provide for the purchase by the companies of the shares of any members of the company, and for the reduction accordingly of its capital, and may make such alteration in the company's memorandum and articles as may be required in consequence of that provision.

(6) If the court's order requires the company not to make nay, or any specified, alteration in its memorandum or articles, the company does not then have power without the leave of the court to make any such alteration in breach of the requirement.

Section 25 - Provisions supplementing sections 23, 24

(1) Where a company passes a resolution altering its objects and no application is made to the court under section 24 for its cancellation, the company shall within 15 days from the end of the period for making such an application, deliver to the Registrar of companies a printed copy of its memorandum as altered;

(2) If such an application is made, the company shall –

- forthwith give notice of that fact to the registrar, and
- within 15 days from the date of any order cancelling or confirming the alteration, deliver to the registrar a certified copy of the order, and in the case of an order confirming the alteration, a printed copy of the memorandum as altered.

(3) The court may by order at any time extend the time for the delivery of documents to the registrar under subsection (1)(b) for such period as the court may think proper.

(4) If a company makes default in giving notice or delivering any document to the registrar of companies as required by subsection (1), the company and every officer of it who is in default is liable of a fine and, for continued contravention, to a daily default fine.

Chapter III Private Companies

Section 26 – Meaning of private company

(1) For the purpose of this Act, “private company” means a company which by its articles-

- Restricts the right of transfer its shares; and
- Limit[s] the number of its members to thirty, not included persons who are in the employment of the company and persons who, having been formerly in the employment of the company, were while in that employment, and have continued after the determination of that employment to be, members of the company;
- Prohibits any invitation to the public to subscribe for any shares of the company.

Section 27 – Consequences of default in complying with conditions constituting a private company

(1) Where the articles of a company include the provisions which, under section 26, are required to be included in the articles of a company in order to constitute it a private company but default is made in complying with any of those provisions, the company

shall cease to be entitled to any privilege or exemption conferred on private companies under any provisions of this Act, and thereupon the provisions of this Act shall apply to the company as if it were not a private company.

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

Section 28 - Statement in lieu of prospectus by company on ceasing to be private company

(1) If a company, being a private company, alters its articles in such a manner that they no longer include the provisions which, under section 26, are required to be included in the articles of a company in order to constitute it a private company, the company must, on and from the date of the alteration, cease to be a private company and must within a period of fourteen days after the said date, deliver to the registrar for registration a statement in lieu of prospectus in the form and containing the particulars set out in *Part I of the second Schedule* "Form of Statement in Lieu of Prospectus to be Delivered to Registrar by a Private Company on becoming a Public Company"¹⁰ ,

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

(3) Where a statement in lieu of prospectus delivered to the registrar under subsection (1) include any untrue statement, any person who authorized the delivery of the statement in lieu of prospectus for registration shall be guilty of an offence and liable to a default fine unless he/she proves that the untrue statement was immaterial or that he/she had reasonable ground to believe and did, up to the time of the delivery for registration of the statement in lieu of prospectus, believe that the untrue statement was true.

Chapter 4

A Company's Capacity, Formalities of Carrying on Business

Section 29 - A company's capacity not limited by its memorandum

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

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

(3) It remains the duty of the directors to observe any limitations on their powers flowing from the company's memorandum; and action by the directors which but for subsection (1) would be beyond the company's capacity may only be ratified by the

¹⁰ Italics added. There was no second schedule attached to the Law when it was passed.

company special resolution.

(4) A resolution ratifying such action shall not affect any liability incurred by the directors or any other person; relief from any such liability must be agreed to separately by special resolution.

Section 30 – Power of directors to bind the company

(1) In favour of a person dealing with a company in good faith, the power of the board of directors to bind the company, or authorize other to do so, shall be deemed to be free of any limitations under the company's constitution.

(2) For this purpose –

- a person “deals with” a company if he/she is a party to any transaction or other set to which the company is party;
- a person shall not be regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the directors under the company's constitution; and
- a person shall be presumed to have acted in good faith unless the contrary is proved.

(3) The references above to limitations on the directors' powers under the company constitution include limitations deriving-

- from a resolution of the company in general meeting or a meeting of any class of shareholders, or
- from any agreement between the members of the company or of any class of shareholders.

(4) Subsection (1) does not affect any right of a member of the company to bring procedure to restrain the doing of an act which is beyond the powers of the directors; but no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company.

(5) Nor does that subsection affect any liability incurred by the directors, or any other person, by reason of the directors' exceeding their powers.

Section 31- Events affecting a company's status

A company is not entitled to rely against other persons on the happening of any of the following events –

- the making of a winding-up order in respect of the company, or the appointment of a liquidator in a voluntarily winding up of the company, or
- any alteration of the company's memorandum or articles, or
- any changes among the company's directors, or
- (as regards service of any document on the company) any changes in the situation of the company's registered office, if the event had not been officially notified at the material time and is not shown by the company to have been known at that time to the person concerned.

Reduction of Numbers of Members Below legal Minimum

Section 32 - Minimum membership for carrying on business

(1) If at any time the numbers of members of a company is reduced , in the case of a private company, below two, or, in the case of a public company, below seven, and it carries on business for more than six months while the number is so reduced, every member of the company during the time that it carries on business after those six months, is personally liable (jointly and severally with the company) for the payment of the whole debts of the company contracted during the period or, as the case may be, that part of it and may be severally sued therefore.

(2) If a company other than a private limited by shares or by guarantee carries on business without having at least two members and does so for more than 6 months, a person who, for the whole or any part of the period that it so carries on business after those 6 months –

- is a member of the company, and
- knows that it is carrying on business with only one member,

is liable (jointly and severally with the company for the payment of the company's debt contracted during the period or, as the case may be, that part of it.

(3) When the numbers of members are below the legal minimum or the company does not possess the prescribed organs, the court may order the winding-up of such a company on the application of a member or creditor. The court may adjourn its decision upon such term as it thinks fit to permit of the reorganization of the company and order such conservatory measures as may be necessary.

PART III CAPITAL ISSUES

Chapter I The Prospectus

Section 33 - Document offering shares for sale deemed a prospectus

(1) If a company allots or agrees to allot its shares with a view to all or any of them being offered for sale to the public, any document by which the offer for sale to the public is made is deemed for all purposes a prospectus issued by the company.

(2) A prospectus issued by or on behalf of a company or in relation with an intended company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus;

Section 34 - Matters to be stated and reports to be set out in prospectus

(1) Every prospectus issued by or on behalf of a company, or by or on behalf of a person who is or has been engaged or interested in the formation of the company, shall state the matters specified in **Part I of the Third Schedule** and set out the reports specified in **Part II of that Schedule**¹¹.

(2) If any persons act in contradiction of the provisions of this section, he shall be liable to a default fine.

¹¹ See the attached Third Schedule, Part I and II which was passed with the Law in 2004.

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

- As regards any matter not disclosed, he/she proves that he/she was not cognizant thereof; or
- He/she proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or
- The non-compliance or contravention was in respect of matters which in the opinion of the court dealing with the case were immaterial or having regard to all the circumstances of the case, reasonably to be excused

(4) Nothing in subsection (3) above shall limit or diminish any liability, which any person may incur under the general law or this Act apart from that section.

Section 35 - Expert's consent to issue of prospectus containing statement by him/her

(1) A prospectus inviting persons to subscribe for shares in a company and including a statement purporting to be made by an expert shall not be issued unless-
He/she has given and has not, before delivery of a copy of the prospectus for registration; withdraw his written consent to the issue thereof with the statement included in the form and context in which it is included.

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

Section 36 - Registration of prospectus

(1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of publication, there has been delivered to the registrar for registration a copy thereof signed by every person who is named therein as a director or proposed director of the company.

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

(3) If a prospectus is issued without a copy thereof being delivered under this section to the registrar or without the copy so delivered having endorsed thereon or attached thereto the required documents, the company and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine and, for continued contravention, to a daily default for every date from the date of the issue of the prospectus until a copy thereof is so delivered with the required documents endorsed thereon or attached thereto.

Section 37 - Restrictions on alteration of terms mentioned in prospectus or statement in lieu of prospectus

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

(2) This section shall not apply to a private company but shall apply to a company

which was a private company before becoming a public company.

Section 38 – Civil liability for mis-statements in prospectus

(1) Subject to the provision of this section, where a prospectus invite persons to subscribe for share in a company, the following persons shall be liable to pay compensation to all persons who subscribe for any shares on the faith of the prospectus for the loss or damage they may have sustained by reasons of any untrue statement included therein, that is to say –

- Every person who is a director of the company at the time of the issue of the prospectus;
- Every person who has authorized himself to be named and is names in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time.
- Every person who has authorized the issue of the prospectus.

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

- That having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
- That the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or
- That after the issue of the prospectus, he on becoming aware of any untrue statement therein, withdrew his consent thereto and gave reasonable public notice of the withdrawal and of the reason therefore.

Section 39 – Expert’s Liability

(1) An expert who gives a report for inclusion in a prospectus is placed in a similar position in that he is liable for an untrue statement contained in his report as being a person who has authorized the issue of the prospectus.

(2) However, he is not liable for any part of the prospectus other than his own report and he shall not be liable if he proves –

- that having given his consent under section 35 to the issue of the prospectus he withdrew his consent in writing before the registration of the prospectus;
- that after such registration but before allotment, on becoming aware of the untrue statement, he withdrew his statement in writing and gave reasonable public notice of such withdrawal and the reason for it; or
- that he was competent to make the statement and up to the time of allotment he believed on reasonable grounds that it was true.

Section 40 - Criminal liability for mis-statements in prospectus

Where a prospectus includes any untrue statement, any person who authorized the issue of the prospectus shall be guilty of an offence and liable to a fine, unless he proves either the statement was immaterial or that he had reasonable ground to believe and did, up to the time of the issue of the prospectus, believe that the statement was true.

Section 41- Interpretation of provisions relating to prospectuses

For the purpose of the foregoing provisions of this Part-

- a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and
- a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

PART IV ALLOTMENT OF SHARES AND DEBENTURES

Chapter I General Provisions as to allotment

Section 42 – Authority of company required for certain allotment

(1) The directors of a company shall not exercise any power of the company to allot relevant securities unless they are, in accordance with this section authorized to do so by-

- The company in general meeting; or
- The company's articles.

(2) In this section “relevant securities” means-

- shares in the companies other than shares shown in the memorandum to have been taken by the subscribers to it,
- any right to subscribe for, or to convert any security into, shares in the company (other than shares so allotted);

and references to the allotment of relevant securities include the grant of such a right but not the allotment of shares to such a right.

Section 43 - Prohibition of allotment unless minimum subscription is received

(1) No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which, in the opinion of the directors, must be raised by the issue of capital in order to provide for the matters specified in *paragraph 4 of the Third Schedule*¹² has been subscribed, and the sum payable on application for the amount so stated has been paid and received by the company.

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

¹² Italics added. The Third Schedule paragraphs are not numbered but are separated by bullet points, the fourth of which states that the minimum subscription, i.e. the minimum amount considered by the persons issuing the prospectus as being necessary for:

- the preliminary expenses incurred in the issue,
- the purchase of any property intended to be bought out of the proceeds of the issue,
- the purchase of any property intended to be bought out of the proceeds of the issue,
- the repayment of any money borrowed by the company in respect of any of the foregoing matters.

(3) The amount payable on application on each share shall not be less than five per cent of the nominal amount of the share.

(4) If the conditions aforesaid have not been complied with on the expiration of sixty days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and if any such money is not so repaid to them within seventy-five days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the appropriate rate per annum from the expiration of the seventy-five day.

Provided that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

Section 44 - Prohibition of allotment unless statement in lieu of prospectus delivered to registrar.

(1) A company having a share capital which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares allotted to the public for subscription shall not allot any of the said shares unless, at least three days before the first allotment, there has been delivered to the registrar for registration a statement in lieu of prospectus. The statement must be signed by every person who is named therein as a director or a proposed director of the company.

(2) The statement must be in the **form set in Part I of the Fourth Schedule** to the Act [Law] and must contain the particulars set out therein and, where applicable, set out the reports specified therein.

(3) A statement shall be deemed to be untrue if it is misleading in the form and context in which it is included.

(4) Where a statement in lieu of a prospectus delivered to the registrar under subsection (1) include any untrue statement, any person who authorized the delivery of the statement in lieu of prospectus for registration shall be guilty of an offence and liable to a default fine, unless he proves either that the untrue statement was immaterial or that he had reasonable grounds, up to the time of the delivery for registration of the statement in lieu of prospectus, to believe that the untrue statement was true.

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

Section 45 - Effect of irregular allotment

An allotment made by a company to an applicant in contravention of the provisions of section 43 shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, or in case where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

Section 46 - Applications for and allotment of shares and debentures.

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

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

Section 47 - Return as to allotments

(1) Whenever a company limited by shares and having a share capital make any allotment of its shares, the company shall, within sixty days thereafter, deliver to the Registrar for registration

(a) a return of the allotments stating

- the number and nominal amount of the share allotted,
- the names, addresses and description of the allottee, and
- the amount, if any, paid or due and payable on each share.

(b) In the cases of shares allotted as fully or partly and paid up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment together with any contract of sale or for services or for other consideration in respect of which the allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of shares so allocated, the extent to which they are to be treated as paid up, and the consideration for which they have been allocated.

(2) Where such a contract as above-mentioned is not reduced in writing, the company shall within sixty days after the allotment deliver to the registrar for registration the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing.

Chapter II

Amount to be paid as to payment for shares on allotment

Section 48 - General rules as to payment for shares on allotment

(1) Subject to the following provisions of this Part, shares allotted by a company, and any premium on them, may be paid up in money, or money's worth (including goodwill and know-how).

(2) A public company shall not accept at any time, in payment up of its shares or any premium on them, an undertaking given by any person that he or another should do work or perform services for the company or any person.

(3) If a public company accepts such an undertaking in payment up to its shares or premium on them, the holder of the shares when they or the premium are treated as paid up (in whole or in part) by the undertaking is liable -

- to pay the company in respect of these shares an amount equal to their nominal value, together with the whole of any premium or, if the case so requires, such proportion of that amount as is treated as paid up by the undertaking; and

- to pay interest at the appropriate rate on the amount payable under paragraph (a) above.

(4) This section does not prevent a company from allotting bonus shares to its members or from paying up, with sums available for the purpose, any amounts for the time being unpaid on any of its shares (whether on account of the nominal value of the shares or by way of premium).

(5) The reference in subsection (3) to the holder of shares includes any person who has unconditional right to be included in the company's register of members in respect of those shares or to have an instrument of transfer of them executed in his favour.

Section 49 - Prohibition on allotment of shares at a discount

(1) A company's shares shall not be allotted at a discount.

(2) If shares are allotted in contravention of this section, the allottee is liable to pay the company an amount equal to the amount of the discount, with interest at the appropriate rate.

Section 50 - Shares to be allotted as at least one-quarter paid up

(1) a public company shall not allot a share except as paid up at least as to one - quarter of its nominal value and the whole of any premium on it.

(2) If a company allots a share in contravention of subsection (1), the share is to be treated as if one-quarter of its nominal value, together with the whole of any premium on it, had been received.

(3) But the allottee is liable to pay the company the minimum amount which should have been received in respect of the share under subsection (1).

(4) Subsections (2) and (3) do not apply to the allotment of bonus shares, unless the allottee knew or ought to have known the shares were allotted in contravention of subsection (1).

Section 51- Restriction on payment by long term undertaking

(1) A public company shall not allot shares as fully or partly paid up (as to their nominal value or any premium on them) otherwise than in cash if the consideration for the allotment is or includes an undertaking which is to be or may be, performed more than 5 years after the date of the allotment.

(2) If a company allots in contravention of subsection (1), the allottee is liable to pay the company an amount equal to the aggregate of their nominal and the whole of any premium with interest at the appropriate rate.

Section 52 - Non-cash consideration to be valued before allotment

(1) A public company shall not allot shares as fully or partly paid (as to their nominal value or any premium on them) otherwise than in cash unless –

- the consideration for the allotment has been independently valued under section 53.
- a report with respect to its value has been made to the company by a person appointed by the company during the 6 months immediately preceding the allotment of the shares; and
- a copy of the report has been sent to the proposed allottee.

(2) If a company allots shares in contravention to subsection (1) and either-

- the allottee has not received the valuer's report required by that subsection to be sent to him; or
- there has been some other contravention of this section or section 46 which the allottee knew or ought to have known amounted to a contravention, The allottee is liable to pay the company an amount equal to the aggregate of the nominal value of the shares and the whole of any premium with interest at the appropriate rate.

Chapter III Valuation provisions

Section 53 - Valuation and Report

(1) The valuation and report required by section 52 shall be made by an independent person, that is to say a person qualified at the time of the report to be appointed, or continue to be, an auditor of the company.

(2) The valuer's report shall state-

- the nominal value of the shares to be wholly or partly paid for by the consideration in question;
- the amount of any premium payable on the shares;
- the description of the consideration and the method used to value and the date of the valuation.
- the extent to which the nominal value of the shares and any premium are to be treated as paid up –
 - by the consideration
 - in cash

(3) The valuer's report shall contain or be accompanied by a note by him-

- In the case of a valuation made by a person other than himself, that it appeared to himself reasonable to arrange for it to be so made or to accept a valuation so made;
- Whoever made the valuation, that the method of valuation was reasonable in all the circumstances
- That on the basis of the valuation the value of the consideration, together with any cash by which the nominal value of the shares is to be paid up, is not less than so much of the aggregate of the nominal value and the whole of any such premium as is treated as paid up by the consideration and any such cash.

Section 54 - Entitlement of valuer to full disclosure

(1) A person carrying out a valuation or making a report under section 45 is entitled to require from the officers of the company such information and explanation as he thinks necessary to enable him to carry out the valuation or make the report and provide a note under section 53(3).

(2) A person who knowingly or recklessly makes a statement which –

- Is misleading, false or deceptive in a material particular, and
 - Is a statement to which this subsection applies,
- is guilty of an offence and liable to imprisonment or a fine or both.

(3) Subsection (2) applies to any statement made (whether orally or in writing) to a person carrying out a valuation or making a report under section 46, being a statement which conveys or purports to convey any information or explanation which that person requires, or is entitled to require, under subsection (1) of this section.

Section 55 - Matters to be communicated to registrar

A company to which a report is made under section 53 as to the value of any consideration for which, or partly for which, it proposes to allot shares shall deliver a copy of the report to the registrar of companies for registration at the same time that it files the return of the allotment of those shares under section 47.

Chapter IV Commissions and Discounts

Section 56 - Power to pay certain commissions and prohibitions of payment of all other commissions, discounts

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

- The payment of the commission is authorized by the Articles;
- The commission paid or agreed to be paid does not exceed ten per cent of the price at which the shares are issued or the amount or rate authorized by the articles, whichever is the less;
- The amount or rate per cent of the commission paid or agreed to be paid is-
 - In the case of shares offered to the public for subscription, disclosed in the prospectus; or
 - In the case of shares not offered to the public for subscription disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and delivered before the payment of the commission to the registrar for registration; and
- The number of shares which persons have agreed for a commission to subscribe absolutely is disclosed in manner aforesaid.

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

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

(4) A vendor to, or promoter of, or other person who receives payment in money or shares from, a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

PART V SHARE CAPITAL, ITS INCREASE, MAINTENANCE AND REDUCTION

Chapter I General Provisions about share capital

Section 57 - Public company share capital requirements

(1) A company registered as a public company on its original incorporation shall not do business or exercise any borrowing powers unless the registrar of companies has issued it with a certificate under this section.

(2) The registrar shall issue a company with such a certificate if, on application made to him by the company in the prescribed form, he is satisfied that the nominal value of the company's allotted share capital is not less than the authorized minimum, and there is delivered a statutory declaration complying with the following subsections.

(3) The statutory declaration must be in the prescribed form and be signed by a Director of the company, and it must -

- state that the nominal value of the company's allotted share capital is not less than the authorized minimum;
- specify the amount paid up, at the time of the application, on the allotted share capital of the company;
- Specify the amount, or estimated amount, of the company's preliminary expenses and the persons by whom any of those expenses have been paid or are payable. And
- Specify any amount or benefit paid or given or intended to be paid or given, to any promoter of the company, and the consideration for the payment or benefice.

(4) A certificate under this section in respect of a company is conclusive evidence that the company is entitled to do business and exercise any borrowing powers.

(5) If a company does business or exercise borrowing powers in contravention with this section, the company and any officer of it who is in default is liable to a fine.

(6) Nothing in this section affects the validity of any transactions entered by a company; but if a company enters into transaction in contravention with this section and fails to comply with its obligation in that connection within 21 days from being called upon to do so, the directors of the company are jointly and severally liable to indemnify the other party to the transaction in respect of any loss or damage suffered by him by reason of the company's failure to comply with those obligations.

Section 58 - The authorized minimum

In this Act [Law], “the authorized capital” means *US\$5,000*¹³ or such other sum as the Attorney General may by order made by statutory instrument specify instead.

Section 59 - Alteration of share capital (limited companies)

(1) A company limited by shares or a company limited by guarantee and having a share capital, if so authorized by its articles, may alter the conditions of its memorandum in any of the following ways:

(2) The company may-

- increase its share capital by new shares of such amount as it thinks expedient;
- consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
- convert all or any of its paid-up shares into stock and re-convert that stock into paid-up shares of any denomination;
- Sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum (but subject to the following subsection);
- Cancel shares, which, at the date of the passing of the resolution to cancel them, have not been taken or agreed to be taken by any person, and diminish the amount of the company's share capital by the amount of the shares so cancelled.

(3) In any sub-division under subsection (2d)¹⁴ the proportion between the amount paid and the amount, if any, unpaid on each reduced share must be the same as it was in the case of the share from which the reduced share is derived.

(4) The powers conferred by this section must be exercised by the company in general meeting.

(5) A cancellation of shares under this section does not for the purpose of the Act [Law] constitute a reduction of share capital.

Section 60 - Notice to registrar of alteration

(1) If a company having a share capital has –

- consolidated and divided its share capital into shares of larger amount than the existing shares; or,
- converted any shares into stock; or,
- re-converted stock into shares; or,
- sub-divided its shares or any of them; or,
- redeemed any redeemable shares; (to convert any share into cash); or,
- cancelled any shares (other than in connection with a reduction of share capital under section 72), it shall within one month after so doing give notice in the prescribed form to the registrar of companies, specifying (as the case may be) the shares consolidated, divided, converted, sub-divided, redeemed or cancelled, or the stock

¹³ This was not in the Law, as originally passed, but was the set minimum in 2012.

¹⁴ Fourth bullet point of sub section 59(2) i.e sub-division of the shares, or any of them, into shares of smaller amount than is fixed by the memorandum.

reconverted.

(2) If default is made in complying with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

Section 61 - Notice to registrar of increased share capital

(1) If a company having a share capital (whether or not its share having been converted into stock) increases its share capital beyond the registered capital, it shall within 15 days after the passing of the resolution authorizing the increase, give to the registrar of companies notice of the increase, and the registrar shall record the increase.

(2) The notice must include such particulars as may be prescribed with respect to the classes of shares affected and the conditions subject to which the new shares have been or are to be issued.

(3) There shall be forwarded to the registrar together with the notice a printed copy of the resolution authorizing in some other form approved by the registrar.

(4) If default is made in complying with this section, the company and every officer of it who is in default is liable to a fine and, or for continued contravention, to a daily default fine.

Chapter II Class Rights

Section 62 - Variation of class rights

(1) This section is concerned with the variation of the rights attached to any class of shares in a company whose share capital is divided into shares of different classes.

(2) Where the rights are attached to a class of shares otherwise than by the company's memorandum, and the company's articles do not contain provision, with respect to the variation of the rights, those rights may be varied if, but only if-

- the holders of three quarters in nominal value of the issued shares of that class consent in writing to the variation; or
- an extraordinary resolution passed at a separate general meeting of the holders of that class sanctions the variation;

(3) Where -

- the rights are attached to a class of shares by the memorandum or otherwise;
- the memorandum or articles contain provision for the variance of those rights;
- The variation of those rights is connected with the giving variation, revocation or renewal of an authority for allotment under section 35 or with a reduction of the company's share capital under section 62.

Those rights shall not be varied unless -

- The condition mentioned in subsection (2)(a) or (b) above is satisfied;
- Any requirement of the memorandum or articles in relation to the variation of rights of that class is complied with to the extent that it is not comprised in that condition.

(4) If the rights are attached to a class of shares by the memorandum or otherwise and –

- where they are so attached by the memorandum, the articles contain provision with respect to their variation which had been included in the articles at the time of the company's original incorporation; or
- where they are so attached otherwise, the articles contain such provision (whenever first so included),

and in either case the variation is not connected as mentioned in subsection (3) (c), those rights may only be varied if all the members of the company agree to the variation.

(5) If the rights are attached to a class of shares by the memorandum, and the memorandum and articles do not contain provision with respect to the variation of those rights, those rights may be varied if all the members of the company agree to the variation.

(6) Any alteration of a provision contained in a company's articles for the variation of the rights attached to a class of shares, or the insertion of any such provision into the articles, is itself to be treated as a variation of those rights.

Section 63 - Shareholders' rights to object to variation

(1) The section applies if, in the case of a company whose share capital is divided into different classes of shares -

- Provision is made by the memorandum or articles for authorizing the variation of the rights attached to any class of shares in the company, subject to-
 - The consent of any specified proportion of the holders of the issued shares of that class, or
 - The sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of that provisions the rights attached to any such class of shares at any time varied;
 - The rights attached to any class of shares in the company are varied under section 62
- (2).

(2) The holders of not less in the aggregate than 15 per cent of the issued shares of the class in question (being persons who did not consent to or vote in favour of the resolution for the variation), may apply to the court to have the variation cancelled; and if such an application is made, the variation has no effect unless it is confirmed by the court.

(3) Application to the court must be made within 21 days after the date on which the consent was given or the resolution was passed (as the case may be), and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(4) The court, after hearing the applicant and any other person who apply to the court to be heard, may, if satisfied having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not satisfied, confirm it. The decision of the court on any such application is final.

(5) The company shall within 15 days after the making of an order of the court on such an application forward a copy of the order to the registrar of companies; and, if default is made in complying with this provision, company and every officer of it who is in

default is liable to a fine and for continued contravention, to a daily default fine.

(6) “Variation” in this section includes abrogation; and varied is to be construed accordingly

Chapter III

Shares at Premium, at Discount and Redeemable Preference Shares

Section 64 - Application of share premiums

(1) If a company issues shares at a premium i.e. at a price above their nominal value, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account called “the share premium account”.

(2) The share account may be applied by the company in paying up unissued shares to be allotted to members as fully paid bonus shares, or in writing off

- the preliminary expenses of the company;
- the expenses of any issues of shares or the commission paid or discount allowed on such issue, or, in providing for the premium payable on redemption of debentures of the company.

(3) The share premium account shall be governed by the provisions of the Company Act [*Law*] relating to the reduction of the share capital of a company as if the share premium account were part of its paid up share capital of the company.

Section 65 - Application of share at a discount

(1) Subject as provided in this section, it shall be lawful for a company to issue at a discount shares in the company of a class already issued,
Provided that –

- the issues of the shares at a discount shall be authorized by resolution passed in general meeting of the company, and shall be sanctioned by the court; and
- the resolution shall specify the maximum rate of discount at which the shares are to be issued; and
- not less than one year shall at the date of the issue, have elapsed since the date on which the company was entitled to commence business; and
- the shares to be issued at a discount shall be issued within one month after the date on which the issue is sanctioned by the court or within such extended time as the court may allow.

(2) Where a company has passed a resolution authorizing the issue of shares at a discount, it may apply to the court for an order sanctioning the issue, and on any such applications the court, if, having regard to all the circumstances of the case, it thinks proper to do so, may make an order sanctioning the issue on such terms and condition as it thinks fit.

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

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

Section 66 - Power of company to arrange for different amount being paid on shares

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

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

Section 67 - Reserve liability of limited company

A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up except in the event and for the purpose of the company being wound up and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

Section 68 - Power of a company limited by shares to alter its share capital

(1) A company limited by shares, if so authorized by its articles, may alter the conditions of its memorandum as follows, that is to say, it may–

- increase its share capital by new shares of such amount as it thinks expedient;
- consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
- convert all or any of its paid-up shares into stock, and reconvert that stock into paid-up shares of any denomination;
- subdivide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived,
- cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken nor agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The powers conferred by this section shall be exercised by the company in general meeting.

(3) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act [Law].

Section 69 - Notice to registrar of consolidation of share capital

(1) If a company having a share capital has –

- consolidated and divided its share capital into shares of larger amount than its existing shares;
- converted any shares into stock; or

- reconverted stock into shares; or
- subdivided its share or any of them; or
- redeemed any redeemable preference shares; or
- cancelled any shares, otherwise than in connection with a reduction of share capital under section 72, it shall, within thirty days after so doing, give notice thereof to the registrar specifying, as the case may be, the share consolidated, converted, subdivided, redeemed or cancelled, or the stock reconverted.

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

Section 70 - Notice of increase of share capital

(1) Where a share company having a share capital has increased its share capital beyond the registered capital, it shall within thirty days after the passing of the resolution authorizing the increase, give to the registrar notice of the increase, and the registrar shall record the increase.

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

Section 71 - Power of a company to pay interest out of capital in certain cases

Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or building or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and may charge the sum so paid by way of interest to capital, as part of the cost of construction of the work or building, or the provision of plant.

Provided that –

- No such payment shall be made unless it is authorized by the articles or by special resolutions;
- So such payment, whether authorized by the articles or by special resolution, shall be made without the previous sanction of the registrar.
- The payment shall be made only for such period as may *be* determined by the registrar, and that period shall in no case extend beyond the close of the half next year after the half year during which the works or building are actually completed or the plant provided.
- The rate of interest shall in no case exceed the rate as the Minister may for the time being by notice in the Gazette prescribe.
- The payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid.

Chapter IV Reduction of Share Capital

Section 72 - Special resolution for reduction of share capital

(1) Subject to confirmation by the court, a company limited by shares may, if so authorized by its articles, by special resolution reduce its share capital in any way:

- (2) In particular, and without prejudice to subsection (1), the company may-
- Extinguish or reduce the liability on any of its share in respect of share capital not paid up; or
 - Either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or
 - Either with or without extinguish or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the company's wants. and the company may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its share accordingly.
- (3) A special resolution under this section is in this Act referred to as "a resolution for reducing share capital".

Section 73 - Application to court for order of confirmation

- (1) Where a company has passed a resolution for reducing shares capital, it may apply to the court for an order confirming the reduction;
- (2) If the proposed reduction of share capital involves either-
- diminution of liability in respect of unpaid shares capital; or
 - the payment to a shareholder of any paid-up share capital, and in any other case if the court so directs, the next three subsections have effect, but subject throughout to subsection (6).
- (3) Every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company is entitled to object to the reduction of capital.
- (4) The court shall settle a list of creditors entitled to object, and for that purpose-
- shall ascertain, as far as possible, without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims; and
 - may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction of capital.
- (5) If a creditor entered on the list whose debt or claim is not discharged or does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating (as the court may direct) the following amount -
- If the company admits the full amount of the debt or claim, or though not admitting it, is willing to provide for it, then the full amount of the debt or claim;
 - If the company does not admit, and is not willing to provide for, the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the court after the like enquiry and adjudication as if the company were being wound up by the court.
- (6) If a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the court may, if having regard to any special circumstances of the case it think proper to do so, direct that subsections (3) to (5) of this section shall not apply

as regards any class or any class of creditors.

Section 74 - Court order confirming reduction

(1) The court, if satisfied with respect to every creditor of the company who under section 73 is entitled to object to the reduction of capital that either –

- his consent to the reduction has been obtained; or
- his debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

(2) Where the court so orders, it may also–

- for any reason it thinks proper to do so, make an order directing that the company shall, during such period as is specified in the order, add to its name as its last words the words “and reduced”; and
- make an order requiring the company to publish (as the court direct) the reasons for reduction of capital or such other information in regard to it as the court thinks expedient with a view to giving proper information to the public and (if the court thinks fit) the causes which led to the reduction.

(3) Where a company is ordered to add to its name the words “and reduced”, those words are, until the expiration of the period specified in the order, deemed to be part of the company’s name.

Section 75 - Public company reducing capital below authorized minimum

(1) This section applies where the court makes an order confirming a reduction of a public company’s capital, which has the effect of bringing the nominal value of its allotted share capital below the authorized minimum.

(2) The registrar of companies shall not register the order unless the court otherwise directs, or the company is first registered as a private company.

(3) The court may authorize the company to be so re-registered without its having passed the special resolution required; and where that authority is given; the court shall specify in the order the alterations in the company’s memorandum and articles to be made in connection with that re-registration.

(4) The company may then be re-registered as a private company, if an application in the prescribed form and signed by a director or secretary of the company is delivered to the registrar, together with a printed copy of the memorandum and articles as altered by the court’s order.

(5) On receipt of such an application, the registrar shall retain it and the other document delivered with it and issue the company with a certificate of incorporation appropriate to a company that is not a public company; and –

- the company by virtue of the issue of the certificate becomes a private company, and the alteration in the memorandum and articles set out in the court’s order take effect; and,
- the certification is conclusive evidence that the requirements of this section in respect of re-registration and of matters precedent and incidental thereto have been complied with, and that the company is a private company.

Chapter V Maintenance of Capital

Section 76 - Duty of directors on serious loss of capital

(1) Where the net assets of a public company are half or less of its called-up share capital, the directors shall, not later than 28 days from the earliest day on which that fact is known to a director of the company, duly convene an extraordinary general meeting of the company for a date not later than 56 days from that day for the purpose of considering whether any, and if so what, steps should be taken to deal with the situation.

(2) If there is a failure to convene an extraordinary general meeting as required by subsection (1) each of the directors of the company who-

- knowingly and willfully authorizes or permits the failure, or
- after the expiry of the period during which that meeting should have been convened, during which that meeting knowingly and wilfully authorizes or permits the failure to continue,

is liable to a fine¹⁵.

Section 77- General rule against company acquiring own shares

(1) Subject to the following provisions, a company limited by shares or limited by guarantee and having a share capital shall not acquire its own shares, whether by purchases, subscription or otherwise.

(2) If a company purports to act in contravention of this section, the company is liable to a fine, and every officer of the company who is in default is liable to imprisonment or a fine, or both; and the purported acquisition is void.

(3) A company limited by shares may acquire any of its fully paid shares otherwise than for valuable consideration; and subsection (1) does not apply in relation to-

- the redemption or purchase of shares in accordance with the Chapter VII of this Part.
- the acquisition of shares in a reduction of capital duly made;
- the purchase of shares in pursuance of an order of the [court?] under section 5??¹⁶ (alteration of object[s]);
- the forfeiture of shares or the acceptance of shares surrendered in lieu, in pursuance of the articles, for failure to pay any sum payable in respect of the shares.

Chapter VI

Financial assistance by a company for acquisition its own shares

Section 78 - Prohibition of provision of financial assistance by a company for purchase of or subscription for its own shares

(1) Subject to the following provision of this section, where a person is acquiring or is proposing to acquire shares in a company, it is not lawful for the company to give

¹⁵ No set fine is indicated in this provision.

¹⁶ An order relating to a special resolution to restrict or abandon any of the objects as set out in subsection 23(1)(5), i.e. fifth bullet point.

financial assistance directly or indirectly for the purpose of that acquisition before or at the same time as the acquisition takes place.

(2) Where a person has acquired shares in a company and any liability has been incurred (by that or any other person), for the purpose of that acquisition, it is not lawful for the company to give financial assistance directly or indirectly for the purpose of reducing or discharging the liability so incurred.

Provided that nothing in this section will be taken to prohibit –

- Where the lending of money is part of the ordinary business of a company and the money is lent by the company in the ordinary course of its business.
- Where the loan is to trustees to enable them to purchase fully paid shares in the company to be held under an employee's share scheme.
- Where the loan is to employees' (other than directors) to enable them to purchase or subscribe for fully-paid shares in the companies to be held by themselves by way of beneficial ownership.

(2) If a company acts in contravention of this section, the company and every officer of the company who is in default is liable to a fine¹⁷.

Chapter VII Redeemable Shares

Section 79 - Power to issue redeemable preference shares

(1) Subject to the provisions of this section, a company limited by shares may, if so authorized by its articles, issue preference shares which are to be redeemed:

Provided that –

- No such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out the proceeds of a fresh issue of shares for the purposes of the redemption;
- No such shares shall be redeemed unless they are fully paid;
- The premium, if any payable on redemption, must have been provided for out of the profits of the company or out of the company's share premium account before the shares are redeemed;
- Where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall out of profits which would otherwise have been available for dividend be transferred to a reserve fund to be called the capital redemption reserve fund, a sum equal to the nominal amount of the shares redeemed.

Section 80 - Financing of redemption

(1) Subject to the next subsection and to section 83 (private companies redeeming or purchasing own shares out of capital) -

- redeemable shares may only be redeemed out of distributable profits of the company or out of the proceeds of a fresh issue of shares made for the purpose of the redemption; and

¹⁷ No set fine is indicated in this provision.

- Any premium payable on redemption must be paid out of distributable profits of the company.

(2) If the redeemable shares were issued at a premium, any premium payable on their redemption may be paid out of the proceeds of a fresh issue of shares made for the purposes of the redemption, up to an amount equal to –

- the aggregate of a premiums received by the company on the issue of the share redeemed, or
- the current amount of the company’s share premium account (including any sum transferred to that account in respect of premiums on the new shares), whichever is the less; and in that case the amount of the company’s share premium account shall be reduced by a sum corresponding to the amount of any payment made by virtue of this subsection out of the proceeds of the issue of the new shares.

(3) Subject to the provisions of this section, redemption of shares may be affected on such terms and in such manner as may be provided by the company’s articles.

(4) Shares *redeemed under this section*¹⁸ shall be treated as cancelled on redemption, and the amount of the company’s issued share capital shall be diminished by the nominal value of those shares accordingly; but the redemption of preference shares by a company is not to be taken as reducing the amount of the company’s authorized share capital.

(5) Without prejudice to subsection (4), where a company is about to redeem shares, it has power to issue share up to the nominal value of the shares to be redeemed as if those shares had never been issued.

Purchase by a Company of its own Shares

Section 81 - Power of company to purchase own shares

(1) Subject to the provision of this section, a company limited by shares or limited by guarantee and having a share capital may, if authorized to do so by its articles, purchase its own shares (including any redeemable shares).

(2) Section 79 applies to the purchase by a company under this section of its own shares as they apply to the redemption of redeemable shares, save that the terms and manner of purchase need not to be determined by the articles as required by section 79 (3).

(3) A company may not under this section purchase its shares if as a result of the purchase there would no longer be any member of the company holding shares other than redeemable shares.

Section 82 - The capital redemption reserve

(1) Where under this chapter shares of a company are redeemed or purchased wholly out of the company’s profits, the amount by which the company’s issued share capital is diminished in accordance with section 79 (3) on cancellation of the shares redeemed or purchased shall be transferred to a reserve called “the capital redemption reserve”.

¹⁸ Italics in the text of the Law, as passed, do not appear to have any significance.

(2) If the shares are redeemed or purchased wholly or partly out of the proceeds of a fresh issue and the aggregate amount of those proceeds is less than the aggregate nominal value of the shares redeemed or purchased, the amount of the difference shall be transferred to the capital redemption reserve.

*Redemption or purchase of own shares out of capital
(Private companies only)*

Section 83 - Power of private companies to redeem or purchase own share out of capital

(1) Subject to the following provision of this chapter, a private company limited by shares or limited by guarantee and having a share capital may if so authorized by its articles, make a payment in respect of the redemption or purchase under section 80, of its own shares otherwise than out of its distributable profits or the proceeds of a fresh issue of shares.

(2) The payment which may be made by a company out of capital in respect of the redemption or purchase of its own shares is such an amount as, taken together with

- any available profits of the company, and
- the proceeds of any fresh issue of shares made for the purposes of the redemption or purchases, is equal to the price of redemption or purchase; and the payment permissible under this subsection is referred to below in this section as the permissible capital payment for the shares.

(3) Subject to subsection (5), if the permissible capital payment for shares redeemed or purchased is less than their nominal amount, the amount of the difference shall be transferred to the company's capital redemption reserve.

(4) Subject to subsection (5), if the permissible capital payment is greater than the nominal amount of the shares redeemed or purchased –

- the amount of any capital redemption reserve, share premium account or fully paid share capital of the company, and
- any amount representing unrealized profits of the company for the time being standing to the credit of any reserve maintained by the company (revaluation reserve), may be reduced by a sum not exceeding the amount by which the permissible capital payment exceeds the nominal amount of the shares.

(5) Where the proceeds of a fresh issue are applied by a company in making any redemption or purchase of its own shares in addition to a payment out of capital under this section, the references in subsections (3) and (4) to the permissible capital payment are to be read as referring to the aggregate of that payment and those proceeds.

Section 84 - Objections by company's members or creditors

(1) Where a private company passes a special resolution approving any payment out of capital for the redemption or purchases of any of its shares –

- any member of the company other than one who consented to or voted in favor of the resolution; and
- Any creditor of the company may within 5 weeks of the date on which the resolution was passed apply to the court for cancellation of the resolution.

- (2) If an application is made, the company shall –
- forthwith give notice in the prescribed form of that fact to the registrar of companies; and
 - within 15 days from the making of any order of the court on the hearing of the application, such longer period that the court may by order direct, deliver an office copy of the order of the registrar.

Section 85 - Powers of court on application under section 84

(1) On the hearing of an application under section 84, the court may, if it thinks for, adjourn the proceedings in order that an arrangement may be made to the court's satisfaction for the purchase of the interests of dissentient members or for the protection of dissentient creditors (as the case may be), and the court may give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement.

(2) Without prejudice to its powers under subsection (1), the court shall make an order on such terms and conditions as it thinks for either confirming or canceling the resolution; and if the court confirms the resolution, it may in particular by order alter or extend any date or period of time specified in the resolution.

(3) The court's order may, if the court thinks fit, provide for the purchase by the company of the shares of any of its members and for the reduction accordingly of the company's capital, and may make such alterations in the company's memorandum and articles as may be required in consequence of that provision.

(4) If the court's order requires the company not to make any or any specified, alteration in its memorandum or articles, the company has not them power without leave of the court to make any such alteration in breach of the requirement.

Chapter VIII Miscellaneous Provisions about Shares and Debentures

Share and debentures certificates

Section 86 - Nature, transfer and numbering of shares

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

(2) Each share in a company having a share capital shall be distinguished by its appropriate number; except that, if at any time all the issued shares in a company, or all the issued share in it of a particular class, are fully paid up and rank *pari passu*¹⁹ for all purposes, none of those shares need thereafter have a distinguished number so long as it remains fully paid up and rank *pari passu* for all purposes with all shares of the same class for the time being issued and fully paid up.

Section 87 - Transfer and registration

¹⁹ i.e. shall have equal standing or rights.

(1) It is not lawful for a company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company. This applies notwithstanding anything in the company's articles.

(2) Subsection (1) does not prejudice any power of the company to register as shareholder or debenture holder a person whom the right to any shares in or debentures of the company has been transmitted by operation of law.

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

(4) If a company refuses to register a transfer of shares or debentures the company shall, within 2 months after the date on which the transfer was lodged with it, send to the transferee notice of the refusal.

(5) If default is made in complying with subsection (4), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

Section 88 - Certification of transfers

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

(2) For the purpose of this section-

- An instrument of transfer shall be deemed to be certificated if it bears the words "certificate lodged" or words to the like effect.
- The certification shall be deemed to be made by a company if –
 - the person issuing the instrument is a person authorized to issue certificated instruments of transfer on the company's behalf; and
 - the certification is signed by a person authorized to certificate transfers on the company's behalf or by any officer or servant either of the company or of a body corporate so authorized;
- A certification shall be deemed to be signed by any person if-
 - It purports to be authenticated by his signature or initials (whether handwritten or not); and
 - It is not shown that the signature or initials was or were placed there neither by himself nor by any person authorized to use the signature or initials for the purpose of certificating transfers on the company's behalf.

Section 89 - Duty of company as to issue of certificates

(1) Every company shall –

- within sixty days after the allotment of any of its shares, debentures or debenture stock, and
- within sixty days after the date on which a transfer of any such shares, debentures or debenture stock is lodged with the company, complete and have ready for delivery the certificates of all shares, the debentures and the certificates of all debentures stock allotted or transferred (unless the condition of issues of the shares, debentures or debentures stock otherwise provide).

(2) For this purpose, transfer means a transfer duly stamped and otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.

(3) if default is made in complying with subsection (1), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine²⁰.

Section 90 - Certificate to be evidence of title

A certificate under the common seal of the company, specifying any shares held by a member shall be sufficient evidence of his title to the shares.

Debentures

Section 91- Register of debenture holders

(1) Every company which after the appointed day issues a series of debentures shall keep at the registered office of the company a register of holders of such debentures. Provided that –

- Where the work of making up such register is done at some office of the company other than the registered office such register may be kept at such office; and
- Where the work of making up such register is by arrangement by the company undertaken by some person on behalf of the company such register may be kept at the office of that person at which the work is done.

(2) Every company shall give notice to the registrar of the place where the register is kept and of any change in that place. Provided that a company shall not be bound to give notice under this subsection if the register has been kept at the registered office of the company.

Section 92 - Right to inspect register

(1) Every register of holders of debentures of a company shall, except when duly closed, be open to the inspection –

- of the registered holder of any such debentures or any holder of shares in the company without fee; and
- of any other person on payment of such fee as may be prescribed.

(2) Any such registered holder or debentures or holder of shares, or any other person, may require a copy of the register of the holders of debentures of the company or any part

²⁰ The extent of these fines has not been indicated yet.

of it, on payment of such fee as may be prescribed.

(3) A copy of any trust deed for securing an issue of debentures shall be forwarded to every holder of any such debentures at his request on payment of such fee as may be prescribed.

(4) If inspection is refused, or a copy is refused or not forwarded, the company and every officer in it who is in default is liable to a fine and , for continued contravention for a daily default fine.

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

(6) For the purpose of this section, a register is deemed to be duly closed if closed in accordance with provisions contained in the articles or in the debentures or, in the case of debenture stock, in the stock certificates, or in the trust deed or other document securing the debentures or debentures stock, during such period or periods not exceeding in the whole 30 days in any year, as may be therein specified.

PART VI ACCOUNTS AND AUDIT

Chapter I Provisions Applying To Companies Generally

Accounting records

Section 93 - Duty to keep accounting record

(1) Every company shall keep accounting records which are sufficient to show and explain the company's transactions and are such as to-

- disclose with reasonable accuracy, at any time, the financial position of the company at that time, and
- Enable the directors to ensure that any balance sheet and profit and loss account prepared under this Part complies with the requirement of this Act.

(2) The accounting record shall in particular contain –

- entries from day to day of all sums of money received and expended by the company, and the matters in respect of which the receipt and expenditures takes place, and
- a record of the assets and liabilities of the company.

(3) If the company's business involves dealing in goods, the accounting records shall contain –

- Statements of stock held by the company at the end of each financial year of the company,
- all statements of stocktaking from which any such statement of stock as its mentioned in paragraph (a) has been or is to be prepared; and
- except in the case of goods sold by way of ordinary retail trade, statements of all goods sold and purchased, showing the goods and the buyers and the sellers in sufficient detail to enable all these to be identified.

(4) If a company fails to comply with any provision of this section, every officer of the company who is in default is guilty of an offence unless he shows that he has acted honestly and that in the circumstances in which the company's business was carried on the default was excusable.

(5) A person guilty of an offence under this section is liable to imprisonment or a fine or both.

Section 94 - where and for how long records be kept

(1) A company's accounting records shall be kept at its registered office or such other place as the directors think fit, and shall at all-time[s] be open to inspection by the company's officers.

(2) If a company fails to comply with any provision of subsection (1), every officer who is in default is guilty of an offence and liable to imprisonment or a fine or both, unless he shows that he has acted honestly and that in the circumstances in which the company's business was carried on the default was excusable.

(3) Accounting records which a company is required by section 93 to keep shall be preserved by it-

- in the case of a private company for three years from the date on which they are made, and
- in the case of a company limited by share, for six years from the date on which they are made.

(4) An officer of a company is guilty of an offence, and liable to imprisonment or a fine or both, if he fails to take all reasonable steps for securing compliance by the company with subsection (3) or intentionally causes any default by the company under that subsection.

Section 95 - A company's financial year

(1) A company's "financial year" is determined as follows

(2) Its first financial year begins with the first day of its accounting reference period and ends with the last day of that period or such other date, not more than seven days before or after the end of that period, as the directors may determine.

(3) Subsequent financial years begin with the day immediately following the end of the company's previous financial year and end with the last day of its next accounting reference period or such other date, not more than seven days before or after the end of that period, as the directors may determine.

Section 96 - Accounting reference period and accounting reference date

(1) A company's first accounting reference period is the period of more than six months, but not more than 18 months, beginning with the date of its incorporation and ending with its accounting reference date.

(2) Its subsequent accounting reference period are successive periods of twelve months beginning immediately after the end of previous accounting reference period and ending with its accounting reference date.

Section 97 - Alteration of accounting reference date

(1) A company may by notice in the prescribed form given in the registrar specify a new accounting reference date having effect in relation to the company's current accounting reference period and subsequent periods.

Annual accounts

Section 98 - Duty to prepare company accounts

(1) The director of the company shall prepare for each financial year of the company –

- a balance sheet as at the last day of the year; and
- a profit and loss account.

(2) The balance sheet shall give a true and fair view of the state of affairs of the company as at the end of the financial year; and profit and loss account shall give a true and fair view of the profits or loss of the company for the financial year.

(3) A company's accounts shall comply with the provisions of **Schedule 4²¹** [***Fifth Schedule***] as to the form and content of the balance sheet and profit and loss account and additional information to be provided by way of notes to the accounts.

Approval and signing of accounts

Section 99 - Approval and signing of accounts

(1) A company's annual account shall be approved by the board of directors and signed on behalf of the board by a director of the company.

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

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

(4) If annual accounts are approved which do not comply with the requirements of this Act, every director of the company who is party to their approval and who knows that they do not comply is guilty of an offence and liable to a fine.

(5) If a copy of the balance sheet-

- is laid before the company, or otherwise circulated, published or issued without the balance sheet having been signed as required by this section or without the required statement of the signatory's name being included, or
- is delivered to the registrar without being signed as required by this section, the

²¹ The Fourth Schedule in this Law, as set out in s. 44(2) deals with a form of a statement in lieu of prospectus by having a share capital. It is submitted therefore that this missing Schedule should be referred to as the Fifth Schedule dealing with the content and form of the company Accounts.

company and every officer of it who is in default is guilty of an offence and liable to a fine.

Chapter II Director's report

Section 100 - Duty to prepare directors' report

- (1) The directors of a company shall for each financial year prepare a report – Containing a fair review of the development of the business of the company during the financial year and of their position at the end of it, and stating the amount (if any) which they recommend should be paid as dividend.
- (2) The report shall state the names of the persons who, at any time during the financial year, were directors of the company and the principal activities of the company in the course of the year and any significant change in those activities in the year.
- (3) The report shall also comply with *Schedule 7* as regards the disclosure of the matters mentioned there.
- (4) In *Schedule 7*²² –

Part I relates to matters of general nature, including changes in asset values, directors' shareholding and other interests and contributions for political charitable purposes.

Part II relates to the acquisition by a company of its own shares

Part III relates to the employment, training and advancement of disabled persons.

Section 101- Approval and signing of director's report

- (1) The director's report shall be approved by the board of directors and signed on behalf of the board by the director.
- (2) The copy of the directors' report which is delivered to the registrar shall be signed on behalf of the board by the director.
- (3) If a copy of the directors' report -
 - is laid before the company, or otherwise circulated, published or issued without the balance sheet having been signed as required by this section or without the required statement of the signatory's name being included, or
 - is delivered to the registrar without being signed as required by this section, the company and every officer of it who is in default is guilty of an offence and liable to a fine.

Chapter III Auditors' report

Section 102 - Auditors' report

- (1) A company's auditors shall make a report to the company's members on all annual accounts of the company of which copies are to be laid before the company in general meeting during their tenure of office.

²² No Schedule 7 was attached to the Law (as passed).

(2) The auditor's report shall state whether in the auditor's opinion the annual accounts have been properly prepared in accordance with this Act, and in particular whether a true and fair view is given.

- In the case of an individual balance sheet, of the state of affairs of the company as at the end of the financial year.
- In the case of an individual profit and loss account, of the profit or loss of the company for the financial year,

(3) The auditors shall consider whether the information given in the directors' report for the financial year for which the annual accounts are prepared is consistent with those accounts; and if they are of opinion that it is not they shall state that fact in their report.

Section 103 - Signature of auditors' report

(1) The auditor's report shall state the names of the auditors and be signed by them.

(2) The copy of the auditor's report which is delivered to the registrar shall state the names of the auditors and be signed by them.

(3) If a copy of the auditors' report-

- is laid before the company, or otherwise circulated, published or issued without the balance sheet having been signed as required by this section or without the required statement of the signatory's name being included, or
- is delivered to the registrar without being signed as required by this section, the company and every officer of it who is in default is guilty of an offence and liable to a fine.²³

Section 104 - Duties of auditors

(1) A company's auditors shall, in preparing their report, carry out such investigations as will enable them to form an opinion as to –

- Whether proper accounting records have been kept by the company ;
- Whether the company's individual accounts are in agreement with the accounting records and returns.

(2) If the auditors are of opinion that proper accounting records have not been kept , or that proper returns adequate for their audit have not been received , or if the company's individual accounts are not in agreement with the accounting records and returns , the auditors shall state that fact in their report.

(3) If the auditors fail to obtain all the information and explanation which, to the best of their knowledge and belief, are necessary for the purpose of their audit, they shall state that fact in their report.

Chapter IV Publication of accounts and reports

Section 105 - Persons entitled to receive copies of accounts and reports

²³ No fine is indicted in this provision.

(1) A copy of the company's annual accounts, together with a copy of the directors' report for that financial year and of the auditors' report on those accounts, shall be sent to —

- every member of the company
- every holder of the company's debenture;
- every person who is entitled to receive notice of general meetings, not less than 21 days before the date of the meeting at which a copies of those documents are to be laid in accordance with section 107.

(2) In case of a company not having a share capital, copies need not to be sent to anyone who is not entitled to receive notices of general meeting of the company.

(3) If copies are sent less than 21 days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by all members entitled to attend and vote at the meeting.

(4) If default is made in complying with this section, the company and every officer of it who is in default is guilty of an offence and liable to a fine.

Section 106 - Right to demand copies of accounts and reports

(1) Any member of a company and any holder of a company's debentures is entitled to be furnished, on demand and without charge, with a copy of the company's last annual accounts and directors' report and a copy of the auditor's report on those accounts.

(2) If a demand under this section is not complied with within seven days, the company and every officer of it who is in default is guilty of an offence and liable to a fine and for continued contravention, to a daily default fine.

Chapter V **Laying and delivering of accounts and reports**

Section 107 - Accounts and reports to be laid before company in general meeting

(1) The directors of a company shall in respect of each financial year lay before the company in general meetings copies of the company's annual accounts, the directors' report and the auditors' reports on those accounts.

(2) If the requirements of subsection (1) are not complied with and before the end of the period allowed for laying and delivering accounts and reports, every person who immediately before the end of that period was a director of the company is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

(3) It is a defence for a person charged with such an offence to prove that he took all reasonable steps for securing that those requirements would be complied with before the end of that period.

(4) It is not a defence to prove that the documents in question were not in fact prepared as required by this part.

Section 108 - Accounts and reports to be delivered to the registrar

(1) The directors of a company shall in respect of each financial year deliver to the registrar a copy of the company’s annual accounts together with a copy of the directors’ report for that year and a copy of the auditors’ reports on those accounts.

(2) If the requirements of subsection (1) are not complied with and before the end of the period allowed for laying and delivering accounts and reports, every person who immediately before the end of that period was a director of the company is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

(3) Further, if the directors of the company fail to make good the default within 14 days after the service of a notice on them requiring compliance, the court may on the application of any member or creditor of the company or of the registrar, make an order directing the directors (or any of them) to make good the default within such time as may be specified in the order.

The court’s order may provide that all costs of and incidental to the application shall be borne by the directors.

(4) It is a defence for a person charged with such an offence to prove that he took all reasonable steps for securing that those requirements would be complied with before the end of that period.

(5) It is not a defence to prove that the documents in question were not in fact prepared as required by this part.

Section 109 - Civil penalty for failure to deliver accounts

(1) Where the requirements of section 108 (1) are not complied with before the end of the period allowed for laying and delivering accounts and reports, the company is liable to a civil penalty.

This in addition to any liability of the directors under [*this*] section 109.

(2) The amount of the penalty²⁴ is determined by reference to the length of the period between the end of the period allowed for laying and delivering accounts and reports and the day on which the requirements are complied with, and whether the company is a public or private company as follow:

<i>Length of period</i>	<i>Public company</i>	<i>Private company</i>
Not more than 3 months		
More than 3 months but not more than 6 months		
More than 6 months but no more than 12 months		
More than 12 months		

²⁴ The penalties are not set out in this sub-section table.

(3) The penalty may be recovered by the registrar and shall be paid by him into the Consolidated Fund²⁵.

(4) It is not a defence to prove that the documents in question were not in fact prepared as required by this part.

Section 110 - Period allowed for laying and delivering account and reports

(1) The period allowed for laying and delivering accounts and reports is –

- for a private company, 10 months after the end of the relevant accounting reference period, and
- for a public company, 7 months after the end of that period.

This is subject to the following provision of this section.

(2) If the relevant accounting reference period is the company's first and is a period of more than 12 months, the period allowed is –

- 10 months or 7 months, as the case may be, from the first anniversary of the incorporation of the company, or
- 3 months from the end of the accounting reference period, whichever last expires.

(3) In this section “the relevant accounting reference period” means the accounting reference period by reference to which the financial year for the accounts in question was determined.

PART VII DISTRIBUTION OF PROFITS AND ASSETS

Limits of company's power of distribution

Section 111 – Certain distribution prohibited

(1) A company shall not make a distribution except out of profits available for the purpose.

(2) In this Part, “distribution” means every description of distribution of a company's assets to its members, whether in cash or otherwise, except distribution by way of –

- an issue of shares as fully or partly paid bonus shares,
- the redemption or purchase of any of the company's own shares out of capital (including the proceeds of any fresh issue of shares) or out of unrealized profits in accordance with Chapter V of Part V²⁶;
- the reduction of share capital by extinguishing or reducing the liability of any of the members on any of the company's share in respect of share capital not paid up, or by paying off paid up share capital, and
- a distribution of assets to members of the company on its winding up.

²⁵ Somaliland Revenue (or Income) Fund established under Article 54(2) of the Constitution is ‘the Consolidated Fund’ referred to in this subsection.

²⁶ See sections 76 – 77 above.

(2) For purpose of this Part, a company's profit available for distribution are its accumulated, realized profits, so far as not previously utilized by distribution or capitalization, less its accumulated, realized losses, so far as not previously written off in a reduction or reorganization of capital duly made.

(3) A company shall not apply an unrealized profit in paying up debentures, or any amounts unpaid on its issued shares.

Section 112 - Restriction on distribution of assets

(1) A public company may only make a distribution at any time –

- If at that time the amount of its net assets is not less than the aggregate of its called-up share capital and undistributable reserves, and
- If and to the extent that, the distribution does not reduce the amount of those assets to less than that aggregate.

(2) In subsection (1) “net assets” means the aggregate of a company's assets less the aggregate of its liabilities (“liabilities to include any provision for liabilities or charges”).

(3) A company's undistributable reserves are

- the share premium account
- the capital redemption reserve
- the amount by which the company's accumulated, unrealized profits so far as not previously utilized by capitalization of a description to which the paragraph applies, exceed its accumulated, unrealized losses (so far as not previously written off in a reduction or reorganization of capital duly made) and
- any other reserve which the company is prohibited from distributing by any enactment other than the one contained in this Part) or by its memorandum or articles.

(4) A public company shall not include any uncalled share capital as an asset in any accounts relevant for purposes of this section.

Section 113 - Distribution to be justified by reference to company's accounts

(1) The amount of a distribution which may be determined by reference to the following items as stated in the company's accounts -

- profits, losses, assets and liabilities
- provisions of any of the kinds mentioned in Schedule 4 (depreciation, diminution in values of assets, retentions to meet liabilities).
- share capital and reserves (including un distributable reserves).

Except in a case falling within the next subsection, the company's accounts which are relevant for this purpose are its last annual accounts, that is to say those prepared under Part VI which were laid in respect of the last preceding accounting reference period in respect of which accounts so prepared were laid.

PART VIII A COMPANY'S MANAGEMENT: DIRECTORS AND SECRETARIES: THEIR QUALIFICATIONS DUTIES AND RESPONSABILITIES

Officers and registered office

Section 114- Directors

- (1) Every company registered (other than a private company) shall have at least two directors.
- (2) Every private company shall have at least one director.

Section 115 - Secretary

- (1) Every company shall have a secretary.
- (2) A sole director shall not also be secretary

Section 116 - Validity of acts of directors

The acts of a director are valid notwithstanding any defect that may afterwards be discovered in his appointment or qualifications.

Section 117 - Registered office

- (1) A company shall have at ant times a registered office to which all communications and notice may be addressed.
- (2) On incorporation the situation of the company's registered office is that specified in the statement sent to the registrar under section 11.
- (3) The company may change the situation of its registered office from time to time by giving notice in the prescribed form to the registrar.
- (4) For the purposes of any duty of a company –
 - to keep at its registered office, or make available for public inspection there, any register, index or other document, or
 - to mention the address of its registered office in any document,a company which has given notice to the registrar of a change in the situation of its registered office may act on the change as from such date not more than 14 days after the notice is given as it may determine.
- (5) Where a company unavoidably ceases to perform at its registered office any such duty as it is mentioned in subsection (4) (a) in circumstances in which it was not practicable to give prior notice to the registrar of a change in the situation of its registered office, but –
 - resumes performance of that duty at other premises as soon as practicable, and
 - gives notice accordingly to the registrar of a change in the situation of its registered office within 14 days of doing so, it shall not be treated as having failed to comply with that duty.

Section 118 - Register of directors and secretaries

- (1) Every company shall keep at its registered office a register of its directors and secretaries; and the registrar shall, with respect to the particulars to be contained in it of those persons, comply with the requirements.

- (2) The company shall, within the period of 14 days from the occurrence of –
- Any change among its directors or in its secretary, or
 - Any change in the particulars contained in the register.
- send to the registrar of companies a notification in the prescribed form of the change and of the date on which it occurred; and a notification of a person having a director or secretary of the company shall contain a consent, signed by that person, to act in the relevant capacity.
- (3) The register shall be open to the inspection of any member of the company without charges and of any other person on payment of such fees as may be prescribed.
- (4) If an inspection required under this section is refused, or if default is made in complying with subsection (1) and (2), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.
- (5) In the case of a refusal of inspection of the registrar, the court may by order compel an immediate inspection of it.

Provisions governing appointment of directors

Section 119 - Share qualification of directors

- (1) It is the duty of every director who is by the company's articles required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within 2 months after his appointment, or such shorter time as may be fixed by the articles.
- (2) The office of director of a company is vacated if the director does not within 2 months from the date of his appointment (or within such shorter time as may be fixed by the articles) obtain his qualifications, or after the expiration of that period or shorter time he ceases at any time to hold his qualification.
- (3) A person vacating office under this section is incapable of being reappointed to be a director of the company until he has obtained his qualification.
- (4) If after the expiration of that period or shorter time any unqualified person acts as a director of the company, he is liable to a fine and, for continued contravention, to a daily default fine.

Section 120 - Appointment of directors to be voted individually

- (1) At a general meeting of a public company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be made, unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.
- (2) For purposes of this section, a motion for approving a person's appointment, or for nominating a person for appointment, is to be treated as a motion for his appointment.

Section 121 - Age limit for directors

- (1) Every company (except a private company) is subject to this section.
- (2) No person is capable of being appointed a director of a company which is subject to this section if at the time of his appointment he has attained the age of 70.
- (3) A director of such company shall vacate his office at the conclusion of the annual general meeting commencing next after he attains the age of 70; but acts done by a person as director are valid notwithstanding that it is afterwards discovered that his appointment had terminated under this subsection.

Removal of directors

Section 122 - Resolution to remove director

- (1) A company may by ordinary resolution remove a director before the expiration of his period of office
- (2) Special notice is required of a resolution to remove a director under this section or to appoint somebody instead of a director so removed at the meeting at which he is removed.
- (3) A vacancy created by the removal of a director under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.

Section 123 - Director's right to protest removal

- (1) On receipt of notice of an intended resolution to remove a director under section 122, the company shall forthwith send a copy of the notice to the director concerned; and he (whether or not a member of the company) is entitled to be heard on the resolution at the meeting.
- (2) Where notice is given of an intended resolution to remove a director under that section, and the director concerned makes with respect to it representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so –
 - In any notice of the resolution given to members of the company state the fact that the representations having been made; and
 - Send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company).
- (3) If a copy of the representations is not sent as required by subsection (2) because received too late or because of the company's default, the director may (without its rights to be heard orally) require that the representations shall be read out at the meeting.

Section 124 - Directors' name on company correspondence

A company to which this section applies shall not state, in any form, the name of any of its directors (otherwise than in the text or as a signatory) on any business letter on which the

company's name appear unless it states on the letter in legible characters the name of every director of the company.

If a company makes default in complying with this section, every officer of the company who is in default is liable for each offence to a fine

PART IX ENFORCEMENT OF FAIR DEALING BY DIRECTORS

Restrictions on directors taking financial advantage

Section 125 - Payment to director for loss of office

It is not lawful for a company to make to a director of the company any payment by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, without particulars of the proposed payment (including its amount) being disclosed to members of the company and the proposal being approved by the company.

Section 126 - Director's duty of disclosure on takeover, etc.

(1) This section applies where, in connection with the transfer to any person of all or any of the shares in a company, being a transfer resulting from –

- an offer made to the general body of shareholders ;or
- an offer made by or on behalf of some other body corporate with a view to the company becoming its subsidiary;
- an offer made by or on behalf of an individual with a view to his obtaining the right to exercise of not less than one-third of the voting power at any general meeting of the company; or
- any other payment which is conditional on acceptance to a given extent, a payment is to be made to a director by way of compensation for loss of office, or as consideration for or in connection with his retirement from office.

(2) It is in those circumstances the director's duty to take all reasonable steps to secure that particulars of the proposed payment (including its amount are included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(3) If -

- the director fails to take those steps, or
- any person who has been properly required by the director to include those particulars in or send with the notice required by subsection (2) fails to do so, he is liable to a fine.

Section 127 - Directors to disclose interest in contracts

(1) It is the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company to declare the nature of his interest at a meeting of the directors of the company.

(2) For purpose of this section, a general notice given to the directors of a company by a director to the effect that –

- he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm;

or

- He is to be regarded as interested in any contract which may after the date of the notice be made with a specified person who is connected with him/her is deemed a sufficient declaration of interest in relation to any such interest.

(3) However, no such notice is of effect unless either it is given at a meeting of the directors or the director takes reasonable steps to secure that it is brought up and read at the next meeting of the directors after it is given.

(4) For purpose of this section, a transaction or arrangement of a kind described in section 130 (prohibition of loans, quasi loan to directors) made by a company for a director of the company or person connected with such a director is treated as a transaction or arrangements in which that director is interested.

Section 128 – Directors’ services contracts to be open to inspection.

(1) Subject to the following provisions, every company shall keep at an appropriate place-

- In the case of each director whose contract of service with the company is in writing, a copy of that contract;
- In the case of each director whose contract of services with the company is not in writing, a written memorandum setting out its terms.

(2) All copies and memoranda kept by a company in pursuance of subsection (1) shall be kept at the same place.

(3) The following are appropriate place for the purpose of subsection (1) –

- The company’s registered office.
- The place where its register of members is kept (if other than its registered office)

(4) Every company shall send notice in the prescribed form to the registrar of companies of the place where copies and memoranda are kept in compliance with subsection (1), and of any change in that place, save in a case in which they have at all times been kept at the company’s registered office.

(5) Every copy and memorandum required by subsection (1) to (4) to be kept shall be open to inspection of any member of the company without charge.

(6) If-

- default is made in complying with subsection (1) or,
- an inspection required under subsection (5) is refused, or
- default is made for 14 days in complying with subsection (4), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

Section 129 - Contracts with sole members who are directors

(1) Subject to subsection (2), where a private company limited by shares or by guarantee having only one member enters into a contract with the sole member of the company and the sole member is also a director of the company, the company shall, unless the contract is in writing, ensure that the terms of the contract are either set out in a

written memorandum or are recorded in the minutes of the first meeting of the directors of the company following the making of the contract.

(2) Subsection (1) shall not apply to contracts entered into the ordinary course of the company's business.

(3) If a company fails to comply with subsection (1), the company and every officer of it who is in default is liable to a fine.

(4) Failure to comply with subsection (1) with respect to a contract shall not affect the validity of that contract.

*Restriction on a company's power to make loans, etc
to a director and persons connected with them*

Section 130 - General restriction on loans etc. to directors and persons connected with them

(1) The prohibitions listed below in this section are subject to the exceptions in section 132.

(2) A company shall not-

- make a loan to a director of the company
- enter into any guarantee or provide any security in connection with a loan made by any person to such a director

(3) A relevant company shall not-

- make a quasi-loan to a director of the company;
- make a loan or a quasi-loan to a person connected with such a director;
- enter into a guarantee or provide any security in connection with a loan or a quasi-loan made by any other person for such a director or a person so connected.

(4) A relevant company shall not –

- enter into a credit transaction as creditor for such a director or a person so connected;
- enter into any guarantee or provide any security in connection with a credit transaction made by any other person for such a director or person so connected.

Section 131 - Definitions for section 130

(1) The following subsections apply for the interpretation of section 130.

(2) "Guarantee" includes indemnity, and cognate expressions are to be construed accordingly;

(3) A quasi loan is a transaction under which one party ("the creditor") agrees to pay, or pays otherwise than in pursuance of an agreement, a sum for another ("the borrower") or agrees to reimburse, or reimburse otherwise than in pursuance of an agreement, expenditure incurred by another party for another ("the borrower").-

- on terms that the borrower (or a person on his behalf) will reimburse the creditor; or
- in circumstances giving rise to a liability on the borrower to reimburse the creditor.

(4) Any reference to a person to whom a quasi-loan is made is a reference to the borrower; and the liabilities of a borrower under a quasi-loan include the liabilities of any person who has agreed to reimburse the creditor on behalf of the borrower.

(5) “Relevant company” means a company which –

- is a public company, or
- a subsidiary of a public company .

(6) A “credit transaction” is a transaction under which one party (“the creditor”) –

- supplies any goods or sells any land under a hire-purchase agreement or a conditional sale agreement;
- leases or hires any land or goods in return for periodical payments;
- otherwise disposes of land or supplies goods or services on the understanding that payment (whether a lump sum or by way of periodical payments or otherwise) is to be deferred.

(7) “Services” means anything than goods or land.

(8) A transaction or arrangement is made “for” a person if-

- in the case of a loan or quasi loan, it is made to him;
- in the case of a credit transaction, he is the person to whom goods or services are supplied, or land is sold or otherwise disposed of, under the transaction;
- in the case of a guarantee or security, it is entered into or provided in connection with a loan or a quasi- loan made to him or a credit transaction made for him; and
- in the case of any other transaction or arrangement for the supply or transfer of, or any interest in, goods, land or services, he is the person to whom the goods, land and services (or the interest) are supplied or transferred.

Section 132 - Short term quasi-loans

(1) Subsection (3) of section 130 does not prohibit a company (“the creditor”) from making a quasi-loan to one of its directors or to a director of its holding company if-

- the quasi loan contains a term requiring the director or a person on his behalf to reimburse the creditor his expenditures within 2 months of its being incurred; and
- the aggregate of the amount of that quasi-loan and of the amount outstanding under each relevant of quasi-loan does not exceed²⁷

(2) A quasi-loan is relevant for this purpose if it was made to the director by virtue of this section by the creditor or its subsidiary.

PART X COMPANY MANAGEMENT, ADMINISTRATION AND PROCEDURE

Chapter I Company Identification

Section 133 - Company’s name to appear in its correspondence

(1) Every company shall have its name mentioned in legible characters –

²⁷ The extent is not specified.

- in all business letters of the company
- in all its notices and other official publications,
- in all bill of exchange, promissory notes, endorsement, check and orders for money or goods purporting to be signed by or on behalf of the company, and
- in all its bills of parcels, invoices, receipts and letter of credit.

(2) If a company fails to comply with subsection (1) it is liable to a fine.

(3) If an officer of a company or a person on its behalf –

- issues or authorizes the issue of any business letter of the company or any notice or other official publication of the company, in which the company's name is not mentioned as required by subsection (1), or
- issues or authorizes the issue of any bill of parcels, invoice, receipt or letter of credit of the company in which the name is not so mentioned, he is liable to a fine.²⁸

(4) If an officer of a company or a person on its behalf signs or authorizes to be signed on behalf of the company any bill of exchange, promissory notes, endorsement, checks or orders for money or goods in which the company's name is not mentioned as required by subsection (1), he is liable to a fine; and he is further personally liable to the holder of the bill of exchange, promissory notes, checks or orders for money or goods for the amount of it (unless it is duly paid by the company).

Section 134 - Particulars in correspondence etc.

(1) Every company shall have the following particulars mentioned in legible characters in all business letters and order forms of the company, that is to say –

- The company's place of registration and the number with which it is registered,
- The address of its registered office

(2) If in the case of a company having a share capital there is on the stationery used for any such letters, or on the company's order forms, a reference to the amount of share capital, the reference must be to paid-up share capital.

(3) As to contravention of this section, the following applies –

If a company fails to comply with subsection (1) or (2), it is liable to a fine,

If an officer of the company or a person on its behalf issues or authorizes the issue of any business letter or order form not complying with those subsections, he is liable to a fine.

Statement of Amount of Paid up Capital

Section 135 - Statement of Amount of Paid up Capital

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

²⁸ Fine not specified in this provision.

Register of Members

Section 136 - Obligation to keep and enter up register

(1) Every company shall keep a register of its members and enter in it the particulars required by this section.

(2) There shall be entered in the register –

- The names and address of the members;
- The date on which each person was registered as a member, and
- The date at which any person ceased to be a member.

(3) The following applies in the case of a company having a share capital –

- With the names and addresses of the members there shall be entered a statement –
- of the shares held by each member, distinguish each share by its number (so long as the share has a number) and, where the company has more than one class of issued shares, by its class, and
- of the amount paid or agreed to be considered as paid on the shares of each member;
- Where the company has converted any of its shares into stock and given notice of the conversion to the registrar of companies, the register shall show the amount and class of stock held by each member, instead of the amount of shares and the particulars relating to shares specified in paragraph (a).

(4) If a company makes default in complying with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.²⁹

Section 137 - Statement that company has only one member

(1) If the number of members of a private company limited by shares falls to one there shall upon the occurrence of that event be entered in the company's register of members with the name and address of the sole member –

- A statement that the company has only one member,
- The date on which the company became a company having only one member.

(2) If the membership of a private company limited by shares increases from one to two or more members there shall upon the occurrence of that event be entered in the company's register of members, with the name and address of the person who was formerly the sole member, a statement that the company has ceased to have only one member together with the date on which that event occurred.

(3) If a company makes default in complying with this section, the company and every officer of it who is in default is liable to a fine, and for continued contravention, to a daily default fine.

Section 138 - Inspection of registrar and index

(1) Except when the registrar of members is closed under the provisions of this Act, the registrar and the index of members' names shall be open to the inspection of any

²⁹ Fines not specified.

member of the company without charge, and of any other person on payment of such fee as may be prescribed.

(2) Any member of the company or other person may require a copy of the registrar, or any part of it, on payment of such fee as may be prescribed. And the company shall cause any copy so required by a person to be sent to him within 10 days beginning with the day next following that on which the requirement is received by the company.

(3) If an inspection required under this section is refused, or if a copy so required is not sent within the proper period, the company and every officer of it who is in default is liable in respect of each offence to a fine.

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

Section 139 - Register to be evidence

The register of members is prima facie evidence of any matters which are by this Act directed or authorized to be inserted in it.

Annual Return

Section 140- Duty to deliver annual returns

(1) Every company shall deliver to the registrar successive annual returns each of which is made up to a date not later than the date which is from time to time the company's "return date", that is –

- the anniversary of the company's incorporation, or
- If the company's last return delivered in accordance with this chapter was made up to a different date, the anniversary of that date.

(2) Each return shall-

- to be in the prescribed form,
 - contain the information required by or under the following provisions of this chapter, and
 - be signed by a director or the secretary of the company;
- and it shall be delivered to the registrar within 28 days after the date to which it is made up.

(3) If a company fails to deliver an annual return in accordance with this chapter before the end of the period of 28 days after a return date, the company is guilty of an offence and liable to a fine and, in the case of continued contravention, to a daily default fine.

The contravention continues until such time as an annual return made up to that return date and complying with the requirements of the subsection (2) (except as to the date of delivery) is delivered by the company to the registrar

(4) Where a company is guilty of an offence under subsection (3), every director or secretary of the company is similarly liable unless he/she shows that he/she took all

reasonable steps to avoid the commission or continuation of the offence.

Section 141 - Contents of annual return: general

(1) Every return shall state the date to which it is made up and shall contain the following information:

- The address of the company.
- The name and address of the secretary.
- The name and address of every director of the company.
- In the case of each individual director,
 - his nationality, date of birth and business occupation; and
 - such particulars of other directorships and former names as are required to be contained in the company's register of directors.
- If the register of members is not kept at the company's registered office, the address of the place where it is kept.
- If the company has elected –
 - to dispense with the laying of accounts and reports before the company in general meeting, or
 - to dispense under section 144 with the holding of annual general meetings,a statement to that effect.

(2) The information as to the company's principal business activities may be given by reference to one or more categories of any prescribed system of classifying business activities.

Section 142 - Contents of annual return: particulars of share capital and shareholders

(1) The annual return having a share capital shall contain the following information with respect to its share capital and members.

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

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

- The nature of the class, and
- The total number and aggregate nominal value of issued shares of that class at the date to which the return is made up.

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

- is a member of the company on the date to which the return is made up, or
- has ceased to be a member of the company since the date to which the last return was made up (or in the case of the first return, since the incorporation of the company); and if the names are not arranged in alphabetical order the return shall have annexed to it an index sufficient to enable the name of any person in the list to be easily found.

(5) The return shall also state-

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

the transfers.

Chapter II Meetings and Resolution

Meetings

Section 143 - Statutory meeting and Annual general meeting

A – Statutory meeting and statutory report

(1) Every company limited by shares and every company limited by guarantee and having a share capital shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which is called ‘the statutory meeting’.

(2) The directors shall, at least fourteen before the day on which the meeting is held, forward a report (in the Act [*Law*] referred to as the “statutory report”) to every member of the company.

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

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

(4) The statutory report shall, so far as it relates to the shares allotted by the company, and to the receipts and payments of the company on capital account, be certified as correct by the auditors, if any, of the company.

(5) The directors shall cause a copy of the statutory report, certified as required by this section, to be delivered to the registrar for registration forthwith after the sending thereof to the members of the company.

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

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

(8) In the event of any default in complying with the provisions of this section, every director of the company who is knowingly and wilfully guilty of the default, or in the case of default by the company, every officer of the company who is in default, shall be liable to a fine.³⁰

(9) This section A shall not apply to a private company.

B- Annual General Meeting

(10) Every company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notice calling it.

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

(12) Not more than 15 months shall elapse between the date of one annual general of a company and that of the next.

(13) If default is made in holding a meeting in accordance with this section, the company and every officer of it who is in default is liable to a fine.³¹

Section 144 - Election by private company to dispense with annual general meetings

(1) A private company may elect (by elective resolution in accordance with section 156 to dispense with the holding of general annual meetings.

(2) An election has effect for the year in which it is made and subsequent years, but does not affect any liability already incurred by reason of default in holding an annual general meeting.

(3) In any year in which an annual meeting would be required to be held but for the election, and in which no such meeting has been held, any member of the company may, by notice to the company not later than three months before the end of the year, require the holding of an annual general meeting in that year.

Section 145 - Attorney General's power to call meeting in default

(1) If a default is made in holding a meeting in accordance with section 144 the Attorney General may, on the application of any member of the company, call, or direct the calling of, a general meeting of the company and give such ancillary or consequential

³⁰ Fine not specified.

³¹ Fine not specified.

directions, as he thinks expedient, including directions modifying or supplementing, in relation to the calling, holding and conduct of the meeting, the operation of the company's articles.

(2) If default is made in complying with directions of the Attorney General under subsection (1), the company and every officer of it who is in default is liable to **a fine**.³²

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

(4) Where a company so resolves, a copy of the resolution shall, within 15 days after its passing, be forwarded to the registrar of companies and recorded by him; and if default is made in complying with this subsection, the company and every officer of it who is in default is liable to **a fine** and, for continued contraventions, to a **daily default fine**.³³

Section 146 - Extraordinary general meeting on member's requisition

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

(2) A member requisition is a requisition of members of the company holding at the date of the deposit of the requisition not less than one –tenth of such a paid –up capital of the company as at that date carries the right of voting at general meetings of the company.

(3) The requisition must state the object of the meeting, and must be signed by the requisitionists and deposited at the register office of the company, and may consist of several documents in like form of each signed by one or more requisitionists.

(4) If the directors do not within 21 days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists, or any of them representing more than one half of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convene shall not be held after the expiration of 3 months from that date.

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

Section 147 - Length of notice for calling meetings

(1) A provision of a company's articles is void in so far as it provides for the calling of a

³² Fine not specified.

³³ Fines not specified.

meeting of the company (other than an adjourned meeting) by a shorter notice than -

- In the case of the annual meeting, 21 days' notice in writing; and
- In the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution by 14 days' notice in writing.

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

- In the case of meeting called as the annual general meeting, by all the members entitled to attend and vote at it; and
- Otherwise, by the requisite majority.

(3) The requisite majority for this purpose is a majority in number of the members having the right to attend and vote at the meeting being a majority together holding not less than per cent in nominal value of the shares giving a right to attend and vote at the meeting.

Section 148 - General provision as to meeting and votes

(1) The following provisions have effect in so far as the articles of the company do not make other provision in that behalf.

(2) Notice of the meeting of a company shall be served on every member of it in the manner in which notices are required to be served by **Table A³⁴** (as for the time being in force).

(3) Two or more members holding not less than one-tenth of the issued share capital may call a meeting.

(4) Two members personally present are a quorum.

(5) Any member elected by the members present at a meeting may be chairman of it.

Section 149 - Quorum at meetings of the sole member

Notwithstanding any provision to the contrary in the articles of a private company limited by shares having only one member, one member present in person or by proxy shall be a quorum.

Section 150 - Power of Court to order meeting

(1) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting in manner prescribed by the articles or this Act [*Law*], the court may, either of its own motion or on the application –

- of any director of the company, or
- of any member of the company who would be entitled to vote at the meeting, order a meeting to be called, held and conducted in any manner the courts thinks fit.

³⁴ The First Schedule Statutory form of Memorandum and Articles relevant Table A (see s. 10(1)).

(2) A meeting called, held and conducted in accordance with an order under subsection (1) is deemed for all purposes a meeting of the company duly called, held and conducted.

Section 151 - Proxies

(1) Any member of a company entitled to attend and vote at a meeting of it is entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of him; and in the case of a private company a proxy appointed to attend and vote instead of a member has also the same as the member to speak at the meeting.

(2) But unless the articles otherwise provide –

- a member of a private company is not entitled to appoint more than one proxy to attend on the same occasion; and
- a proxy is not entitled to vote except on a poll.

(3) In the case of a company having a share capital, in every notice calling a meeting of the company there shall appear with reasonable prominence a statement that a member is entitled to attend and vote is entitled to appoint a proxy or, where that is allowed, one or more proxies to attend and vote instead him, and that a proxy need not also be a member.

(4) If default is made in complying with subsection (3) as respects any meeting, every officer of the company who is in default is liable to a fine.

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

Section 152 - Right to demand a poll

(1) A provision contained in a company's articles is void in so far as it would have the effect either –

- of excluding the right to demand a poll at a general meeting on any question other than the election of the chairman of the meeting or the adjournment of the meeting; or
- of making ineffective a demand for a poll on any such question which is made either –
 - by not less than 5 members having the right to vote at the meeting; or
 - by a member or members representing not less than one-tenth of the total voting rights of all members having the right to vote at the meeting; or
 - by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than one –tenth of the total sum paid up on the shares conferring that right.

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

Resolutions

Section 153 - Circulation of members' resolutions

(1) Subject to the section next following, it is the duty of a company, on the requisition in writing of such number of members as is specified below and (unless the company otherwise resolves) at the expense of the requisitionists-

- to give to members of the company entitled to receive notice of the next annual general meeting notice of any resolution which may properly be moved and is intended to be moved at the meeting .

(2) The number of members necessary for a requisition under subsection (1) is-

- any number representing not less than one twentieth of the total voting rights of all members having at the date of the requisition a right to vote at the meeting to which the requisition relates.

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

(4) Notice of any such resolution shall be given to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving him notice of meetings of the company.

(5) For compliance with subsections (3) and (4) the copy must be served or notice to the effect of the resolution be given (as the case may be) in the same manner and (so far it is practicable) at the same time as notice of the meeting; and, where it is not practicable for it to be served or given at the same time, it must be served or given as soon as practicable thereafter.

(6) In the event of default in complying with this section, every officer of the company who is in default is liable to a fine.³⁵

Section 154 - Extraordinary and special resolution

(1) A resolution is an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members as (being entitled to do so) vote in person or; where proxies are allowed, by proxy, at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

(2) A resolution is a special resolution when it has passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than 21 days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given.

(3) If it is so agreed by a majority in number of the members having the right to attend and vote at such meeting, being a majority together holding not less than 95 per cent in nominal values of the shares giving that right, a resolution may be proposed and passed as a special resolution at a meeting of which less than 21 days' notice has been

³⁵ Fine not specified.

given.

(4) A private company may elect (by elective resolution in accordance with section 156) that the above provisions shall effect in relation to the company as if for the references to such lesser percentage, but not less than 90 per cent, as may be specified in the resolution or subsequently determined by the company in general meeting.

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

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

Section 155 - Resolution requiring special notice

(1) Where by any provision of this Act special notice is required of a resolution, the resolution is not effective unless notice of the intention to move it has been given to the company at least 28 days before the meeting at which it is moved.

(2) The company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the company's articles, at least 21 days before the meeting.

(3) If, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date 28 days or less after the notice has been given, the notice is deemed properly given, though not given within the time required.

Section 156 - Elective resolution of private company

(1) An election by a private company for the purpose of –

- election as to duration of authority to allot shares;
- election to dispense with laying of accounts and reports before general meeting;
- election to dispense with holding of annual general meeting;
- election as to majority required to authorize short notice of meetings; or
- election to dispense with appointment of auditors annually;

shall be made by resolution of the company in general meeting in accordance with this section.

Such a resolution is referred to in this Act as an “elective resolution”.

(2) An elective resolution is not effective unless –

- At least 21 days' notice in writing is given of the meeting, stating that an elective resolution is to be proposed and stating the terms of the resolution, and
- The resolution is agreed to at the meeting, in person or by proxy, by all members entitled to attend and vote at the meeting.

(3) An elective resolution is effective notwithstanding the fact that less than 21 days' notice in writing of the meeting is given if all the members entitled to attend and vote at

the meeting so agree.

(4) The company may revoke an elective resolution by passing an ordinary resolution to that effect.

(5) An elective resolution shall cease to have effect if the company is re-registered as a public company.

(6) An elective resolution may be passed or revoked in accordance with this section, and the provisions referred to in subsection (1) have effect, notwithstanding any contrary provision in the company's articles of association.

Section 157 - Registration, etc. of resolutions and agreements

(1) A copy of every resolution or agreement to which this section applies shall, within 15 days after it is passed or made, be forwarded to the registrar of companies and recorded by him; and it must be either a printed copy or else a copy in some other form approved by the registrar.

(2) Where articles have been registered, a copy of every such resolution or agreement for the time being in force shall be embodied in or annexes to every copy of the articles issued after the passing of the resolution or the making of the agreement.

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

(4) If a company fails to comply with subsection (1) the company and every officer of it who is in default is liable to a fine and for continued contravention, to a daily default fine.

(5) If a company fails to comply with subsection (2) and (3), the company and every officer of it who is in default are liable to a fine.

(6) For purposes of subsections (4) and (5), a liquidator of a company is deemed an officer of it.

Written resolutions of private companies

Section 158 - Written resolutions of private companies

(1) Anything which in the case of a private company may be done –

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

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

(3) The date of the resolution means when the resolution is signed by or on behalf of

the last member to sign.

- (4) A resolution agreed to in accordance with this section has effect as if passed-
- by the company in general meeting, or
 - by a meeting of the relevant class of members of the company, as the case may be, and any reference in any enactment to a meeting at which a resolution is passed or to members voting in favour of a resolution shall be construed accordingly.

(5) Any reference in any enactment to the date of passing of a resolution is, in relation to a resolution agreed to in accordance with this section, a reference to the date of the resolution.

Records of proceedings

Section 159 - Minutes of meetings

(1) Every company shall cause minutes of all proceedings of general meetings, all proceedings at meeting of its directors and, where there are managers, all proceedings at meetings of its managers to be entered in books kept for that purposes.

(2) Where minutes have been made in accordance with this section of the proceedings at any general meeting of the company or meeting of directors or managers, then, until the contrary is proved, the meeting is deemed duly held and convened and all proceedings had at the meeting to have been duly had; and all appointments of directors, managers or liquidators are deemed valid.

(3) If a company fails to comply with subsection (1), the company and every officer of it who is in default is liable to a fine and for continued contravention, to a daily default fine.

Section 160 - Recording of written resolutions

(1) When a written resolution is agreed to in accordance with section 158 which has effect as if agreed by the company in general meeting, the company shall cause a record of the resolution (and of the signatures) to be entered in a book in the same way as minutes of proceedings of a general meeting of the company.

(2) Any such record, if purporting to be signed by a director of the company or by the company secretary, is evidence of the proceedings in agreeing to the resolution; and where a record is made in accordance with this section, then until the contrary is proved, the requirements of this Act with respect to those proceedings shall be deemed to be complied with.

Section 161- Recording of decisions by the sole member

(1) Where a private company limited by shares has only one member and he takes the decision which may be taken by the company in general meeting, he shall (unless that decision is taken by way of a written resolution) provide the company with a written record of that decision.

(2) If the sole member fails to comply with subsection (1) he shall be liable to a fine.

(3) Failure by the sole member to comply with section (1) shall not affect the validity of any decision referred to in that subsection.

Section 162 - Inspection of minutes' books

(1) The books containing the minutes of proceeding of any general meeting of a company shall be kept at the company's registered office, and shall be open to the inspection of any member without charge.

(2) If an inspection required under this section is refused or if a copy required under this section is not sent within the proper time, the company and every officer of it who is in default is liable in respect of each offence to a fine.

(3) In the case of any such refusal or default, the court may by order compel an immediate inspection of the books in respect of all proceedings of general meeting, or direct that the copies required to be sent to the persons requiring them.

Chapter III Auditors

Appointment of auditors

Section 163 - Duty to appoint auditors

(1) Every company shall appoint an auditor or auditors in accordance with this chapter.

This is subject to section 165 certain companies exempt from obligation to appoint auditors.

(2) Auditors shall be appointed in accordance with section 164 (appointment at general meeting at which accounts are laid) except in the case of a private company which has elected to dispense with the laying of accounts in which case the appointment shall be made in accordance with section 165.

Section 164 - Appointment at general meeting at which accounts are laid

(1) This section applies to every public company and to a private company which has not elected to dispense with the laying of accounts.

(2) The company shall, at each general meeting at which accounts are laid, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next general meeting at which accounts are laid.

(3) The first auditors of the company may be appointed by the directors at any time before the first general meeting of the company at which accounts are laid; and auditors so appointed shall hold office until the conclusion of that meeting.

(4) If the directors fail to exercise their powers under subsection (3), the powers may be exercised by the company in general meeting.

Section 165 - Appointment by private company which is not obliged to lay accounts

(1) This section applies to private company which has elected to dispense with the laying of accounts before the company in general meeting.

(2) Auditors shall be appointed by the company in general meeting before the end of the period of 28 days beginning with the day on which copies of the company's annual accounts for the year are sent to members under section 105 or, if notice is given requiring the laying of the accounts before the company in general meeting, the conclusion of that meeting.

Auditors so appointed shall hold office from the end of that period or, as the case may be, the conclusion of that meeting until the end of the time for appointing auditors for the next financial year.

(3) The first auditor of the company may be appointed by the directors at any time before –

- The end of the period of 28 days beginning with the day on which copies of the company's first annual accounts are sent to members under section 238, or
- If the notice is given requiring the laying of the accounts before the company in general meeting, the beginning of that meeting. and auditors so appointed shall hold office until the end of that period or, as the case may be, the conclusion of that meeting.

(4) If the directors fail to exercise their powers under subsection (3), the powers may be exercised by the company in general meeting.

(5) Auditors holding office when the election is made shall, unless the company in general meeting determine otherwise, continue to hold office until the end of the time for appointing auditors to the next financial year, and auditors holding office when an election ceases to have effect shall continue to hold office until the conclusion of the next general meeting of the company at which accounts are laid.

Section 166 - Election by private company to dispense with annual appointment

(1) A private company may elect (by elective resolution in accordance with section 156) to dispense with the obligation to appoint auditors annually.

(2) When such an election is in force the company's auditors shall be deemed to be re-appointed for each succeeding financial year on the expiry of the time for appointing auditors for that year, unless –

- A resolution has been passed by virtue of which the company is exempt from the obligation to appoint auditors, or a resolution has been passed to the effect that their appointment should be brought to an end.

(3) If the election ceases to be in force, the auditors then holding office shall continue to hold office –

- where section 165 then applies, until the conclusion of the next general meeting of the company at which accounts are laid ;
- where section 166 then applies, until the end of the time for appointing auditors for the next financial year under that section.

Rights of auditors

Section 167- Right to information

(1) The auditors of a company have a right of access at all times to the company's books, account and vouchers, and are entitled to require from the company's officer such information and explanation as they think necessary for the performance of their duties as auditors.

(2) An officer of a company commits an offence if he knowingly or recklessly makes to the company's auditors a statement (whether written or oral) which –

- Conveys or purports to convey any information or explanation which the auditors require, or are entitled to require, as auditors of the company, and
- Is misleading, false or deceptive in a material particular.

A person guilty of an offence under this subsection is liable to imprisonment or a fine³⁶ or both.

Section 168 - Right to attend company meeting

A company's auditors are entitled –

- to receive all notices of, and other communications relating to, any general meeting which a member of the company is entitled to receive;
- to attend any general meeting of the company; and
- to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors.

Section 169 - Remuneration of auditors

(1) The remuneration of auditors appointed by the company in general meetings shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

(2) There shall be stated in a note to the company's annual account the amount of the remuneration of the company's auditors in their capacity as such.

(3) For the purposes of this section "remuneration" includes sums paid in respect of expenses.

(4) This section applies in relation to benefits in kind as to payment in cash, and in relation to any such benefit references its amount are to its estimated money value. The nature of any such benefit shall be disclosed.

Section 170 - Removal of auditors

(1) A company may by ordinary resolution at any time remove an auditor from office, notwithstanding anything in any agreement between it and him.

(2) Where a resolution removing an auditor is passed at a general meeting of a company, the company shall within 14 days give notice of the fact in the prescribed form

³⁶ Fine not specified.

to the registrar.

If a company fails to give the notice required by the subscription, the company and every officer of it who is in default is liable to a fine and for continued contravention, to a daily default fine.

(3). Nothing in this section shall be taken as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his appointment as auditor or of any appointment terminating with that as auditor.

Section 171 - Rights of auditors who are removed or not re-appointed

(1) Special notice is required for a resolution at a general meeting of a company-

- removing an auditor before the expiration of his term of office, or
- appointing as auditor a person other than a retiring auditor.

(2) On receipt of notice of such an intended resolution the company shall forthwith send a copy of it to the person proposed to be removed or, as the case may be, to the person proposed to be appointed and to the retiring auditor.

(3) The auditor proposed to be removed or (as the case may be) the retiring auditor may make with respect to the intended resolution representations in writing to the company (not exceeding a reasonable length) and request their notification to members of the company.

(4) The company shall (unless the representations are received by it too late for it to do so)-

- in any notice of the resolution given to members of the company, state the fact of the representations having been made, and
- send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent.

(5) If a copy of any such representations is not sent out as required because received too late or because the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representations be read out at the meeting.

Section 172 - Resignation of auditors

(1) An auditor of a company may resign his office by depositing a notice in writing to that effect at the company's registered office.

The notice is not effective unless it is accompanied by the statement required by section 174.

(2) An effective notice of resignation operates to bring the auditor's term of office to an end as of the date on which the notice is deposited or on such later date as may be specified in it.

(3) The company shall within 14 days of the deposit of a notice of resignation send a copy of the notice to the registrar of companies.

If default is made in complying with this subsection, the company and every officer of it who is in default is liable to a fine and for continued contravention, to a daily default

fine.³⁷

Section 173³⁸ - Rights of resigning auditors

(1) This section applies where an auditor's notice of resignation is accompanied by a statement of circumstances which he considers should be brought to the attention of members or creditors of the company.

(2) He may deposit with the notice a signed requisition calling on the directors of the company forthwith duly to convene an extraordinary general meeting of the company for the purpose of receiving and considering such explanation of the circumstances connected with his resignation as he may wish to place before the meeting.

(3) He may request the company to circulate to its members –

- before the meeting convened on his requisition, or
- before any general meeting at which his term of office would have otherwise expired or at which it is proposed to fill the vacancy caused by his resignation, a statement in writing (not exceeding a reasonable length) of the circumstances connected with his resignation.

(4) The company shall (unless the representations are received by it too late for it to do so)-

- in any notice of the meeting given to members of the company, state the fact of the statement having been made, and
- send a copy of the statement to every member of the company to whom notice of the meeting is or has been sent.

(5) If the directors do not within 21 days from the date of the deposit of a requisition under this section proceed duly to convene a meeting for a day not more than 28 days after the date on which the notice convening the meeting is given, every director who failed to take all reasonable steps to secure that a meeting was convened as mentioned above is guilty of an offence and liable to a fine.

(6) If a copy of the statement mentioned above is not sent out as required because received too late or because the company's default, the auditor may (without prejudice to his right to be heard orally) require that the statement be read out at the meeting.

Section 174 - Statement by person ceasing to hold office as auditor

(1) Where an auditor ceases for any reason to hold office, he shall deposit at the company's registered office a statement of any circumstances connected with his ceasing to hold office which he considers should be brought to the attention of the members or creditors of the company or, if he considers that there are no such circumstances, a statement that there are none.

(2) In the case of resignation, the statement shall be deposited along with the notice of resignation; in the case of failure to seek re-appointment, the statement shall be deposited not less than 14 days before the end of the time allowed for next appointing

³⁷ Fines not specified.

³⁸ This section was incorrectly numbered 170.

auditors; in any other cases, the statement shall be deposited not later than the end of the period of 14 days beginning with the date on which he ceases to hold office.

(3) If the statement is of circumstances which the auditors considers should be brought to the attention of the members or creditors of the company, the company shall within 14 days of the deposit of the statement send a copy of it to every person who under section 105 is entitled to be sent copies of the account.

PART XI ARRANGEMENTS AND RECONSTRUCTIONS

Section 175 - Power of company to compromise with creditors and members

(1) Where a compromise or arrangement is proposed between a company and its creditors, or any class of them, or between the company and its members, or any class of them, the court may on the application of the company or any creditor or member of it or, in the case of a company wound up or an administration order being in force in relation to a company, of the liquidator or administrator, order a meeting of the creditors or class of creditors or of the members of the company or class of members (as the case may be), to be summoned in such manner as the courts directs.

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members (as the case may be), present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement, if sanctioned by the court, is binding on all the creditors or the class of creditors or on the members or class of members (as the case may be), and also on the company or in the case of accompany in the course of being wound up, on the liquidator and contributories of the companies.

(3) The court's order under subsection (2) has no effect until an office copy of it has been delivered to the registrar of the companies for registration; and a copy of every such order shall be annexed to every copy of the company's memorandum issued after the order has been made or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting the company or defining its constitution.

(4) If a company makes default in complying with subsection (3), the company and every officer of it who is in default is liable to a fine.

(5) In this section and the next –

- “company” means any company liable to be wound up under this Act, and
- “arrangements” includes a reorganization of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.

Section 176 - Provisions for facilitating company reconstruction or amalgamation

(1) The following applies where application is made to the court under section 175 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section.

(2) If it is shown –

- that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies, or the amalgamation of any two or more companies, and
- that under the scheme the whole or any part of the undertaking or the property of any company or companies concerned in the scheme (“a transferor company”) is to be transferred to another company (“the transferee company”).

The court may, either by the order sanctioning the compromise or arrangement or by subsequent order, make provision for all or any of the following matters.

(3) The matters for which the court’s order may make provision are –

- the transfer of the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company.
- the allotting or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person.
- the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company,
- the dissolution, without winding up, of any transfer company,
- the provision to be made for any persons who, within such time and in such manner as the court directs, dissent from the compromise or arrangement,
- such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation is fully and effectively carried out.

(4) If an order under this section provides for the transfer of property or liabilities, then -

- the property is by virtue of the order transferred to, and vests in, the transferee company, and
- those liabilities are, by virtue of the order, transferred to and become liabilities of that companies; and property (if the order so directs) vests from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(5) Where an order is made under this section, every company in relation to which the order is made shall cause an office copy of the order to be delivered to the registrar of companies for registration within 7 days after its making; and if default is made in complying with this subsection, the company and every officer of it who is in default is liable to a fine and for continued contravention, to a daily default fine.

(6) In this section the expression “property” includes property, rights and powers of every description; the expression “liabilities” include duties and “company” include only a company as defined in section 2 (1) or 268 (1).

PART XII INVESTIGATION OF COMPANIES AND THEIR AFFAIRS REQUISITION OF DOCUMENTS

Appointment and functions of inspectors

Section 177 - Investigation of a company on its own application or that of its members

(1) The Attorney General may appoint one or more competent inspectors to investigate the affairs of a company and to report on them in such manner as he may

direct.

(2) The Attorney General may make such an appointment if it appears to him that there are circumstances suggesting –

- that the company's affairs are being or have been conducted with intent to defraud its creditors or the creditors of any other person, or otherwise for a fraudulent or unlawful purpose, or in a manner which is unfairly prejudicial to some part of its members, or
- that any actual or proposed act or omissions of the company (including an act or omission on its behalf) is or would be so prejudicial, or that the company was formed for any fraudulent or unlawful purpose, or
- that persons concerned with the company's formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members, or
- that the company's members have not been given all the information with respect to its affairs which they might reasonably expect.

Section 178 - Production of documents and evidence to inspectors

(1) When inspectors are appointed under section 177, it is the duty of all officers and agents of the company -

- To produce to the inspectors all documents of or relating to the company;
- To attend before the inspectors when required to do so;
- Otherwise to give the inspectors all assistance in connection with the investigation which they are reasonably able to give.

(2) The inspectors consider that an officer or agent of the company or any other person is or may be in possession of information relating to a matter which they believe to be relevant to the investigation, they may require him-

- To produce to them any documents in his custody or power relating to that matter,
- To attend before them, and otherwise to give them all assistance in connection with the investigation which is reasonably able to give; And it is that person's duty to comply with the requirement.

(3) An inspector may for the purposes of the investigation examine any person on oath, and may administer an oath accordingly.

(4) In this section a reference to officers or to agents include past as well as present, officers or agents (as the case may be); and "agents", in relation to a company includes its bankers and solicitors and persons employed by it as auditors, whether these persons are or are not officers of the company or other body corporate.

(5) An answer given by a person to a question put to him in exercise of powers conferred by this section may be used in evidence against him.

(6) In this section "documents" includes information recorded in any form; and in relation to information recorded otherwise than in legible form, the power to require its production include power to require the production of a copy of the information in legible form.

Section 179 - Obstruction of inspectors treated as contempt of court

- (1) If any person –
- fails to comply with section 178 (1) (a) or (c)
 - refuses to comply with a requirement under section 178 (1)(b) or (2) or
 - refuses to answer any question put to him by the inspectors for the purpose of the investigation.

The inspectors may certify that fact in writing to the court.

- (2) The court may thereupon enquire 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, the court may punish the offender in like manner as if he had been guilty of contempt of the court.

Section 180 – Inspectors’ report to be evidence

- (1) A copy of any report of inspectors under this Part, certified by the Attorney General to be a true copy, is admissible in any legal proceedings as evidence of the opinion of the inspectors in relation to any matter contained in the report.

- (2) A document purporting to be such a certificate as is mentioned above shall be received in evidence and be deemed to be such a certificate, unless the contrary is proved.

Section 181 - Power to investigate company ownership

- (1) Where it appears to the Attorney General that there is good reason to do so, he may appoint one or more competent inspectors to investigate and report on the membership of any company, and otherwise with respect to the company, for the purpose of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the company or able to control or materially to influence its policy.

- (2) Subject to the terms of their appointment, the inspectors’ powers extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of the investigation.

Section 182 - Provisions applicable on investigation under 181

- (1) For purposes of an investigation under section 181, sections 182 (1), 178, and 179 apply with the necessary modifications of references to the affairs of the company, subject however to the following subsections.

Those sections apply to –

- all persons who are or have been, or whom the inspector has reasonable cause to believe to be or have been, financially interested in the success or failure or the apparent success or failure of the company or able to control or materially influence its policy (including persons concerned only on behalf of others), and
- any other person whom the inspector has reasonable cause to believe possesses information relevant to the investigation, as they apply in relation to officers and agents of the company.

- (2) If the Attorney General is of opinion that there is good reason for not divulging any

part of a report made by virtue of section 178 and this section, he may disclose the report with the omission of that part; and he may cause to be kept by the registrar of companies a copy of the report with that part omitted.

Section 183 - Power to obtain information as those interested in shares, etc.

(1) If it appears to the Attorney General that there is good reason to investigate the ownership of any shares in or debentures of a company and that it is unnecessary to appoint inspectors for the purpose, he may require any person whom he has reasonable cause to believe to have or to be able to obtain any information as to the present and past interests in those shares or debentures and the names and addresses of the person interested and of any persons who act or have acted on their behalf in relation to the shares or debentures to give any such information to the Attorney General.

(2) A person who fails to give information required of him under this section, or who in giving such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement, which is false in a material particular, is liable to imprisonment or to **a fine³⁹** or both.

Section 184 - Attorney General's power to require production of documents

(1) The Attorney General may at any time if he thinks there is good reason to do so, give directions to a company requiring it, at such time and place as may be specified in the directions, to produce such documents as may be so specified.

(2) The power under this section to require a company or other person to produce documents includes power –

- if the documents are produced
- to take copies of them or extracts from them, and
- to require that person, or any other person who is present or past officer of, or is or was at any time employed by the company in question, to provide an explanation of any of them;
- if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and believed what they are.

(3) If the requirements to produce documents or provide an explanation or make a statement are not complied with, the company or other person on whom the requirement was so imposed is guilty of an offence and liable to a fine

(4) However, where a person is charged with an offence under subsection (3) in respect of a requirement to produce any documents, it is a defence to prove that they were not in possession or under his control and that it was not reasonably practicable for him to comply with the requirement.

(5) A statement made by a person in compliance with such a requirement may be used in evidence against him.

(6) In this section “documents” includes information recorded in any form; and in relation to information recorded otherwise than in legible form, the power to require its

³⁹ Fine not specified.

production includes power to require the production of a copy of the information in legible form.

Section 185 - Provision for security of information obtained

(1) No information or document relating to a company which has been obtained under section 184 shall without the previous consent in writing of that company be published or disclosed, except to a competent authority.

(2) A person who publishes or discloses any information or document in contravention of this section is guilty of an offence and liable to imprisonment or fine.

For the purpose of this section each of the following is a competent authority –

- the Attorney General;
- the Chief Justice of the High Court⁴⁰;
- an inspector appointed by the Inland Revenue Department;
- the Minister of Finance;
- the Bank of Somaliland⁴¹.

Section 186 - Punishment for destroying, mutilating etc. company documents

(1) An officer of a company who –

- destroy, mutilates or falsifies or is privy to the destruction, mutilation, falsification of a document affecting or relating to the company's property or affairs, or
- makes, or is privy to the making of, a false entry in such a document, is guilty of an offence, unless he proves that he had no intention to conceal the state of affairs of the company or to defeat the law.

(2) A person guilty of an offence under this section is liable to imprisonment or a fine or both.

(3) In this section “document” includes information recorded in any form.

Section 187 - Disclosure of information by Attorney General

The Attorney General may, if he/she thinks [fit]⁴² ~~for to~~ disclose any information obtained under section 183 to-

- the company whose ownership was the subject of the investigation,
- any member of the company,
- any person whose conduct was investigated in the course of the investigation,
- the auditors of the company,
- any person whose financial interests appear to the Attorney General to be affected by matters covered by the investigation.

⁴⁰ The phrase ‘High Court’ was in the (Kenyan?) Companies Act this Law was based upon and as there has been High Court in Somaliland since 1960, it can surmised that the equivalent court in Somaliland is the Regional Court and not the Supreme Court which is the highest court in the country. The reference to ‘the Chief Justice of the High Court’ in this sub section should, therefore, in my view, be read as ‘the President of the Regional Court’.

⁴¹ Since April 2012, renamed the Central Bank of Somaliland (Law No.54/2012).

⁴² Italicised word added and incorrect words struck out.

**PART XIII
FRAUDULENT TRADING BY A COMPANY**

Section 188 - Punishment for fraudulent trading

In any business of a company is carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, every person who was knowingly a party to the carrying on of the business in that manner is liable to imprisonment or a fine, or both.

This applies whether or not the company has been or is in the course of being wound up.

**PART XIV
PROTECTION OF COMPANY'S MEMBER AGAINST UNFAIR PREJUDICE**

Section 189 - Order on application of company member

(1) A member of a company may apply to the court by petition for an order under this Part on the ground that the company's affairs are being or have been conducted in a manner which is unfairly prejudicial to the interests of its members generally or of some part of its members or that any actual or proposed act or omission of the company is or would be so prejudicial.

(2) The provision of this Part apply to a person who is not a member of a company but to whom shares in the company have been transferred or transmitted or transmitted by operation of law, as those provisions apply to member of the company; and reference to a member or members are to be construed accordingly.

Section 190 - Provisions as to petition and order under this part

(1) If the court is satisfied that a petition under his/her Part is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.

(2) Without prejudice to the generality of subsection (1), the court's order may –

- Regulate the conduct of the company's affairs in the future,
- Require the company to refrain from doing or continuing an act complained by the petitioner or do an act which the petitioner has complained it has omitted to do,
- Authorize civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the court may direct,
- Provide for the purchase of the shares of any members of the company or other members or by the company itself, the reduction of the company's capital accordingly.

(3) If an order under this Part requires the company not to make any, or any specified, alteration in the memorandum or articles, the company does not than have power without leave of the court to make any such alteration in breach of that requirement.

(4) Any alteration in the company's memorandum or articles made by virtue of an order under this Part is of the same effect as if duly made by the resolution of the company, and the provisions of this Act apply to the memorandum or articles as so altered accordingly.

(5) An office copy of an order under this Part altering or giving leave to alter, a company's memorandum or articles shall, within 14 days from the making of the order or such longer period as the court may allow, be delivered by the company to the registrar of companies for registration; and if a company makes default in complying with this subsection, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

PART XV
WINDING UP OF COMPANIES REGISTERED UNDER THIS ACT OR THE FORMER
COMPANIES ACT

Chapter I. Preliminary

Section 191 - Modes of winding up

(1) Modes of winding up

The winding up of a company may be either –

- by the court; or
- voluntarily,
- Subject to the supervision of the court.

(2) The provisions of this Act with respect to winding up applies, unless the contrary appears, to the winding of a company limited by shares.

Section 192 - Liabilities as contributories

(1) In the case of a company limited by shares, no contribution shall be required from any member exceeding the amount , if any, unpaid on the shares in respect of which he is liable as a present or past member;

(2) A sum due to any member of a company, in his character of a member, by way of dividends, profits or otherwise shall not be deemed to be a debt of the company payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(3) In the winding up of a limited company, any director or manager, whether past or present, whose liability is under the provisions of this Act [*Law*], unlimited, shall in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company.

Provided that –

- A past director or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up;
- A past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;
- Subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company and the costs,

charges and expenses of the winding up.

Section 193 - Definition of contributory

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

Section 194 - Nature of liability of contributory

The liability of a contributory shall create a debt accruing due from him/her at the time when his liability commenced, but payable at the time when calls are made for enforcing the liability.

Section 195 - Contributories in case of death of member

(1) If a contributory dies either before or after he/she has been placed on the list of contributories, his/her personal representative shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liabilities and shall be contributories accordingly.

(2) If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory and for compelling payment there out of the money due.

Chapter II - Winding up by the court jurisdiction

Section 196 - Jurisdiction to wind up companies registered in Somaliland

The *High [Regional]*⁴³ Court shall have jurisdiction to wind up any company registered in Somaliland.

Cases in which Company may be wound up by Court

Section 197 - Circumstances in which company may be wound up by the court

A company may be wound up by the court if-

- The company has by special resolution resolved that the company be wound up by the court;
- Default is made in delivering the statutory report to the registrar or in holding the statutory meeting;
- The company does not commence its business within a year from its incorporation or suspends its business for the whole year;
- The numbers of members are reduced, in the case of a private company, below two, or, in the case of any other company, below seven;

⁴³ The equivalent of the former pre 1960 Somaliland High Court is the Regional Court. The Civil Litigation Branch of the Regional Court General Section (Article 7(6a) of the 2003 (as amended) Organisation of the Judiciary Law- Law No. 24/2003) shall deal with any winding up applications relating to companies.

- The company is unable to pay its debts;
- The court is of opinion that it is just and equitable that the company should be wound up;
- in the case of a company incorporated outside Somaliland and carrying on business in Somaliland, winding up proceedings have been commenced in respect of it in the country or territory of its incorporation or in any other country or territory in which it has established a place of business.

Section 198 - Definition of inability to pay debts

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

- if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding⁴⁴ then due has served on the company, by leaving it at the registered office of the company, a demand under his hand 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; or
- if execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
- if it is proved to the satisfaction of the court that the company is unable to pay its debt, and in determining whether a company is unable to pay its debts the court shall take into account the contingent and prospective liabilities of the company.

Petition for Winding Up and Effects Thereof

Section 199 - Provisions as to applications for winding up

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

Provided that –

- a contributory shall not be entitled to present a winding-up petition unless-
 - either the number of members is reduced, in the case of a private company, below two, or on the case of any other company, below seven; or
 - 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; and
- A winding up petition shall not, if the ground of the petition is default in delivering the statutory report to the registrar or in holding the statutory meeting, be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held; and
- The court shall not give a hearing to a winding up petition presented by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable and until a prima facie for winding up has been established to the satisfaction of the court; ~~and~~⁴⁵.

⁴⁴ Sum not inserted.

⁴⁵ This word appears redundant.

Section 200 - Power of the court on hearing petition

(1) On hearing a winding up petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make an interim order, or any other order that it thinks, but the court shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets.

(2) Where the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the court if it is of opinion –

- that the petitioners are entitled to relief either by winding up the company or by some means; and
- that in advance of any other remedy it would be just and equitable that the company should be wound up, Shall make a winding-up order, unless it is also the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

(3) Where the petition is presented on the ground of default in delivering the statutory report to the register or in holding the statutory meeting, the court may –

- instead of making a winding-up order, direct that the statutory report shall be delivered or that a meeting shall be held; and
- order the costs to be paid by any persons who, in the opinion of the court, are responsible for the default.

Section 201 - Avoidance of dispositions of property etc. after commencement of winding up

In a winding up by the court, any disposition of the property, including things in action, and any transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding up, shall, unless the court otherwise orders, be void.

Section 202 - Avoidance of attachment

Where any company is being wound up by the court, any attachment, distress or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void.

Commencement of Winding-Up

Section 203 - Commencement of winding up by the court

(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 voluntarily winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the court on proof of fraud or mistake, thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validity taken.

(2) In any other case, the winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up.

Consequences of Winding up Order

Section 204 - Copies of order to be forwarded to registrar

On the making of a winding-up order, a copy of the order shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar for registration.

Section 205 - Actions stayed on winding up order

When a winding up order has been made or an interim liquidator has been appointed under section 211 no action or proceeding shall be proceed with or commenced against the company except by leave of the court and subject to such terms as the court may impose.

Section 206 - Effect of winding up order

An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

Official Receiver in Winding-Up

Section 207 - Official receiver in bankruptcy

(1) For the purposes of this Act so far as it relates to the winding up of companies by the court, “official receiver “ means the official receiver attached to the court for bankruptcy purposes.

Any such officer shall for the purpose of his duties under this Act [Law], be styled the official receiver.

Section 208 - Appointment of official receiver by court in certain cases

If, in the case of the winding-up of any company by the court, it appears to the court desirable, with a view to securing the more convenient and economical conduct of the winding-up, that some officer other than the person who would by virtue of section 207 be the official receiver should be the official receiver for the purposes of that winding up, the court may appoint that other officer to act as official receiver in that winding up, and the person so appointed shall be deemed to be the official receiver in that winding up for all the purposes of this Act [Law].

Section 209 - Statement of company’s affair to be submitted to official receiver

(1) When the court has made a winding-up order or appointed an interim liquidator under section 212, there shall, unless the court thinks fit to order otherwise and so orders, be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts and liabilities, the names, postal address and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively

given, and such further or other information as may be prescribed or as the official receiver may require.

(2) The statement shall be submitted and verified by one or more of the persons who are the relevant date of the directors and by the persons who is at that date the secretary of the company, or by such of the persons hereinafter in this subsection mentioned as the official receiver, subject to the direction of the court, may require to submit and to verify the statement, that is to say, persons-

- who are or have been officers of the company;
- who have taken part in the formation of the company at any time within one year before the relevant date;
- who are in the employment of the company or have been in the employment of the company within the said year, and are in the opinion of the official receiver capable of giving the information required;
- who are or have been within the said year officers or in the employment of a company which is, or within the said year was, an officer of the company to which the statement relates;
- who are at the relevant date the receivers or managers of the whole or substantially the whole of the company's property.

(3) The statement shall be submitted within fourteen days from the relevant date or within such extended time as the official receiver or the court may for special reasons appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section may be allowed, and if so allowed 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 may consider reasonable, subject to an appeal to the court.

(5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a fine and for continued contravention, to a daily default fine.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to copy thereof or extract there from.

(7) Any person untruthfully so stating, himself to be a creditor or contributory of the company shall be liable to a fine.

(8) In this section, "the relevant date" means, in a case where an interim liquidator is appointed, the date of his appointment and in a case where no such appointment is made, the date of the winding-up order.

Section 210 - Report by official receiver

(1) In the 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 209, 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 –

- as to the amount of capital issued, subscribed and paid up, and the estimated amount of assets and liabilities; and
- if the company has failed, as to the causes of the failure; and
- whether in his opinion further inquiry is desirable to any matter relating to the promotion, formation or failure of the company or the conduct of the business thereof.

(2) The official receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation or by any officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.

(3) If the official receiver states in any further report as aforesaid that in his opinion a fraud has been committed as aforesaid, the court shall have the further powers provided in section 240.

Liquidators

Section 211 - Power of court to appoint liquidators

For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the court may impose, the court may appoint a liquidator or liquidators.

Section 212 - Appointment and powers of interim liquidator

(1) The court may appoint the official receiver to be the liquidator provisionally at any time after the presentation of a winding up petition and before the making of a winding-up order.

(2) Where a liquidator (in this Act referred to as an interim liquidator) is so appointed by the court, the court may limit and restrict his powers by the order appointing him.

Section 213 - Appointment of liquidator

The following provisions with respect to liquidators shall have effect on a winding up order being made-

- 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;
- the official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the court for appointing a liquidator in the place of the official receiver.

Section 214 - Provisions where person other than official receiver is appointed liquidator

Where, in the winding up of a company by the court, a person other than the official receiver is appointed liquidator, that person –

- shall not be capable of acting as liquidator until he has notified his appointment to

the registrar and given security in the prescribed manner to the satisfaction of the official receiver;

- shall 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 that officer to perform his duties under this Act [Law].

Section 215 - General provision as to liquidator

(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 such 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 any act by this Act required or authorized to be done by the liquidator is to be done by all or any or more of the persons appointed.

(5) The acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

Section 216 - Custody of company's property

Where a winding up order has been made or where an interim liquidator has been appointed, the liquidator or the interim liquidator, as the case may be, shall take into his custody or under his control all the property and things in action to which the company is or appears to be entitled.

Section 217 - Vesting of property of company in liquidator

Where a company is being wound up by the court, the court may on the application of the liquidator by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest accordingly, and the liquidator may, after giving such indemnity, if any, as the court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purposes of effectually winding up the company and recovering its property.

Section 218 - Powers of liquidator

(1) The liquidator in a winding up by the court shall have power, with the sanction of the court –

- To bring or defend any action or other legal proceeding in the name and on behalf of the company;
- To carry on the business of the company so far as may be necessary for the beneficial of the winding up thereof;

- To appoint an advocate to assist him in the performance of his duties;
- To pay any class of creditors in full;
- To make any compromise, or arrangement with creditors, or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;
- To compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts and all claims, present or future, certain or contingent, subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect thereof.

(2) The liquidator in a winding up by the court shall have power –

- to sell the movable and immovable property and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company or to sell the same in parcels;
- to do all acts to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to use, when necessary the company's seal;
- to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributors for any balance against his estate, and to receive dividends in the bankruptcy, insolvency and sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors;
- to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or endorsed by or behalf of the company in the course of its business;
- To raise on the security of the assets of the company any money requisite;
- To appoint an agent to do any business which the liquidator is unable to do himself;
- To do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(3) The exercise by a liquidator in a winding up by the court of the powers conferred by this section shall be subject to the control of the court, and any creditor or contributory may apply to the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

Section 219 - Exercise and control of liquidators powers

Subject to the provisions of this Act [*Law*],

(1) The liquidator may summon general meeting of the creditors or contributories for the purpose of ascertaining their wishes, and it shall his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one tenth in value of the creditors or contributories as the case may be.

(2) The liquidator may apply to the court in manner prescribed for directions in

relation to any particular matter arising under the winding up.

(3) The liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(4) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court, and the court may confirm, reverse or modify the act or decision complained of, and make such order in the premises as it thinks just.

Section 220 - Books to be kept by the liquidator

Every liquidator of a company which is being wound up by the court shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and 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 any such books.

Section 221 - Payments by liquidator to official receiver

Every liquidator of a company which is being wound up by the court shall, in such manner and at such times as the official receiver shall direct, pay the money, received by him to the official receiver for the credit of the Companies Liquidation Account, and the official receiver shall furnish him with a receipt for the money so paid.

Section 222 - Audit of liquidator's account

(1) Every liquidator other than the official receiver of a company which is being wound up by the court shall, at such times as may [be] prescribed but not less than twice in each year during his tenure of office, send to the official receiver, or as he directs, an account of his receipts and payment as liquidator.

(2) The account shall be in the prescribed form, shall be made in duplicate and shall be verified by a statutory declaration in the prescribed form.

(3) The official receiver shall cause the account to be audited, and for the purpose of the audit the liquidator shall furnish the official receiver with such vouchers and information as the official receiver may require, and the official receiver may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4) When the account has been audited, one copy thereof shall be filled by the official receiver and the other copy shall be delivered to the court for filing, and each copy shall be open to the inspection of any person on payment of the prescribed fee.

Section 223 - Control over liquidators

The official receiver may at any time require any liquidator of a company which is being wound up by the court to answer any inquiry in relation to any winding up in which he is engaged, and may, if the official receiver thinks fit, apply to the court to examine him or any other person on oath concerning the winding up.

Section 224 - Release of liquidators

(1) When the liquidator of a company which is being wound up by the court has realized all the property of the company or so much thereof as can, in his opinion, be realized without needlessly protracting the liquidation, and has distributed a final dividend, if any to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories or has resigned, or had been removed from his office, the court shall, on his application, cause a report and any objection which may be urged by any creditor or contributory or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly.

(2) Where the release of a liquidator is withheld, the court may on the application of any creditor or contributory or person interested, make such order as he thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(3) An order from the court releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

Committee of Inspection

Section 225 - Meeting of creditors and contributories to determine whether committee of inspection shall be established

When a winding up order has been made by the court, it shall be the business of the separate meeting of creditors and contributories to be summoned for the purpose of determining whether or not an application is to be made to the court for appointing a liquidator in place of the official receiver, to determine further whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator and who are to be members of the committee if appointed.

Section 226 - Constitution and proceedings of committee of inspection

(1) A committee of inspection appointed in pursuance of this Act [*Law*] shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories or as, in the case of difference, may be determined by the court.

(2) The committee shall meet 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 they think necessary.

(3) The committee may act by a majority of their members present at a meeting but shall not act unless a majority of the committee are present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

Section 227 - Powers of court where no committee of inspection

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 give any direction or permission which is by this Act [*Law*] authorized or required to be done or given by the committee.

General Powers of Court in Case of Winding Up by Court

Section 228 - Powers to stay winding up

The court may at any time after an order for winding up, on the application either 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.

Section 229 - Settlement of list of contributories and application of assets

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

(2) In settling the list of contributories, the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

Section 230 - Delivery of property to liquidator

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

Section 231 - Payment of debts due by contributory to company

The court may, at any time after making a winding-up order, make an order on any contributory for the time being on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company.

Section 232 - Power of court to make calls

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 call on all or any 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 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.

Section 233 - Payment into bank of money due to company

The court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into a specified bank or any branch thereof to the account of the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

Section 234 - Appointment of special manager

(1) Where the official receiver becomes the liquidator of the company, 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 on such application appoint a special manager of the said estate or business to act during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court.

(2) The special manager shall give such security and account in such manner as the official receiver shall direct.

(3) The special manager shall receive such remuneration as may be fixed by the court.

Section 235 - Power to exclude creditors not proving in time

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

Section 236 - Inspection of books by creditors and contributories

The court may, at any time after making a winding-up order, make such order for inspection of the books and papers of the company by creditors and contributories as the court thinks just and any books and papers of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

Section 237 - Power to order cost of winding up to be paid out of assets

The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding up in such order of priority as the court thinks just.

Section 238 - Power to summon persons suspected of having property of company

(1) The court may, at any time after the appointment of an interim liquidator or the making a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company.

-2) If any person so summoned 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 arrested and brought before the court for examination.

Section 239 - Attendance of officers of company at meeting of creditors

In the winding up by the court of a company the court shall have power to require the attendance of any officer of the company at any meetings of creditors or of contributories or of a committee of inspection for the purposes of giving information as to the trade, dealings, affairs or property of the company.

Section 240 - Power to order public examination of promoters and officers

(1) Where an order has been made for winding up a company by the court, and the official receiver has made a further report under this Act stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since its formation, the court may, after consideration of the report, direct that that person or officer shall attend before the court on a day appointed by the court for that purpose and be publicly examined as to the promotion or formation or the conduct of the business of the company or as to his conduct and dealings as an officer thereof.

(2) The person examined shall be examined on oath and shall answer all such questions as the court may put or allow to be put to him.

(3) A person ordered to be examined under this section shall at his own cost, before his examination, be furnished with a copy of the official receiver's report, and may at his own cost employ an advocate who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him.

Section 241- Dissolution of a company

(1) When the affairs of a company have been completely wound up, the court, if the liquidator makes an application in that behalf, shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) A copy of the order shall within fourteen days from the date thereof be delivered by the liquidator to the registrar for registration.

(3) If the liquidator makes default in complying with the requirements of this section, he shall be liable to a fine.

Appeals

Section 242- Appeals

Subject to such conditions and limitations as may be prescribed by rules, an appeal from any decision shall lie to the court of Appeal from any decision or order given or made by the High Court in the exercise of the jurisdiction conferred upon it by section 196.

Chapter III - Voluntary Winding Up

Resolutions for, and commencement of, Voluntary Winding up

Section 243 - Circumstances in which company may be wound up voluntarily

- (1) A company may be wound up voluntarily –
- When the period, if any, fixed for the duration of the company by the articles expires, or the event, if any, occurs on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;
 - If the company resolves by special resolution that the company be wound up voluntarily.
- (2) In this Act, a resolution for voluntarily winding means a resolution passed under any of the provisions of subsection (1)

Section 244 - Notice of resolution

- (1) When a company has passed a resolution for voluntarily winding up, it shall, within fourteen days after the passing of the resolution, give notice of the resolution by advertisement in the Official Gazette and also in some newspaper circulating in Somaliland.
- (2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine, and for the purposes of this subsection the liquidator of the company shall be deemed to be an officer of the company.

Section 245 - Commencement of voluntary winding up

In case of a voluntary winding up, the company shall from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof.

Consequences of Voluntary Winding Up

Section 246 - Effects of voluntary winding up on business and status of company

- (1) In case of a voluntary winding up, the company shall from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof.
- (2) Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding up, shall be void.

Section 247 - Avoidance of transfers of share after commencement of voluntary winding up

Any transfer of shares, not being a transfer made or with the sanction of the liquidator,

and any alteration in the status of the members of the company, made after the commencement of a voluntary winding up, shall be void.

Declaration of solvency

Section 248 - Statutory declaration of solvency in case of proposal to wind up voluntary

(1) Where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors, may, at a meeting of the directors make a declaration in the prescribed form to the effect that they have 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) Any director of a company making a declaration under this section, without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration, shall be liable toand if the company is wound up in pursuance of a resolution passed within the period of thirty days after the making of the declaration, but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion.

Provisions Applicable to a Members' Voluntary Winding

Section 249 - Power of company to appoint and fix remuneration of liquidators

(1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company and may fix the remuneration to be paid to him or them.

(2) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting or the liquidator sanctions the continuance thereof.

Section 250 - Power to fill vacancy in office of liquidator

(1) If a vacancy occurs by death, resignation or otherwise in the office of a liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by any continuing liquidator.

(3) The meeting shall be held in manner provided by this Act or by the articles, or in such manner as may, on application by any contributory or, by any continuing liquidator be determined by the court.

Section 251- Power of liquidator for sale of property of company

(1) Where a company is proposed to be, or in the course of being, wound up voluntarily, and the whole or part of its business or property is proposed to be transferred

or sold to another company, whether a company within the meaning of this Act or not (in this section called the transferred company), the liquidator of the first mentioned company (in this section called the transferor company) may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive, in compensation or part compensation for the transfer or sale, shares policies or other like interests in the transferee company for distribution among the members of the transferors company, may, in lieu of receiving cash, shares, policies and other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in accordance with the law relating to arbitration for the time being in force in Somaliland.

Section 252 - Duty of liquidator to call creditors' meeting in case of insolvency

(1) If in the case of a winding up commenced after the appointed day, the liquidator is at any time of opinion that the company will not be able to pay its debts in full within the period stated in the declaration under section 245 he shall forthwith notify the registrar accordingly and summon a meeting of the creditors and shall lay before the meeting a statement of the assets and liabilities of the company.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine.

Section 253 - Duty of liquidator to call general meeting at the end of each year

(1) 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 convenient date within three months from the end of the year or such longer period as the registrar may allow, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine

Section 254 - Final meeting and dissolution

(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 disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) The meeting shall be called by advertisement in the Official Gazette and in two newspapers circulating in Somaliland, specifying the time, place and object thereof, and published thirty days at least before the meeting.

(3) Within fourteen days after the meeting, the liquidator shall deliver to the registrar a copy of the account, and shall make a return to him of the holding of the meeting and of its date, and if the copy is not delivered or the return is not made in accordance with this subsection the liquidator shall be liable to a daily default fine.

(4) The registrar on receiving the account and either of the returns, hereinbefore mentioned shall forthwith register them, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to deliver to the registrar a certified copy of the order, to deliver to the registrar a certified copy of the order for registration and if that person fails so to do he shall be liable to a fine and, for continued contravention, to a daily default fine.

(6) If the liquidator fails to call a general meeting of the company as required by this section, he shall be liable to a fine not exceeding SL Shs.⁴⁶

Provisions Applicable to a Creditors' Voluntary Winding Up

Section 255 - Provisions applicable to a creditors' winding up

The provisions of sections 256 to 262 shall apply in relation to a creditors' voluntary winding up.

Section 256 - Meeting of creditors

(1) The company shall cause a meeting of the creditors of the company to be summoned for the next day following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the said meetings of creditors to be sent by post to the creditor simultaneously with the sending of the notices of the said meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised once in the Official Gazette and once at least, in a newspaper circulating in Somaliland.

(3) The directors of the company shall-

- Cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of the creditors to be held as aforesaid; and
- Appoint one of their number to preside at the said meeting.

(4) It shall be the duty of the director appointed to preside at the meeting of the creditors to attend the meeting and preside thereat.

⁴⁶ Fine not specified.

(5) If default is made

- by the company in complying with subsections (1) and (2),
- by the directors of the company in complying with subsection (3);
- by any director of the company in complying with subsection (4),

the company, directors or director, as the case may be, shall be liable to a fine and in the case of default by the company, every officer of the company who is in default shall be liable to the like penalty.

Section 257 - Appointment of liquidator

The creditors and the company at their respective meetings mentioned in section 256 may nominate a person to be the liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be the liquidator, and if no person is nominated by the creditors the person, if any, nominated by the company shall be the liquidator.

Section 258 - appointment of committee of inspection

(1) The creditors at the meeting to be held in pursuance of section 256 or at any subsequent meeting may, if they think fit, appoint not more than five persons to be members of the committee of inspection, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntarily winding up is passed or any time subsequently in general meeting, appoint such number of persons as they think fit to be members of the committee so, however, that the majority of the members of the committee shall be persons appointed by the creditors.

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not be members of the committee of inspection, and if the creditors so resolve, the persons mentioned in the resolution shall not, unless the court otherwise directs, be qualified to act as members of the committee, and on any application to the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(2) Subject to the provisions of this section and to any rules made in this behalf, the provisions of section 226, except subsection (1) thereof, shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the court.

Section 259 - Fixing of liquidators' remuneration

The committee of inspection, or if there is no such committee the creditors, may fix the remunerations to be paid to the liquidator or liquidators.

Section 260 - Termination of directors powers on appointment of liquidators

On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection or if there is no such committee, the creditors sanction the continuance thereof.

Section 261- Duty of the liquidator to call meetings of company and creditors at end of each year

In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of the creditors at the end of the first year from the commencement of the winding up, and each succeeding year, or at the first convenient date within three months from the end of the year or such longer period as the registrar may allow, and shall lay before the meetings an account of his acts and dealings and on the conduct of the winding up during the preceding year.

Section 262 - Final Meeting and dissolution

(1) As soon as the affairs of the company are fully wound up, the liquidator shall make an account of the winding up, showing how the winding up has been conducted and the property of the company 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 an explanation thereof.

(2) Each such meeting shall be called by advertisement in the Official Gazette and in a newspaper circulating in Somaliland specifying the time, place and object thereof, and published thirty days at least before the meeting.

(3) Within fourteen days after the date of the meetings or if the meeting was not held on the same date, after the date of the later meeting, the liquidator shall deliver to the registrar a copy of the account, and shall make a return to him of the holding of the meeting and of their dates, and if the copy is not delivered or the return is not made in accordance with this subsection the liquidator shall be liable to a fine he is liable to a fine and, for continued contravention, to a daily default fine.

Provided that, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat and upon such a return being made the provisions of this subsection as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.

(4) The registrar on receiving the account and, in respect of each such meeting, either of the returns hereinbefore mentioned, shall forthwith register them, and on the expiration of three months from the registration thereof the company shall be deemed to be dissolved.

Provided that the court may, on the application of the liquidator or on any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to deliver to the registrar a certified copy of the order for registration, and if that person fails to do so he shall be liable to a fine and, for continued contravention, to a daily default fine.

(6) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this section, he shall be liable to a fine.

Provisions Applicable to every Voluntary Winding Up

Section 263 - Provision applicable to every voluntary winding up

The provisions of sections 264 to 271 shall apply to every voluntary winding up whether a members' or a creditors' winding up.

Section 264 - Distribution of property of company

Subject to the provisions of this Act [*Law*] as to preferential payments, the assets of a company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu*, and subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

Section 265 - Powers and duties of the liquidator in voluntary winding up

(1) The liquidator may –

- In the case of a members' voluntarily winding up, with the sanction of a special resolution of the company, and in the case of a creditors' voluntarily winding up; with the sanction of the court or the committee of inspection or (if there is no such committee) a meeting of the creditors, exercise any of the power given by paragraphs (d), (e) and (f) of subsection (1) of section 218 to a liquidator in a winding up by the court.
- Without sanctions, exercise any of the other powers by this Act given to the liquidator in a winding up by the court.
- Exercise the power of the court under this Act of setting a list of contributories, and the list of contributories shall be prima facie evidence of the liability of the persons names therein to be contributories;
- Exercise the power of the court of making calls;
- Summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or for 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.

Section 266 - Power of court to appoint and remove liquidator in voluntary winding up

(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.

Section 267 - Notice by liquidator of his appointment

(1) The liquidator shall, within fourteen days after his appointment, publish in the Official Gazette and deliver to the registrar for registration a notice of his appointment in the form prescribed.

(2) If the liquidator fails to comply with the requirements of this section he shall be liable to a fine and, for continued contravention, to a daily default fine.

Section 268 - Arrangement when binding on creditors

(1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditor 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) Any creditor or contributor may, within thirty days from the completion of the arrangement, appeal to the court against it, and the court may thereupon, as it thinks just, amend, vary or confirm the arrangement.

Section 269 - Power to apply to court to have questions determined or powers exercised

(1) The liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the court might exercise if the company were being wound by the court.

(2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit or may make such other order on the application as it thinks just.

(3) A copy of an order made by virtue of this section staying the proceedings in the winding up shall forthwith be delivered by the company, or otherwise as may be prescribed to the registrar for registration.

Section 270 - Costs of voluntary winding up

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.

Section 271 - Saving for rights of creditors and contributories

The voluntary winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the court, but in the case of an application by a contributory the court shall be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

Chapter IV - Winding Up Subject to Supervision of Court

Section 272 - Power in order winding up subject to supervision

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

Section 273 - Effect of petition for winding up subject to supervision

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

a petition for winding up by the court.

Section 274 - Application of sections 201 and 202 to winding up subject to supervision

A winding up subject to the supervision of the court shall, for the purposes of sections 201 and 202 be deemed to be a winding up by the court.

Section 275 - Power of court to appoint or remove liquidators

(1) Where an order is made for a winding up subject to supervision, the court may by that or any subsequent orders appoint an additional liquidator.

(2) A liquidator appointed by the court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position, as if he had been duly appointed in accordance with the provision of this Act [Law] with respect to the appointment of liquidators in a voluntary winding up.

(3) The court may remove any liquidator so appointed by the court or any liquidator continued under the supervision order and fill(s)⁴⁷ any vacancy *caused* by the removal, or by death or resignation.

Section 276 - Effect of supervision order

(1) Where a an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the court, exercise all his powers, without the sanction or intervention of the court, in the same manner as if the company were being wound up voluntarily.

Provided that none of the powers specified in paragraph (d), (c) and (f) of subsection (1) of section 218 Shall be exercised by the liquidator except with the sanction of the court or, in a case where before the order the winding up was a creditors' voluntarily winding up, with the sanction of the court or the committee of inspection, or (if there is no such committee) a meeting of the creditors.

(2) A winding up subject to the supervision of the court is not a winding up by the court for the purpose of the proposition of this Act specified in the Eight Schedule, but subject to aforesaid, an order for a winding up subject to supervision shall for all purposes be deemed to be an order for winding up by the court.

Provided that where the order for winding up subject to supervision was made in relation to a creditors' voluntary winding up in which a committee of inspection had been appointed, the order shall be deemed to be an order for winding up by the court for the purpose of section 176, except subsection (1) thereof, except in so far as the operation of that section is excluded in a voluntary winding up by general rules.

Chapter V - Provisions Applicable to Every Mode of Winding Up

Proof and Ranking of Claims

Section 277 - Debts of all description may be proved

⁴⁷ Letter (s) and word in brackets added by the editor.

In every winding up, 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 the debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

Section 278 - Application of bankruptcy rules in winding up of insolvent companies

In the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy with respect to the estate of persons adjudged bankrupt, and all persons who is in any such case would be entitled to prove and to receive dividends out of the asset 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.

Section 279 - Preferential payments

In the winding up of a company there shall be paid in priority to all other debts-

- a) All taxes and local rates due from the company at the relevant date and having become due and payable within twelve months next before that date not exceeding in the whole one year's assessment.
- b) All government rents not more than one year in arrear
- c) All wages and salary (whether or not earned wholly or in part by way of commission) of any clerk or servant (not being a director) in respect of services rendered to the company during four months next before the relevant date and all wages (whether payable for time or for piece work) of any worker in respect of services rendered.

Effect of Winding Up on Antecedent and other transactions

Section 280 - Fraudulent preference

Any transfer, conveyance, mortgage, charge, delivery of goods, payment, execution or other act relating to property made or done by or against a company within six months before which, had it been made or done by or against an individual within six months before the presentation of a bankruptcy, would be deemed in his bankruptcy petition on which he is adjudged bankrupt, would be deemed in his bankruptcy a fraudulent preference shall in the event of the company being wound up be deemed a fraudulent preference of its creditors and be void accordingly.

Section 281 - Liabilities and rights of certain fraudulently preferred persons

Where anything made or done after the appointed day is void under section 280 as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as surety for the debt to the extent of the mortgage or charge on the property or the value of his interest, whichever is the less.

Section 282 - Disclaim of onerous property in case of company wound up

(1) Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts or of any other property that is unsaleable, or not readily saleable, the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto, may with the leave of the court and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the court; disclaim the property; Provided that where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power under this section of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended 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 for granting leave, and make such other order, in the matter as the court thinks just.

(5) The court may, on an application by any person who claims any interest in any disclaimed property, make an order for the vesting of the property in or the delivery of the property to any person entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid and on such terms as the court may think fit.

Chapter VI -Matters Arising Subsequent To Winding Up

Section 283 - Power of court to declare dissolution of company void

(1) Where a company has been dissolved, the court may at any time within two years of the date of the dissolution, on an application made for the purpose by the liquidator of the company or by any other person appearing to the court to be interested, make an order, on such terms as the court thinks fit, declaring the dissolution to have been void.

(2) Thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(3) It is the duty of the person on whose application the order was made, within 7 days after its making (or such further time as the court may allow), to deliver to the registrar of companies for registration an office copy of the order. Fails to do so, he is liable to a fine and, for continued contravention, to a daily default fine.⁴⁸

Section 284 - Registrar may strike defunct company off register

⁴⁸ Fines not specified.

(1) If the registrar of companies has reasonable cause to believe that a company is not carrying on business or in operation, he may send to the company a letter inquiring whether the company is carrying on business or in operation.

(2) If the registrar does not within thirty days of sending the letter receive any answer to it, he shall within 14 days after the expiration of that month send to the company a registered letter referring to the first letter, and stating that no answer to it has been received, and that if no answer is not received to the second letter within one month from its date, a notice will be published in the Official Gazette with a view to striking the company's name off the register

(3) If the registrar either receives an answer to the effect that the company is not carrying on business or in operation, or does not within thirty days after sending the second letter receive any answer, he may publish in the Official 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 in it will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in a case where a company is being wound up, the registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months, the registrar shall publish in the gazette and send to the company or the liquidator (if any) a like notice as is provided in subsection (3).

(5) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice in the Official Gazette and on the publication of that notice in the Official Gazette the company is dissolved.

(6) However

- The liability (if any) of every director, managing officer and member of the company continues and may be enforced as if the company has not been dissolved, and
- Nothing in subsection (5) affects the power of the court to wind up a company the name of which has been struck off the register.

(7) A notice to be sent to a liquidator under this section may be addressed to him 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 officer of the company.

If there is no officer of the company whose name and address are known to the registrar of companies; the letter or notice may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

Section 285 - Registrar may strike private company off register on application

(1) On application by private company, the registrar of companies may strike the company's name off the register.

(2) An application by a company under this section shall –

- be made on its behalf by its directors or by a majority of them,

- be in the prescribed form, and
- contain the prescribed information.

(3) The registrar shall not strike a company off under this section until after the expiration of 3 months from the publication by him in the Official Gazette of a notice –

- stating that he may exercise his power under this section in relation to the company, and
- inviting any person to show cause why he should not do so.

(4) Where the registrar strikes a company off under this section, he shall publish notice of the fact in the Official Gazette:

(5) On the publication in the Official Gazette of a notice under subsection (4) the company to which the notice relates is dissolved.

(6) However –

- the liability (if any) of every director, managing officer and member of the company continues and may be enforced as if the company has not been dissolved.
- Nothing in this section affects the power of the court to wind up a company the name of which has been struck off the register.

Section 286 - Property of dissolved company

Where a company is dissolved, all property and rights whatsoever vested in or held in trust for the company immediately before its dissolution shall subject and without prejudice to any order which may at any time be made by the court under section 283 or section 284 be deemed to be *bona vacantia*, and shall accordingly belong to the government.

Section 287 - Power of Government to disclaim title of property

(1) Where any property vests in the Government under section 286, the government's title thereto under that section may be disclaimed by a notice signed by the Attorney General.

(2) Where a notice of disclaimer under this section is executed as respects any property, that property shall be deemed not to have vested in the Government under section 286 and subsequent (2) and (5) of section 282 shall apply in relations to the property as it had been disclaimed under subsection (1) of section 282 immediately before the dissolution of the company.

Companies Liquidation Account

Section 288 - Companies Liquidation Account

An account to be called the Companies Liquidation Account shall be kept by the official receiver with the National Bank of Somaliland⁴⁹, and all moneys received by the official receiver in respect of proceedings under this Act in connection with the winding up of companies shall be paid to that account.

⁴⁹ Somaliland Central Bank.

Section 289- Investment of surplus funds

(1) Whenever the cash balance standing to the credit of the Companies Liquidation Account in excess of the amount which, in the opinion of the official receiver, is required for the time being to answer demands in respect of companies' estates, the official receiver may invest the amount not so required, or any part thereof, in any investment authorized by law for the investment of trust funds or may place the same or part thereof, on fixed deposit with the National Bank of Somaliland.

(2) The dividends and interest accruing from any money so invested or placed on deposit shall be paid by the official receiver to the credit of a separate account, to be called the Companies Contingency Fund to be kept by him at the National Bank of Somaliland.

Rules and Fees

Section 290 - Rules and fees for winding up

(1) The Minister may make rules for carrying into effects the objects of this Act so far as relates to the winding up of, and without prejudice to the generation of the foregoing power, for providing for any matter or thing which by this Act is to be or may be provided for by rules.

(2) There shall be in respect of proceedings under his Act in relation to the winding up of companies such fees as the Minister may prescribe by rules made under sub-section (1).

(3) No rules which are in the nature of the rules of court shall be made under this section except after obtaining the advice of the Chief Justice⁵⁰[*President of the Supreme Court*].

PART XVI COMPANIES INCORPORATED OUTSIDE SOMALILAND

Chapter I. Provisions as to Establishment of Place of Business in Somaliland

Section 291 - Application of sections 292-300

(1) The next nine following sections shall apply to all foreign companies, that is to say, companies incorporated outside Somaliland which after [date of commencement of the Act [*Law*]] have established a place of business in Somaliland and companies incorporated outside Somaliland which have [date of commencement of the Act [*Law*]]⁵¹ established a place of business in Somaliland on and after the [date of commencement of the Act [*Law*]]

(2) A foreign company shall not be deemed to have a place of business in Somaliland solely on account of its doing business through an agent in Somaliland at the place of

⁵⁰ In this context, the reference to the Chief Justice is indeed likely to be the head of the Judiciary, the President of the Supreme Court and not to the President of the Regional Court, the Somaliland equivalent of the High Court.

⁵¹ This was in February 2004.

business of the agent.

Section 292 - Documents to be delivered to registrar by foreign companies carrying on business in Somaliland

(1) Foreign companies which, after the [date of commencement of the Act [*Law*]] establish a place of business within Somaliland shall, within thirty days of the establishment of the place of business deliver to the registrar for registration –

(a) A certified copy of the charter, statutes or memorandum and articles of the company or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the English language, a certified translation thereof;

(b) A list of the directors and secretary of the company containing the particulars mentioned in the next following subsection;

(c) The names and postal addresses of some one or more persons resident in Somaliland authorized to accept on behalf of the company service of process and any notices required to be served on the company;

(d) The full address of the registered or principal office of the company.

(2) The list referred to in paragraph (b) of the foregoing subsection shall contain the following particulars with respect to each director and secretary –

(a) In the case of an individual, his present family name and surname, his usual postal address, his nationality and his business occupation, if any; and

(b) In the case of a corporation, its corporate name and registered or principal office, and its postal address:

Provided that, where all the partners in a firm are joint secretaries of the company, the name and principal office of the firm maybe stated instead of the particulars mentioned in this subsection.

Subsection (1) of section 118 of this Act shall apply for the purpose of the construction of references in this subsection to present and former last names and surnames as they apply for the purpose of the construction of such references in that section.

(3) If any charge, being a charge which ought to have been included in the statement required by paragraph (c) of subsection (1) of this section, is not so included, it shall be void as regards property in Somaliland against the liquidator and any creditor of the company.

Section 293 - Certificate of registration and power to hold land

(1) On the registration of the documents specified in the last foregoing section the registrar shall certify under his hand that the company has complied with the provisions of that section and such certificate shall be conclusive evidence that the company is registered as a foreign company under this Act [*Law*].

(2) From the date of registration under this Act, a foreign company shall have the same power to hold land in Somaliland as if it were a company under this Act [*Law*].

Section 294 - Returns to be delivered to registrar by foreign company

(1) If any alteration is made in –

(a) the charter, statutes, or memorandum and articles of a foreign company or any such

instrument as aforesaid; or

(b) the directors or secretary of foreign company or the particulars contained in the list of the directors and secretary; or

(c) the names or postal addresses of the persons authorised to accept service on behalf of a foreign company; or

(d) the address of the registered or principal office of a foreign company, the company shall within sixty days, deliver to registrar for registration a return containing the prescribed particulars of the alteration.

(2) Where in the case of a company to which this Part of this Act [Law] applied –

- a winding up order is made by; or
- proceedings substantially similar to a voluntary winding up of the company under this Act [Law] are commenced in, a court of the country in which such company was incorporated, the company shall within thirty days of the date of the making of such order or the commencement of such proceedings, as the cause may be, deliver to the registrar a return containing the prescribed particulars relating to the making of such order or the commencement of such proceedings and shall cause the prescribed advertisements in relation thereto to be published.

Section 295 - Accounts of foreign company

(1) Every foreign company shall, in every calendar year, make out a balance sheet and profit and loss account and, if the company is a holding company, group accounts in such form, and containing such particulars and including such documents, as under the provisions of this Act [Law] (subject, however, to any prescribed exceptions) it would, if it had been a company within the meaning of this Act [Law], have been required to make out and lay before the company in general meeting, and deliver copies of those documents to the registrar for registration:

(2) If any such document as is mentioned in subsection (1) of this section is not written in English language there shall be annexed *[to it a certified English language translation]*⁵².

Section 296 - Obligation to state name of foreign company, whether limited and country where incorporated

(1) Every foreign company shall –

(a) in every prospectus inviting subscriptions for its shares or debentures in Somaliland state the country in which the company is incorporated; and

(b) conspicuously exhibit in legible roman characters or every place where it carries on business in Somaliland, the name of the company and the country in which the company is incorporated; and

(c) cause the name of the company and of the country in which the company is incorporated to be stated in legible roman letters in all bill-heads and letter-paper, and in all notices and other official publications of the company; and

(d) if the liability of the members of the company is limited, cause notice of that fact to be stated in the English language in legible roman characters in every such prospectus as aforesaid and in all bill-heads, letter-paper, notices and other official publications of the company in Somaliland and to be affixed on every place where it carries on its business.

⁵² The italicised words were missing from the original text of the Law.

(2) Every foreign company shall in all trade catalogues, trade circulars, show cards and business letters on or in which the company's name appears and which are issued or sent by the company to any person in Somaliland, state in legible roman letters with respect to every director being a corporation, the corporate name, and with respect to every director, being an individual, the following particulars -

- his present family name, or the initials thereof, and present surname;
- any former family names and surnames;
- his nationality.

Provided that, if special circumstances exist which render it in the opinion of the registrar expedient that such an exemption should be granted, the registrar may by order grant, subject to such conditions as may be specified in the order, exemption from the obligations imposed by this section.

Section 297 - Service on foreign company

Any process or notice required to be served on foreign company shall be sufficiently served if addressed to any person whose name has been delivered to the registrar under the foregoing provisions of this Part of this Act [Law] and left at or sent by registered post to the address which has been so delivered.

Provided that –

(a) where any such company makes default in delivering to the registrar the name and address of a person resident in Somaliland who it is authorised to accept on behalf of the company service of process or notices; or

(b) if at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on behalf of the company or for any reason cannot be served, a document may be served on the company leaving it at or sending it by registered post to any place of business established by the company in Somaliland.

Section 298 - Cessation of business by foreign company and striking off register

(1) If any foreign company ceases to have a place of business in Somaliland it shall forthwith give notice in writing of the fact to the registrar for registration and is from the date on which notice is so given the obligation of the company to deliver any document to the registrar shall cease and the registrar shall strike the name of the company off the register.

(2) Where the registrar has reasonable cause to believe that a foreign company has ceased to have a place of business in Somaliland, he may send by registered post to the person authorised to accept service on behalf of the company and, if more than one, to all such persons, a letter inquiring whether the company is maintaining a place of business in Somaliland.

(3) If the registrar receives an answer to the effect that the company has ceased to have a place of business in Somaliland or does not within three months receive any reply, he may strike the name of the company off the register.

Section 299 - Penalties

If any foreign company fails to comply with any of the foregoing provisions of this Part of

this Act the company and every officer or agent of the company and every officer or agent of the company who knowingly and wilfully authorises or permits the default, shall be liable to **a fine** and for continued contravention, to **a daily default fine**.⁵³

Section 300 - Interpretation of sections 292 to 299

For the purposes of the foregoing provision of this Part of this Act [*Law*] –

“Certified” means certified in the prescribed manner to be a true copy or a correct translation;

“Director”, in relation to a company, includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;

“Place of business” includes a share transfer or share registration office;

“Prospectus” has the same meaning as when used in relation to a company includes any person occupying the position of secretary by whatever name called.

~~Prospectuses.~~

Chapter II - Prospectuses

Section 301- Dating of prospectus and particulars to be contained therein

(1) It shall not be lawful for any person to issue, circulate or distribute in Somaliland any prospectus offering for subscription shares in or debentures of a company incorporated outside Somaliland, whether the company has or has not established, or when formed will or will not establish, a place of business in Somaliland unless the prospectus is dated and –

(a) Contains particulars with respect to the following matters –

(i) The instrument constituting or defining the constitution of the company;

(ii) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected;

(iii) an address in Somaliland where the said instrument, enactments or provisions, or copies thereof, and if the same are in a language other than English an English translation thereof certified in the prescribed manner, can be inspected;

(iv) whether the company has established a place of business in Somaliland, and, if so the address of its principal office in Somaliland;

(b)⁵⁴ Subject to the provisions of this section, states the matters specified in Part I of the Third Schedule to this Act [*Law*] and sets out the reports specified [*in*] Part II of that Schedule, subject always to the provisions contained Part III of that Schedule:

Provided that the provisions of sub-paragraphs (i), (ii) and (iii) of paragraph (a) of this subsection shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business, and, in the application of Part I of the Third Schedule for the purposes of this subsection, paragraph 2 thereof shall have effect with the substitution, for the reference to the articles, of a reference to the constitution of the company.

(2) Any condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement imposed by virtue of paragraph (a) or (b) of the foregoing subsection, or purporting to affect him with notice of any contract, document or

⁵³ Fines not specified.

⁵⁴ I have numbered this para as (b) rather than its original bullet point to make it clearer that it stands a separate sub section

matter not specifically referred to in the prospectus, shall be void.

(3) It shall not be lawful for any person to issue to any person in Somaliland a form of application for shares in or debentures of such a company or intended company as is mentioned in subsection (1) of this section unless the form is issued with a prospectus which complies with this Part of this Act [Law] and the issue whereof in Somaliland does not contravene the provisions of section 302 of this Act [Law]:

Provided that this subsection shall not apply if it is shown that the form of application was issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

(4) In the event of non-compliance with or contravention of any of the requirements imposed by paragraphs (a) and (b) of subsection (1) of this section a director, or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if –

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

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters contained in paragraph 16 of the Third Schedule to this Act [Law], no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(5) This section –

- shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons;
- except in so far as it requires a prospectus to be dated, shall not apply to the issue of a prospectus relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued, But, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

(6) Nothing in this section shall limit or diminish any liability, which any person may incur under the general law or this Act [Law], apart from this section.

Section 302 - Provision as to expert's consent and allotment

(1) It shall not be lawful for any person to issue, circulate or distribute in Somaliland, any prospectus incorporated or to be incorporated outside Somaliland, whether the company has or has not established, or when formed will or will not establish, a place of business in Somaliland –

- If, where the prospectus includes a statement purporting to be made by an expert, he has not given, or has before delivery of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included or there does not appear in the prospectus a

- statement that he has given and has not withdrawn his consent as aforesaid; or
- If the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by all the provisions (other than penal provisions) of section 52 and 53 of this Act [Law] so far as applicable.

(2) In this section “expert” includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him, and for the purposes of this section a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

Section 303 - Registration of Prospectus

(1) It shall not be lawful for any person to issue circulate or distribute in Somaliland any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Somaliland, whether the company has or has not established, or when formed will or will not establish a place of business in Somaliland, unless before the issue, circulation or distribution of the prospectus in other directors of the company as having been delivered to the registrar for registration, and the prospectus states on the face of it that a copy has been so delivered, and there is endorsed on or attached to the copy –

- Any consent to the issue of the prospectus required by section 303;
- A copy of any required by **paragraph 14 of the Third Schedule** to this Act [Law] to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof;
- Where the persons making any report required by **Part II of that Schedule** have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in **paragraph 29 of that Schedule**, a written statement signed by those persons setting out the adjustments and giving the reasons therefore;

(2) The references in paragraph (b) of the foregoing subsection to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a language other than English of the parts in a language other than English, as the case may be, being a translation and the reference to a copy of a contract required to be available for inspection shall include a reference to a copy of a translation thereof or a copy embodying a translation of parts thereof.

Section 304 - Penalty for contravention of sections 301, 302 and 303

Any person who is knowingly responsible for the issue, circulation or distribution of a prospectus, or for the issue of a form of application for shares or debentures, in contravention of any of the provisions of the four last foregoing sections 301,302 and 303 shall be liable to a fine.

Section 305 - Civil liability for mis-statement in prospectus

Section 38 of this Act shall extend to every prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Somaliland, whether the company has or has not established, or when formed will or will not establish, a place of business in Somaliland, with the substitution for reference to section 35 of reference to section 302.

Section 306 - Interpretation of provisions as to prospectus

(1) Where any document by which any shares in or debentures of a company incorporated outside Somaliland are offered for sale to the public would, if the company concerned had been a company within the meaning of this Act [Law], have been deemed by virtue of section 33 of this Act to be a prospectus issued by the company, that document shall be deemed to be, for the purpose of this Part of this Act [Law], a prospectus issued by the company.

(2) An offer of share or debentures for subscription or sale to any person whose ordinary business it is to buy or sell shares or debentures, whether as principal or agent shall not be deemed an offer to the public for the purposes of this Part of this Act [Law].

(3) In this Part of this Act [Law], “prospectus”, “shares” and “debentures” have the same meaning as when used in relation to a company incorporated under this Act [Law].

**PART XVII
GENERAL PROVISION AS TO REGISTRATION**

Chapter I - The Registrar of Companies, His Functions And Offices

Section 307 - Inspection of records kept by the registrar

(1) Any person may inspect any records kept by the registrar for the purposes of the companies Act [Law] and may require –

- A copy in such form as the registrar considers appropriate, of any information contained in those records, or
- A certified copy of, or extract from, any such record.

(2) The right of inspection extends to the originals of documents delivered to the registrar in legible form only where the record kept by the registrar of the contents of the document is illegible or unavailable.

(3) A copy of or extract from a record kept at the office for the registration of companies at Hargeysa, certified in writing by the registrar (whose official position it is unnecessary to prove) to be an accurate record of the contents of any document delivered to him under the Companies Act [Law], is in all legal proceedings admissible in evidence as of equal validity with the original document and as evidence of any fact stated therein of which direct oral evidence would be admissible.

(4) Copies of or extracts from records furnished by the registrar may, instead of being certified by him in writing to be an accurate record, be sealed with his official seal.

Section 308 - Public notice by registrar of receipt and issue of certain documents

(1) The Registrar of Companies shall cause to be published in the Official Gazette notice of the issue or receipt by him of documents of any of the following description (stating in the notice the name of the company, the description of document and the date of issue or receipt) –

- Any certificate of incorporation of a company,

- any document making or evidencing an alteration in a company's memorandum or articles,
- any notification of a change among the directors of a company,
- any return of allotment of a public company,
- any notice of a change in the situation of a company's registered office,
- any copy of a winding up order in respect of a company,
- any return by a liquidator of the final meeting of a company on a winding up,
- any copy of a draft of the terms of a scheme delivered to the registrar of companies.

(2) In **section 31** ⁵⁵ "official notification" means

- In relation to anything stated in a document of the above descriptions, the notification of that document in the Gazette under this section,
- In relation to the appointment of a liquidator in a voluntary winding up, the notification of it in the Gazette.

And "officially notified" is to be construed accordingly.

Section 309 – Regulations

The President of the Somaliland Republic, on the proposal of the Board, and having heard the Minister of Commerce and Industry and the Council of Ministers, may issue regulation[s] for the proper implementation of this Law.

Section 310 – Entry into force

This Law shall come into a force following its signature by the H.E. President of the Republic of Somaliland.

Mohamed Hussein Osman
Secretary General of The HoR

Ahmed Mohamed Adan
Chairman of the HoR

⁵⁵ The reference to this section 31? In this subsection is not clear, but the preceding subsection already indicates the type of documents which shall be published in the Somaliland Official Gazette.

THIRD SCHEDULE⁵⁶

Form and contents of a prospectus
Matters to be specified in Prospectus and Reports

PART I. MATTERS TO BE SPECIFIED

The following are the items to be included in a prospectus as per Third Schedule of the Act [*Law*].

- The number of founders or deferred shares, and the nature and extent of the interest of the holders in the company's property and profits.
- The number of shares, if any, fixed by the Articles as the qualification of a director, and the remuneration of directors for their services.
- The names, occupations and addresses of the director of proposed directors
- The minimum subscription, i.e. the minimum amount considered by the persons issuing the prospectus to be necessary for:
 - The preliminary expenses incurred in the issue.
 - The purchase of any property intended to be bought out of the proceeds of the issue,
 - The purchase of any property intended to be bought out of the proceeds of the issue.
 - The repayment of any money borrowed by the company in respect of any of the foregoing matters.
- Sufficient working capital.
- The time of opening of the subscription list
- The amount payable on allocation and allotment of each share, and in the case of subsequent offer of shares, the amount offered and allotted during the two preceding years.
- The number, description and amount of any shares for which any person has or entitled to be given an option to subscribe; and
- The period during which the option is exercisable
- The price to be paid.
- The consideration given for the option.
- The names and address of the persons entitled to the options, or the relevant shares.
- The number and amount of shares issued or agreed to be issued during the two preceding years as fully or partly paid up otherwise than in cash, and the consideration for such issue.
- Particulars of the vendors of any property to be purchased out of the issue, giving details of the price and particulars of any transaction in relation to the property purchased from the vendors, specifying of the amount payable for good will.
- Particulars of any underwriting commission paid within the two preceding years or payable for subscribing for shares of the company
- The amount or estimated amount of the preliminary expenses and to the expenses of the issue, and the persons by whom they have been respectively paid or payable.
- The amount paid or any benefit given within two preceding years or intended to be paid or given, to any promoter and the consideration thereof.
- The dates of, parties to and the general nature of every material contract, unless made in the ordinary course of the company's business or made more than two years before the issue of the prospectus. *Material contract* here means one, which might have, if known, influence the decision of the individual for or against subscribing to

⁵⁶ See section 34(1) headed '*Matters to be stated and reports to be set out in prospectus*.'

the issue.

- The names and address of the auditors, if any,
- Full particulars of the nature and extent of the interest, if any, of every director in the promotion of the company, or in any property acquired by the Company, and all sums paid to him in cash as an inducement to become a director, or as a share qualification, or in return of services.
- The rights attached to the various classes of shares, e.g. the right of voting at meetings or receiving dividends
- The length of time during which the company's business or the business has been carried on, if less than three years.

PART II REPORTS TO BE SET OUT IN THE PROSPECTUS

A report by the auditors of the company stating:

Profit or losses of the company in each of the five financial years preceding the issue of the prospectus;

The rate of dividends, if any, paid by the company in respect of each classes of shares in each of those years;

The assets and liabilities at the last date to which the accounts of the company were made up;

If the proceeds, or any of the proceeds, of the issue of the shares are to be applied directly or indirectly in the purchase of any business, then a report must be made on the profit and losses of such business during the five financial years immediately preceding the issue of the prospectus, and also on the assets and liabilities of the business at the last date to which the account were made up.

*Editor's Note: This Form which was attached to the Law, as passed, is actually **Table A, Part I of the First Schedule referred to in section 10(1) of the Law.** There are ng missing parts of the First Schedule*

FORM OF MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES

1. The name of the Company is
2. The registered office of the Company will be situated in Somaliland.
3. The objects for which the Company is established are
.....
.....
4. The liability of the members is limited.
5. The share of the capital of the Company is
divided intoshares of.....each.
6. We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Postal Addresses and Occupation of subscribers	Number of shares taken by each subscriber
1.....
2.....
3.....
4.....
5.....
6.....
7.....

Dated this

Witness to all above written signatures

EDITOR'S NOTE: *Missing Schedules referred to in the Law but were not issued at the time of the promulgation of the Law.*

Sections referring to missing Schedule	Missing Schedule number
s.10(1)	Statutory Form of Memorandum and Articles <ul style="list-style-type: none"> • First Schedule - Table A Part I for a Company limited by shares, not being a private company. <i>Note that this Table was attached to the Law but was not identified as such – see the last attachment to the Law after the Third Schedule.</i>
s.10(2)	
s.28(1)	Second Schedule, Part I - Form of Statement in Lieu of Prospectus to be Delivered to Registrar by a Private Company on becoming a Public Company.
s.44(2)	Fourth Schedule, Part I – Form of a statement in lieu of prospectus by having a share capital
s.98(2)	Fifth Schedule – Form and content of the company accounts
-	<i>There is no Sixth Schedule mentioned in this Law</i>
s.100(4)	Seventh Schedule – Director's Report Part I relates to matters of general nature, including changes in asset values, directors' shareholding and other interests and contributions for political charitable purposes. Part II relates to the acquisition by a company of its own shares Part III relates to the employment, training and advancement of disabled persons.