

COMPANIES AND ALLIED MATTERS ACT

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COMPANIES AND ALLIED MATTERS ACT

**An Act to establish the Corporate Affairs Commission, provide for the incorporation of companies and incidental matters, registration of business names and the incorporation of trustees of certain committees, bodies and associations.**

[1990 No. 1.]

[Commencement.]

[2nd January, 1990]

PART A

*Companies*

PART I

*Corporate Affairs Commission*

**1. Establishment of the Corporate Affairs Commission**

(1) There is hereby established under this Act, a body to be known as the Corporate Affairs Commission (in this Act referred to as "the Commission").

(2) The Commission shall be-

(a) a body corporate with perpetual succession and a common seal;

(b) capable of suing and being sued in its corporate name; and

(c) capable of acquiring, holding or disposing of any property, movable or immovable, for the purpose of carrying out its functions.

(3) The headquarters of the Commission shall be situated in the Federal Capital Territory, Abuja, and there shall be established an office of the Commission in each State of the Federation.

## **2. Membership of the Commission**

The Commission shall consist of the following members, that is-

(a) a chairman who shall be appointed by the President on the recommendation of the Minister, being a person who by reason of his ability, experience or specialised knowledge of corporate, industrial, commercial, financial or economic matters or of business or professional attainments would in his opinion be capable of making outstanding contributions to the work of the Commission;

(b) one representative of the business community, appointed by the Minister on the recommendation of the Nigerian Association of Chambers of Commerce, Industries, Mines and Agriculture;

(c) one representative of the legal profession, appointed by the Minister on the recommendation of the Nigerian Bar Association;

(d) one representative of the accountancy profession, appointed by the Minister on the recommendation of the Institute of Chartered Accountants of Nigeria;

(e) one representative of the Manufacturers Association of Nigeria, appointed by the Minister on the recommendation of the Association;

(f) one representative of the Securities and Exchange Commission not below the grade of Director or its equivalent;

(g) one representative of each of the following Federal Ministries, that is-

(i) Commerce;

(ii) Justice;

(iii) Industry, and

(h) the Registrar-General of the Commission.

[1992 No. 40.]

## **3. Tenure of office**

(1) Subject to the provisions of subsection (2) of this section, a person appointed as a member of the Commission (not being an ex-officio member) shall hold office for three years and shall be eligible for re-appointment for one further term of three years.



(2) The Minister may, with the approval of the President at any time remove any member of the Commission from office if the Minister is of the opinion that it is not in the interest of the Commission for the member to continue in office and shall notify the member in writing to that effect.

[1992 No. 40.]

(3) The members of the Commission except the Registrar-General shall be part-time members of the Commission.

(4) Any member of the Commission shall cease to hold office if-

(a) he becomes of unsound mind or is incapable of carrying out his duties;

(b) he becomes bankrupt or has made arrangement with his creditors;

(c) he is convicted of a felony or any offence involving dishonesty;

(d) he is guilty of serious misconduct relating to his duties; or

(e) in the case of a person possessed of professional qualifications, he is disqualified or suspended (other than at his own request) from practising his profession in any part of Nigeria by the order of any competent authority made in respect of him personally.

#### **4. Remuneration and allowance**

Members of the Commission appointed under section 2 (a), (b), (c), (d), (e), (f), (g) and (h) shall be paid such remuneration and allowances as the President may, from time to time, direct.

#### **5. Proceedings of the Commission**

(1) Subject to this section and section 27 of the Interpretation Act, the Commission may make standing orders regulating its proceedings.

[Cap. 123.]

(2) The chairman shall preside at every meeting of the Commission but, in his absence, the members present shall elect one of their number present to preside at the meeting.

(3) The quorum for meetings of the Commission shall be five.

[1992 No. 40.]

(4) The Commission may appoint any of its officers to act as secretary at any of its meetings.

#### **6. Disclosure of interest**

(1) A member of the Commission who is directly interested in any company or enterprise, the affairs of which are being deliberated upon by the Commission, or is interested in any contract made or proposed to be made by the Commission shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Commission.

(2) A disclosure, under subsection (1) of this section, shall be recorded in the minutes of the Commission, and the member shall-

(a) not take part after such disclosure in any deliberation or decision of the Commission with regard to the subject matter in respect of which his interest is thus disclosed;

(b) be excluded for the purpose of constituting a quorum of the Commission for any such deliberation or decision.

## **7. Functions**

(1) The functions of the Commission shall be to-

(a) subject to section 541 of this Act, administer this Act including the regulation and supervision of the formation, incorporation, registration, management, and winding up of companies under or pursuant to this Act;

(b) establish and maintain a company's registry and offices in all the States of the Federation suitably and adequately equipped to discharge its functions under this Act or any other law in respect of which it is charged with responsibility;

(c) arrange or conduct an investigation into the affairs of any company where the interests of the shareholders and the public so demand;

(d) perform such other functions as may be specified by any Act or enactment; and

(e) undertake such other activities as are necessary or expedient for giving full effect to the provisions of this Act.

(2) Nothing in this section shall affect the powers, duties or jurisdiction of the Securities and Exchange Commission under the Investments and Securities Act.

[Cap. 124.]

## **8. Appointment of Registrar-General**

(1) There shall be appointed by the Commission a Registrar-General who shall be qualified to practise as a legal practitioner in Nigeria and has been so qualified for not less than 10 years and in addition, has had experience in company law practice or administration for not less than 8 years.

(2) The Registrar-General shall be the chief executive of the Commission and shall be subject to the directives of the Commission and shall hold office on such terms and conditions as may be specified in his letter of appointment and on such other terms and conditions as may be determined, from time to time, by the Commission with the approval of the President.

(3) The Registrar-General shall be the accounting officer for the purpose of controlling and disbursing amounts from the fund established pursuant to section 12 of this Act.

## **9. Appointment of staff**

The Commission may appoint such other staff as it may deem necessary for the efficient performance of the functions of the Commission under or pursuant to this Act.

## **10. Right to appear in court**

Notwithstanding the provisions of any enactment to the contrary, a person appointed to the office of Registrar-General under section 8 of this Act or a person appointed under section 9 of this Act who is a legal practitioner

shall, while so appointed, be entitled to represent the Commission as a legal practitioner for the purpose and in the course of his employment.

#### **11. Service in the Commission to be pensionable**

Service in the Commission shall be approved service for the purpose of the Pensions Act and accordingly, officers and other persons employed in the Commission shall in respect of their service in the Commission be entitled to pensions, gratuities and other retirement benefits enjoyed by persons holding equivalent grades in the public service of the Federation, so however that nothing in this Act shall prevent the appointment of a person to any office on terms which preclude the grant of a pension and gratuity in respect of that office.

[Cap. P4.]

#### **12. Fund of the Commission**

The Commission shall establish a fund which shall consist of such sums as may be allocated to it by the Federal Government and such other funds as may accrue to it in the discharge of its functions.

#### **13. Expenditure of the Commission**

The Commission may, from time to time, apply the proceeds of the fund established in pursuance of section 12 of this Act-

- (a) to the cost of administration of the Commission;
- (b) for re-imbursing members of the Commission or any Committee set up by the Commission for such expenses as may be authorised or approved by the Commission, in accordance with the rate approved in that behalf by the President;
- (c) to the payment of salaries, fees or other remuneration or allowances, pensions and gratuities payable to the employees of the Commission;
- (d) for the maintenance of any property acquired or vested in the Commission; and
- (e) for, and in connection with, all or any of the functions of the Commission under this Act.

#### **14. Annual accounts, audit and estimates**

- (1) The Commission shall keep proper accounts and proper records in relation thereto and shall prepare in respect of each year a statement of accounts in such form as the President may direct.
- (2) The accounts of the Commission shall be audited not later than six months after the end of the year by auditors appointed by the Commission from the list and in accordance with guidelines supplied by the Auditor-General for the Federation; and the fees of the auditors and the expenses of the audit generally shall be paid from the funds of the Commission.
- (3) The Commission shall cause to be prepared, not later than 30 September in each year, an estimate of the expenditure and income of the Commission during the next succeeding year and when prepared they shall be submitted through the Minister to the President.

#### **15. Annual report**

The Commission shall, not later than 30 June in each year, submit to the President a report on the activities of the Commission during the immediate preceding year, and shall include in such report the audited accounts of the Commission.

## **16. Regulations**

The Minister may, with the approval of the President, make regulations generally for the purpose of this Act and in particular, without prejudice to the generality of the foregoing provisions, make regulations-

- (a) prescribing the forms and returns and other information required under this Act;
- (b) prescribing the procedure for obtaining any information required under this Act;
- (c) requiring returns to be made within the period specified therein by any company or enterprise to which this Act applies; and
- (d) prescribing any fees payable under this Part, that is, Part A of this Act.

## **17. Meaning of certain words used in this Part**

In this Part of this Act-

"**chairman**" means the chairman of the Commission; and

"**member**" means any member of the Commission including the chairman.

## PART II

### *Incorporation of companies and incidental matters*

## CHAPTER 1

### *Formation of Company*

## **18. Right to form a company**

As from the commencement of this Act, any two or more persons may form and incorporate a company by complying with the requirements of this Act in respect of registration of such company.

## **19. Partnership, etc., of more than 20 members when permitted**

(1) No company, association, or partnership consisting of more than 20 persons shall be formed for the purpose of carrying on any business for profit or gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other enactment in force in Nigeria.

(2) Nothing in this section shall apply to-

- (a) any co-operative society registered under the provisions of any enactment in force in Nigeria; or
- (b) any partnership for the purpose of carrying on practice-

(i) as legal practitioners, by persons each of whom is a legal practitioner; or

(ii) as accountants by persons each of whom is entitled by law to practise as an accountant.

(3) If at any time the number of members of a company, association or partnership exceeds 20 in contravention of this section and it carries on business for more than 14 days while the contravention continues, every person who is a member of the company, association or partnership during the time that it so carries on business after those 14 days shall be liable to a fine of N25 for every day during which the default continues.

## **20. Capacity of individual to form company**

(1) Subject to subsection (2) of this section, an individual shall not join in the formation of a company under this Act if-

(a) he is less than 18 years of age; or

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

(c) he is an undischarged bankrupt; or

(d) he is disqualified under section 254 of this Act from being a director of a company.

(2) A person shall not be disqualified under paragraph (a) of subsection (1) of this section, if two other persons not disqualified under that subsection have subscribed to the memorandum.

(3) A corporate body in liquidation shall not join in the formation of a company under this Act.

(4) Subject to the provisions of any enactment regulating the rights and capacity of aliens to undertake or participate in trade or business, an alien or a foreign company may join in forming a company.

## **21. Types of companies**

(1) An incorporated company may be a company-

(a) having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed "a company limited by shares"); or

(b) having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed "a company limited by guarantee"); or

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

(2) A company of any of the foregoing types may either be a private company or a public company.

## **22. Private company**

(1) A private company is one which is stated in its memorandum to be a private company.

(2) Every private company shall by its articles restrict the transfer of its shares.

(3) The total number of members of a private company shall not exceed 50, not including persons who are bona fide in the employment of the company, or were while in that employment and have continued after the determination of that employment to be, members of the company.

(4) Where two or more persons hold one or more shares in a company jointly, they shall for the purpose of subsection (3) of this section be treated as a single member.

(5) A private company shall not, unless authorised by law, invite the public to-

(a) subscribe for any shares or debentures of the company; or

(b) deposit money for fixed periods or payable at call, whether or not bearing interest.

### **23. Consequences of default in complying with conditions constituting a private company**

(1) Subject to subsection (2) of this section, where default is made in complying with any of the provisions of section 22 of this Act in respect of a private company, the company shall cease to be entitled to the privileges and exemptions conferred on private companies by or under this Act and this Act shall apply to the company as if it were not a private company.

(2) If a court, on the application of the company or any other person interested, is satisfied that the failure to comply with the provisions of section 22 of this Act 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, the court may, on such terms and conditions as may seem to it to be just and expedient, order that the company be relieved from the consequences mentioned in subsection (1) of this section.

### **24. Public company**

Any company other than a private company shall be a public company and its memorandum shall state that it is a public company.

### **25. Unlimited company to have share capital**

As from the commencement of this Act, an unlimited company shall be registered with a share capital; and where an existing unlimited company is not registered with a share capital, it shall, not later than the appointed day, alter its memorandum so that it becomes an unlimited company having a share capital not below the minimum share capital permitted under section 99 of this Act.

### **26. Company limited by guarantee**

(1) Where a company is to be formed for promoting commerce, art, science, religion, sports, culture, education, research, charity or other similar objects, and the income and property of the company are to be applied solely towards the promotion of its objects and no portion thereof is to be paid or transferred directly or indirectly to the members of the company except as permitted by this Act, the company shall not be registered as a company limited by shares, but may be registered as a company limited by guarantee.

(2) As from the commencement of this Act, a company limited by guarantee shall not be registered with a share capital and every existing company limited by guarantee and having a share capital shall, not later than the appointed day, alter its memorandum so that it becomes a company limited by guarantee and not having a share capital.

(3) In the case of a company limited by guarantee, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member or purporting to divide the company's undertaking into shares or interests shall be void.

(4) A company limited by guarantee shall not be incorporated with the object of carrying on business for the purpose of making profits for distribution to members.

(5) The memorandum of a company limited by guarantee shall not be registered without the authority of the Attorney-General of the Federation.

[1990 No. 32.]

(6) If any company limited by guarantee carries on business for the purpose of distributing profits, all officers and members thereof who are cognisant of the fact that it is so carrying on business shall be jointly and severally liable for the payment and discharge of all the debts and liabilities of the company incurred in carrying on such business, and the company and every such officer and member shall be liable to a fine not exceeding N100 for every day during which it carries on such business.

(7) The total liability of the members of a company limited by guarantee to contribute to the assets of the company in the event of its being wound up shall not at any time be less than N10,000.

(8) Subject to compliance with subsection (6) of this section, the articles of association of a company limited by guarantee may provide that members can retire or be excluded from membership of the company.

(9) If, in breach of subsection (6) of this section, the total liability of the members of any company limited by guarantee shall at any time be less than ₦10,000, every director and member of the company who is cognisant of the breach shall be liable to a fine of ₦50 for every day during which the default continues.

(10) If, upon the winding up of a company limited by guarantee, there remains after the discharge of all its debts and liabilities any property of the company, the same shall not be distributed among the members but shall be transferred to some other company limited by guarantee having objects similar to the objects of the company or applied to some charitable object and such other company or charity shall be determined by the members prior to the dissolution of the company.

#### *Memorandum of association*

### **27. Requirements with respect to the memorandum of a company**

(1) The memorandum of every company shall state-

- (a) the name of the company;
- (b) that the registered office of the company shall be situated in Nigeria;
- (c) the nature of the business or businesses which the company is authorised to carry on, or, if the company is not formed for the purpose of carrying on business, the nature of the object or objects for which it is established;
- (d) the restriction, if any, on the powers of the company;

- (e) that the company is a private or public company, as the case may be;
- (f) that the liability of its members is limited by shares or by guarantee or is unlimited, as the case may be.

(2) If the company has a share capital-

- (a) the memorandum shall also state the amount of authorised share capital, not being less than ₦10,000 in the case of a private company and ₦500,000 in the case of a public company, with which the company proposed to be registered, and the division thereof into shares of a fixed amount;
- (b) the subscribers of the memorandum shall take among them a total number of shares of a value of not less than 25 per cent of the authorised share capital; and
- (c) each subscriber shall write opposite to his name the number of shares he takes.

(3) A subscriber of the memorandum who holds the whole or any part of the shares subscribed by him in trust for any other person shall disclose in the memorandum that fact and the name of the beneficiary.

(4) The memorandum of a company limited by guarantee shall also state that-

- (a) the income and property of the company shall be applied solely towards the promotion of its objects, and that no portion thereof shall be paid or transferred directly or indirectly to the members of the company except as permitted by or under this Act; and
- (b) each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year after he ceases to be a member for payment of debts and liabilities of the company, and of the costs of winding up, such amount as may be required not exceeding a specified amount and the total of which shall not be less than N10,000,

(5) The memorandum shall be signed by each subscriber in the presence of at least one witness who shall attest the signature.

(6) The memorandum shall be stamped as a deed.

## **28. Form of memorandum**

Subject to the provisions of section 27 of this Act, the form of a memorandum of association of-

- (a) a company limited by shares;
- (b) a company limited by guarantee; and
- (c) an unlimited company,

shall be as specified in Tables B, C and D respectively in the First Schedule to this Act, or as near that form as circumstances admit.

[First Schedule. Tables B, C and D.]

*Name of company*



### **29. Name as stated in the memorandum**

- (1) The name of a private company limited by shares shall end with the word "Limited".
- (2) The name of a public company limited by shares shall end with the words "Public Limited Company".
- (3) The name of a company limited by guarantee shall end with the words "(Limited by Guarantee)" in brackets.
- (4) The name of an unlimited company shall end with the word "Unlimited".
- (5) A company may use the abbreviations "Ltd", "PLC" "(Ltd/Gte)" and "Ltd" for the words "Limited", "Public Limited Company", "(Limited by Guarantee)" and "Unlimited" respectively in the name of the company.

### **30. Prohibited and restricted names**

- (1) No company shall be registered under this Act by a name which-
  - (a) is identical with that by which a company in existence is already registered, or so nearly resembles that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the Commission requires; or
  - (b) contains the words "Chamber of Commerce" unless it is a company limited by guarantee; or
  - (c) in the opinion of the Commission is capable of misleading as to the nature or extent of its activities or is undesirable, offensive or otherwise contrary to public policy; or
  - (d) in the opinion of the Commission would violate any existing trade mark or business name registered in Nigeria unless the consent of the owner of the trade mark or business name has been obtained.
- (2) Except with the consent of the Commission, no company shall be registered by a name which-
  - (a) includes the word "Federal", "National", "Regional", "State", "Government", or any other word which in the opinion of the Commission suggests or is calculated to suggest that it enjoys the patronage of the Government of the Federation or the Government of a State in Nigeria, as the case may be, or any Ministry or Department of Government; or
  - (b) contains the word "Municipal" or "Chartered" or in the opinion of the Commission suggests, or is calculated to suggest, connection with any municipality or other local authority; or
  - (c) contains the word "Co-operative" or the words "Building Society"; or
  - (d) contains the word "Group" or "Holding".

### **31. Change of name of company**

- (1) If a company, through inadvertence or otherwise, on its first registration or on its registration by a new name, is registered under a name identical with that by which a company in existence is previously registered, or so nearly resembling it as to be likely to deceive, the first-mentioned company may, with the approval of the Commission, change its name; and if the Commission so directs, within six months of its being registered under that name, the company concerned shall change its name within a period of six weeks from the date of the direction or such longer period as the Commission may allow.

(2) If a company makes default in complying with a direction under subsection (1) of this section, it shall be liable to a fine of ₦25 for every day during which the default continues.

(3) Any company may, by special resolution and with the approval of the Commission signified in writing, change its name:

Provided that no such approval shall be required where the only change in the name of a company is the substitution of the words "Public Limited Company" for the word "Limited" or vice versa on the conversion of a private company into a public company or a public company into a private company in accordance with the provisions of this Act.

(4) Nothing in this Act shall preclude the Commission from requiring a company to change its name if it is discovered that such a name conflicts with an existing trade mark or business name registered in Nigeria prior to the registration of the company and the consent of the owner of the trade mark or business name was not obtained.

(5) Where a company changes its name, the Commission shall enter the new name on the register in place of the former name, and issue a certificate of incorporation altered to meet the circumstances of the case.

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

(7) Any alteration made in the name under this section shall be published by the Commission in the Gazette.

(8) A certificate or publication in the Gazette under this section shall be evidence of the alteration to which it relates.

### **32. Reservation of name**

(1) The Commission may on written application and on payment of the prescribed fee reserve a name pending registration of a company or a change of name by a company.

(2) Such reservation as is mentioned in subsection (1) of this section shall be for such period as the Commission shall think fit not exceeding 60 days, and during the period of reservation no other company shall be registered under the reserved name or under any other name which in the opinion of the Commission bears too close a resemblance to the reserved name.

### *Articles of association*

### **33. Articles for regulating companies**

There shall be registered, with the memorandum of association, articles of association signed by the subscribers to the memorandum of association, and prescribing regulations for the company.

### **34. Form and contents of articles**

(1) The form and contents of the articles of association of a public company having a share capital, a private company having a share capital, a company limited by guarantee and an unlimited company shall be as in Parts I, II,

III and IV respectively, of Table A in the First Schedule to this Act with such additions, omissions or alterations as may be required in the circumstances.

[First Schedule. Parts I, II, III and IV. Table A.]

(2) In the case of a company limited by guarantee, the articles of association shall state the number of members with which the company proposes to be registered for the purpose of enabling the Commission to determine the fees payable on registration.

(3) The articles of association shall-

(a) be printed;

(b) be divided into paragraphs numbered consecutively; and

(c) be signed by each subscriber of the memorandum of association in the presence of at least one witness who shall attest the signature.

(4) The articles shall bear the same stamp duty as if they were contained in a deed.

#### *Registration of companies*

### **35. Documents of incorporation**

(1) As from the commencement of this Act, a company shall be formed in the manner set out in this section.

(2) There shall be delivered to the Commission-

(a) the memorandum of association and articles of association complying with the provisions of this Part of this Act;

(b) the notice of the address of the registered office of the company and the head office if different from the registered office:

Provided that a postal box address or a private bag address shall not be accepted by the Commission as the registered office;

(c) a statement in the prescribed form containing the list and particulars together with the consent of the persons who are to be the first directors of the company;

(d) a statement of the authorised share capital signed by at least one director; and

(e) any other document required by the Commission to satisfy the requirements of any law relating to the formation of a company.

(3) A statutory declaration in the prescribed form by a legal practitioner that those requirements of this Act for the registration of a company have been complied with shall be produced to the Commission, and it may accept such a declaration as sufficient evidence of compliance:

Provided that where the Commission refuses a declaration, it shall within 30 days of the date of receipt of the declaration send to the declarant a notice of its refusal giving the grounds of such refusal.

### **36. Registration**

(1) The Commission shall register the memorandum and articles unless in its opinion-

(a) they do not comply with the provisions of this Act; or

(b) the business which the company is to carry on, or the objects for which it is formed, or any of them, are illegal; or

(c) any of the subscribers to the memorandum is incompetent or disqualified in accordance with section 20 of this Act; or

(d) there is non-compliance with the requirement of any other law as to registration and incorporation of a company; or

(e) the proposed name conflicts with or is likely to conflict with an existing trade mark or business name registered in Nigeria.

(2) Any person aggrieved by the decision of the Commission under subsection (1) of this section, may give notice to the Commission requiring it to apply to the court for directions and the Commission shall within 21 days of the receipt of such notice apply to the court for the directions.

(3) The Commission may, in order to satisfy itself as provided in subsection (1) (c) of this section, by instrument in writing require a person subscribing to the memorandum to make and lodge with the Commission, a statutory declaration to the effect that he is not disqualified under section 20 of this Act from joining in forming a company.

(4) Steps to be taken under this Act to incorporate a company shall not include any invitation to subscribe for shares or otherwise howsoever on the basis of a prospectus.

(5) Upon registration of the memorandum and articles, the Commission shall certify under its seal-

(a) that the company is incorporated;

(b) in the case of a limited company, that the liability of the members is limited by shares or by guarantee; or

(c) in the case of an unlimited company, that the liability of the members is unlimited; and

(d) that the company is a private or public company, as the case may be.

(6) The certificate of incorporation shall be prima facie evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental to it have been complied with and that the Association is a company authorised to be registered and duly registered under this Act.

### **37. Effect of registration**

As from the date of incorporation mentioned in the certificate of incorporation, the subscriber of the memorandum together with such other persons as may, from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the powers and functions of an incorporated company including the power to hold land, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

## *Capacity and powers of companies*

### **38. Powers of companies**

(1) Except to the extent that the company's memorandum or any enactment otherwise provides, every company shall, for the furtherance of its authorised business or objects, have all the powers of a natural person of full capacity.

(2) A company shall not have or exercise power either directly or indirectly to make a donation or gift of any of its property or funds to a political party or political association, or for any political purpose; and if any company, in breach of this subsection makes any donation or gift of its property to a political party or political association, or for any political purpose, the officers in default and any member who voted for the breach shall be jointly and severally liable to refund to the company the sum or value of the donation or gift and in addition, the company and every such officer or member shall be guilty of an offence and liable to a fine equal to the amount or value of the donation or gift.

### **39. Effect of *ultra vires* acts**

(1) A company shall not carry on any business not authorised by its memorandum and shall not exceed the powers conferred upon it by its memorandum or this Act.

(2) A breach of subsection (1) of this section, may be asserted in any proceedings under sections 300 to 313 of this Act or under subsection (4) of this section.

(3) Notwithstanding the provisions of subsection (1) of this section, no act of a company and no conveyance or transfer of property to or by a company shall be invalid by reason of the fact that such act, conveyance or transfer was not done or made for the furtherance of any of the authorised business of the company or that the company was otherwise exceeding its objects or powers.

(4) On the application of-

(a) any member of the company; or

(b) the holder of any debenture secured by a floating charge over all or any of the company's property or by the trustee of the holders of any such debentures,

the court may prohibit, by injunction, the doing of any act or the conveyance or transfer of any property in breach of subsection (1) of this section.

(5) If the transactions sought to be prohibited in any proceeding under subsection (4) of this section are being, or are to be performed or made pursuant to any contract to which the company is a party, the court may, if it deems the same to be equitable and if all the parties to the contract are parties to the proceedings, set aside and prohibit the performance of such contract, and may allow to the company or to the other parties to the contract compensation for any loss or damage sustained by them by reason of the setting aside or prohibition of the performance of such contract but no compensation shall be allowed for loss of anticipated profits to be derived from the performance of such contract.

### **40. Effect of reliance on restrictions in the memorandum**

(1) Where there is provision in the memorandum of association of a company restricting the powers and capacity of the company to carry on its authorised business or object, the restriction may be relied on and have effect only for the purpose of-

(a) proceedings against the company by a director or member of the company, or where the company has issued debentures secured by a floating charge over all or any of the company's property, by the holder of any of the debentures or the trustee for the holders of the debentures; or

(b) proceedings by the company or a member of the company against the present or former officers of the company for failure to observe any such restriction; or

(c) proceedings by the Commission or a member of the company to wind up the company; or

(d) proceedings for the purpose of restraining the company or other person from acting in breach of the memorandum or directing the company or such person to comply with the same.

(2) A person may not in proceedings referred to in subsection (1) (a), (b) or (c), of this section, rely on a restriction of the power or capacity of the company contained in the memorandum in any case where he voted in favour of, or otherwise expressly or by conduct agreed to the doing of an act by the company or the conveyance by or to the company of property which, it is alleged in the proceedings, was or would be contrary to such a restriction.

#### *Effect of memorandum and articles*

#### **41. Effect of memorandum and articles**

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

(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 and shall be of the nature of a speciality debt.

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

(4) In any action by any member or officer to enforce any obligation owed under the memorandum or articles to him and any other member or officer, such member or officer may, if any other member or officer is affected by the alleged breach of such obligation, with his consent, sue in a representative capacity on behalf of himself and all other members or officers who may be affected other than any who are defendants and the provisions of Part XI of this Act shall apply.

#### *Member's right to copy of memorandum and articles*

#### **42. Member's right to copies of memorandum, etc.**

(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 enactment which alters the memorandum, subject to payment, in the case of a copy of the memorandum and of the articles, of ~~N20~~ or such less sum as the company may prescribe and in the

case of a copy of an enactment of such sum not exceeding the published price thereof as the company may require.

(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 fine not exceeding ₦25.

#### **43. Copies of memorandum issued 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 copies of the memorandum which are not in accordance with the alteration, it shall be liable to a fine not exceeding N25 for each copy so issued, and every officer of the company who is in default shall be liable to the like penalty.

#### *Alteration of memorandum and articles*

#### **44. Restriction on alteration of memorandum**

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

(2) Only those provisions which are required by section 27 of this Act or by any other specific provision contained in this Act, to be stated in the memorandum of the company concerned, shall be deemed to be conditions contained in its memorandum.

#### **45. Alteration of memorandum**

(1) The name of the company shall not be altered except with the consent of the Commission in accordance with section 31 of this Act.

(2) The business which the company is authorised to carry on or, if the company is not formed for the purpose of carrying on business, the objects for which it is established, may be altered or added to in accordance with the provisions of section 46 or of Part XV of this Act.

(3) Any restriction on the powers of the company may be altered in the same way as the business or object of the company.

(4) The share capital of the company may be altered in accordance with the provisions of sections 100 to 111 of this Act, but not otherwise.

(5) Subject to section 49 of this Act, any other provision of the memorandum may be altered in accordance with section 46 of this Act, or as otherwise provided in this Act.

#### **46. Mode of alteration of business or objects**

(1) A company may, at a meeting of which notice in writing has been duly given to all members (whether or not otherwise entitled thereto), by special resolution alter the provisions of its memorandum with respect to the business or objects of the company:

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

(2) An application under this section may be made to the court-

(a) 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 thereof or, if the company is not limited by shares, not less than 15 per cent of the company's members; or

(b) by the holders of not less than 15 per cent of the company's debentures entitling the holders to object to alterations of its objects:

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

(3) An application under this section shall be made not later than 28 days after the date on which the resolution altering the company's business or 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) On an application under this section, the court may make an order confirming the alteration either wholly or in part and on such terms and conditions as it thinks fit, and may adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interest of dissenting members, and the court may give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement:

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

(5) The debentures entitling the holders to object to alterations of a company's business or objects shall be any debentures secured by a floating charge.

(6) The special resolution altering a company's business or objects shall require the same notice to the holders of any such debentures as to members of the company; and in default of any provisions regulating the giving of notice to any such debenture holders, the provisions of the company's articles regulating the giving of notice to members shall apply.

(7) Where a company passes a resolution altering its business or objects and-

(a) application is thereafter made to the court for its confirmation under this section, the company shall forthwith give notice to the Commission of the making of the application, and thereafter there shall be delivered to the Commission within 15 days from the date of its making-

(i) a certified true copy of the order in the case of refusal to confirm the resolution; and

(ii) a certified true copy of the order in the case of confirmation of the resolution together with a printed copy of the memorandum as thereby altered;

(b) no application is made with respect thereto to a court under this section, the company shall within 15 days from the end of the period for making such an application deliver to the Commission a copy of the resolution as passed.



(8) If the Commission-

(a) is satisfied, a printed copy of the memorandum as altered by the resolution shall forthwith thereafter be delivered to it;

(b) is not satisfied, it shall give notice in writing to the company of its decision and an appeal from its decision shall thereafter lie to the court at the suit of any person aggrieved, if made within 21 days from the date of the receipt by the company of the notice of the rejection, or within such extended time as the court may allow.

(9) The court may at any time extend the time for the delivery of documents to the Commission under paragraph (a) of subsection (7) of this section for such period as the court may think proper.

(10) If a company makes default in giving notice or delivering any document to the Commission as required by subsection (6) of this section, the company and every officer of the company who is in default shall be liable to a fine of ₦50.

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

(12) In this section "**member**" includes any person financially interested in the company.

#### **47. Power to alter provisions in the memorandum in certain cases**

(1) Subject to the provisions of section 44 of this Act and of this section and of any part of Part A of this Act (which preserves the rights of minorities in certain cases) any provision in a company's memorandum, which might lawfully have been in articles of association instead of in the memorandum, may be altered by the company by special resolution; but if an application is made to the court for the alteration to be cancelled, the alteration 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 provisions, and shall not authorise any variation or abrogation of the special rights of any class of members.

(3) Subsections (2), (3), (4), (7), (8) and (9) of section 46 of this Act (which relate to mode of alteration of business or objects) except paragraph (b) of subsection (2) thereof, shall apply in relation to any alteration and to any application made under this section as they apply in relation to alterations and to applications made under that section.

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

#### **48. Alteration of articles**

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

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

#### **49. Limitation of liability to contribute to share capital if memorandum, etc., altered**

Save to the extent to which a member of a company agrees in writing at any time to be bound thereby, and anything to the contrary in the memorandum or articles notwithstanding, the member shall not be bound by any alteration made in the memorandum or articles of the company requiring him on or after the date of the alteration to-

- (a) take or subscribe for more shares than he held at the date on which he became a member; or
- (b) increase his liability to contribute to the share capital of the company; or
- (c) pay money by any other means to the company.

## CHAPTER 2

### *Conversion and re-registration of companies*

#### **50. Re-registration of private company as public**

(1) Subject to this section, a private company having a share capital may be re-registered as a public company if-

- (a) a special resolution that it should be so re-registered is passed; and
- (b) an application for re-registration is delivered to the Commission together with the documents prescribed in subsection (3) of this section.

(2) The special resolution shall-

- (a) alter the company's memorandum so that it states that the company is to be a public company; and
- (b) make such other alterations in the memorandum as are necessary to bring it in-to conformity with the requirements of this Act with respect to the memorandum of a public company in accordance with section 27 of this Act; and
- (c) make such alterations in the company's articles as are requisite in the circumstances.

(3) The application shall be made to the Commission in the prescribed form and be signed by at least one director and the secretary of the company; and the documents to be delivered with it are the following-

- (a) a printed copy of the memorandum and articles as altered in pursuance of the resolution; and
- (b) a copy of a written statement by the directors and the secretary certified on oath by them, and showing that the paid up capital of the company as at the date of the application is not less than 25 per cent of the authorised share capital as at that date; and
- (c) a copy of the balance sheet of the company as at the date of the resolution or the preceding 6 months, whichever is later; and
- (d) a statutory declaration in the prescribed form by a director and the secretary of the company-

(i) that the special resolution required under this section has been passed; and

(ii) that the company's net assets are not less than the aggregate of the paid up share capital and undistributable reserves; and

(e) a copy of any prospectus or statement in lieu of prospectus delivered within the preceding 12 months to the Securities and Exchange Commission established under the Investments and Securities Act.

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(4) If the Commission is satisfied that a company has complied with the provisions of this section and may be re-registered as a public company, it shall-

(a) retain the application and other documents delivered to it under this section;

(b) register the application and other documents; and

(c) issue to the company a certificate of incorporation, stating that the company is a public company.

(5) Upon the issue to a company of the certificate of incorporation under this section-

(a) the company shall by virtue of the issue of that certificate become a public company; and

(b) any alterations in the memorandum and articles set out in the resolution shall take effect accordingly.

(6) The certificate shall be *prima facie* evidence that-

(a) the requirements of this Act in respect of re-registration and of matters precedent and incidental thereto have been complied with; and

(b) the company is a public company.

(7) A company shall not be re-registered under this section if it has previously been re-registered as an unlimited company.

#### **51. Re-registration of company limited by shares as unlimited**

(1) Subject as follows, a company which is registered as limited by shares may be re-registered as unlimited in pursuance of an application in that behalf complying with the requirements of this section.

(2) A company shall be precluded from re-registering under this section if it is limited by virtue of re-registration under section 52 of this Act.

(3) A public company or a company which has previously been re-registered as an unlimited company shall not be registered under this section.

(4) An application under this section shall be in the prescribed form and signed by a director and the secretary of the company, and be lodged with the Commission together with the documents specified in subsection (6) of this section.

(5) The application shall set out such alterations in the company's memorandum and articles as are requisite to bring it into conformity with the requirements of this Act with respect to the memorandum and articles of a company to be formed as an unlimited company.

(6) The documents to be lodged with the Commission are as follows-

(a) the prescribed form of assent to the company being registered as unlimited, subscribed by or on behalf of all the members of the company;

(b) a statutory declaration made by the directors of the company-

(i) that the persons by whom or on whose behalf the form of assent is subscribed constitute the whole membership of the company; and

(ii) if any of the members have not subscribed that form themselves, that the directors have taken all reasonable steps to satisfy themselves that each person who subscribed to it on behalf of a member was lawfully empowered to do so; and

(c) a printed copy of the memorandum and the articles incorporating the alterations set out in the application.

(7) If the Commission is satisfied that the company be registered under this section as an unlimited company, it shall retain the application and other documents lodged with it under this section and-

(a) register the application and other documents; and

(b) issue to the company a certificate of incorporation appropriate to the status to be assumed by virtue of this section.

(8) On the issue of the certificate-

(a) the status of the company, by virtue of the issue, shall be changed from limited to unlimited; and

(b) the alterations in the memorandum set out in the application and any alteration in the articles so set out shall take effect as if duly made by resolution of the company; and

(c) the provisions of this Act shall apply accordingly to the memorandum and articles as altered.

(9) The certificate shall be prima facie evidence that the requirements of this section in respect of the re-registration and of matters precedent and incidental to it have been complied with, and that the company was authorised to be re-registered under this Act in pursuance of this section and was duly so re-registered.

## **52. Re-registration of unlimited as limited by shares**

(1) Subject as follows, a company which is registered as unlimited may be re-registered as limited by shares if a special resolution that it should be so registered is passed, and the requirements of this section are complied with in respect of the resolution and otherwise.

(2) A company shall not under this section be re-registered as a public company or company limited by guarantee; and a company shall be precluded from registering under it if it is unlimited by virtue of re-registration under section 51 of this Act.

(3) The special resolution shall state the proposed authorised share capital and provide for the making of such alterations in the memorandum as are necessary to bring it into conformity with the requirements of this Act with respect to the memorandum of a company so limited, and such alterations in the articles as are requisite in the circumstances.

(4) An application in the prescribed form for the company to be re-registered as limited signed by a director and the secretary of the company shall be lodged with the Commission together with the necessary documents not earlier than the day on which the resolution was filed under section 237 of this Act.

(5) The documents to be lodged with the Commission shall be a printed copy of the-

(a) memorandum as altered in pursuance of the resolution; and

(b) articles as so altered.

(6) If the Commission is satisfied that the company be re-registered under this section as a company limited by shares, it shall retain the application and other documents lodged with it under this section and register them, and it shall issue to the company a certificate of incorporation appropriate to the status to be assumed by the company by virtue of this section.

(7) On the issue of the certificate-

(a) the status of the company shall, by virtue of the issue, change from unlimited to limited; and

(b) the alterations in the memorandum specified in the resolution and the alterations in, and additions to, the articles so specified shall take effect accordingly.

(8) The certificate shall be prima facie evidence that the requirements of this section in respect of re-registration and of matters precedent and incidental to it have been complied with, and that the company was authorised to be re-registered in pursuance of this section and was duly so re-registered.

(9) The re-registration of an unlimited company as a limited company shall not affect the rights and liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of the company before the re-registration, and those rights or liabilities may be enforced in the manner provided by Part III of this Act as in the case of a company registered pursuant to Part II of this Act.

### **53. Re-registration of public company as private**

(1) A public company may be re-registered as a private company if-

(a) a special resolution complying with subsection (2) of this section that it should be so re-registered is passed and has not been cancelled by the court under this section;

(b) an application for the purpose in the prescribed form and signed by a director and the secretary of the company is delivered to the Commission together with a printed copy of the memorandum and articles of the company as altered by the resolution; and

(c) either-

(i) the period during which an application for the cancellation of the resolution under this section may be made has expired without any such application having been made; or

(ii) where such an application has been made, the application has been withdrawn or an order has been made confirming the resolution and a copy of that order has been delivered to the Commission.

(2) The special resolution shall alter the company's memorandum so that it states that the company is a private company and shall make such other alterations in the company's memorandum and articles as are requisite in the circumstances.

(3) Where the special resolution is passed, an application may be made to the court for the cancellation of the resolution, and such application may be made by-

(a) the holders of not less in the aggregate than five per cent in nominal value of the company's issued share capital, or any class thereof; or

(b) not less than five per cent of the company's members; but not by a person who has consented to or voted in favour of the resolution.

(4) The application shall be made within 28 days after the passing of the resolution and the applicant shall forthwith give notice of the application in the prescribed form to the Commission and to the company.

(5) On the hearing of the application, the court shall make an order either cancelling or confirming the resolution and may make all such orders or give such directions as it may think expedient under the circumstances.

(6) The company shall, within 15 days from the making of the court's order, or with-in such other period as the court may by order direct, deliver to the Commission a certified true copy of the order.

(7) If a company fails to deliver to the Commission a certified true copy of the order as required in subsection (6) of this section, the company and any officer of it who is in default, shall be guilty of an offence and liable to a fine of N100 and for continued contravention, to a daily default fine of N25.

(8) If the Commission is satisfied that a company may be re-registered under this section, it shall-

(a) retain the application and other documents delivered to it under this section;

(b) register the application and other documents; and

(c) issue the company with a certificate of incorporation as a private company.

(9) On the issue of the certificate-

(a) the company shall become a private company; and

(b) the alteration in the memorandum and articles set out in the resolution shall take effect accordingly.

(10) The certificate shall be prima facie evidence that-

(a) the requirements of this section in respect of re-registration and of matters precedent and incidental to it have been complied with; and

(b) the company is a private company.

## CHAPTER 3

### *Foreign companies*

#### **54. Foreign companies intending to carry on business in Nigeria**

(1) Subject to sections 56 to 59 of this Act, every foreign company which before or after the commencement of this Act was incorporated outside Nigeria, and having the intention of carrying on business in Nigeria, shall take all steps necessary to obtain incorporation as a separate entity in Nigeria for that purpose, but until so incorporated, the foreign company shall not carry on business in Nigeria or exercise any of the powers of a registered company and shall not have a place of business or an address for service of documents or processes in Nigeria for any purpose other than the receipt of notices and other documents, as matters preliminary to incorporation under this Act.

(2) Any act of the company in contravention of subsection (1) of this section shall be void.

(3) Nothing in this section shall affect the status of-

(a) any foreign company which before the commencement of this Act was granted exemption from compliance with Part X of the Companies Act 1968;

(b) any foreign companies exempted under any treaty to which Nigeria is a party.

#### **55. Penalties**

If any foreign company fails to comply with the requirements of section 54 of this Act in so far as they may apply to the company, the company shall be guilty of an offence and liable on conviction to a fine of not less than ₦2,500; and every officer or agent of the company who knowingly and wilfully authorises or permits the default or failure to comply shall, whether or not the company is also convicted of any offence, be liable on conviction to a fine of not less than ₦250 and where the offence is a continuing one to a further fine of ₦25 for every day during which the default continues.

#### **56. Power to exempt foreign companies**

(1) A foreign company may apply to the President for exemption from the provisions of section 54 of this Act if that foreign company belongs to one of the following categories, that is-

(a) foreign companies (other than those specified in paragraph (d) of this subsection) invited to Nigeria by or with the approval of the Federal Government to execute any specified individual project;

(b) foreign companies which are in Nigeria for the execution of specific individual loan projects on behalf of a donor country or international organisation;

(c) foreign government-owned companies engaged solely in export promotion activities; and

(d) engineering consultants and technical experts engaged on any individual specialist project under contract with any of the governments in the Federation or any of their agencies or with any other body or person, where such contract has been approved by the Federal Government.

(2) An application for exemption under this section shall be in writing addressed to the Secretary to the Government of the Federation and shall set out-

- (a) the name and place of business of the foreign company outside Nigeria;
- (b) the name and place of business or the proposed name and place of business of the foreign company in Nigeria;
- (c) the name and address of each director, partner or other principal officer of the foreign company;
- (d) a certified copy of the charter, statutes, or memorandum and articles of association 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;
- (e) the names and addresses of some one or more persons resident in Nigeria authorised to accept on behalf of the foreign company services of process and any notices required to be served on the company;
- (f) the business or proposed business in Nigeria of the foreign company and the duration of such business;
- (g) particulars of any project previously carried out by the company as an exempted foreign company; and
- (h) such other particulars as may be required by the Secretary to the Federal Government.

(3) Where the President upon the receipt of an application for exemption is of the opinion that the circumstances are such as to render it expedient that such an exemption should be granted, the President may, subject to such conditions as it may prescribe, exempt the foreign company from the obligations imposed by or under this Act.

(4) Every exemption granted in pursuance of this section shall specify the period or, as the case may be, the project or series of projects, for which it is granted and shall lapse at the end of such period or upon the completion of such project or series of projects.

(5) The President may at any time revoke any exemption granted to any company if it is of the opinion that the company has contravened any provision of this Act or has failed to fulfill any condition contained in the exemption order or for any other good or sufficient reason.

(6) The President shall cause to be published in the Gazette the name of any company-

- (a) to which an exemption has been granted and the period or, as the case may be, the project or series of projects for which the exemption is granted;
- (b) whose exemption has been revoked and the effective date of such revocation.

### **57. Annual report**

Every exempted foreign company shall deliver to the Commission, every calendar year, a report in the form prescribed by the Commission.

### **58. Exempted foreign company to have status of unregistered company**

Subject to this Act and save as may be stated in the instrument of exemption, a foreign company exempted pursuant to this Act shall have the status of an unregistered company and accordingly, the provisions of this Act



applicable to an unregistered company shall apply in relation to such an exempted company as they apply in relation to an unregistered company under this Act.

#### **59. Penalties for false information**

(1) Any person who for the purpose of obtaining an exemption or of complying with any of the provisions of section 56 of this Act, makes any statement or presents any instrument which is false in a material particular shall be guilty of an offence unless he proves that he has taken all reasonable steps to ascertain the truth of the statement made or contained in the instrument so presented.

(2) Any person who is guilty of an offence under this section shall be liable on conviction to a fine of ₦5,000 or imprisonment for a term of three years.

#### **60. Application of certain sections to foreign companies**

For the avoidance of doubt, it is hereby declared that-

(a) save as provided in sections 55, 56, 57 and 58 of this Act, nothing in this Act shall be construed as authorising the disregard by any exempted foreign company of any enactment or rule of law; and

(b) nothing in this Chapter shall be construed as affecting the rights or liability of a foreign company to sue or be sued in its name or in the name of its agent.

### **CHAPTER 4**

#### *Promoters*

#### **61. Persons promoting a company**

Any person who undertakes to take part in forming a company with reference to a given project and to set it going and who takes the necessary steps to accomplish that purpose, or who, with regard to a proposed or newly formed company, undertakes a part in raising capital for it, shall prima facie be deemed a promoter of the company:

Provided that a person acting in a professional capacity for persons engaged in pro-curing the formation of the company shall not thereby be deemed to be a promoter.

#### **62. Duties and liabilities of a promoter**

(1) A promoter stands in a fiduciary relationship to the company and shall observe the utmost good faith towards the company in any transaction with it or on its behalf and shall compensate the company for any loss suffered by reason of his failure so to do.

(2) A promoter who acquired any property or information in circumstances in which it was his duty as a fiduciary to acquire it on behalf of the company shall account to the company for such property and for any profit which he may have made from the use of such property or information.

(3) Any transaction between a promoter and the company may be rescinded by the company unless, after full disclosure of all material facts known to the promoter, such transaction shall have been entered into or ratified on behalf of the company-

- (a) by the company's board of directors independent of the promoter; or
  - (b) by all the members of the company; or
  - (c) by the company at a general meeting at which neither the promoter nor the holders of any shares in which he is beneficially interested shall vote on the resolution to enter into or ratify that transaction.
- (4) No period of limitation shall apply to any proceedings brought by the company to enforce any of its rights under this section but in any such proceedings the court may relieve a promoter in whole or in part and on such terms as it thinks fit from liability here-under if in all the circumstances, including lapse of time, the court thinks it equitable to do so.

### PART III

*Acts by or on behalf of the company*

*Exercise of company's powers*

#### **63. Division of powers between general meeting and board of directors**

- (1) A company shall act through its members in general meeting or its board of directors or through officers or agents, appointed by, or under authority derived from, the members in general meeting or the board of directors.
- (2) Subject to the provisions of this Act, the respective powers of the members in general meeting and the board of directors shall be determined by the company's articles.
- (3) Except as otherwise provided in the company's articles, the business of the company shall be managed by the board of directors who may exercise all such powers of the company as are not by this Act or the articles required to be exercised by the members in general meeting.
- (4) Unless the articles shall otherwise provide, the board of directors, when acting within the powers conferred upon them by this Act or the articles, shall not be bound to obey the directions or instructions of the members in general meeting:  
  
Provided that the directors acted in good faith and with due diligence.
- (5) Notwithstanding the provisions of subsection (3) of this section, the members in general meeting may-
  - (a) act in any matter if the members of the board of directors are disqualified or are unable to act because of a deadlock on the board or otherwise;
  - (b) institute legal proceedings in the name and on behalf of the company, if the board of directors refuse or neglect to do so;
  - (c) ratify or confirm any action taken by the board of directors; or
  - (d) make recommendations to the board of directors regarding action to be taken by the board.
- (6) No alteration of the articles shall invalidate any prior act of the board of directors which would have been valid if that alteration had not been made.

#### **64. Delegation to committees and managing directors**

Unless otherwise provided in this Act or in the articles, the board of directors may-

- (a) exercise their powers through committees consisting of such members of the body as they think fit; or
- (b) from time to time, appoint one or more of their body to the office of managing director and may delegate all or any of their powers to such managing director.

#### *Liability for acts of the company*

#### **65. Acts of general meeting, board of directors, or of managing directors**

Any act of the members in general meeting, the board of directors, or of a managing director while carrying on in the usual way the business of the company, shall be treated as the act of the company itself and the company shall be criminally and civilly liable therefore to the same extent as if it were a natural person:

Provided that-

- (a) the company shall not incur civil liability to any person if that person had actual knowledge at the time of the transaction in question that the general meeting, board of directors, or managing director, as the case may be, had no power to act in the matter or had acted in an irregular manner or if, having regard to his position with or relationship to the company, he ought to have known of the absence of such power or of the irregularity;
- (b) if in fact a business is being carried on by the company, the company shall not escape liability for acts undertaken in connection with that business merely because the business in question was not among the business authorised by the company's memorandum.

#### **66. Acts of officers or agents**

(1) Except as provided in section 65 of this Act, the acts of any officer or agent of a company shall not be deemed to be acts of the company, unless-

- (a) the company, acting through its members in general meeting, board of directors, or managing director, shall have expressly or impliedly authorised such officer or agent to act in the matter; or
- (b) the company, acting as mentioned in paragraph (a) of this subsection, shall have represented the officer or agent as having its authority to act in the matter, in which event the company shall be civilly liable to any person who has entered into the transaction in reliance on such representation unless such person had actual knowledge that the officer or agent had no authority or unless having regard to his position with or relationship to the company, he ought to have known of such absence of authority.

(2) The authority of an officer or agent of the company may be conferred prior to any action by him or by subsequent ratification, and knowledge of such action by the officer or agent and acquiescence therein by all the members of the company or by the directors for the time being, or by the managing director for the time being, shall be equivalent to ratification by the members in general meeting, board of directors, or managing director, as the case may be.

(3) Nothing in this section shall derogate from the vicarious liability of the company for the acts of its servants while acting within the scope of their employment.

## **67. When provision exempting, etc., officer from liability to the company is void**

(1) Any provision, whether contained in the articles of the company or in any contract with a company or otherwise, for exempting any officer of the company or any person (whether an officer of the company or not) employed by the company as auditor from, or indemnifying him against any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, or breach of trust of which he may be guilty in relation to the company, shall be void.

(2) Notwithstanding the provisions of subsection (1) of this section-

(a) a person shall not be deprived of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision as mentioned in that subsection was in force; and

(b) a company may, in pursuance of any such provision as mentioned in subsection (1) of this section, indemnify any such officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under section 641 of this Act in which relief is granted to him by the court.

### *Constructive notice of registered documents*

## **68. Abolition of constructive notice of registered documents**

Except as mentioned in section 197 of this Act, regarding particulars in the register of particulars of charges, a person shall not be deemed to have knowledge of the contents of the memorandum and articles of a company or of any other particulars, documents, or the contents of documents merely because such particulars or documents are registered by the Commission or referred to in any particulars or documents so registered, or are available for inspection at an office of the company.

## **69. Presumptions of regularity**

Any person having dealings with a company or with someone deriving title under the company, shall be entitled to make the following assumptions and the company and those deriving title under it shall be estopped from denying their truth that-

(a) the company's memorandum and articles have been duly complied with;

(b) every person described in the particulars filed with the Commission pursuant to sections 35 and 292 of this Act as a director, managing director or secretary of the company, or represented by the company, acting through its members in general meeting, board of directors, or managing director, as an officer or agent of the company, has been duly appointed and has authority to exercise the powers and perform the duties customarily exercised or performed by a director, managing director, or secretary of a company carrying on business of the type carried on by the company or customarily exercised or performed by an officer or agent of the type concerned;

(c) the secretary of the company, and every officer or agent of the company having authority to issue documents or certified copies of documents on behalf of the company, has authority to warrant the genuineness of the documents or the accuracy of the copies so issued;

(d) a document has been duly sealed by the company if it bears what purports to be the seal of the company attested by what purports to be the signatures of two persons who, in accordance with paragraph (b) of this section, can be assumed to be a director and the secretary of the company:

Provided that-

(i) a person shall not be entitled to make such assumptions as aforesaid, if he had actual knowledge to the contrary or if, having regard to his position with or relationship to the company, he ought to have known the contrary;

(ii) a person shall not be entitled to assume that anyone or more of the directors of the company have been appointed to act as a committee of the board of directors or that an officer or agent of the company has the company's authority merely because the company's articles provided that authority to act in the matter may be delegated to a committee or to an officer or agent.

#### **70. Liability of company not affected by fraud or forgery of officer**

Where, in accordance with sections 65 to 69 of this Act, a company would be liable to a third party for the acts of any officer or agent, the company shall, except where there is collusion between the officer or agent and the third party, be liable notwithstanding that the officer or agent has acted fraudulently or forged a document purporting to be sealed by or signed on behalf of the company.

#### *Company's contracts*

#### **71. Form of contract**

(1) Contracts on behalf of a company may be made, varied or discharged as follows-

(a) any contract which if made between individuals would be by law required to be in writing under seal, or which would be varied, or discharged only by writing under seal, may be made, varied or discharged, as the case may be, in writing under the common seal of the company;

(b) any contract which if made between individuals would be by law required to be in writing, signed by the parties to be charged therewith, or which could be varied or discharged only by writing or written evidence signed by the parties to be charged, may be made, varied or discharged, as the case may be, in writing signed in the name or on behalf of the company; and

(c) any contract which if made between individuals would be valid although made by parol only and not reduced into writing or which could be varied or discharged by parol, may be made varied or discharged, as the case may be, by parol on behalf of the company.

(2) A contract made according to this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto, their heirs, executors, or administrators, as the case may be; and may be varied or discharged in the same manner in which it is authorised by this section to be made.

#### **72. Pre-incorporation contracts**

(1) Any contract or other transaction purporting to be entered into by the company or by any person on behalf of the company prior to its formation may be ratified by the company after its formation and thereupon the company shall become bound by and entitled to the benefit thereof as if it has been in existence at the date of such contract or other transaction and had been a party thereto.

(2) Prior to ratification by the company, the person who purported to act in the name of or on behalf of the company shall, in the absence of express agreement to the contrary, be personally bound by the contract or other transaction and entitled to the benefit thereof.

### **73. Bills of exchange and promissory note.**

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

(2) The company and its successors shall be bound thereby if the company is, in accordance with sections 65 to 67 of this Act, liable for the acts of those who made, accepted or endorsed it in its name or on its behalf or account, and a signature by a director or the secretary on behalf of the company shall not be deemed to be a signature by procuration for the purposes of section 25 of the Bills of Exchange Act.

[Cap. B8.]

### **74. Common seal of the company**

A company shall have a common seal, the use of which shall be regulated by the articles.

### **75. Official seal for use abroad**

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

(2) A company having such an official seal may, by writing under its common seal, authorize any person appointed for the purpose in any territory, district, or place outside Nigeria, to affix the same to any deed or other document to which the company is party in that territory, district, or place.

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

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

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

### **76. Powers of attorney**

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

(2) A deed signed by a person empowered as provided in subsection (1) of this section shall bind the company and have the same effect as it would have if it were under the company's common seal.

*Authentication and service of documents*

**77. Authentication of documents**

A document or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorised officer of the company, and need not be under its common seal unless otherwise so required in this Part of this Act.

**78. Service of documents on companies**

A court process shall be served on a company in the manner provided by the Rules of Court and any other document may be served on a company by leaving it at, or sending it by post to, the registered office or head office of the company.

PART IV

*Membership of the company*

**79. Definition of member**

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

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

(3) In the case of a company having a share capital, each member shall be a shareholder of the company and shall hold at least one share.

**80. Capacity to be a member**

(1) As from the commencement of this Act, an individual shall not be capable of becoming a member of a company if-

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

(b) he is an undischarged bankrupt.

(2) A person under the age of 18 years shall not be counted for the purpose of determining the legal minimum number of members of a company.

(3) A corporate body in liquidation shall not be capable of becoming a member of a company.

(4) Where at the commencement of this Act, any person falling within the provisions of subsection (1) of this section is a member of a company by reason of being a shareholder of the company, his share shall vest in his committee or trustee, as the case may be.

(5) Where after the commencement of this Act, any shareholder purports to transfer any shares to a person falling within the provisions of subsection (1) of this section, the purported transfer shall not vest the title in the shares in that person, but the title shall remain in the purported transferor or his personal representative who shall hold the shares in trust for that person during the period of his incapacity.

### **81. Right of member to attend meetings and vote**

Every member shall notwithstanding any provision in the articles, have a right to attend any general meeting of the company and to speak and vote on any resolution before the meeting:

Provided that the articles may provide that a member shall not be entitled to attend and vote unless all calls or other sums payable by him in respect of shares in the company have been paid.

### **82. Personation of members**

If any person falsely and deceitfully personates any member of a company and thereby obtains or endeavours to obtain any benefit due to any such member, he shall be guilty of an offence and be liable on conviction to imprisonment for a term of not more than 7 years or a fine of not more than N2,500.

#### *Register of members*

### **83. Register of members**

(1) Every company shall keep a register of its members and enter in it the following particulars-

(a) the names and addresses of the members, and in the case of a company having a share capital, a statement of the shares and class of shares, if any, held by each member, distinguishing each share by its number so long as the share has a number, and of the amount paid or agreed to be considered as paid on the shares of each member;

(b) the date on which each person was registered as a member; and

(c) the date on which any person ceased to be a member:

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

(2) The entry required under paragraph (a) or (b) of subsection (1) of this section, shall be made within 28 days of the conclusion of the agreement with the company to become a member or, in the case of a subscriber of the memorandum, within 28 days of the registration of the company.

(3) The entry required under paragraph (c) of subsection (1) of this section, shall be made within 28 days of the date on which the person concerned ceased to be a member, or if he ceased to be a member otherwise than as a result of action by the company, within 28 days of production to the company of evidence satisfactory to the company of the occurrence of the event whereby he ceased to be a member.

(4) Where a company makes default in complying with the provisions of this section, the company and every officer of the company who is in default shall be liable to a fine of ~~N25~~ and a daily default fine of ~~N5~~.

(5) Liability incurred by a company from the making or deletion of an entry in its register of members, or from a failure to make or delete any such entry, shall not be enforceable after the expiration of 20 years from the date on which the entry was made or deleted or, in the case of any such failure, from the date on which the failure first occurred.

### **84. Location of register**



(1) The register of members shall be kept at the registered office of the company, except that if-

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

(b) the company arranges with some other person for the making up of the register to be undertaken on behalf of the company by that person, it may be kept at the office of that other person at which the work is done,

but the register shall not be kept in the case of a company registered in Nigeria at a place outside Nigeria.

(2) Every company shall send notice to the Commission of the place where the register is kept and of any change of that place.

(3) A company shall not be bound to send notice under this subsection where the register has, at all times since it came into existence or, in the case of a register in existence at the commencement of this Act, at all times since then, been kept at the registered office of the company.

(4) If a company makes default for 28 days in complying with subsection (2) of this section, the company and every one of its officers who is in default shall be liable to a fine of ₦10 and, for continued contravention, to a daily default fine of ₦5.

#### **85. Index of members to be kept**

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

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

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

(4) If default is made in complying with the provisions of this section, the company and every officer of the company who is in default shall be liable to a fine of ₦50.

#### **86. Entry of trusts prohibited**

No notice of any trust, express, implied or constructive, shall be entered on the register of members or be receivable by the Commission.

#### **87. Inspection of register and index**

(1) Except when the register of members is closed under the provisions of this Act, the register and the index of members' names shall be open during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so however, that not less than 2 hours in each day shall be allowed for inspection) to the inspection of any member of the company without charge, and with the permission of the company to any other person on payment of ₦1 or any less sum as the company may prescribe for each inspection.

(2) Any member or, with the permission of the company, any other person may require a copy of the register, or of any part thereof, on payment of 50 kobo, or such less sum as the company may prescribe, for every 100 words or

fractional part thereof required to be copied; and the company shall cause any copy so required by any person to be sent to that person within a period of 10 days commencing on the day next after the day on which the requirement is received by the company.

(3) In the case of a member, if any inspection required under this section is refused or if any copy required under this section is not sent within the prescribed period, the company and every officer of the company who is in default shall be liable in respect of each offence to a fine of ₦10.

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

#### **88. Consequences of failure by agents' default to keep register**

Where, by virtue of paragraph (b) of subsection (1) of section 84 of this Act, the register of members is kept at the office of some person other than the company, and by reason of any default of his, the company fails to comply with subsection (1) or (2) of section 84 of this Act, or with any requirements of this Act as to the production of the register, that other person shall be liable to the same penalties as if he were an officer of the company who was in default, and the power of the court under subsection (4) of section 87 of this Act shall extend to the making of orders against that other person and his officers and servants.

#### **89. Power to close register**

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

#### **90. Power of court to rectify register**

(1) If-

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

(b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,

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

(2) The court may refuse the application, or order rectification of the register and payment by the company of any damages sustained by the party aggrieved.

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

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

### **91. Register to be evidence**

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

### *Liability of members*

### **92. Liability of members**

(1) Prior to the winding up of a company, a member of the company with shares shall be liable to contribute the balance, if any, of the amount payable in respect of the shares held by him in accordance with the terms of the agreement under which the shares were issued or in accordance with a call validly made by the company pursuant to its articles.

(2) Where any contribution has become due and payable by reason of a call validly made by the company pursuant to the articles or where, under the terms of any agreement with the company, a member has undertaken personal liability to make future payments in respect of shares issued to him, the liability of the member shall continue notwithstanding that the shares held by him are subsequently transferred or forfeited under a provision to that effect in the articles, but his liability shall cease if and when the company shall have received payment in full of all such moneys in respect of the shares.

(3) Subject to subsections (1) and (2) of this section, no member or past member shall be liable to contribute to the assets of the company, except in the event of its being wound up.

(4) In the event of a company being wound up, every present or past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and for the costs, charges and expenses of the winding up and for the adjustment of the rights of the members and past members among themselves, but subject to the following qualifications-

(a) a past member shall not be liable to contribute if he has ceased to be a member for a period of 1 year or upwards before the commencement of the winding up;

(b) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this section;

(c) in the case of a company limited by shares, no contribution shall be required from any member or past member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;

(d) in the case of a company limited by guarantee, no contribution shall be required from any member or past member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up; and

(e) any sum due from the company to a member or past member, in his capacity as member, by way of dividends or otherwise shall not be set-off against the amount for which he is liable to contribute in accordance with this section but any such sum shall be taken into account for the purposes of final adjustment of the rights of the members and past members amongst themselves.

(5) For the purposes of this section, the expression "**past member**" includes the estate of a deceased member and where any person dies after becoming liable as a member or past member, such liability shall be enforceable against his estate.

(6) Except as contained in this section, a member or past member shall not be liable as a member or past member for any of the debts and liabilities of the company.

### **93. Liability for company debts where membership is below legal minimum**

If a company carries on business without having at least two members and does so for more than 6 months, every director or officer of the company during the time that it so carries on business with only one or no member shall be liable jointly and severally with the company for the debts of the company contracted during that period.

#### *Disclosure of beneficial interest in shares*

### **94. Power of company to require disclosure**

(1) Notwithstanding the provisions of section 95 of this Act, a public company may, by notice in writing, require any member of the company, within such reasonable time as is specified in the notice-

(a) to indicate in writing the capacity in which he holds any shares in the company; and

(b) if he holds them other than as beneficial owner, to indicate in writing the particulars of the identity of persons interested in the shares in question and whether persons interested in the same shares are parties to any agreement or arrangement relating to the exercise of any rights conferred by the holding of the shares.

(2) Where a company is formed in pursuance of a notice given to any person under subsection (1) of this section, or under this subsection, that any other person has an interest in any shares in the company, the company may, by notice in writing, require that other person within such reasonable time as is specified in the notice-

(a) to indicate in writing the capacity in which he holds that interest; and

(b) if he holds it otherwise than as beneficial owner, to indicate in writing, so far as it lies within his knowledge, the persons who have any interests in them (either by name and address or by other particulars sufficient to enable them to be identified) and the nature of their interests.

(3) Whenever a company receives information from a person in pursuance of a requirement imposed on him under this section with respect to shares held by a member of the company, it shall be under an obligation to inscribe against the name of the member in the register of members-

(a) the fact that the requirement was imposed; and

(b) the information received in pursuance of the requirement.

(4) Subject to subsection (5) of this section, any person who-

(a) fails to comply with a notice under this section; or

(b) in purported compliance with such a notice, makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular,

shall be guilty of an offence and liable to imprisonment for six months or to a fine of ₦25 for every day during which the default continues.

(5) A person shall not be guilty of an offence under subsection (4) (a) of this section, if he proves that the information in question was already in the possession of the company or that the requirement to give it was for any other reason frivolous or vexatious.

#### **95. Obligation of disclosure by substantial shareholder in public company**

(1) A person who is a substantial shareholder in a public company shall give notice in writing to the company stating his name and address and giving full particulars of the shares held by him or his nominee (naming the nominee) by virtue of which he is a substantial shareholder.

(2) A person is a substantial shareholder in a public company if he holds himself or by his nominee, shares in the company which entitle him to exercise at least 10 per cent of the unrestricted voting rights at any general meeting of the company.

(3) A person required to give a notice under subsection (1) of this section, shall do so within 14 days after that person becomes aware that he is a substantial shareholder.

(4) The notice shall be so given notwithstanding that the person has ceased to be a substantial shareholder before the expiration of the period referred to in subsection (3) of this section.

(5) A person who fails to comply with the provisions of this section shall be liable to a fine of ₦50 for every day during which the default continues.

#### **96. Person ceasing to be a substantial shareholder to notify company**

(1) A person who ceases to be a substantial shareholder in a public company shall give notice in writing to the company stating his name and the date on which he ceased to be a substantial shareholder and giving full particulars of the circumstances by reason of which he ceased to be substantial shareholder.

(2) A person required to give notice under subsection (1) of this section, shall do so within 14 days after he becomes aware that he has ceased to be substantial shareholder.

#### **97. Register of interests in shares**

(1) A public company shall keep a register in which it shall enter-

(a) in alphabetical order, the names of persons from whom it has received a notice under section 95 of this Act; and

(b) against each name so entered, the information given in the notice, and where it receives a notice under section 95 of this Act, the information given in that notice.

(2) The register shall be kept at the place where the register of members required to be kept under section 84 of this Act is kept and subject to the same right of inspection as the register of members.

(3) The Commission may, at any time, in writing, require the company to furnish it with a copy of the register or any part of the register and the company shall furnish the copy within 14 days after the day on which the requirement is received by the company.

(4) If the company ceases to be public company, it shall continue to keep the register until the end of the period of six years beginning with the day next following that on which it ceases to be such a company.

(5) A company shall not, by reason of anything done for the purposes of this section, be affected with notice of, or put on enquiry as to, a right of a person to or in relation to a share in the company.

(6) 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 fine of ~~₦~~25 and a daily default fine of ~~₦~~5.

#### **98. Registration of interests to be disclosed**

The matter relating to beneficial interests in shares required by section 94 of this Act shall be entered in a different part of the register of interests which shall be so made up that the entries inscribed in it appear in chronological order.

### PART V

#### *Share capital*

##### *Minimum share capital*

#### **99. Authorised minimum share capital**

(1) Where, after the commencement of this Act, a memorandum delivered to the Commission under section 35 of this Act states that the association to be registered is to be registered with shares, the amount of the share capital stated in the memorandum to be registered shall not be less than the authorised minimum share capital and not less than 25 per cent of that capital shall be taken by the subscribers of the memorandum.

(2) No company having a share capital shall, after the commencement of this Act, be registered with an authorised share capital less than the authorised minimum share capital.

(3) Where, at the commencement of this Act, the authorised share capital of an existing company is less than the authorised minimum share capital, the company shall, not later than 30 days after the appointed day, increase the share capital to an amount not less than the authorised minimum share capital of which not less than 25 per cent shall be issued.

(4) Subject to subsection (3) of this section and to section 103 of this Act, where a company is registered with shares, its issued capital shall not at any time be less than 25 per cent of the authorised share capital.

(5) Where a company to which subsections (3) and (4) of this section apply fails to comply with the applicable subsection, it shall be liable to a fine of ~~₦~~2,500, and every officer who is in default shall be liable to a fine of ~~₦~~50 for every day during which the default continues.

#### *Alteration of share capital*

#### **100. Alteration of share capital by consolidation, etc.**

(1) A company having a share capital may in general meeting and not otherwise alter the conditions of its memorandum to the following extent, that is to say, it may-

(a) consolidate and divide all or any part of its share capital into shares of larger amount than its existing shares;

(b) convert all or any of its paid-up shares into stock, and re-convert that stock into paid-up shares of any denomination;

(c) 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;

(d) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) Cancellation of shares made in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

#### **101. Notice required where shares and stock consolidated, etc.**

(1) If a company having share capital has-

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

(b) converted any shares into stock; or

(c) re-converted stock into shares; or

(d) subdivided its shares or any of them; or

(e) cancelled any shares, otherwise than in connection with a reduction of share capital under section 105 of this Act,

it shall within one month after so doing, give notice of it to the Commission specifying, as the case may be, the shares consolidated, divided, converted, subdivided, cancelled, or the stock re-converted.

(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 fine of ~~₹~~50 for every day during which the default continues.

#### **102. Increase of share capital and notice of increase**

(1) A company having a share capital, whether or not the shares have been converted into stock, may in general meeting and not otherwise, increase its share capital by new shares of such amount as it thinks expedient.

(2) Where a company has increased its share capital it shall, within 15 days after the passing of the resolution authorising the increase, give to the Commission notice of the increase and the Commission shall record the increase.

(3) Where, in connection with the increase of shares, any approval is required to be obtained under any enactment other than this Act, the Commission may on application by a company extend the time within which to give notice of the increase to the Commission.

(4) The notice to be given under this section shall include any particulars prescribed with respect to the classes of shares affected and the condition subject to which the new shares have been or are to be issued and the notice shall be accompanied by a printed copy of the resolution authorising the increase.

(5) If default is made in complying with the provisions of this section, the company in default shall be liable to a fine of ~~₹~~50 for every day during which the default continues.

### **103. Increase of paid-up capital on increase of shares**

Where a company passes a resolution increasing its authorised share capital, the increase shall not take effect unless-

(a) within six months of giving notice of the increase to the Commission not less than 25 per cent of the share capital including the increase has been issued; and

(b) the directors have delivered to the Commission a statutory declaration verifying that fact.

### **104. Power for unlimited company to provide reserve share capital on re-registration**

If an unlimited company resolves to be registered as a limited company under this Act, it may-

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

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

### *Reduction of share capital*

### **105. Restriction on reduction of issued share capital**

(1) Except as authorised by this Act, a company having a share capital shall not reduce its issued share capital.

(2) For the purposes of this and other sections relating to reduction of share capital, any issue of share capital shall include the share premium account and any capital redemption reserve account of a company, and "**issued share capital**" shall be construed accordingly.

### **106. Special resolution for reduction of share capital**

(1) Subject to confirmation by the court, a company having share capital may, if so authorised by its articles, by special resolution reduce its share capital in any way.

(2) In particular, and without prejudice to subsection (1) of this section, the company may-

(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or

(b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or



(c) either with or without extinguishing or reducing liability on any of its shares, cancel 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 shares accordingly.

(3) A special resolution under this section shall in this Act be referred to as "a resolution for reducing share capital".

#### **107. Application to court for order of confirmation**

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

(2) If the proposed reduction of share capital involves either-

(a) diminution of liability in respect of unpaid share capital; or

(b) subject to subsection (6) of this section, the payment to a shareholder of any paid-up share capital,

and in any other case if the court so directs, subsection (3), (4) and (5) of this section shall have effect.

(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, shall be entitled to object to the reduction of capital.

(4) The court shall settle a list of creditors entitled to object, and for that purpose-

(a) shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of the debts or claims;

(b) 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 has not been determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating (as the court may direct) the following amount if-

(a) 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;

(b) 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 thinks proper to do so, direct that subsections (3) to (5) of this section shall not apply as regards any class or any classes of creditors.

#### **108. Court order confirming reduction**

(1) The court, if satisfied-

(a) with respect to every creditor of the company who under section 107 of this Act is entitled to object to the reduction of capital, that either-

(i) his consent to the reduction has been obtained; or

(ii) his debt or claim has been discharged or has determined, or has been secured; and

(b) that the share capital does not by this reduction fall below the authorised minimum share capital,

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-

(a) if for any special reason it thinks it proper to do so, make an order directing that the company shall, during such period (commencing on or at any time after the date of the order) as is specified in the order, add to its name as its last words "and reduced";

(b) make an order requiring the company to publish (as the court directs) 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 the company is ordered to add to its name the words "and reduced", those words shall, until the expiration of the period specified in the order, be deemed to be part of the company's name.

#### **109. Registration of order and minutes of reduction**

(1) The Commission, on production to it of the order of the court confirming the reduction of a company's share capital, and the delivery to it of a copy of the order and of minutes of the meeting of the company (approved by the court) showing, with respect to the company's share capital as altered by the order-

(a) the amount of the share capital;

(b) the number of shares into which it is to be divided, and the amount of each share; and

(c) the amount (if any) at the date of the registration deemed to be paid up on each share,

shall register the order and minutes.

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

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

(4) The Commission shall certify the registration of the order and minutes; and the certificate-

(a) may be either signed by the Registrar-General or authenticated by its official seal;

(b) shall be prima facie evidence that all the requirements of this Act with respect to the reduction of share capital have been complied with, and that the company's share capital is as stated in the minutes.

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

(6) The substitution of such minutes for part of the company's memorandum shall be deemed an alteration of the memorandum.

#### **110. Liability of members on reduced shares**

(1) Where a company's share capital is reduced, a member of the company (past or present) shall not be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount of the share as fixed by the minutes and the amount paid on the share or the reduced amount (if any), which is deemed to have been paid on it, as the case may be.

(2) Subsections (3) and (4) of this section shall apply if-

(a) a creditor, entitled in respect of a debt or claim to object to the reduction of share capital, by reason of his ignorance of the proceedings for reduction of share capital, or of their nature and effect with respect to his claim, is not entered on the list of creditors; and

(b) after the reduction of capital, the company is unable (within the meaning of section 409 of this Act) to pay the amount of his debt or claim.

(3) Every person who was a member of the company at the date of the registration of the order for reduction and minutes, shall be liable to contribute for the payment of the debt or claim in question an amount not exceeding that which he would have been liable to contribute if the company had commenced to be wound up on the day before that date.

(4) If the company is wound up, the Court, on application of the creditor in question and proof of ignorance referred to in subsection (2) (a), of this section, may (if it thinks fit), settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

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

#### **111. Penalty for concealing name of creditor, etc.**

If an officer of the company-

(a) wilfully conceals the name of a creditor entitled to object to the reduction of capital; or

(b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or

(c) aids, abets or is privy to any such concealment or misrepresentation as is mentioned above,

he shall be guilty of an offence and liable on conviction to a fine of ₦500

*Miscellaneous matters relating to capital*

#### **112. 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 30 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 day not later than 60 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) of this section, each of the directors of the company who-

(a) knowingly and wilfully authorises or permits the failure; or

(b) after the expiry of the period during which that meeting should have been convened, knowingly and wilfully authorises or permits the failure to continue, shall be liable to a fine of ₦500

(3) Nothing in this section shall authorise the consideration, at a meeting convened in pursuance of subsection (1) of this section, of any matter which could have been considered at that meeting apart from this section.

### **113. Power to pay interest out of capital in certain cases**

Where any shares of a company are issued for the purposes of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a long period, the company may pay interest on so much of that share capital as if for the time being paid up for the period and subject to the conditions and restrictions mentioned in this section, and may charge the same to capital as part of the cost of construction of the work or building or the provision of plant:

Provided that-

(a) no such payment shall be made unless it is authorised by the articles or by special resolution;

(b) no such payment, whether authorised by the articles or by special resolution, shall be made without the previous sanction of the Commission;

(c) before sanctioning any such payment the Commission may, at the expense of the company, appoint a person to inquire and report to it as to the circumstances of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry;

(d) the payment shall be made only for such period as may be determined by the Commission which shall in no case extend beyond the close of six months after the half year during which the works or buildings have been actually completed or the plant provided;

(e) the rate of interest shall not exceed the current bank rate;

(f) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid.

## PART VI

### *Shares*

#### *Nature of shares*

### **114. Rights and liabilities attached to shares**

Subject to the provisions of this Act, the rights and liabilities attaching to the shares of a company shall-

(a) be dependent on the terms of issue and of the company's articles; and

(b) notwithstanding anything to the contrary in the terms or the articles, include the right to attend any general meeting of the company and vote at such a meeting.

#### **115. Shares as transferable property**

The shares or other interests of a member in a company shall be property transferable in the manner provided in articles of association of the company.

#### **116. Prohibition of non-voting and weighted shares**

(1) Unless otherwise provided by any other enactment-

(a) any share issued by a company after the date of commencement of this Act, shall carry the right on a poll at a general meeting of the company to one vote in respect of each share and no company may by its articles or otherwise authorise the issue of shares which carry more than one vote in respect of each share or which do not carry any right to vote; and

(b) where, at the commencement of this Act, any share of a company carries more than one vote or does not carry any vote at a general meeting of the company, such a share shall be deemed, as from the appointed day, to carry one vote only.

(2) If a company contravenes any of the provisions of this section, the company and any officer in default shall be liable to a daily default fine of N50 and any resolution passed in contravention of this section shall be void.

(3) Nothing in this section shall affect any right attached to a preference share under section 143 of this Act.

#### *Issue of shares*

#### **117. Power of companies to issue shares**

Subject to any limitation in the articles of a company with respect to the number of shares which may be issued, and any pre-emptive rights prescribed in the articles in relation to the shares, a company shall have the power, at such times and for such consideration as it shall determine, to issue shares up to the total number authorised in the memorandum.

#### **118. Issue of classes of shares**

(1) A company may, where so authorised by its articles, issue classes of shares.

(2) Shares shall not be treated as being of the same class unless they rank equally for all purposes.

#### **119. Issue with rights attached**

Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, any share in a company may be issued with such preferred, deferred or other special rights or such restrictions, whether with regard to dividend, return of capital or otherwise, as the company may, from time to time, determine by ordinary resolution.

## **120. Issue of shares at a premium**

(1) Shares of a company may be issued at a premium.

(2) Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premium on those shares shall be transferred to an account, to be called "the share premium account", and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the share premium account were paid-up share capital of the company.

(3) Notwithstanding, anything to the contrary in subsection (2) of this section, the share premium account may be applied by the company in paying up unissued shares of the company to be issued to members of the company as fully-paid bonus shares, in writing off-

(a) the preliminary expenses of the company; or

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

(4) Where a company has before the commencement of this Act issued any shares at a premium, this section shall apply as if the shares had been issued after the commencement of this Act:

Provided that any part of the premium which has been so applied that it does not at the commencement of this Act form an identifiable part of the company's reserves within the meaning of the Second Schedule to this Act, shall be disregarded in determining the sum to be included in the share premium account.

[Second Schedule.]

## **121. Issue of shares at a discount**

(1) Subject to the provisions of this section, it shall be lawful for a company to issue at a discount shares in the company of a class of shares already issued:

Provided that-

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

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

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

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

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

(4) If default is made in complying with subsection (3) of this section, the company and every officer of the company who is in default shall be liable to a fine of N50 for every day during which the default continues.

Subject to the provisions of section 158 of this Act, a company limited by shares may, if so authorised by its articles, issue preference shares which shall, or at the option of the company, be liable to be redeemed.

### **123. Validation of improperly issued shares**

(1) Where a company has purported to issue or allot shares and the creation, issue or allotment of those shares was invalid by reason of any provision of this Act or any other enactment or of the articles of the company or otherwise, or the terms of issue or allotment were inconsistent with or unauthorised by any such provision, the court may upon application made by the company or by a holder or mortgagee of those shares or by a creditor of the company, and upon being satisfied that in all the circumstances it is just and equitable to do so, validate the issue or allotment of those shares or confirm the terms of the issue and allotment, as the case may be.

(2) In every case where the court validates an issue or allotment of shares or confirms the terms of an issue or allotment in accordance with subsection (1) of this section, it shall make, upon payment of the prescribed fees, an order which shall be proof of the validation or confirmation and upon the issue of the order, those shares shall be deemed to have been issued or allotted upon the relevant terms of issue or allotment.

#### *Allotment of shares*

### **124. Authority to allot shares**

Subject to the provisions of the Investment and Securities Act, the power to allot shares shall be vested in the company, which may delegate it to the directors, subject to any conditions or directions that may be imposed in the articles or from time to time by the company in general meeting.

[Cap. 124.]

### **125. Method of application and allotment**

Without prejudice to the provisions of sections 566 to 574 of this Act, the following provisions shall apply in respect of an application for an allotment of issued shares of a company-

(a) in the case of a private company or a public company where the issue of shares is not public, there shall be submitted to the company a written application signed by the person wishing to purchase shares and indicating the number of shares required;

(b) in the case of a public company, subject to any conditions imposed by the Securities and Exchange Commission where the issue of shares is public, there shall be returned to the company a form of application as prescribed in the company's articles, duly completed and signed by the person wishing to purchase shares;

(c) upon the receipt of an application, a company shall, where it wholly or partially accepts the application, make an allotment to the applicant and within 42 days after the allotment notify the applicant of the fact of allotment and the number of shares allotted to him;

(d) an applicant under this section shall have the right at any time before allotment, to withdraw his application by written notice to the company.

#### **126. Allotment as acceptance of contract**

An allotment of shares made and notified to an applicant in accordance with section 125 of this Act shall be an acceptance by the company of the offer by the applicant to purchase its shares and the contract takes effect on the date on which the allotment is made by the company.

#### **127. Payment on allotment**

Subject to the provisions of sections 135 to 138 of this Act, a company may, in its articles, make provision with respect to payments on allotment of its shares.

#### **128. Effect of irregular allotment**

(1) An allotment made by a company before the holding of the statutory meeting to an applicant in contravention of the provisions of this Act, 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 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 the allotment shall be so voidable notwithstanding that the company is in the course of being wound up.

(2) If any director of a company knowingly contravenes or permits or authorises the contravention of any of the provisions of this Act with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby:

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

#### **129. Return as to allotment**

(1) Whenever a company limited by shares makes any allotment of its shares, the company shall within one month thereafter deliver to the Commission for registration-

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

(b) in the case of shares allotted as fully or partly paid up otherwise than in cash-

(i) a contract in writing, constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped;

(ii) a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted; and

(iii) particulars of the valuation of the consideration in accordance with section 137 of this Act, if any.



(2) If default is made in complying with this section, every officer of the company who is in default shall be liable to a fine of N50 for every day during which the default continues:

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

#### *Commissions and discounts*

### **130. Prohibition of payments of commissions, discounts out of shares and capital**

(1) Except as provided in section 131 of this Act, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or capital money are 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 any such money is paid out of the nominal purchase money or contract price, or otherwise.

(2) Nothing in this section shall affect the payment of any brokerage as is usual for a company to pay.

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

### **131. Power to pay commission in certain cases**

(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 subscription, whether absolute or conditional, for any shares in the company if-

(a) the payment of the commission is authorised by the articles; and

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

(c) the amount or rate per cent of the commission paid or agreed to be paid is-

(i) in the case of shares offered to the public for subscription disclosed in the prospectus; or

(ii) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus, and delivered before the payment of the commission to the Commission for registration, and where a circular or notice, not being a prospectus inviting subscription for the shares is issued, also disclosed in that circular or notice; and

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

(2) If default is made in delivering to the Commission any document required to be delivered to the Commission under this section, the company and every officer in default shall be liable to a fine of N250.

### **132. Statement in balance sheet as to commission**

(1) Where a company has paid any sum by way of commission in respect of any shares in the company, the amount so paid or so much of it as has not been written off, shall be stated in every balance sheet of the company until the whole amount has been written off.

(2) If default is made in complying with this section, the company and every officer of the company in default is guilty of an offence and liable to a fine of ₦50 for every day during which the default continues.

#### *Call on and payment for shares*

### **133. Call on shares**

(1) Subject to the terms of the issue of the shares and of the articles, the directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment of the shares made payable at fixed times:

Provided that no call shall exceed one fourth of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last preceding call, and each member shall (subject to receiving at least 14 days' notice specifying the time or times and place of payment) pay to the company at the time or times and place so specified the amount called on his shares, so however that a call may be revoked or postponed as the directors may determine.

(2) A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed, and may be required to be paid by instalments.

(3) The joint holders of a share shall be jointly and severally liable to pay all calls in respect of the share.

(4) If a sum called in respect of a share is not paid before or on the day appointed for payment, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment to the time of actual payment at such rate not exceeding the current bank rate per annum, as the directors may determine, but the directors shall be at liberty to waive payment of such interest wholly or in part.

(5) Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the shares or by way of premium shall, for the purposes of these provisions, be deemed to be a call duly made and payable on the date on which by the terms of issue the same becomes payable, and in case of non-payment, all the relevant provisions of this Act as to payment of interest and expenses, forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.

(6) The directors may, if they think fit, receive from any member willing to advance the same, all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same would but for such advance, become payable) pay interest at such rate not exceeding (unless the

company in general meeting shall otherwise direct) the current bank rate per annum as may be agreed upon between the directors and the member paying such sum in advance.

#### **134. Reserve liability of company having share capital**

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

#### **135. Payment for shares**

Subject to the provisions of sections 136 and 137 of this Act, the shares of a company and any premium on them shall be paid up in cash, or where the articles so permit, by a valuable consideration other than cash or partly in cash and partly by a valuable consideration other than cash.

#### **136. Meaning of payment in cash**

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

#### **137. Payment other than in cash**

- (1) Where a company agrees to accept payment for its shares otherwise than wholly in cash, it shall appoint an independent valuer who shall determine the true value of the consideration other than cash and prepare and submit to the company a report on the value of the consideration.
- (2) The valuer shall be 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 under subsection (3) of this section.
- (3) The company shall, not more than three days after the receipt by it of the valuer's report, send a copy of it to the proposed purchaser of shares, and indicate to the proposed purchaser whether or not it intends to accept the consideration as payment or part-payment for its shares.
- (4) A company shall not accept as payment or part-payment for its shares consideration other than cash unless the cash value of the consideration as determined by the valuer is worth at least as much as may be credited as paid up in respect of the shares allowed to the proposed purchaser.
- (5) A valuer who, in his report or otherwise, knowingly or recklessly makes a statement which is misleading, false or deceptive in a material particular, shall be guilty of an offence and liable to imprisonment for 12 months or to a fine of ₦1,000 or both such imprisonment and fine.
- (6) For the purposes of this section "valuer" means an auditor, a valuer, a surveyor or engineer or an accountant not being a person in the employment of the company nor an agent or associate of the company or any of its directors or officers.

**138. Power to pay different amounts on shares**

To the extent to which it is so authorised by its articles, a company may-

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

*Lien and forfeiture of shares*

**139. Lien on shares**

(1) A company shall have a first and paramount lien on every share, (not being a fully paid share for all moneys (whether currently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a first and paramount lien on all shares (other than fully paid shares) standing registered in the name of a single person for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this subsection.

(2) A company's lien, if any, on a share shall extend to all dividends payable on it.

(3) A company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless a sum in respect of which the lien exists is currently payable, nor until the expiration of 14 days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is currently payable, has been given to the registered holder for the time being of the shares, or the person entitled to them by reason of his death or bankruptcy.

(4) For the purpose of giving effect to any such sale, the directors may authorise some person to transfer the shares sold to the purchaser of the shares and the purchaser shall be registered as the holder of the shares comprised in any such transfer.

(5) The purchaser shall not be bound to see to the application of the purchase money and his title to the shares shall not be affected by any irregularity or invalidity in the proceedings in reference to the sale.

**140. Forfeiture of shares**

(1) If a member fails to pay any call or instalment of a call on the day appointed for payment, the directors may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

(2) The notice shall name a further day (not earlier than the expiration of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made, and it shall state that in the event of

non-payment at or before the time appointed, the shares in respect of which the call was made shall be liable to be forfeited.

(3) If the requirements of any such notice as is mentioned in subsections (1) and (2) of this section are not complied with, any share in respect of which notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

(4) A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition, the forfeiture may be cancelled on such terms as the directors think fit.

(5) A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were payable by him to the company in respect of the shares, but his liability shall cease if and when the company receives payment in full of all such moneys in respect of the shares.

(6) A statutory declaration that the declarant is a director or the secretary of the company, and that a share in the company has been duly forfeited on a date stated in the declarations, shall be prima facie evidence of the facts stated in it as against all persons claiming to be entitled to the shares.

(7) The company may receive the consideration, if any, given for the share on any sale or disposition of it and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of, and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

(8) The provisions of this section as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

#### *Classes of shares*

#### **141. Power to vary rights**

(1) If at any time the share capital of a company is divided into different classes of shares under section 118 of this Act, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the company is being wound up, be varied with the consent, in writing, of the holders of three-quarters of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class.

(2) To every such separate general meeting as is mentioned in subsection (1) of this section, the provisions of this Act relating to general meetings shall apply, so however that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.

(3) The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking *pari passu* with them.

#### **142. Application for cancellation of variation**

(1) Where in pursuance of section 141 of this Act, the rights attached to any class of shares are at any time varied, the holder of not less in the aggregate than fifteen per cent of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the court to have the variation cancelled, and, where any such application is made, the variation shall not have effect, unless and until it is confirmed by the court.

(2) An application to the court under this section shall, in a proper case, 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 or by such one or more of their number as they may appoint in writing for the purpose.

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

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

(5) The company shall, within 15 days after the making of an order by the court on an application to it under this section, forward a copy of the order to the Commission and if default is made in complying with the provisions of this subsection, the company and every officer of the company who is in default shall be liable to a fine of ₦50 for every day during which the default continues.

(6) In this section, "**variation**" includes abrogation and cognate expressions shall be constructed accordingly.

#### **143. Right of a preference share to more than one vote**

(1) Notwithstanding the provisions of section 116 of this Act, the articles may provide that preference shares issued after the commencement of this Act shall carry the rights to attend general meetings and on a poll at the meetings, to more than one vote per share in the following circumstances, but not otherwise, that is to say-

(a) upon any resolution during such period as the preferential dividend or any part of it remains in arrears and unpaid, such period starting from a date not more than 12 months or such lesser period as the articles may provide, after the due date of the dividend; or

(b) upon any resolution which varies the rights attached to such shares; or

(c) upon any resolution to remove an auditor of the company or to appoint another person in place of such auditor; or

(d) upon any resolution for the winding up of the company or during the winding up of the company.

(2) Notwithstanding the provisions of section 116 of this Act, any special resolution of a company increasing the number of shares of any class, may validly resolve that any existing class of preference shares shall carry the right to such votes additional to one vote per share as shall be necessary in order to preserve the existing ratio which the votes exercisable by the holders of such preference shares at a general meeting of the company bear to the total votes exercisable at the meeting.

(3) For the purposes of subsection (2) of this section, a dividend shall be deemed to be due on the date appointed in the articles for the payment of the dividend for any year or other period, or if no such date is appointed, upon the day immediately following the expiration of the year or other period, and whether or not such dividend shall have been earned or declared.

#### **144. Construction of class rights**

In construing the provisions of a company's articles in respect of the rights attached to shares, the following rules of construction shall be observed-

(a) unless the contrary intention appears, no dividend shall be payable on any shares unless the company shall resolve to declare such dividend;

(b) unless the contrary intention appears, a fixed preferential dividend payable on any class of shares is cumulative, that is to say, no dividend shall be payable on any shares ranking subsequent to them until all the arrears of the fixed dividend have been paid;

(c) unless the contrary intention appears, in a winding up arrears of any cumulative preferential dividend, whether earned or declared or not, are payable up to the date of actual payment in the winding up;

(d) if any class of shares is expressed to have a right to a preferential dividend, then, unless the contrary intention appears, such class has no further right to participate in dividends;

(e) if any class of shares is expressed to have preferential rights to payment out of the assets of the company in the event of winding up, then unless the contrary intention appears, such class has no further right to participate in the distribution of assets in the winding up;

(f) in determining the rights of the various classes to share in the distribution of the company's property on a winding up, no regard shall be paid, unless the contrary intention appears, to whether or not such property represents accumulated profits or surplus which would have been available for dividend while the company remained a going concern;

(g) subject to this section, all shares rank equally in all respects unless the contrary intention appears in the company's articles.

#### *Numbering of shares*

#### **145. Shares to be numbered**

Each share in a company having a share capital shall be distinguished by its appropriate number:

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

#### *Share certificates*

#### **146. Issue of share certificates**

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

(2) Every person whose name is entered as a member in the register of members shall be entitled, without payment, to receive within three months of allotment or lodgement of transfer or within such other period as the conditions of issue shall provide, one certificate for all his shares or several certificates each for one or more of his shares upon payment of a fee as the directors shall, from time to time, determine.

(3) Every certificate issued by a company shall be under the company's seal and shall specify the shares to which it relates and the amount paid up on them:

Provided that in respect of shares held jointly by several persons, the company shall not be bound to issue more than one certificate, and delivery of a certificate for shares to one of several joint holders shall be sufficient delivery to all such holders.

(4) If a share certificate is defaced, lost or destroyed, it may be replaced on such terms (if any), as to evidence and indemnity and the payment of out-of-pocket expenses of the company of investigating evidence as the directors think fit.

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

(6) 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 fine of ₦50 for every day during which the default continues.

(7) In this section, "**transfer**" means a transfer duly stamped and otherwise valid, but does not include a transfer which under this Act a company is for any reason entitled to refuse to, and does not, register.

#### **147. Effect of share certificate**

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

(2) If any person changes his position to his detriment in good faith on the continued accuracy of the statements made in a certificate, the company shall be estopped from denying the continued accuracy of such statements and shall compensate the person for any loss suffered by him in reliance on them and which he would not have suffered had the statements been or continued to be accurate.

(3) Nothing contained in subsection (2) of this section shall derogate from any right the company may have to be indemnified by any other person.

#### **148. Probate, etc., as evidence of grant**

The production to a company of any document which is by law sufficient evidence of probate of the will, or letters of administration of the estate, or confirmation as executor, of a deceased person having been granted to some



person, shall be accepted by the company as sufficient evidence of the grant, notwithstanding anything in its articles to the contrary.

#### **149. Abolition of share warrants**

- (1) As from the date of commencement of this Act, no company shall have the power to issue warrants.
- (2) Every company shall within a period of 30 days from the date of commencement of this Act, cancel any share warrants previously issued by it which are still valid on that date and enter in its register of members the names and relevant particulars of the bearers of the share warrants.
- (3) A person whose name is entered in a company's register of members by virtue of subsection (2) of this section, shall be deemed to be a member of the company with effect from the date on which the share warrant thereby cancelled, was issued.

#### *Conversion of shares into stock*

#### **150. Conversion of shares into stock**

- (1) The provisions of this section shall apply with respect to the conversion of all or any of the shares of a company into stock and the re-conversion of such stock into shares under the provisions of section 100 of this Act.
- (2) The conversion of any paid-up shares into stock and the re-conversion of any stock into paid-up shares shall be by ordinary resolution of the company at a general meeting.
- (3) The holders of stock may transfer the same, or any part of it, in the same manner and subject to the same conditions, as and subject to which the shares from which the stock arose might, previous to the conversion, have been transferred, or as near to it as circumstances admit; and the directors may, from time to time, fix the minimum amount of stock transferable, so however that such minimum shall not exceed the nominal amount of the shares from which the stock arose.
- (4) The holders of stock shall, according to the amount of stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profit of the company and in the assets on winding up) shall be conferred by an amount of stock which would not, if existing in shares, have conferred that privilege or advantage.
- (5) Such of the articles of the company as are applicable to paid-up shares shall apply to stock, and the words "**shares**" and "**shareholder**" in those articles shall include "**stock**" and "**stockholder**".

#### *Transfer and transmission*

#### **151. Transfer of shares**

- (1) The transfer of a company's shares shall be by instrument of transfer and except as expressly provided in the articles, transfer of shares shall be without restrictions.
- (2) Notwithstanding anything in the articles of a company, it shall not be lawful for the company to register a transfer of shares in the company, unless a proper instrument of transfer has been delivered to the company:

Provided that nothing in this section shall prejudice any power of the company to register as shareholder, any person to whom the right to any shares in the company has been transmitted by operation of law.

(3) The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee, and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect of the share.

(4) Subject to such of the restrictions of a company's articles as may be applicable, any member may transfer all or any of his shares by instrument in writing in any usual or common form or any other form which the directors may approve.

#### **152. Entry in register of transfers**

(1) 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 conditions as if the application for the entry were made by the transferee.

(2) Until the name of the transferee is entered in the register of members in respect of the transferred shares, the transferor shall, so far as concerns the company, be deemed to remain the holder of the shares.

(3) The company may refuse to register the transfer of a share (not being a fully paid share) to a person of whom they do not approve, and may also refuse to register the transfer of a share on which the company has a lien.

(4) The company may refuse to recognise any instrument of transfer unless-

(a) a fee as the company may, from time to time, determine is paid to the company in respect of the instrument; and

(b) the instrument of transfer is accompanied by the certificate of the shares to which it relates and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer; and

(c) the instrument of transfer is in respect of only one class of shares.

#### **153. Notice of refusal to register**

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

(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 fine of ₦200.

#### **154. Transfer by personal representative**

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

#### **155. Transmission of shares**

(1) In case of the death of a member, the survivor or survivors where the deceased was a joint holder, or the legal personal representative of the deceased where he was a sole holder, shall be the only persons recognised by the

company as having any title to his interest in the shares; but nothing in this section shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.

(2) Any person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such evidence being produced as may, from time to time, properly be required by the directors and subject as hereafter provided in this section, elect either to be registered himself as holder of the share, or to have some person nominated by him registered as the transferee of the share; but the company shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by that member before his death or bankruptcy, as the case may be.

(3) If the person so becoming entitled elects to be registered himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects and if he elects to have another person registered, he shall testify his election by executing to that person a transfer of the share.

(4) All the limitations, restrictions and provisions of this Act and the company's articles relating to the rights to transfer and the registration of transfers of share, shall be applicable to any such notice or transfer as mentioned in subsection (3) of this section as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.

(5) A person becoming entitled to a share by reason of the death or bankruptcy of the holder, shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, unless the articles otherwise provide, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company:

Provided that the directors may at any time give notice requiring any such person to elect either to be registered himself or to transfer the share, and if the notice is not complied with within 90 days the directors may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with.

#### **156. Protection of beneficiaries**

(1) Any person claiming to be interested in any shares or the dividends or interest on them, may protect his interest by serving on the company concerned a notice and affidavit of interest.

(2) Notwithstanding the provisions of section 86 of this Act, the company shall enter on the register of members, the fact that such notice has been served and shall not register any transfer or make any payment or return in respect of the shares contrary to the terms of the notice until the expiration of 42 days' notice to the claimant of the proposed transfer or payment.

(3) In the event of any default by the company in complying with this section, the company shall compensate any person injured by the default.

#### **157. Certification of transfers**

(1) When the holder of any shares of a company wishes to transfer to any person only a part of the shares represented by one or more certificates, the instrument of transfer together with the relevant certificates shall be delivered to the company with a request that the instrument of transfer be recognised and registered.

(2) A company to which a request is made under subsection (1) of this section, may recognise the instrument of transfer by endorsing on it the words "certificate lodged" or words to the like effect.

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

(4) Where any person acts on the faith of a false recognition by a company made negligently, the company shall be under the same liability to that person as if the recognition has been made fraudulently.

(5) For the purposes of this section-

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

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

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

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

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

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

(ii) it is not shown that the signature or initials was or were placed there by any person other than him or a person authorised to use the signature or initials for the purpose of transfers on the company's behalf.

#### *Transactions by company in respect of its own shares*

### **158. Redemption of redeemable preference shares**

(1) The provisions of this section shall apply with respect to the redemption by a company of any redeemable preference shares issued by it under section 122 of this Act.

(2) The shares shall not be redeemed unless they are fully paid, and redemption shall be made only out of-

(a) profits of the company which would otherwise be available for dividend; or

(b) the proceeds of a fresh issue of shares made for the purposes of the redemption.

(3) Before the shares are redeemed, the premium, if any, payable on redemption, shall be provided for out of the profits of the company or out of the company's share premium account.

(4) Where shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall, out of profits which would otherwise have been available for dividend, be transferred to a reserve fund, to be called "the capital redemption reserve fund", a sum equal to the nominal amount of the shares redeemed, and the provisions of this

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

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

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

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

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

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

#### **159. Prohibition of financial assistance by company for acquisition of its shares**

(1) In this section, financial assistance includes a gift, guarantee, security or indemnity, loan, any form of credit and any financial assistance given by a company, the net assets of which are thereby reduced to a material extent or which has no net assets.

(2) Subject to the provisions of this section-

(a) where a person is acquiring or is proposing to acquire shares in a company, it shall not be lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of that acquisition before or at the same time as the acquisition takes place; and

(b) 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 this acquisition, it shall not be lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of reducing or discharging the liability so incurred.

(3) Nothing in subsection (1) of this section shall be taken to prohibit-

(a) the lending of money by the company in the ordinary course of its business, where the lending of money is part of the ordinary business of a company;

(b) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of, or subscription for, fully-paid shares in the company or its holding company, being a purchase or subscription by trustees of or for shares to be held by or for the benefit of employees of the company, including any director holding a salaried employment or office in the company;

(c) the making by a company of loans to persons, other than directors, bona fide in the employment of the company with a view to enabling those persons to purchase or subscribe for fully-paid shares in the company or its holding company, to be held themselves by way of beneficial ownership;

(d) any act or transaction otherwise authorised by law.

(4) If a company acts in contravention of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding ₦500.

#### **160. Acquisition by a company of its own shares**

(1) Subject to the provisions of subsection (2) of this section and its articles, a company may not purchase or otherwise acquire shares issued by it.

(2) A company may acquire its own shares for the purpose of-

(a) settling or compromising a debt or claim asserted by or against the company; or

(b) eliminating fractional shares; or

(c) fulfilling the terms of a non-assignable agreement under which the company has an option or is obliged to purchase shares owned by an officer or an employee of the company; or

(d) satisfying the claim of a dissenting shareholder; or

(e) complying with a court order.

(3) A company may accept from any shareholder, a share in the company surrendered to it as a gift, but may not extinguish or reduce a liability in respect of an amount unpaid on any such share, except in accordance with section 106 of this Act.

#### **161. Conditions for purchase by a company of its own shares**

Notwithstanding any provision in the articles, a company shall not purchase any of its own shares except on compliance with the following conditions, that is-

(a) shares shall only be purchased out of profits of the company which would otherwise be available for dividend or the proceeds of a fresh issue of shares made for the purpose of the purchase;

(b) redeemable shares shall not be purchased at a price greater than the lowest price at which they are redeemable or shall be redeemable at the next date thereafter at which they are due or liable to be redeemed;

(c) no purchase shall be made in breach of section 162 of this Act.

#### **162. Limit on number of shares acquired**

No transaction shall be entered into by or on behalf of a company whereby the total number of its shares, or of its shares of anyone class, held by persons other than the company or its nominees becomes less than 85 per cent of the total number of shares, or of shares of that class, which have been issued:

Provided that-

(a) redeemable shares shall be disregarded for the purposes of this section; and

(b) where, after shares of any class have been issued, the number of such shares has been reduced, this section shall apply as if the number originally issued (including shares of that class cancelled before the reduction took effect) has been the number as so reduced.

### **163. Enforceability of contract to acquire shares**

(1) A contract with a company providing for the acquisition by the company of shares in the company is specifically enforceable against the company, except to the extent that the company cannot perform the contract without thereby being a breach of the provisions of section 160 of this Act.

(2) In any action brought on a contract referred to in subsection (1) of this section, the company shall have the burden of proving that performance of the contract is prevented by the provisions of section 160 of this Act.

### **164. Re-issue of shares acquired**

Where shares in a company are redeemed, purchased, acquired or forfeited, such shares shall, unless the company by alteration of its articles of association cancels the shares, be available for re-issue by the company.

### **165. Acquisition of shares of holding company**

(1) A company which is a subsidiary may acquire shares in its holding company where the subsidiary company is concerned as personal representative or trustee, unless the holding company or any subsidiary of it is beneficially interested otherwise than by way of security for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

(2) A subsidiary which is, at the commencement of this Act, a holder of shares of its holding company or a subsidiary which acquired shares in its holding company before it became a subsidiary of that holding company, may continue to hold such shares but, subject to subsection (1) of this section, shall have no right to vote at meetings of the holding company or any class of shareholders of the holding company and shall not acquire any future shares in it except on a capitalisation issue.

## **PART VII**

### *Debentures*

#### *Creation of debenture and debenture stock*

### **166. Power to borrow money, to charge property and to issue debentures**

A company may borrow money for the purpose of its business or objects and may mortgage or charge its undertaking, property and uncalled capital, or any part thereof, and issue debentures, debenture stock and other securities whether outright or as security for any debt, liability or obligation of the company or of any third party.

### **167. Documents of title to debentures or certificate of debenture stock**

(1) Every company shall, within 60 days after the allotment of any of its debentures or after the registration of the transfer of any debentures, deliver to the registered holder thereof, the debenture or a certificate of the debenture stock under the common seal of the company.

(2) If a debenture or debenture stock certificate is defaced, lost or destroyed, the company, at the request of the registered holder of the debenture, shall issue a certified copy of the debenture or renew the debenture stock certificate on payment of a fee not exceeding N5 and on such terms as to evidence and indemnity and the payment of the company's out-of-pocket expenses of investigating evidence, as the company may reasonably require.

(3) If default is made in complying with this section, the company and any officer of the company who is in default, shall be liable to a fine not exceeding N25; and on application by any person entitled to have the debentures or debenture stock certificate delivered to him, the court may order the company to deliver the debenture or debenture stock certificate and may require the company and any such officer to bear all the costs of and incidental to the application.

#### **168. Statements to be included in debentures**

Every debenture shall include a statement on the following matters, that is-

(a) the principal amount borrowed;

(b) the maximum discount which may be allowed on the issue or re-issue of the debentures, and the maximum premium at which the debentures may be made redeemable;

(c) the rate of and the dates on which interest on the debentures issued shall be paid and the manner in which payment shall be made;

(d) the date on which the principal amount shall be repaid or the manner in which redemption shall be effected, whether by the payment of instalments of principal or otherwise;

(e) in the case of convertible debentures, the date and terms on which the debentures may be converted into shares and the amounts which may be credited as paid up on those shares, and the dates and terms on which the holders may exercise any right to subscribe for shares in respect of the debentures held by them;

(f) the charges securing the debenture and the conditions subject to which the debenture shall take effect.

#### **169. Effect of statements in debentures**

(1) Statements made in debenture or debenture stock certificates shall be *prima facie* evidence of the title to the debentures of the person named therein as the registered holder and of the amounts secured thereby.

(2) If any person shall change his position to his detriment in reliance in good faith on the continued accuracy of any statements made in the debenture or debenture stock certificate, the company shall be estopped in favour of such person from denying the continued accuracy of such statements and shall compensate such person for any loss suffered by him in reliance thereon and which he would not have suffered had the statement been or continued to be accurate:

Provided that nothing in this subsection shall derogate from any right the company may have to be indemnified by any other person.

#### **170. Enforcement of contracts relating to debentures**



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

### *Types of debentures*

#### **171. Perpetual debentures**

A company may issue perpetual debentures, and a condition contained in any debentures, or in any deed for securing any debentures, shall not be invalid by reason only that the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.

#### **172. Convertible debentures**

Debentures may be issued upon the terms that in lieu of redemption or repayment, they may, at the option of the holder or the company, be converted into shares in the company upon such terms as may be stated in the debentures.

#### **173. Secured or naked debentures**

(1) Debentures may either be secured by a charge over the company's property or may be unsecured by any charge.

(2) Debentures may be secured by a fixed charge on certain of the company's property or a floating charge over the whole or a specified part of the company's undertaking and assets, or by both a fixed charge on certain property and a floating charge.

(3) A charge securing debentures shall become enforceable on the occurrence of the events specified in the debentures or the deed securing the same.

(4) Where any legal proceedings are brought by a debenture holder to enforce the security of a series of debentures of which he holds part, the debenture holder shall sue in a representative capacity on behalf of himself and all other debenture holders of that series.

#### **174. Redeemable debentures**

A company limited by shares may issue debentures which are, or at the option of the company are to be liable, to be redeemed.

#### **175. Power to re-issue redeemed debentures in certain cases**

(1) Where either before or after the commencement of this Act, a company has redeemed any debentures previously issued, then unless-

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

(b) the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled, the company shall have, and shall be deemed always to have had, power to re-issue the debentures, either by re-issuing the same debentures or by issuing other debentures in their place.

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

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

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

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

(5) Nothing in this section shall prejudice any power to issue debentures in place of any debentures paid off or otherwise satisfied or extinguished which, by its debentures or the securities for the same, is reserved to a company.

#### **176. Rights of debenture holders**

(1) The trustee of a debenture trust deed shall hold all contracts, stipulations and undertakings given to him and all mortgages, charges and securities vested in him in connection with the debentures covered by the deed, or some of those debentures, exclusively for the benefit of the debenture holders concerned (except in so far as the deed otherwise provides) and the trustee shall exercise due diligence in respect of the enforcement of those contracts, stipulations, undertakings, mortgages, charges and securities and the fulfillment of his functions generally.

(2) A debenture holder may sue-

(a) the company which issued the debentures he holds for payment of any amount payable to him in respect of the debentures; or

(b) the trustee of the debenture trust deed covering the debentures he holds for compensation for any breach of the duties which the trustee owes him, and in any such action, it shall not be necessary for any other debenture holders of the same class, or if the action is brought against the company, the trustee of the covering trust deed, to be joined as a party.

(3) This section shall apply notwithstanding anything contained in a debenture or trust deed or other instrument, but a provision in a debenture or trust deed shall be valid and binding on all the debenture holders of the class concerned in so far as it enables a meeting of the debenture holders by a resolution supported by the votes of the holders of at least three quarters in value of the debentures of that class in respect of which votes are cast on the resolution to-

(a) release any trustee from liability for any breach of his duties to the debenture holders which he has already committed, or generally from liability for all such breaches (without necessarily specifying them) upon his ceasing to be trustee;

(b) consent to the alteration or abrogation of any of the rights, powers or remedies of the debenture holders and the trustee of the debenture trust deed covering their debentures (except the powers and remedies under section 209 of this Act); or

(c) consent to the substitution for the debentures of a different class issued by the company or any other company or corporation, or the cancellation of the debentures in consideration of the issue to the debenture holders of shares credited as fully paid in the company or any other company.

### **177. Meetings of debenture holders**

(1) The terms of any debentures or trust deed may provide for the convening of general meetings of the debenture holders and for the passing, at such meetings, of a resolution binding on all the holders of the debentures of the same class.

(2) Whether or not the debentures or trust deed contain such provisions as are referred to in subsection (1) of this section, the Commission may at any time direct a meeting of the debenture holders of any class to be held and conducted in such manner as the Commission thinks fit to consider ancillary or consequential direction as it shall think fit.

(3) Notwithstanding anything contained in a debenture trust deed, or in any debenture or contract or instrument, the trustee of a debenture deed shall, on the requisition of persons holding, at the date of the deposit of the acquisition debentures covered by the trust deed which carry not less than one tenth of the total voting rights attached to all the issued and outstanding debentures of that class, forthwith, proceed duly to convene a meeting of that class of debenture holders.

### *Fixed and floating charges*

### **178. Meaning of "floating" and "fixed" charges**

(1) A "**floating charge**" means an equitable charge over the whole or a specified part of the company's undertakings and assets, including cash and uncalled capital of the company both present and future, but so that the charge shall not preclude the company from dealing with such assets until-

(a) the security becomes enforceable and the holder thereof, pursuant to a power in that behalf in the debenture or the deed securing the same, appoints a receiver or manager or enters into possession of such assets; or

(b) the court appoints a receiver or manager of such assets on the application of the holder; or

(c) the company goes into liquidation.

(2) On the happening of any of the events mentioned in subsection (1) of this section, the charge shall be deemed to crystallise and to become a fixed equitable charge on such of the company's assets as are subject to the charge, and if a receiver or manager is withdrawn with the consent of the chargee, or the chargee withdraws from possession before the charge has been fully discharged, the charge shall thereupon be deemed to cease to be a fixed charge and again to become a floating charge.

### **179. Priority of fixed over floating charge**

A fixed charge on any property shall have priority over a floating charge affecting that property, unless the terms on which the floating charge was granted prohibited the company from granting any later charge having priority over the floating charge and the person in whose favour such later charge was granted had actual notice of that prohibition at the time when the charge was granted to him.

### **180. Powers of the court**

(1) Whenever a fixed or floating charge has become enforceable, the court shall have power to appoint a receiver and in the case of a floating charge, a receiver and manager of the assets subject to the charge.

(2) In the case of a floating charge, the court may, notwithstanding that the charge has not become enforceable, appoint a receiver or manager if satisfied that the security of the debenture holder is in jeopardy; and the security of the debenture holder shall be deemed to be in jeopardy if the court is satisfied that events have occurred or are about to occur which render it unreasonable in the interests of the debenture holder that the company should retain power to dispose of its assets.

(3) A receiver or manager shall not be appointed as a means of enforcing debentures not secured by any charge.

### **181. Advertisement of appointment of receiver and manager**

Where a receiver or a receiver and manager is appointed by the court, advertisement to this effect shall be made by the receiver or the receiver and manager in the Gazette and in two daily newspapers.

### **182. Preferential payment to debenture holders in certain cases**

(1) Where a receiver is appointed on behalf of the holders of any debentures of a registered company secured by a floating charge, or possession is taken by, or on behalf of those debenture holders of any property comprising or subject to the charge, then if the company is not at the time in course of being wound up, the debts which in every winding up are under the provisions relating to preferential payments in Part XV of this Act to be paid in priority to all other debts, shall be paid out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(2) In the application of the provisions relating to preferential payments-

(a) section 494 of this Act shall be construed as if the provision for payment of accrued holiday remuneration becoming payable on the termination of employment before or by the effect of the winding-up order or resolution, were a provision for payment of such remuneration becoming payable on the termination of employment before or by the effect of appointment of the receiver or possession being taken as aforesaid; and

(b) the periods of time mentioned therein shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be, and if such date occurred before the commencement of this Act, the provisions relating to preferential payments which would have applied but for this Act, shall be deemed to remain in full force.

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

### **183. Execution of debenture trust deed**

(1) Every company which offers debentures to the public for subscription or purchase shall, before issuing any of the debentures, execute a debenture trust deed in respect of them and procure the execution of the deed by the trustee for the debenture holders appointed by the deed.

(2) No debenture trust deed shall cover more than one class of debentures, whether or not the trust deed is required by this section to be executed.

(3) Where a trust deed is required to be executed by this section but has not been executed, the court, on the application of a debenture holder concerned, may-

(a) order the company to execute a trust deed;

(b) direct that a person nominated by the court shall be appointed to be trustee; and

(c) give such consequential directions as it thinks fit, as to the contents of the trust deed and its execution by the trustee thereof.

(4) For the purposes of this Act, debentures shall belong to different classes if different rights attach to them in respect of-

(a) the rate of, or dates for payment of interest;

(b) the dates when, or the instalments by which, the principal of the debenture shall be repaid, unless the difference is solely that the class of debentures shall be repaid during a stated period of time and particular debentures may be repaid at different dates during that period according to selections made by the company or by drawings, ballot or otherwise;

(c) any right to subscribe for or convert the debentures into shares in, or other debentures of, the company or any other company; or

(d) the powers of the debenture holders to realise any security.

(5) Debentures further belong to different classes, if they do not rank equally for payment when any security invested in the debenture holders under any trust deed is realised or when the company is wound up, that is to say, if, in the circumstances mentioned in subsection (4) of this section the subject matter of any such security or the proceeds thereof, or any assets available to satisfy the debentures, is or are not to be applied in satisfying the debentures strictly in proportion to the amount of principal, premiums and arrears of interest to which the holders of them are respectively entitled.

(6) A debenture is covered by a trust deed if-

(a) the holder of the debenture is entitled to participate in any money payable by the company under the deed; or

(b) is entitled to the benefit of any mortgage, charge or security created by the deed, whether alone or together with other persons.

(7) If a company issues debentures in circumstances in which this section requires a debenture trust deed to be executed, without such a deed having been executed in compliance with this section, or if the company issues

debentures under a trust deed which covers two or more classes of debentures, the directors of the company who are in default are guilty of an offence and liable on conviction to a fine of ₦5,000 jointly or severally.

#### **184. Contents of debenture trust deed**

(1) Every debenture trust deed, whether required by section 183 of this Act or not, shall state-

(a) the maximum sum which the company may raise by issuing debentures of the same class;

(b) the maximum discount which may be allowed on the issue or re-issue of the debentures, and the maximum premium at which the debentures may be made redeemable;

(c) the nature of any assets over which a mortgage, charge or security is created by the trust deed in favour of the trustee for the benefit of the debenture holders equally, and except where such a charge is a floating charge or a general floating charge, the identity of the assets subject to it;

(d) the nature of any assets over which a mortgage, charge or security has been or will be created in favour of any person other than the trustee for the benefit of the debenture holders equally, and except where such a charge is a floating charge or a general floating charge, the identity of the assets subject to it;

(e) whether the company has created or will create any mortgage, charge or security for the benefit of some, but not all, of the holders of debentures issued under the trust deed;

(f) any prohibition or restriction on the power of the company to issue debentures or to create mortgages, charges or any security on any of its assets ranking in priority to, or equally with the debentures issued under the trust deed;

(g) whether the company shall have power to acquire debentures issued under the trust deed before the date of their redemption and to re-issue the debentures;

(h) the rate of and the dates on which interest on the debentures issued under the trust deed shall be paid and the manner in which payment may be made;

(i) the date or dates on which the principal or the debentures issued under the trust deed shall be repaid, and unless the whole principal is to be repaid to all the debenture holders at the same time, the manner in which redemption shall be effected, whether by the payment of equal instalments of principal in respect of each debenture, or by the selection of debentures for redemption by the company, or by drawing, ballot, or otherwise;

(j) in the case of convertible debentures, the dates and terms on which the debentures may be converted into shares and the amounts which may be credited as paid up on those shares in right of the debentures held by them;

(k) the circumstances in which the debenture holders shall be entitled to realise any mortgage, charge or security invested in the trustee or any other person for their benefit (other than the circumstances in which they are entitled to do so by this Act);

(l) the powers of the company and the trustee to call meetings of the debenture holders and the rights of debenture holders to require the company or the trustee to call such meetings;

(m) whether the rights of debenture holders may be altered or abrogated and if so, the conditions which must be fulfilled, and the procedure which must be followed, to effect such an alteration or abrogation; and

(n) the amount or rate of remuneration to be paid to the trustee and the period for which it shall be paid, and whether it shall be paid in priority to the principal, interest and costs in respect of debentures issued under the trust deed.

(2) If debentures are issued without a covering debenture trust deed being executed, the statements required by subsection (1) of this section shall be included in each debenture or in a note forming part of the same document or endorsed thereon, and in applying that subsection references therein to "the debenture trust deed" shall be construed as references to all or any of the debentures of the same class.

(3) Subsection (2) of this section shall not apply if the debenture is the only debenture of the class to which it belongs which has been or may be issued, and the rights of the debenture holder may not be altered or abrogated without his consent.

(4) Any director who issues a debenture in violation of the provisions of this section shall be guilty of an offence.

#### **185. Contents of debenture covered by trust deed**

(1) Every debenture covered by a debenture trust deed shall state, either in the body thereof or in a note forming part of the same document or endorsed thereon-

(a) the matters required to be stated in a debenture trust deed by paragraphs (a), (b), (f), (h), (i), (j), (l) and (m) of subsection (1) of section 184 of this Act;

(b) whether the trustee of the covering debenture trust deed holds the mortgages, charges and securities vested in him by the trust deed in trust for the debenture holders equally, or in trust for some only of the debenture holders, and if so, which debenture holders; and

(c) whether the debenture is secured by a general floating charge vested in the trustee of the covering debenture trust deed or in the debenture holders.

(2) A debenture issued by a company shall state on its face in clearly legible print, that it is unsecured if no mortgage, charge or security is vested in the holder of the debenture or in any other person for his benefit as security for payment of principal or interest.

(3) Any director of a company who issues a debenture in violation of the provisions of subsections (1) and (2) of this section shall be guilty of an offence.

#### **186. Trustees for debenture holders**

(1) Whether or not a debenture is secured by a charge over the company's property, it may be secured by a trust deed appointing trustees for the debenture holders.

(2) It shall be the duty of such trustees to safeguard the rights of the debenture holders and, on behalf of and for the benefit of the debenture holders, to exercise the rights, powers and discretions conferred upon them by the trust deed.

(3) Charges securing the debentures may be created in favour of the debenture holders by vesting them in the trustees.

(4) Any provision contained in a trust deed or in any contract with the holders of debentures secured by a trust deed shall be void in so far as it would have the effect of exempting a trustee thereof from, or indemnifying him against, liability for any breach of trust or failure to show the degree of care and diligence required of him as trustee having regard to the powers, authorities or discretions conferred on him by the trust deed:

Provided that nothing herein contained shall be deemed to invalidate any release otherwise validly given in respect of anything done or omitted to be done by a trustee on the agreement to such release of a majority of not less than three quarters in value of the debenture holders present in person, or where proxies are permitted, by proxy at a meeting summoned for the purpose.

(5) Notwithstanding any provisions contained in the debentures or trust deed, the court may, on the application of any debenture holder or of the Commission remove any trustee and appoint another in his place if satisfied that such trustee has interests which conflict or may conflict with those of the debenture holders or that for any reason it is undesirable that such trustee should continue to act:

Provided that where any such application is made by a debenture holder, the court if it thinks fit, may order the applicant to give security for the payment of the costs of the trustee and may direct that the application shall be heard in Chambers.

#### **187. Disqualification for appointment as trustee of debenture trust deed**

(1) A person is not qualified for appointment as a trustee of a debenture trust deed if he is-

(a) an officer or an employee of the company which issues debentures covered by the trust deed

or of a company in the same group of companies as the company so issuing debentures;

(b) less than 18 years of age;

(c) of unsound mind and has been so found by a court in Nigeria or elsewhere;

(d) an undischarged bankrupt;

(e) disqualified under section 257 of this Act from being appointed as a director of a company;

(f) a substantial shareholder (as defined in section 95 of this Act) of the company.

(2) If a trustee becomes subject to any of the disqualifications mentioned in subsection (1) of this section after he has been appointed, he shall immediately cease to be qualified to act as a trustee of the debenture trust deed.

(3) Any person who acts as a trustee of a debenture trust deed shall be guilty of an offence, if his appointment is invalid under subsection (1) of this section or if he is disqualified from acting under subsection (2) of this section.

#### **188. Liability of trustees for debenture holders**

(1) Subject to the provisions of this section, anything contained in a trust deed for securing an issue of debentures, or in any contract with the holders of debentures secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from or indemnifying him against liability for breach of trust, where he fails to show the degree of care and diligence required of him as trustee, having regard to the provisions of the trust deed conferring on him any powers, authorities or discretions.



(2) Subsection (1) of this section shall not invalidate-

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

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

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

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

(3) Subsection (1) of this section shall not operate to-

(a) invalidate any provision in force at the commencement of this Act in any such trust deed or contract, so long as any person entitled to the benefit of that provision, or afterwards given the benefit thereof under subsection (4) of this section, remains a trustee of the trust deed in question; or

(b) deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him, while any such provision was in force.

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

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

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

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

### **189. Restrictions on transferability of debentures**

(1) Except as expressly provided in the terms of any debentures, debentures shall be transferable without restriction by a written transfer in common form and so that the transferee shall be entitled to the debenture and to the moneys secured thereby without regard to any equities, set-off, or cross-claim between the company and the original or any intermediate holder.

(2) The terms of any debenture may impose restrictions of any nature whatsoever on the transferability of debentures, including power for the company to refuse to register any transfer and provisions for compulsory acquisition or rights of first refusal in favour of other debenture holders, or members or officers of the company:

Provided that if any restriction is imposed on the right to transfer any debenture, notice of the restriction shall be endorsed on the face of the debenture or debenture stock certificate and in the absence of such endorsement, the restriction shall be ineffective as regards any transferee for value, whether or not he has notice of the restriction.

*Provisions as to company's register of charges, debenture holders and as to copies of*

*instruments creating charges*

**190. Company to keep copies of instruments creating charges**

Every company shall cause a copy of every instrument creating any charge requiring registration under this Part of this Act to be kept at the registered office of the company:

Provided that, in the case of a series of uniform debentures, a copy of one debenture of the series shall be sufficient.

**191. Company's register of charges**

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

(2) If any officer of the company knowingly and wilfully authorises or permits the omission of any entry required to be made in pursuance of this section, he shall be guilty of an offence and liable on conviction to a fine not exceeding ₦250.

**192. Inspection of register and copies of instruments**

(1) The copies of instruments creating any charge requiring registration under this Part of this Act with the Commission and the register of charges kept in pursuance of section 191 of this Act, shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day shall be allowed for inspection) to inspection by any creditor or member of the company without fee and the register of charges shall also be open to inspection by any other person on payment of such fee, not exceeding ₦5 for each inspection, as the company may prescribe.

(2) If inspection of copies of instruments creating charges or of the register is refused, every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding ₦10 for every day during which the refusal continues.

(3) If any such refusal occurs in relation to a company registered in Nigeria or, in so far as a foreign company has an established place of business within Nigeria and an instrument creates a charge over any of its property in Nigeria and the refusal relates to that charge, the court may by order compel an immediate inspection of the copies of instruments or register.

**193. Register of debenture holders**

(1) A company which issues or has issued debentures shall maintain a register of the holders thereof.

(2) The register shall contain the following information that is-

(a) the names and addresses of the debenture holders;

(b) the principal of the debentures held by each of them;

(c) the amount or the highest amount of any premium payable on redemption of the debentures;

(d) the issue price of the debenture and the amount paid up on the issue price;

(e) the date on which the name of each person was entered on the register as a debenture holder; and

(f) the date on which each person ceased to be a debenture holder.

(3) The entry required under this section shall be made within 30 days of the conclusion of the agreement with the company to become a debenture holder or within 30 days of the date at which he ceases to be one.

#### **194. Inspection of register of debentures, etc.**

(1) Every register of holders of debentures of a company shall, except when duly closed (but subject to such reasonable restrictions as the company may in general meeting impose, so that not less than two hours in each day shall be allowed for inspection), 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 a fee of ₦1 or such less sum as may be prescribed by the company.

(2) Any such registered holder of debentures as aforesaid or any other person may require a copy of the register of the holders of debentures of the company or any part thereof on payment of 50 kobo for every 100 words required to be copied.

(3) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed, of the sum of ₦1 or such less sum as may be prescribed by the company, or, where the trust deed has not been printed, on payment of 50 kobo for every 100 words required to be copied.

(4) If inspection is refused, or a copy is refused or not forwarded, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding ₦50 and in case of a continuing default, to a further fine of ₦10 for every day during which the default continues.

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

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

#### **195. Entry in register of transfer**

On the application of the transferor of any debenture in a company, the company shall enter in its register of debenture holders, 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.

#### **196. Notice of refusal to register**

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

(2) If any default is made in complying with the provisions of this section, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine of ₦500.

### **197. Registration of charges created by companies**

(1) Subject to the provisions of this Part of this Act, every charge created by a company, being a charge to which this section applies, shall so far as any security on the company's property or undertaking is conferred, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge together with the instrument, if any, by which the charge is created or evidenced, have been or are delivered to or received by the Commission for registration in the manner required by this Act or by any enactment repealed by this Act within 90 days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a charge becomes void under this section, the money thereby secured shall immediately become payable.

(2) The provisions of this section shall apply to the following charges that is-

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

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

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

(d) a charge on land, wherever situate, or any interest therein, but not including a charge for rent or other periodical sum issuing out of land;

(e) a charge on book debts of the company;

(f) a floating charge on the undertaking or property of the company;

(g) a charge on calls made but not paid;

(h) a charge on a ship or aircraft or any share in a ship;

(i) a charge on goodwill, on a patent or a licence under a patent, on trademark or on a copyright or a licence under a copyright.

(3) Where a charge affects or relates to property situated in Nigeria and in addition to registration under subsection (1) of this section, registration elsewhere in Nigeria is necessary to make the charge valid or effectual, it shall, subject to this subsection, be sufficient evidence of compliance with the requirements of subsection (1) of this section, if, instead of delivery of the original instrument creating or evidencing the charge, there is delivered to and received by the Commission within the prescribed period of 90 days, or such extended time as the court may allow, a true copy of it duly certified as such by the secretary to the company.

(4) A reference in any enactment to the date of execution of an instrument for the purposes of computation of time within which registration is to be effected with or without penalty, shall be construed as a reference to the date of presentation of a copy of the instrument to the Commission under this Act, and time shall be computed accordingly; and if a certified copy is delivered to the Commission under this subsection, the original of it shall be produced to it for inspection and comparison, if the Commission so requires.

(5) In the case of a charge created out of Nigeria, affecting or in relation to property situate outside Nigeria, the delivery to and the receipt by the Commission of a copy verified in the prescribed manner of the instrument by which the charge is created or evidenced, shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself, and 90 days after the date on which the instrument or copy could, in due course of post, and if despatched with diligence, have been received in Nigeria shall be substituted for 90 days after the date of the creation of the charges as the time within which the particulars and instrument or copy are to be delivered to the Commission.

(6) Where a charge is created in Nigeria but affects or relates to property outside Nigeria, the instrument creating or purporting to create the charge may be sent for registration under this section, notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situate.

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

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

(9) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it shall, for the purposes of this section, be sufficient if there are delivered to or received by the Commission within 90 days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars-

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

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

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

(d) the names of the trustees, if any, for the debenture holders; together with the deed containing the charge, or, if there is no such deed, one of the debentures of the series:

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

(10) Where any commission, allowance or discount has been paid or made either directly or indirectly by a company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be sent for registration under this section shall include particulars as to the amount or rate per cent of commission, discount or allowance so paid or made, but an omission to do this shall not affect the validity of the debentures issued:

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

(11) In this Part of this Act, "charge" includes mortgage.

### **198. Register of particulars of charges**

(1) The Commission shall keep with respect to each company, a register in the prescribed form of all the charges requiring registration under this Part of this Act, and shall, on payment of such fee as may be specified by regulations made by the Commission, enter in the register with respect to such charges the following particulars-

(a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are specified in section 197 (9) of this Act;

(b) in the case of any other charge-

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

(ii) the amount secured by the charge;

(iii) short particulars of the property; and

(iv) the persons entitled to the charge.

(2) Where a charge is registered under this Part of this Act, the Commission shall issue a registration certificate setting out the parties to the charge, the amount thereby secured, with such other particulars as the Commission may consider necessary; and the certificate shall be *prima facie* evidence of due compliance with the requirements as to registration under this Part of his Act.

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of such fee, not exceeding N I for each inspection as may be specified by regulations made by the Commission.

### **199. Duty of company to register charges**

(1) It shall be the duty of a company to send to the Commission for registration, the particulars of every charge created by the company and of the issues of debentures of a series requiring registration under section 197 of this Act, but registration of any such charge may be effected on the application of any person interested therein.

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

(3) If any company makes default in sending to the Commission for registration, the particulars of any charge created by the company or of the issues of debentures of a series requiring registration as aforesaid, then, unless the registration has been effected on the application of some other person, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine of ₦500.

### **200. Duty of company acquiring property to register subsisting charges**

(1) Where a company acquires any property which is subject to a charge of any such kind as would, if it has been created by the company after the acquisition of the property, have been required to be registered under this Part

of this Act, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the Commission for registration in the manner required by this Act within 90 days after the date on which acquisition is completed:

Provided that, if the property is situated and the charge was created outside Nigeria, 90 days after the date on which the copy of the instrument could in due course of post, and if despatched with due diligence, have been received in Nigeria shall be substituted for 90 days after the completion of the acquisition, as the time within which the particulars and the copy of the instrument are to be delivered to the Commission.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine of ₦250.

(3) It shall be sufficient compliance with this section in any case affecting land registered under any enactment in a State, where the charge is registered thereunder before the land is acquired by the company, if a true copy of the charge duly certified by the Registrar of Land is delivered to the Commission within the time prescribed by this section.

#### **201. Existing charges**

(1) Where, at the date of commencement of this Act, a company has property on which there is a charge, particulars of which would require registration if it had been created by the company after the date of such commencement, then, unless the charge has been discharged or the property has ceased to be held by the company prior to the expiration of six months from the date of such commencement, the company shall, within that time, cause particulars of the charge as prescribed by section 197 of this Act to be delivered to the Commission for registration together with the document, if any, by which the charge was created or a copy thereof, certified as required by that section.

(2) Every existing company shall, prior to the expiration of six months from the commencement of this Act, deliver to the Commission for registration a statutory declaration made by a director and the secretary of the company stating whether or not there are any charges on the company's property of which particulars require to be registered under this section and confirming that particulars of any such charges have been duly delivered to the Commission for registration.

(3) In the event of default in complying with subsection (2) of this section, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding ₦50 for every day during which the default continues.

(4) Failure to comply with the provisions of this section shall not affect the validity of the charge.

#### **202. Charges to secure fluctuating amounts**

Where a charge, particulars of which require registration under section 197 of this Act, is expressed to secure all sums due or to become due or some other uncertain or fluctuating amount, the particulars required under paragraph (a) of subsection (9) of section 197 of this Act shall state the maximum sum deemed to be secured by such charge (being the maximum sum covered by the stamp duty paid thereon) and such charge shall be void, so far as any security on the company's property is thereby conferred, as respects any excess over the stated maximum:

Provided that, if-

(a) additional stamp duty is subsequently paid on such charge; and

(b) at any time thereafter prior to the commencement of the winding up of the company, amended particulars of the said charge stating the increased maximum sum deemed to be secured thereby (together with the original instrument by which the charge was created or evidenced) are delivered to the Commission for registration, then, as from the date of such delivery, the charge, if otherwise valid, shall be effective to the extent of such increased maximum sum except as regards any person who, prior to the date of such delivery, has acquired any proprietary rights in, or a fixed or floating charge on, the property subject to the charge.

### **203. Endorsement of certificate of registration on debentures**

(1) The company shall cause a copy of every certificate of registration given under section 198 of this Act to be endorsed on every debenture or certificate of debenture stock which is issued by the company and the payment of which is secured by the charge so registered:

Provided that nothing in this subsection shall be construed as requiring a company to cause a certificate of registration of any charge so given to be enforced on any debenture or certificate of debenture stock issued by the company before the charge was created.

(2) If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock which under the provisions of this section is required to have endorsed on it a copy of a certificate of registration without the copy being so endorsed upon it, he shall, without prejudice to any other liability, be guilty of an offence and liable to a fine not exceeding ₹500.

### **204. Entries of satisfaction of charges**

If the Commission is satisfied with respect to any registered charge that-

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

(b) part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking, it may enter on the register a memorandum of satisfaction to the extent necessary to give effect thereto and, where it enters a memorandum of satisfaction it shall, if required, furnish the company with a copy of the entry, and any such entry shall have effect, subject to the requirement of any other enactment as to registration.

### **205. Rectification of register**

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

### **206. Registration of appointment order, etc.**



(1) If any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall, within seven days from the date of the order or the appointment under the said powers, give notice of the fact to the Commission and the Commission shall, on payment of such fee as may be specified by regulations made under this Act, enter the fact in the register of charges.

(2) Where any person appointed receiver or manager of the property of a company under the powers contained in any instrument, ceases to act as such receiver or manager, he shall, on so ceasing, give the Commission notice to that effect, and the Commission shall enter the notice in the register of charges.

(3) If any person makes default in complying with the requirements of this section, he shall be guilty of an offence and liable to a fine not exceeding ₦ 50 for every day during which the default continues.

### **207. Inspection of register and copies of instruments**

(1) The copies of instruments creating any charge requiring registration under this Part of this Act with the Commission and the register of charges kept in pursuance of section 198 of this Act, shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day shall be allowed for inspection) to inspection by any creditor or member of the company without fee, and the register of charges shall also be open to inspection by any other person on payment of such fee, not exceeding ₦10 for each inspection, as the company may prescribe.

(2) If inspection of copies of instruments creating charges or of the register is refused, every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding ₦50 for every day during which the refusal continues.

(3) If any such refusal occurs in relation to a company registered in Nigeria or, in so far as a foreign company has an established place of business within Nigeria and an instrument creates a charge over any of its property in Nigeria and the refusal relates to that charge, the court may by order compel an immediate inspection of the copies or register.

### *Realisation of security*

### **208. Realisation of debenture holder's security**

(1) A debenture holder shall be entitled to realise any security vested in him or in any other person for his benefit if-

(a) the company fails to pay any instalment of interest, or the whole or part of the principal or any premium, owing under the debenture or the debenture trust deed covering the debenture, within one month after it becomes due; or

(b) the company fails to fulfil any of the obligations imposed on it by the debentures or the debenture trust deed;

(c) any circumstances occur which by the terms of the debentures or debenture trust deed entitled the holder of the debenture to realise his security; or

(d) the company is wound up.

(2) A debenture holder whose debenture is secured by a general floating charge vested in him or the trustee of the covering debenture trust deed, or any other person, shall additionally be entitled to realise his security if-

(a) any creditor of the company issues a process of execution against any of its assets or commences proceedings for winding up of the company by order of any court of competent jurisdiction; or

(b) the company ceases to pay its debts as they fall due; or

(c) the company ceases to carry on business; or

(d) the company suffers, after the issue of debentures of the class concerned, losses or diminutions in the value of its assets which in the aggregate amount to more than one-half of the total amount owing in respect of debentures of the class held by the debenture holder who seeks to enforce his security and debentures whose holder ranks before him for payment of principal or interest; or

(e) any circumstances occur which entitles a debenture holder who ranks for payment of principal or interest in priority to the debentures secured by the general floating charges to realise his security.

#### **209. Remedies available to debenture holders**

(1) At any time after a debenture holder or a class of debenture holders becomes entitled to realise his or their security, a receiver of any assets subject to a mortgage, charge or security in favour of the class of debenture holders or the trustee of the covering trust deed, or any other person, may be appointed by-

(a) that trustee;

(b) the holders of debentures of the same class containing power to appoint; or

(c) debenture holders having more than one-half of the total amount owing in respect of all the debentures of the same class; or

(d) the court on the application of the trustee.

(2) Subject to any conditions imposed in the debenture or debenture trust deed, a debenture holder, or a trustee in the case of a trust deed, may-

(a) bring an action in a representative capacity against the company for payment and enforcement of the security; or

(b) realise his security by-

(i) bringing a foreclosure action; or

(ii) commencing a winding-up proceeding.

(3) A receiver appointed under this section shall have, subject to the order made by the court, power to take possession of the assets subject to the mortgage, charge or security and to sell those assets and, if the mortgage, charge or security extends to such property, to collect debts owed to the property, to enforce claims vested in the company, to compromise, settle and enter into arrangements in respect of claims by or against the company, on the company's business with a view to selling it on the most favourable terms, to grant or accept leases of land and

licences in respect of patents, designs, copyright or trademarks, and to recover any instalment unpaid on the company's issued shares.

(4) Where a representative action is being brought under paragraph (a) of subsection (2) of this section, the approval of the court shall be obtained where the company is being wound up.

(5) The remedies given by this section shall be in addition to, and not in substitution for, any other powers and remedies conferred on the trustee of the debenture trust deed or on the debenture holders by the debentures or debenture trust deed, and any power or remedy which is expressed in any instrument to be exercisable if the debenture holders become entitled to realise their security, is exercisable on the occurrence of any of the events specified in subsection (1) of section 208 of this Act or in the case of a general charge in subsections (1) and (2) of section 208 of this Act; but a manager of the business or of any of the assets of a company may not be appointed for the benefit of debenture holders unless a receiver has also been appointed and has not ceased to act.

(6) The provisions of sections 387 to 400 of this Act shall apply to receivers and managers under this Part of this Act.

(7) No provision in any instrument which purports to exclude or restrict the remedies given by this section shall be valid.

#### **210. Application of certain sections**

Subject to the provisions of this Part of this Act and unless the context otherwise admits, the provisions of sections 146, 147, 151, 153, 156 and 157 of this Act relating to share certificates and transfer of shares shall apply in respect of shares as if "debentures" were substituted for "shares" and "debenture holders" for "shareholders".

### PART VIII

#### *Meetings and proceedings of companies*

##### *Statutory meeting*

#### **211. Statutory meeting**

(1) Every public company shall, within a period of six months from the date of its incorporation, hold a general meeting of the members of the company (in this Act referred to as "the statutory meeting").

(2) The directors shall, at least 21 days before the day on which the statutory meeting is held, forward to every member of the company a copy of the statutory report.

(3) The statutory report shall be certified by not less than two directors or by a director and the secretary of the company and shall state-

(a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid-up otherwise than in cash, and stating in the case of shares partly paid-up, the extent to which they are so paid up, and in either case the consideration for which they have been allotted;

(b) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid;

(c) the names, addresses and descriptions of the directors, auditors, managers, if any, and secretary of the company;

(d) the particulars of any pre-incorporation contract together with the particulars of any modification or proposed modification thereon;

(e) any underwriting contract that has not been carried out and the reasons therefore;

(f) the arrears, if any, due on calls from every director;

(g) the particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares or debentures to any director or to the manager.

(4) The report shall also contain an abstract of the receipts of the company and of the payments made from them 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 from such receipts and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company.

(5) The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors.

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

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

(8) The members of the company present at the statutory meeting shall be at liberty to discuss any matter relating to the formation of the company, and its commencement of business or arising out of the statutory report.

(9) Any member who wishes a resolution to be passed on any matter arising out of the statutory report shall give further 21 days notice from the date on which the statutory report was received to the company of his intention to propose such a resolution.

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

## **212. Non-compliance and penalty**

Without prejudice to the provisions of section 408 of this Act, if a company fails to comply with the requirements of section 211 of this Act, the company and any officer in default shall be guilty of an offence and liable to a fine of N50 for every day during which the default continues.

### *General meeting*

### **213. Annual general meeting**

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

Provided that-

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

(b) except for the first annual general meeting, the Commission shall have power to extend the time within which any annual general meeting shall be held, by a period not exceeding three months.

(2) If default is made in holding a meeting of a company in accordance with subsection (1) of this section, the Commission, may, on the application of any member of the company call, or direct the calling of, a general meeting of the company and give such ancillary or consequential directions as the Commission thinks expedient, including directions modifying or supplementing, in relation to the calling, holding and conducting of the meeting, the operation of the company's articles; and it is hereby declared that the directions that may be given under this subsection shall include a direction that one member of the company present in person or by proxy may apply to the court for an order to take a decision which shall bind all the members.

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

(4) Where a company resolves that a meeting shall be treated as its annual general meeting, a copy of the resolution shall, within 15 days after the passing thereof, be filed with the Commission.

(5) If default is made in holding a meeting of the company in accordance with subsection (1) of this section, or in complying with any directions of the Commission under subsection (2) thereof, the company and every officer of the company who is in default, shall be guilty of an offence and be liable to a fine of ₦500, and if default is made in complying with subsection (4) of this section, the company and every officer of the company who is in default shall be liable to a fine of ₦25.

### **214. Businesses transacted at annual general meeting**

All businesses transacted at annual general meetings shall be deemed special business, except declaring a dividend, the presentation of the financial statements and the reports of the directors and auditors, the election of directors in the place of those retiring, the appointment, and the fixing of the remuneration of the auditors and the appointment of the members of the audit committee, which shall be ordinary business.

*Extraordinary general meeting*

### **215. Extraordinary general meeting**

(1) The board of directors may convene an extraordinary general meeting whenever they deem fit, and if at any time there are not within Nigeria sufficient directors capable of acting to form a quorum, any director may convene an extraordinary general meeting.

(2) An extraordinary general meeting of a company may be requisitioned by any member or members of the company holding at the date of the requisition not less than one-tenth of the paid up capital of the company as at the date of the deposit carrying the right of voting, or in the case of a company not having a share capital, members of the company representing not less than one tenth of the total voting rights of all the members having at the said date a right to vote at general meetings of the company, and the directors shall on receipt of the requisition forthwith proceed duly to convene an extraordinary general meeting of the company, notwithstanding anything in its articles.

(3) The requisition shall state the objects of the meeting, and be signed by the requisitionists and deposited at the registered office of the company, and the requisition may consist of several documents in like form 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 anyone or more of them representing more than one half of the total voting rights of all of them, may themselves convene a meeting:

Provided that any meeting so convened shall not be held after the expiration of three months from that date.

(5) A meeting convened under this section by a requisitionist or requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(6) Any reasonable expenses incurred by the requisitionist or requisitionists by reason of the failure of the directors duly to convene a meeting, shall be repaid to the requisitionists by the company,

(7) For the purpose of this section the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice as is required by section 217 of this Act.

(8) All businesses transacted at an extraordinary general meeting shall be deemed special.

## **216. Place of meeting**

All statutory and annual general meetings shall be held in Nigeria.

### *Notice of meetings*

## **217. Length of notice for calling meetings**

(1) The notice required for all types of general meetings from the commencement of this Act shall be 21 days from the date on which the notice was sent out.

(2) A general meeting of a company shall, notwithstanding that it is called by a shorter notice than that specified in subsection (1) of this section, be deemed to have been duly called if it is so agreed in the case of-

(a) a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and

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

### **218. Contents of notice**

(1) The notice of a meeting shall specify the place, date and time of the meeting, and the general nature of the business to be transacted thereat in sufficient detail to enable those to whom it is given to decide whether to attend or not, and where the meeting is to consider a special resolution, shall set out the terms of the resolution.

(2) In the case of notice of an annual general meeting, a statement that the purpose is to transact the ordinary business of an annual general meeting shall be deemed to be a sufficient specification that the business is for the declaration of dividends, presentation of the financial statements, reports of the directors and auditors, the election of directors in the place of those retiring, the fixing of the remuneration of the auditors and, if the requirements of sections 362 and 363 of this Act are duly complied with, the removal and election of auditors and directors.

(3) No business may be transacted at any general meeting unless notice of it has been duly given.

(4) In every case in which a member is entitled, pursuant to section 230 of this Act, to appoint a proxy to attend and vote instead of him, the notice shall contain with reasonable prominence, a statement that the member has the right to appoint a proxy to attend and vote instead of him and that the proxy need not be a member of the company, and if default is made in complying with this subsection as respects any meeting, every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding ~~₹~~500.

(5) An error or omission in a notice with respect to the place, date, time or general nature of the business of a meeting shall not invalidate the meeting, unless the officer of the company responsible for the error or omission acted in bad faith or failed to exercise due care and diligence:

Provided that in the case of accidental error or omission, the officer responsible shall effect the necessary correction either before or during the meeting.

### **219. Persons entitled to notice**

(1) The following persons shall be entitled to receive notice of a general meeting-

(a) every member;

(b) every person upon whom the ownership of a share devolves by reason of his being a legal representative, receiver or a trustee in bankruptcy of a member;

(c) every director of the company;

(d) every auditor for the time being of the company; and

(e) the secretary.

(2) No other person shall be entitled to receive notices of general meetings.

## **220. Service of notice**

(1) A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within Nigeria) to the address, if any, supplied by him to the company for the giving of notice to him.

(2) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of seven days after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

(3) A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the register of members in respect of the share.

(4) A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, within Nigeria supplied for the purpose by the person claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

(5) "Registered address" means, in the case of a member, any address supplied by him to the company for the giving of notice to him.

## **221. Failure to give notice**

(1) Failure to give notice of any meeting to a person entitled to receive it shall invalidate the meeting unless such failure is an accidental omission on the part of the person or persons giving the notice.

(2) Failure to give notice to a person entitled to it due to a misrepresentation or misinterpretation of the provisions of this Act, or of the articles, shall not amount to an accidental omission for the purposes of the foregoing subsection.

## **222. Additional notice**

In addition to the notice required to be given to those entitled to receive it in accordance with the provisions of this Act, every public company shall, at least 21 days before any general meeting, advertise a notice of such meeting in at least two daily newspapers.

## **223. Power of court to order meetings**

(1) If for any reason it is impracticable to call a meeting of a company or of the board of directors in any manner in which meetings of that company or board may be called, or to conduct the meeting of the company or board in the manner prescribed by the articles or this Act, the court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, in the case of the meeting of the company, and of any director of the company, in case of the meeting of the board, order a meeting of the company or board, as the case may be, to be called, held and conducted in such manner as the court thinks fit, and where any such order is made, may give such ancillary or consequential directions as it thinks expedient.



(2) It is hereby declared that the directions that may be given under subsection (1) of this section shall include a direction that one member of the company present in person or by proxy in the case of a meeting of the company, and one director in the case of the board may, apply to the court for an order to take a decision which shall bind all the members.

(3) Any meeting called, held and conducted in accordance with an order under subsection (1) of this section, shall for all purposes be deemed to be a meeting of the company or of the board of directors duly called, held and conducted.

### *Voting*

#### **224. Procedure of voting**

(1) At any general meeting, a resolution put to the vote shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by-

(a) the chairman, where he is a shareholder or a proxy;

(b) at least three members present in person or by proxy;

(c) any member or members present in person or by proxy and representing not less than one tenth of the total voting rights of all the members having the right to vote at the meeting; or

(d) any member or members holding shares in the company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one tenth of the total sum paid up on all the shares conferring that right.

(2) Unless a poll is so demanded, a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, the resolution.

#### **225. Right to demand poll**

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

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

(b) making ineffective a demand for a poll on any such question which is made by any of the persons mentioned in section 224 of this Act.

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

(3) Notwithstanding section 224 of this Act and subsections (1) and (2) of this section, there shall be no right to demand a poll on the election of members of the audit committee under section 359 of this Act.

#### **226. Voting on a poll**

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

(2) Except as provided in subsection (4) of this section, if a poll is duly demanded, it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

(3) In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

(4) A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith, and on any other question shall be taken at such time as the chairman of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

### **227. Right of attendance at general meeting**

(1) Subject to section 228 of this Act, every member shall have a right to attend any general meeting of the company in accordance with the provisions of section 81 of this Act.

(2) In the case of joint holders, the vote of the senior joint holder who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

(3) A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, receiver, *curator bonis*, or other person in the nature of a committee, receiver or *curator bonis* appointed by that court, and any such committee, receiver, *curator bonis* or other person may vote by proxy.

### **228. Attendance at meetings**

Every person who is entitled to receive notice of a general meeting of the company as provided by section 227 of this Act shall be entitled to attend such a meeting.

### **229. Objections as to qualification to vote**

No objections shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes and any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

### **230. Proxies**

(1) Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of him, and a proxy appointed to attend and vote instead of a member shall also have the same right as the member to speak at the meeting:

Provided that, unless the articles otherwise provide, this section shall not apply in the case of a company not having a share capital.

(2) In every notice calling a meeting of a company having a share capital, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy or, where that is allowed, two or more proxies, to attend and vote instead of him, and that a proxy need not be a member and if default is made in complying with this subsection as respects any meeting, every officer of the company who is in default shall be guilty of an offence and liable to a fine of ₦250.

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

(4) If, for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to some only of the members entitled to be sent notice of the meeting and to vote by proxy at the meeting, every officer of the company who knowingly and wilfully authorises or permits their issue as aforesaid shall be guilty of an offence and liable to a fine of ₦500:

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

(5) A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the share in respect of which the proxy is given:

Provided that no intimation in writing of such death, insanity, revocation or transfer as aforesaid has been received by the company before the commencement of the meeting or adjourned meeting at which the proxy is used.

(6) The instrument appointing a proxy shall be in writing, under the hand of the appointer or of his attorney duly authorised in writing or, if the appointer is a corporation, either under seal, or under the hand of an officer or attorney duly authorised.

(7) The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a certified copy of that power or authority shall be deposited at the registered office or head office of the company or at such other place within Nigeria as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll; and in default, the instrument of proxy shall not be treated as valid.

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

### **231. Corporation representation at meetings of companies, etc.**

(1) A corporation, whether a company within the meaning of this Act or not, may if it is-

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

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

(2) A person authorised as provided in subsection (1) of this section, shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation might exercise if it were an individual shareholder, creditor or holder of debentures of that other company.

### **232. Quorum**

(1) Unless otherwise provided in the articles, no business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business and throughout the meeting.

(2) Unless otherwise provided in the articles, the quorum for the meeting of a company shall be one third of the total number of members of the company or 25 members (whichever is less) present in person or by proxy:

Provided that where the number of members is not a multiple of three, then the number nearest to one third, and where the number of members is six or less, the quorum, shall be two members.

(3) For the purpose of determining a quorum, all members or their proxies shall be counted.

(4) Where a member or members withdraw from the meeting for what appears to the chairman to be insufficient reasons and for the purpose of reducing the quorum, and in fact the quorum is no longer present, the meeting may continue with the number present, and their decision shall bind all the shareholders and where there is only one member, he may seek direction of the court to take a decision.

(5) Where there is a quorum at the beginning, but no quorum later due to some share-holders leaving for what appears to the chairman to be sufficient reasons, the meeting shall be adjourned to the same place, and time, in a week's time, and if there is no quorum still at the adjourned meeting, the members present shall then be the quorum and their decision shall bind all shareholders and where only one member is present, he may seek direction of the court to take a decision.

### *Resolutions*

### **233. Resolutions**

(1) A resolution shall be an ordinary resolution when it has been passed by a simple majority of votes cast by such members of the company as, being entitled to do so, vote in person or by proxy at a general meeting.

(2) A resolution shall be a special resolution when it has been passed by not less than three fourths of the votes cast by such members of the company as, being entitled to do so, vote in person or by proxy at a general meeting of which 21 days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given:

Provided that, if it is so agreed by majority in number of the members having the right to attend and vote at any such meeting, being a majority together holding not less than 95 per cent in nominal value of the shares giving that right or, in the case of a company not having a share capital, together representing not less than 95 per cent of the

total voting rights at that meeting of all the members, a resolution may be proposed and passed as a special resolution at a meeting of which less than 21 days' notice has been given.

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

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

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

(6) A company may, by its articles, provide that any matter not required by the articles or by this Act to be passed by a special resolution, shall be passed by an ordinary resolution.

#### **234. Written resolutions**

All resolutions shall be passed at general meetings and shall not be effective unless so passed:

Provided that in the case of a private company a written resolution signed by all the members entitled to attend and vote shall be as valid and effective as if passed in a general meeting.

#### **235. Circulation of members' resolutions**

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

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

(b) circulate to members entitled to have notice of any general meeting sent to them, any statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting, and where the statement has more than 1,000 words to circulate a summary of it.

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

(a) anyone or more members representing not less than one twentieth of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or

(b) not less than one hundred members holding shares in the company on which there has been paid up an average sum, per member, of not less than ₦500.

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

shall be given to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving notice of meetings of the company:

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

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

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

(i) in the case of a requisition requiring notice of a resolution, not less than six weeks before the meeting; and

(ii) in the case of any other requisition, not less than one week before the meeting; and

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

Provided that if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date six weeks or less after the copy has been deposited, the copy, though not deposited within the time required by this subsection, shall be deemed to have been properly deposited for the purposes thereof.

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

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

(7) In the event of any default in complying with the provisions of this section, every officer of the company who is in default shall be guilty of an offence and liable to a fine of ~~₹~~500.

### **236. Resolutions requiring special notice**

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

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

### **237. Registration and copies of certain resolutions**

(1) Subject to subsection (7) (b) of section 46 of this Act, a printed copy of every resolution or agreement to which this section applies shall, within 15 days after the passing or making of the resolution or agreement, as the case may be, be forwarded to the Commission.

(2) Where, pursuant to the provisions of sections 44 to 47 of this Act, a company by special resolution alters the provisions of its memorandum and the Commission is satisfied that the alteration is not in compliance with the applicable provisions of those sections, it may refuse to file a copy of the resolution in its records and shall notify the company accordingly and any person aggrieved by the refusal may appeal to the court within 21 days from the receipt of the notification.

(3) A copy of every such resolution or agreement for the time being in force shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement.

(4) This section shall apply to-

(a) special resolutions;

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

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

(d) resolutions requiring a company to be wound up voluntarily, passed under paragraph (a) of section 457 of this Act.

(5) If a company fails to comply with subsection (1) of this section, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine of ₦50.

(6) If a company fails to comply with subsection (3) of this section, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine of ₦5 for each copy in respect of which default is made.

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

### **238. Effect of resolutions passed at adjourned meetings**

Where a resolution is passed at an adjourned meeting of-

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

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

*Miscellaneous matters relating to meetings and proceedings*

**239. Adjournment**

(1) The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(2) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting; but otherwise it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

(3) If within one hour from the time appointed for the meeting a quorum is not present, the meeting if convened upon the requisition of members shall be dissolved, but in any other case, it shall stand adjourned to the same day in the next week, at the same time and place or to such other day and at such other time and place as the chairman, and in his absence the directors, may direct.

(4) If a meeting stands adjourned under subsection (3) of this section any two or more members present at the place and time to which it so stands adjourned shall form a quorum and their decision shall bind all shareholders, and where only one member is present, he may seek the direction of the court to take a decision.

**240. Powers and duties of the chairman of the general meeting**

(1) The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he is not present within one hour after the time appointed for the holding of the meeting or is unwilling to act, the directors present shall elect one of their number to be chairman of the meeting.

(2) If at any meeting no director is willing to act as chairman or if no director is present within one hour after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

(3) The duties and powers of the chairman shall include a duty to-

- (a) preserve order and powers to take such measures as are reasonably necessary to do so;
- (b) see that proceedings are conducted in a regular manner;
- (c) ensure that the true intention of the meeting is carried out in resolving any issue that arises before it;
- (d) ensure that all questions that arise are promptly decided; and



(e) act *bona fide* in the interest of the company.

(4) The chairman shall cast his vote *bona fide* in the interest of the company as a whole, provided that if he is also a shareholder, he may cast it in his own interest.

(5) The chairman shall have power to adjourn a meeting in accordance with section 239 (1) of this Act.

#### **241. Minutes of proceedings and effect**

(1) Every company shall cause minutes of-

(a) all proceedings of general meetings;

(b) all proceedings at meetings of its directors; and

(c) where there are managers, all proceedings at meetings of its managers, to be entered in books kept for that purpose.

(2) Any such minute if purporting to be signed by the chairman of the meeting at which the proceedings were held, or by the chairman of the next succeeding meeting, shall be *prima facie* evidence of the proceedings.

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

(4) If a company fails to comply with the provisions of subsection (1) of this section, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine of ₦500.

#### **242. Inspection of minute books and copies**

(1) The books containing the minutes of proceedings of any general meeting of a company held on or after the commencement of this Act, shall be kept at the registered office of the company, and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, but so that no less than six hours in each day be allowed for inspection) be open to inspection by members without charge.

(2) Any member shall be entitled to be furnished within seven days after receipt of his request in that behalf to the company, with a copy of any such minutes certified by the secretary at a charge not exceeding 10 kobo for every hundred words.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper time, the company and every officer of the company who is in default shall be guilty of an offence and liable in respect of each offence to a fine of ₦25.

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

#### **243. Class meetings**

The provisions of the foregoing sections shall apply to any class meetings except where expressly excluded by this Act.

## PART IX

### *Directors and secretaries of the company*

#### CHAPTER 1

##### *Directors*

##### *Meaning of directors*

#### **244. Meaning of directors**

- (1) Directors of a company registered under this Act are persons duly appointed by the company to direct and manage the business of the company.
- (2) In favour of any person dealing with the company there shall be a rebuttable presumption that all persons who are described by the company as directors, whether as executive or otherwise, have been duly appointed.
- (3) Where a person not duly appointed acts or holds himself out as a director, he shall be guilty of an offence, and on conviction shall be liable to imprisonment for two years or to a fine of ₦100 for each day he so acts or to a fine of ₦1000 each day it holds him out, and he and the company may be restrained by any member from so acting unless or until he is duly appointed.
- (4) If it is the company that holds him out as a director, it shall be liable to a fine of ₦1000 each day it holds him out, and he and the company may be restrained by any member from so acting unless or until he is duly appointed.

#### **245. Shadow director**

- (1) Without prejudice to the provisions of sections 244 and 250, and for the purposes of sections 253, 275 and 281 of this Act, "director" shall include any person on whose instructions and directions the directors are accustomed to act.
- (2) Subject to sections 275, 280 and 281 of this Act, nothing contained in section 250 of this Act shall be deemed to derogate from the duties or liabilities of the duly appointed directors.
- (3) For the avoidance of doubt, the fact that a person in his professional capacity gives advice and a director acts on it shall not be construed to make such a person under this Act a person in accordance with whose directions or instructions the director of a company is accustomed to act.

##### *Appointment of Directors*

#### **246. Number of directors**

- (1) Every company registered on or after the commencement of this Act shall have at least two directors and every company registered before that date shall before the expiration of six months from the commencement of this Act have at least two directors.

(2) Any company whose number of directors falls below two, shall within one month of its so falling appoint new directors and shall not carry on business after the expiration of one month, unless such new directors are appointed.

(3) A director or member of a company who knows that a company carries on business after the number of directors has fallen below two for more than 60 days shall be liable for all liabilities and debts incurred by the company during that period when the company so carried on business.

#### **247. Appointment of first directors**

Subject to section 246 of this Act, the number of directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum of association or a majority of them or the directors may be named in the articles.

#### **248. Subsequent appointments of directors**

(1) The members at the annual general meeting shall have power to re-elect or reject directors and appoint new ones.

(2) In the event of all the directors and shareholders dying, any of the personal representatives shall be able to apply to the court for an order to convene a meeting of all the personal representatives of the shareholders entitled to attend and vote at a general meeting to appoint new directors to manage the company, and if they fail to convene a meeting, the creditors, if any, shall be able to do so.

#### **249. Casual vacancy**

(1) The board of directors shall have power to appoint new directors to fill any casual vacancy arising out of death, resignation, retirement or removal.

(2) Where a casual vacancy is filled by the directors, the person may be approved by the general meeting at the next annual general meeting, and if not so approved, he shall forthwith cease to be a director.

(3) The directors may increase the number of directors so long as it does not exceed the maximum allowed by the articles, but the general meeting shall have power to increase or reduce the number of directors generally and may determine in what rotation the directors shall retire:

Provided that such reduction shall not invalidate any prior act of the removed director.

#### **250. Liability of a person where not duly appointed**

Where a person not duly appointed as a director acts as such on behalf of the company, his act shall not bind the company and he shall be personally liable for such action:

Provided that where it is the company which holds him out as director, the company shall be bound by his acts.

#### **251. Share qualification of directors**

(1) The shareholding qualification for directors may be fixed by the articles of association of the company and unless and until so fixed no shareholding qualification shall be required.

(2) It shall be the duty of every director who is by the articles of the company required to hold a specified share qualification, and who is not already so qualified, to obtain qualification within two months after his appointment.

(3) The office of director of a company shall be vacated if the director does not within two months from the date of his appointment, obtain his qualification or after the expiration of the said period, he ceases at any time to hold his shareholding qualification.

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

(5) If, after the expiration of the said period, any unqualified person acts as a director of the company, he shall be liable to a fine of ~~N~~50 for every day between the expiration of the said period or the day on which he ceased to be qualified, as the case may be, and the last day on which it is proved that he acted as a director.

#### **252. Duty of directors to disclose age to the company**

(1) Any person who is appointed or to his knowledge proposed to be appointed director of a public company and who is 70 or more years old shall disclose this fact to the members at the general meeting.

(2) Any person who fails to disclose his age as required under this section shall be guilty of an offence and liable to a fine of ~~N~~500.

#### **253. Provisions as to insolvent persons acting as directors**

(1) If any person, being an insolvent person, acts as director of or directly or indirectly takes part in or is concerned in the management of any company, he shall be guilty of an offence and liable on conviction to a fine of N500, or to imprisonment for a term not less than six months or more than two years, or both.

(2) In this section, "company" includes an unregistered company.

#### **254. Restraint of fraudulent persons**

(1) Where-

(a) a person is convicted by a High Court of any offence in connection with the promotion, formation or management of a company; or

(b) in the course of winding up a company it appears that a person-

(i) has been guilty of any offence for which he is liable (whether he has been convicted or not) under section 506 of this Act; or

(ii) has otherwise been guilty, while an officer of the company, of any fraud in relation to the company or of any breach of his duty to the company, the court shall make an order that that person shall not be a director of or in any way, whether directly or indirectly, be concerned or take part in the management of a company for a specified period not exceeding 10 years.

(2) In the foregoing subsection, the High Court and the court, where used in relation to the making of an order against any person by virtue of paragraph (a) of subsection (1) of this section, include the court before which he is

convicted, as well as any court having jurisdiction to wind up the company, and in relation to the granting of leave means any court having jurisdiction to wind up the company as respects which leave is sought.

(3) A person intending to apply for the making of an order under this section by the court having jurisdiction to wind-up a company shall give not less than ten days' notice of his intention to the person against whom the order is sought, and on the hearing of the application, the last mentioned person may appear and himself give evidence or call witnesses.

(4) An application for the making of an order under this section by the court having jurisdiction to wind up a company, may be made by the official receiver, or by the liquidator of the company or by any person who is or has been a member or creditor of the company; and on the hearing of any application for an order under this section by the official receiver or the liquidator, or of any application for leave under this section by a person against whom an order has been made on the application of the official receiver or liquidator, the official receiver or liquidator shall appear and call the attention of the court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses.

(5) An order may be made by virtue of paragraph (b) (ii) of subsection (1) of this section, notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made, and for the purposes of the said paragraph (b) (ii) "officer" includes any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

(6) If any person acts in contravention of an order made under this section, he shall be guilty of an offence and in respect of each offence, be liable on conviction to a fine of ₦500 or to imprisonment for a term of not less than six months or more than two years, or both.

#### **255. Appointment of director for life**

A person may be appointed a director for life provided that he shall be removable under section 262 of this Act.

#### **256. Right to appoint a director at any age**

Subject to the provisions of this Act, a person may be appointed a director of a public company notwithstanding that he is 70 years or more of age but special notice shall be required of any resolution appointing or approving the appointment of such a director for the purposes of this section, and the notice given to the company and by the company to its members shall state the age of the person to whom it relates.

#### **257. Disqualification for directorship**

The following persons shall be disqualified from being directors-

- (a) an infant, that is, a person under the age of 18 years;
- (b) a lunatic or person of unsound mind;
- (c) a person disqualified under sections 253, 254 and 258 of this Act;
- (d) a corporation other than its representative appointed to the board for a given term.

#### **258. Vacation of office of director**

(1) The office of director shall be vacated if the director-

- (a) ceases to be a director by virtue of section 251 of this Act; or
- (b) becomes bankrupt or makes any arrangement or composition with his creditors generally; or
- (c) becomes prohibited from being a director by reason of any order made under section 254 of this Act; or
- (d) becomes of unsound mind; or
- (e) resigns his office by notice in writing to the company.

(2) Where a director presents himself for re-election, a record of his attendance at the meetings of the board during the preceding one year shall be made available to members at the general meeting where he is to be re-elected.

### **259. Rotation of directors**

(1) Unless the articles otherwise provide, at the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one third of the directors for the time being, or if their number is not three or a multiple of three, then the number nearest one third shall retire from office.

(2) The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

(3) The company at the meeting at which a director retires in the manner mentioned in subsections (1) and (2) of this section, may fill the vacated office by electing a person to that office and in default, the retiring director shall, if offering himself for re-election, be deemed to have been re-elected, unless at such meeting it is expressly resolved not to fill such vacated office or unless a resolution for the re-election of such director shall have been put to the meeting and lost.

(4) No person other than a director retiring at the meeting shall, unless recommended by the directors, be eligible for election to the office of director at any general meeting unless not less than three nor more than 21 days before the date appointed for the meeting there shall have been left at the registered office or head office of the company notice in writing, signed by a member duly qualified to attend and vote at the meeting for which such notice is given, of his intention to propose such person for election, and also notice in writing signed by that person of his willingness to be elected.

### **260. Validity of acts of directors**

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

### **261. Mode of voting on appointment of directors**

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

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

Provided that-

(a) this subsection shall not be taken as excluding the operation of section 260 of this Act; and

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

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

(4) Nothing in this section shall apply to a resolution altering the company's articles.

#### *Removal of directors*

### **262. Removal of directors**

(1) A company may by ordinary resolution remove a director before the expiration of his period of office, notwithstanding anything in its articles or in any agreement between it and him.

(2) A special notice shall be required of any resolution to remove a director under this section, or to appoint some other person instead of a director so removed, at the meeting at which he is removed, and on receipt of notice of an intended resolution to remove a director under this section, the company shall forthwith send a copy of it to the director concerned, and the director (whether or not he is a member of the company) shall be entitled to be heard on the resolution at the meeting.

(3) Where notice is given of an intended resolution to remove a director under this section and the director concerned makes with respect 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-

(a) in any notice of the resolution given to members of the company state the fact of the representations having been made; and

(b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company);

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

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

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

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

(6) 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 a director or of any appointment terminating with that as director, or as derogating from any power to remove a director which may exist apart from this section.

### *Proceedings of directors*

#### **263. Proceedings of directors**

(1) The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit:

Provided that the first meeting of the directors shall be held not later than six months after the incorporation of the company.

(2) Any question arising at any meeting shall be decided by a majority of votes, and in case of an equality of votes, the chairman shall have a second or casting vote.

(3) A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

(4) The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

(5) The directors may delegate any of their powers to a managing director or to committees consisting of such member or members of their body as they think fit and the managing director or any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be made by the directors.

(6) A committee may elect a chairman of its meeting; and if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

(7) A committee may meet and adjourn as it thinks proper, and any questions arising shall be determined by a majority of votes of the members present, and in the case of equality of votes the chairman shall have a second or casting vote.

(8) A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

(9) In all the directors' meetings, each director shall be entitled to one vote.



#### **264. Quorum**

(1) Unless the articles otherwise provide, the quorum necessary for the transaction of the business of directors shall be two where there are not more than six directors, but where there are more than six directors, the quorum shall be one third of the number of directors, and where the number of directors is not a multiple of three, then the quorum shall be one third to the nearest number.

(2) Where a committee of directors is appointed by the board of directors, the board shall fix its quorum, but where no quorum is fixed, the whole committee shall meet and act by a majority.

#### **265. Failure to have a quorum**

Where the board is unable to act because a quorum cannot be formed, the general meeting may act in place of the board and where a committee is unable to act because a quorum cannot be formed, the board may act in place of the committee.

#### **266. Notice of meeting**

(1) Every director shall be entitled to receive notice of the directors' meetings, unless he is disqualified by any reason under the Act from continuing with the office of director.

(2) There shall be given 14 days' notice in writing to all directors entitled to receive notice unless otherwise provided in the articles.

(3) Failure to give notice in accordance with subsection (2) of this section shall invalidate the meeting.

(4) Unless the articles otherwise provide, it shall not be necessary to give notice of a meeting of directors to any director for the time being absent from Nigeria, provided that if he has given an address in Nigeria, the notice shall be sent to such an address.

#### *Remuneration and other payments*

#### **267. Remuneration of directors**

(1) The remuneration of the directors shall, from time to time, be determined by the company in general meeting and such remuneration shall be deemed to accrue from day to day.

(2) The directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings of the company or in connection with the business of the company.

(3) Where remuneration has been fixed by the articles, it shall be alterable only by a special resolution.

(4) A company shall not be bound to pay remuneration to directors, but where the company agrees to pay, the directors shall be paid such remuneration out of the fund of the company.

(5) The amount of remuneration shall be a debt from the company so that if directors take office on the basis of the articles, they shall be able to sue the company on account of the debt or prove it in the liquidation.

(6) A director who receives more money than he is entitled to, shall be guilty of misfeasance and shall be accountable to the company for such money.

(7) The remunerations of directors shall be apportionable.

#### **268. Remuneration of a managing director**

(1) A managing director shall receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the directors may determine.

(2) Where a managing director is removed for any reason whatsoever under section 262 of this Act, he shall have a claim for breach of contract if there is any or where a contract could be inferred from the terms of the articles.

(3) Where he performs some services without a contract, he shall be entitled to payment on a *quantum meruit*.

#### **269. Prohibition of tax-free payments to directors**

(1) It shall not be lawful for a company to pay a director remuneration (whether as director or otherwise) free of income tax, or otherwise calculated by reference to or varying with the amount of his income tax, or at or with the rate or standard rate of income tax, except under a contract which was in force at the commencement of this Act, and provides expressly, and not by reference to the articles, for payment or remuneration as aforesaid.

(2) Any provision contained in a company's articles or in any contract other than such a contract as mentioned in subsection (1) of this section, or in any resolution of a company or the resolution of a company's directors for payment to a director of remuneration as mentioned in subsection (1) of this section, shall have effect as if it provided for payment, as a gross sum subject to income tax, of the net sum for which it actually provides.

(3) This section shall not apply to remuneration due before this Act comes into force or in respect of a period before it comes into force.

#### **270. Prohibition of loans to directors in certain circumstances**

(1) It shall not be lawful for a company to make a loan to any person who is its director or a director of its holding company, or to enter into any guarantee or provide any security in connection with a loan made to such a person as earlier mentioned by any other person:

Provided that nothing in this section shall apply-

(a) subject to subsection (2) of this section, to anything done to provide any such person as mentioned in this subsection with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company; or

(b) in the case of a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, to anything done by the company in the ordinary course of that business.

(2) Proviso (a) to subsection (1) of this section shall not authorise the making of any loan, or the entering into any guarantee, or the provision of any security except-

(a) with the prior approval of the company given at a general meeting at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed; or

(b) on condition that, if the approval of the company is not given as in subsection (2) (a) of this section at or before the next following annual general meeting, the loan shall be repaid or the liability under the guarantee or security shall be discharged, as the case may be, within six months from the conclusion of that meeting.

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

#### **271. Payment by company for loss of office, etc., to be approved**

It shall not be lawful for a company to make to any director of the company, any payment by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, unless particulars with respect to the proposed payment and the amount have been disclosed to members of the company and the proposal is approved by the company.

#### **272. Payment to director for loss of office, etc., or transfer of property illegal**

(1) If in connection with the transfer of the whole or any part of the undertaking or property of a company, it is proposed to make any payment to a director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, the payment shall be unlawful unless particulars with respect to the proposal and the amount have been disclosed to members of the company and the proposal is approved by the company.

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

#### **273. Directors to disclose payment for loss of office, etc., in certain cases**

(1) Where, in connection with the transfer to any persons of all or any of the shares in a company, being a transfer resulting from-

(a) an offer made to the general body of shareholders;

(b) an offer made by or on behalf of some other body corporate with a view to the company becoming its subsidiary or a subsidiary of its holding company;

(c) an offer made by or on behalf of an individual with a view to his obtaining the right to exercise or control the exercise of not less than one third of the voting power at any general meeting of the company; or

(d) any other offer which is conditional on acceptance to a given extent payment is to be made to a director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, it shall be the duty of that director to do all things reasonably necessary to secure that particulars with respect to the proposed payment and the amount, are included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(2) If-

(a) any such director fails to do all things reasonably necessary as mentioned in this section; or

(b) any person who has been properly required by any such director to include the said particulars in or send them with any such notice as aforesaid fails so to do, he shall be guilty of an offence and liable to a fine of ₦20.

(3) If-

(a) the requirements of subsection (1) of this section are not complied with in relation to any such payments as are mentioned there; or

(b) the making of the proposed payment is not, before the transfer of any shares in pursuance of the offer, approved by a meeting summoned for the purpose of the holders of the shares to which the offer relates and of other holders of shares of the same class as any of the said shares,

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

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

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

#### **274. Provisions supplementary to sections 271 to 273**

(1) Where, in proceedings for the recovery of any payment which has been received by any person in trust by virtue of subsections (1) and (2) of section 272 or subsections (1) and (3) of section 273 of this Act, it is shown that-

(a) the payment was made in pursuance of any arrangement entered into as part of the agreement for the transfer in question, or within one year but before two years after that agreement or the offer leading thereto; and

(b) the company or any person to whom the transfer was made was privy to that arrangement, the payment shall be deemed, except in so far as the contrary is shown, to be one to which the subsections apply.

(2) If in connection with any such transfer as is mentioned in sections 272 and 273 of this Act-

(a) the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him is in excess of the price obtainable at the time by other holders of the like shares; or

(b) any valuable consideration is given to any such director,

the excess or the money value of the consideration, as the case may be, shall, for the purposes of that section, be deemed to have been a payment made to him by way of compensation for loss of office, or as consideration for or in connection with his retirement from office.

(3) It is hereby declared that references in sections 271 to 273 of this Act to payments made to any director of a company by way of compensation for loss of office or as consideration for or in connection with his retirement from office shall not include any bona fide payment by way of damages for breach of contract or by way of pension in respect of past services and for the purposes of this subsection, "**pension**" includes any superannuation allowance, superannuation gratuity or similar payment.

(4) Nothing in section 272 or 273 of this Act shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any such payments as are mentioned there, or with respect to any other like payments made, or to be made, to the directors of a company.

#### *Disclosure of directors' interests*

#### **275. Register of directors' share holding etc.**

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

Provided that the register need not include shares in any body corporate which is the wholly-owned subsidiary of another body corporate, and for this purpose, a body corporate shall be deemed to be the wholly-owned subsidiary of another if it has no members but that other and that other's wholly-owned subsidiaries and its or their nominees.

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

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

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

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

(5) The said register shall, subject to the provisions of this section, be kept at the company's registered or head office and shall be open to inspection during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) as follows-

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

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

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

(7) Without prejudice to the rights conferred by subsection (5) of this section, the Commission may, at any time, request for the production to it of a copy of the register, or any part thereof.

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

(9) If default is made in complying with subsection (1) or (2) of this section, or if any inspection required under this section is refused, or any copy required thereunder is not sent within a reasonable time, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine of ₦500, and if default is made in complying with subsection (8) of this section, the company and every officer of the company who is in default shall be liable to a fine of ₦50.

(10) If any inspection required under this section is refused, the court may, by order, compel an immediate inspection of the register.

(11) For the purposes of this section-

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

(b) a director of a company shall be deemed to hold or to have any interest or right in or over, any shares or debentures, if a permanent representative of the body corporate other than the company holds them or has that interest or right in or over them, and either-

(i) that permanent representative is accustomed to act in accordance with his directions or instructions; or

(ii) he is entitled to exercise or control the exercise of one third or more of the voting power at any general meeting of that body corporate.

#### **276. General duty to give notice, etc.**

(1) It shall be the duty of any director of a company to give notice to the company of such matters relating to himself as may be necessary for the purposes of sections 275 and 277 of this Act except so far as it relates to loans made by the company or by any other person under a guarantee from or on a security provided by the company, to an officer thereof.

(2) Any such notice given for the purposes of section 275 of this Act, shall be in writing and if it is not given at a meeting of the directors, the director giving it shall do all things reasonably necessary to secure that it is brought up and read at the next meeting of directors after it is given.

(3) Subsection (1) of this section shall, to the extent to which it applies in relation to directors, apply to the like extent for-

(a) the purposes of section 277 of this Act in relation to officers other than directors;

(b) the purposes of sections 276 and 277 of this Act in relation to persons who are or have at any time during the preceding five years been officers of the company.

(4) Any person who makes default in complying with the foregoing provisions of this section shall be guilty of an offence and liable to a fine of ₦50.

#### **277. Disclosure by directors of interests in contracts**

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

(2) In the case of a proposed contract, the declaration required by this section to be made by a director shall be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration, or, if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he became so interested, and in a case where the director becomes interested in a contract after it is made, the said declaration shall be made at the first meeting of the directors held after he becomes so interested.

(3) For the 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, shall be deemed to be a sufficient declaration of interest in relation to any contract so made:

Provided that any such notice shall not have effect unless it is given at a meeting of the directors or the director does all things reasonably necessary to secure that it is brought up and read at the next meeting of the directors after it is given.

(4) Any director who fails to comply with the provisions of this section shall be guilty of an offence and liable to a fine of ₦100.

(5) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting directors of a company from having any interest in contracts with the company.

#### **278. Particulars with respect to directors in trade catalogues, etc.**

(1) Every company to which this section applies shall, in all 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 Nigeria, state in legible characters with respect to every director the following particulars-

(a) his present forename, or the initials thereof, and present surname;

(b) any former forenames and surnames;

(c) his nationality, if not a Nigerian:

Provided that, if special circumstances exist which the Commission is of the opinion render it expedient that such an exemption should be granted, the Commission may, subject to such conditions as it may prescribe by notice published in the *Gazette*, exempt a company from the obligations imposed by this subsection.

(2) This section shall apply to every company incorporated under this Act, or any enactment repealed by it.

(3) If a company makes default in complying with this section, every officer of the company who is in default shall be guilty of an offence and liable on conviction for each offence to a fine of ₦50:

Provided that no proceedings shall be instituted under this section except by, or with the consent of, the Attorney-General of the Federation.

(4) For the purposes of this section-

(a) "initials" includes a recognised abbreviation of a forename;

(b) references to a former forename or surname in the case of a married woman do not include the name or surname by which she was known previous to the marriage; and

(c) "showcards" means cards containing or exhibiting articles dealt with, or samples or representations thereof.

#### *Duties of directors*

### **279. Duties of directors**

(1) A director of a company stands in a fiduciary relationship towards the company and shall observe the utmost good faith towards the company in any transaction with it or on its behalf.

(2) A director shall also owe fiduciary relationship with the company in the following circumstances-

(a) where a director is acting as agent of a particular shareholder;

(b) where even though he is not an agent of any shareholder, such a shareholder or other person is dealing with the company's securities.

(3) A director shall act at all times in what he believes to be the best interests of the company as a whole so as to preserve its assets, further its business, and promote the purposes for which it was formed, and in such manner as a faithful, diligent, careful and ordinarily skilful director would act in the circumstances.

(4) The matters to which the director of a company is to have regard in the performance of his functions include the interests of the company's employees in general, as well as the interests of its members.

(5) A director shall exercise his powers for the purpose for which he is specified and shall not do so for a collateral purpose, and the power, if exercised for the right purpose, does not constitute a breach of duty, if it, incidentally, affects a member adversely.

(6) A director shall not fetter his discretion to vote in a particular way.

(7) Where a director is allowed to delegate his powers under any provision of this Act, such a director shall not delegate the power in such a way and manner as may amount to an abdication of duty.



(8) No provision, whether contained in the articles or resolutions of a company, or in any contract, shall relieve any director from the duty to act in accordance with this section or relieve him from any liability incurred as a result of any breach of the duties conferred upon him under this section.

(9) Any duty imposed on a director under this section shall be enforceable against the director by the company.

### **280. Conflicts of duties and interests**

(1) The personal interest of a director shall not conflict with any of his duties as a director under this Act.

(2) A director shall not-

(a) in the course of management of affairs of the company; or

(b) in the utilisation of the company's property, make any secret profit or achieve other unnecessary benefits.

(3) A director shall be accountable to the company for any secret profit made by him or any unnecessary benefit derived by him contrary to the provisions of subsection (2) of this section.

(4) The inability or unwillingness of the company to perform any functions or duties under its articles and memorandum shall not constitute a defence to any breach of duty of a director under this Act.

(5) The duty not to misuse corporate information shall not cease by a director or an officer having resigned from the company, and he shall still be accountable and can be restrained by an injunction from misusing the information received by virtue of his previous position.

(6) Where a director discloses his interests before the transaction and before the secret profits are made before the general meeting, which may or may not authorise any resulting profits, he may escape liability, but he shall not escape liability if he discloses only after he has made the secret profits, and in this case, he shall account for the profits.

### **281. Multiple directorships**

The fact that a person holds more than one directorship shall not derogate from his fiduciary duties to each company, including a duty not to use the property, opportunity or information obtained in the course of the management of one company for the benefit of the other company, or to his own or other person's advantage.

### **282. Duty of care and skill**

(1) Every director of a company shall exercise the powers and discharge the duties of his office honestly, in good faith and in the best interests of the company, and shall exercise that degree of care, diligence and skill which a reasonably prudent director would exercise in comparable circumstances.

(2) Failure to take reasonable care in accordance with the provisions of section 282 of this Act, shall ground an action for negligence and breach of duty.

(3) Each director shall be individually responsible for the actions of the board in which he participated, and the absence from the board's deliberations, unless justified, shall not relieve a director of such responsibility.

(4) The same standard of care in relation to the director's duties to the company shall be required for both executive and non-executive directors:

Provided that additional liability and benefit may arise under the master and servant law in the case of an executive director if there is an express or implied contract to that effect.

### **283. Legal position of directors**

(1) Directors are trustees of the company's moneys, properties and their powers and as such must account for all the moneys over which they exercise control and shall refund any moneys improperly paid away, and shall exercise their powers honestly in the interest of the company and all the shareholders, and not in their own or sectional interests.

(2) A director may, when acting within his authority and the powers of the company, be regarded as agents of the company under Part III of this Act.

#### *Property transactions by directors*

### **284. Substantial property transactions involving directors, etc.**

(1) Subject to the exceptions provided by section 285 of this Act, a company shall not enter into an arrangement-

(a) whereby a director of the company or its holding company, or a person connected with such a director, acquires or is to acquire one or more non-cash assets of the requisite value from the company; or

(b) whereby the company acquires or is to acquire one or more non-cash assets of the requisite value from such a director or a person so connected, unless the arrangement is first approved by a resolution of the company in general meeting and if the director or connected person is a director of its holding company or a person connected with such a director, by a resolution in general meeting of the holding company.

(2) For the purpose of subsection (1) of this section, a non-cash asset is of the requisite value if, at the time the arrangement in question is entered into, its value is not less than ₦2000 but (subject to that) exceeds ₦ 100,000 or 20 *per cent* of the company's asset value, that is-

(a) except in a case falling within paragraph (b) of this subsection the value of the company's net asset determined by reference to the accounts prepared and laid under Part XI in respect of the last preceding year in respect of which such accounts were so laid; and

(b) where no accounts have been so prepared and laid before that time, the amount of the company's called-up share capital.

(3) For the purposes of this section and sections 285 and 286 of this Act, a shadow director shall be treated as a director.

### **285. Exceptions from section 284**

(1) No approval shall be required to be given under section 284 of this Act by any body corporate unless it is a company within the meaning of this Act, or if it is a wholly-owned subsidiary of any body corporate.

(2) Section 283 of this Act shall not apply to an arrangement for the acquisition of a non-cash asset if-

(a) the asset is to be acquired by a holding company from any of its wholly-owned subsidiaries or from a holding company by any of its wholly-owned subsidiary of a holding company from another wholly-owned subsidiary of that same holding company; or

(b) the arrangement is entered into by a company which is being wound up, unless the winding up is a member's voluntary winding up.

(3) Subsection (1) (a) of section 284 of this Act shall not apply to an arrangement whereby a person is to acquire an asset from a company of which he is a member, if the arrangement is made with that person in his character as a member.

#### **286. Liabilities arising from contravention of section 284**

(1) An arrangement entered into by a company in contravention of section 284 of this Act and any transaction entered into in pursuance of the arrangement (whether by the company or any other person), shall be voidable at the instance of the company, unless one or more of the conditions specified in subsection (2) of this section is satisfied.

(2) The conditions are that-

(a) restitution of any money or other asset which is the subject-matter of the arrangement or transaction is no longer possible or the company has been indemnified in pursuance of this section by any other person for the loss or damage suffered by it; or

(b) any rights acquired *bona fide* for value and without actual notice of the contravention by any person who is a party to the arrangement or transaction would be affected by its avoidance; or

(c) the arrangement is, within a reasonable period, affirmed by the company in general meeting and, if it is an arrangement for the transfer of an asset to or by a director of its holding company or a person who is connected with such a director, is so affirmed with the approval of the holding company given by a resolution in general meeting.

(3) If an arrangement is entered into with a company by a director of the company or its holding company or a person connected with him in contravention of section 284 of this Act, that director and the person so connected, and any other director of the company who authorises the arrangement or any transaction entered into in pursuance of such an arrangement, shall be guilty of an offence and liable-

(a) to account to the company for any gain which he has made directly or indirectly by the arrangement or transaction; and

(b) (jointly and severally with any other person liable under this subsection) to indemnify the company for any loss or damage resulting from the arrangement or transaction.

(4) Subsection (3) of this section shall be without prejudice to any liability imposed otherwise than by that subsection, and is subject to the following two subsections; and the liability under subsection (3) of the section arises whether or not the arrangement or transaction entered into has been avoided in pursuance of subsection (1) of this section.

(5) If an arrangement is entered into by a company and a person connected with a director of the company or its holding company in contravention of section 284 of this Act, that director shall not be liable under subsection (3) of this section if he shows that he took all reasonable steps to secure the company's compliance with that section.

(6) In any case, a person so connected and any such other director as is mentioned in subsection (3) of this section, shall not be so liable if he shows that at the time the arrangement was entered into, he did not know the relevant circumstances constituting the contravention.

(7) This section shall have effect with respect to references in sections 284, 285 and 286 of this Act to a person being "connected" with a director of a company, and to a director being "associated with" or "controlling" a body corporate.

(8) A person is connected with a director of a company if he (not being himself a director of it) is-

- (a) that director's spouse, child or step-child, including illegitimate child;
- (b) except where the context otherwise requires, a body corporate with which the director is associated; or
- (c) a person acting in his capacity as trustee of any trust, the beneficiaries of which include-
  - (i) the director, his spouse, any children or step-children; or
  - (ii) a body corporate with which he is associated, or of a trust whose terms confer a power on the trustees that may be exercised for the benefit of the director, his spouse or any children or step-children of his, or any such body corporate; or
- (d) a person acting in his capacity as partner of that director or of any person who, by virtue of paragraphs (a), (b) or (c) of this subsection, is connected with that director.

### **287. Prohibition of secret benefits**

(1) A director shall not accept a bribe, a gift, or commission either in cash or kind from any person or a share in the profit of that person in respect of any transaction involving his company in order to introduce his company to deal with such a person.

(2) If a director contravenes the provisions of section 287 (1) of this Act, he commits a breach of duty and the company shall recover from the director the actual gift and then sue him and the other person jointly and severally for damages sustained without any deduction in respect of what the director has returned.

(3) Where the gift is made after the transaction has been completed in a form of unsolicited gift as a sign of gratitude, the director may be allowed to keep the gift, provided he declares it before the board and that fact shall also appear in the minutes book of the directors.

(4) In all cases concerning secret benefits, the plea that the company benefited or that the gift was accepted in good faith shall be no defence.

#### *Miscellaneous matters relating to directors*

### **288. Directors with unlimited liability in respect of a limited company**

(1) In a limited company the liability of the directors or managers or of the managing director, may, if so provided by the memorandum, be unlimited.

(2) In a limited company in which the liability of a director or manager is unlimited, the directors and any managers of the company and the member who proposes a person for election or appointment to the office of director or manager, shall add to that proposal a statement that the liability of the person holding that office shall be unlimited, and before the person accepts the office or acts therein, notice in writing that his liability shall be unlimited shall be given to him by the following or one of the following persons, namely, the promoters of the company, the directors of the company, any managers of the company and the secretary of the company.

(3) If any director, manager, or promoter makes default in adding such a statement, or if any promoter, director, manager or secretary makes default in giving such a notice, he shall be guilty of an offence and liable to a fine of ~~₹~~100 and shall also be liable for any damage which the person so elected or appointed may sustain from the default.

### **289. Special resolution of limited company making liability of directors unlimited**

(1) A limited company, if so authorised by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors or managers, or of any managing director.

(2) Upon the passing of any such special resolution, the provisions of it shall be as valid as if they had been originally contained in the memorandum.

### **290. Personal liability of directors and officers**

(1) Where a company-

(a) receives money by way of loan for specific purpose; or

(b) receives money or other property by way of advance payment for the execution of a contract or project; and

(c) with intent to defraud, fails to apply the money or other property for the purpose for which it was received, every director or other officer of the company who is in default shall be personally liable to the party from whom the money or property was received for a refund of the money or property so received and not applied for the purpose for which it was received:

Provided that nothing in this section shall affect the liability of the company itself.

### **291. Director's contract of employment for more than five years**

(1) The provisions of this section shall apply in respect of any term of an agreement whereby a director's

employment with the company of which he is a director or, where he is the director of a holding company, his employment within the group, is to continue or may be continued, otherwise than at the instance of the company (whether under the original agreement entered into in pursuance of it or not), for a period of more than five years during which the employment-

(a) cannot be terminated by the company by notice; or

(b) can be so terminated only in specified circumstances.

(2) In any such case where-

(a) a person is or is to be employed with a company under an agreement which cannot be terminated by the company by notice or can be so terminated only in specified circumstances; and

(b) more than six months before the expiration of the period for which he is or to be so employed, the company enters into a further agreement otherwise than in pursuance of a right conferred by or under the original agreement on the other party to it under which he is to be employed with the company or, where he is a director of a holding company, within the group,

this section shall apply as if to the period for which he is to be employed under that further agreement there were added a further period equal to the unexpired period of the original agreement.

(3) A company shall not incorporate in an agreement such a term as is mentioned in subsection (1) of this section unless the term is first approved by a resolution of the company in general meeting and in the case of a director of a holding company, by a resolution of that company in general meeting.

(4) No approval shall be required to be given under this section by any body corporate unless it is a company within the meaning of this Act, or if it is a wholly-owned subsidiary of any body corporate.

(5) A resolution of a company approving such a term as is mentioned in subsection (1) of this section, shall not be passed at a general meeting of the company unless a written memorandum setting out the proposed agreement incorporating the term is available for inspection by members of the company both-

(a) at the company's registered office for not less than 15 days ending with the date of the meeting; and

(b) at the meeting itself.

(6) A term incorporated in an agreement in contravention of this section shall to the extent that it contravenes the section, be void; and that agreement and in a case where subsection (2) of this section applies, the original agreements shall be deemed each to contain a term entitling the company to terminate it at any time by the giving of reasonable notice.

(7) In this section-

(a) "employment" includes employment under a contract for services; and

(b) "group" in relation to a director of a holding company, means the group which consists of that company and its subsidiaries and for purposes of this section, a shadow director shall be treated as a director.

## **292. Register of directors and secretaries**

(1) Every company shall keep at its registered office, a register of its directors and secretaries.

(2) The register shall contain the following particulars with respect to each director, that is to say his present forename and surname, any former forename and surname, his usual residential address, his nationality, his business occupation, if any, particulars of any other directorships held by him and the date of his birth:

Provided that it shall not be necessary for the register to contain particulars of directorships held by a director in companies of which the whole company is the wholly-owned subsidiary, or which are the wholly-owned

subsidiaries either of the company or of another company of which the company is the wholly-owned subsidiary, and for the purpose of this proviso-

(i) "company" includes any body corporate incorporated in Nigeria; and

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

(3) The register shall contain the following particulars with respect to the secretary, in the case of an individual, his present forename and surname, any former forenames and surname and his usual residential address; and in the case of a corporation its registered name and registered or head office.

(4) The company shall within the periods respectively mentioned in subsection (5) of this section, send to the Commission a return in the prescribed form containing the particulars specified in the register and notification in the prescribed form of any change among its directors or in its secretary or in any of the particulars contained in the register, specifying the date of the change.

(5) The periods referred to in subsection (4) of this section shall be the period within which-

(a) the return is to be sent which shall be a period of 14 days from the date of incorporation of the company; and

(b) the notification of a change is to be sent which shall be 14 days from the happening thereof:

Provided that, in the case of a return containing particulars with respect to any person who is the company's secretary at the commencement of this Act, the period shall be 14 days from the commencement of this Act.

(6) The register to be kept under this section shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that no less than two hours in each day be allowed for inspection) be open to inspection by any member of the company without charge and by any other person on payment of 50k or such less sum as the company may prescribe, for each inspection.

(7) If any inspection required under this section is refused, or if default is made in complying with the provisions of subsections (1), (2), (3) and (4) of this section, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine of ₦50.

(8) In case of any such refusal or default as mentioned in subsection (7) of this section, the court may by order compel an inspection of the register or that the copies required be sent as provided in this section.

(9) For the purpose of this section-

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

(b) references to a former forename or surname in the case of a married woman shall not include the name or surname by which she was known previous to the marriage.

## *Secretaries*

### **293. Secretaries**

(1) Every company shall have a secretary.

(2) Anything required or authorised to be done by or of the secretary may, if the office is vacant or there is for any other reason no secretary capable of acting, be done by or of any assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by or of any officer of the company authorised generally or specially in that behalf by the directors.

### **294. Avoidance of acts done by a person as director and secretary**

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

### **295. Qualification of a secretary**

It shall be the duty of a director of a company to take all reasonable steps to ensure that the secretary of the company is a person who appears to have the requisite knowledge and experience to discharge the functions of a secretary of a company, and in the case of a public company, he shall be-

- (a) a member of the Institute of Chartered Secretaries and Administrators; or
- (b) a legal practitioner within the meaning of the Legal Practitioners Act; or

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- (c) a member of the Institute of the Chartered Accountants of Nigeria or such other bodies of accountants as are established from time to time by an Act; or
- (d) any person who has held the office of the secretary of a public company for at least three years of the five years immediately preceding his appointment in a public company; or
- (e) a body corporate or firm consisting of members each of whom is qualified under paragraphs (a), (b), (c), or (d) of this section.

### **296. Appointment and removal of a secretary**

(1) A secretary shall be appointed by the directors and, subject to the provisions of this section, may be removed by them.

(2) Where it is intended to remove the secretary of a public company, the board of directors shall

give him notice-

- (a) stating that it is intended to remove him;
- (b) setting out the grounds on which it is intended to remove him;
- (c) giving him a period not less than seven working days within which to make his defence; and



(d) giving him an option to resign his office within a period of seven working days.

(3) Where, following the notice prescribed in subsection (2) of this section, the secretary does not within the given period resign his office or make a defence, the board may remove him from office and shall make a report to the next general meeting; but where the secretary, without resigning his office, makes a defence and the board does not consider it sufficient, if the ground-

(a) on which it is intended to remove him is that of fraud or serious misconduct, the board may remove him from office and shall report to the next general meeting; and

(b) is other than of fraud or serious misconduct, the board shall not remove him without the approval of the general meeting, but may suspend him and shall report to the next general meeting.

(4) Notwithstanding any rule of law, where a secretary suspended under paragraph (b) of subsection (3) of this section is removed with the approval of the general meeting, the removal may take effect from such time as the general meeting may determine.

#### **297. Fiduciary interests of a secretary**

A secretary shall not owe fiduciary duties to the company, but where he is acting as its agent he shall owe fiduciary duties to it, and as such shall be liable to the company where he makes secret profits or lets his duties conflict with his personal interests, or uses confidential information he obtained from the company for his own benefit.

#### **298. Duties of a secretary**

(1) The duties of a secretary shall include the following-

(a) attending the meeting of the company, the board of directors and its committees, rendering all necessary secretarial services in respect of the meeting and advising on compliance by the meetings with the applicable rules and regulations;

(b) maintaining the registers and other records required to be maintained by the company under this Act;

(c) rendering proper returns and giving notification to the Commission required under this Act; and

(d) carrying out such administrative and other secretarial duties as directed by the director, or the Company.

(2) The secretary shall not without the authority of the board exercise any powers vested in the directors.

### **PART X**

#### *Protection of minority against illegal and oppressive conduct*

##### *Action by or against the company*

#### **299. Only company may sue for wrong or ratify irregular conduct**

Subject to the provisions of this Act, where an irregularity has been committed in the course of a company's affairs or any wrong has been done to the company, only the company can sue to remedy that wrong and only the company can ratify the irregular conduct.

### **300. Protection of minority: injunction and declaration in certain cases**

Without prejudice to the rights of members under sections 303 to 308 and sections 310 to 312 of this Act or any other provisions of this Act, the court, on the application of any member, may by injunction or declaration restrain the company from the following-

- (a) entering into any transaction which is illegal or *ultra vires*;
- (b) purporting to do by ordinary resolution any act which by its constitution or the Act requires to be done by special resolution;
- (c) any act or omission affecting the applicant's individual rights as a member;
- (d) committing fraud on either the company or the minority shareholders where the directors fail to take appropriate action to redress the wrong done;
- (e) where a company meeting cannot be called in time to be of practical use in redressing a wrong done to the company or to minority shareholders; and
- (f) where the directors are likely to derive a profit or benefit, or have profited or benefited from their negligence or from their breach of duty.

### **301. Personal and representative action**

(1) Where a member institutes a personal action to enforce a right due to him personally, he shall not be entitled to any damages but a declaration or injunction to restrain the company and/or the directors from doing a particular act.

(2) Where a member institutes a representative action on behalf of himself and other affected members to enforce any rights due to them, he shall not be entitled to any damages but to a declaration or injunction to restrain the company and/or directors from doing a particular act.

(3) Where any member institutes an action under this section, the court may award costs to him personally whether or not his action succeeds.

(4) In any proceedings by a member under section 300 of this Act, the court may, if it thinks fit, order that the member shall give security for costs.

### **302. Definition of member**

For the purpose of sections 300 and 301 of this Act, "member" includes-

- (a) the personal representative of a deceased member; and
- (b) any person to whom shares have been transferred or transmitted by operation of law.

### **303. Commencing derivative action**

(1) Subject to the provisions of subsection (2) of this section, an applicant may apply to the court for leave to bring an action in the name or on behalf of a company, or to intervene in an action to which the company is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the company.

(2) No action may be brought and no intervention may be made under subsection (1) of this section, unless the court is satisfied that-

- (a) the wrongdoers are the directors who are in control, and will not take necessary action;
- (b) the applicant has given reasonable notice to the directors of the company of his intention to apply to the court under subsection (1) of this section if the directors of the company do not bring, diligently prosecute or defend or discontinue the action;
- (c) the applicant is acting in good faith; and
- (d) it appears to be in the best interest of the company that the action be brought, prosecuted, defended or discontinued.

#### **304. Powers of the court**

(1) In connection with an action brought or intervened under section 303 of this Act, the court may, at any time, make any such order or orders as it thinks fit.

(2) Without prejudice to the generality of subsection (1) of this section, the court may make one or more of the following orders, that is an order-

- (a) authorising the applicant or any other person to control the conduct of the action;
- (b) giving directions for the conduct of the action;
- (c) directing that any amount adjudged payable by a defendant in the action shall be paid, in whole or in part, directly to former and present security holders of the company instead of to the company;
- (d) requiring the company to pay reasonable legal fees incurred by the applicant in connection with the proceedings.

#### **305. Evidence of shareholders' approval not decisive**

An application made or an action brought or intervened in under section 303 of this Act shall not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or a duty owed to the company has been or may be approved by the shareholders of such company, but evidence of approval by the shareholders may be taken into account by the court in making an order under section 304 of this Act.

#### **306. Court's approval to discontinue**

An application made or an action brought or intervened in under section 303 of this Act shall not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the court given upon such terms as the court thinks fit and, if the court determines that the rights of any applicant may be substantially affected by such stay, discontinuance, settlement or dismissal, the court may order any party to the application or action to give notice to the applicant.

### **307. No security for costs**

An applicant shall not be required to give security for costs in any application made or action brought or intervened in under section 303 of this Act.

### **308. Interim costs**

In an application made or an action brought or intervened in under section 303 of this Act, the court may at any time order the company to pay to the applicant interim costs before the final disposition of the application or action.

### **309. Definition**

In sections 303 to 308 of this Act, "applicant" means-

- (a) a registered holder or a beneficial owner and a former registered holder or beneficial owner, of a security of a company;
- (b) a director or an officer or a former director or officer of a company;
- (c) the Commission; or
- (d) any other person who in the discretion of the court, IS a proper person to make an application under section 303 of this Act.

*Relief on the grounds of unfairly prejudicial and oppressive conduct*

### **310. Application**

(1) An application to the court by petition for an order under section 311 of this Act in relation to a company may be made by any of the following persons-

- (a) a member of the company;
- (b) a director or officer or former director or officer of the company;
- (c) a creditor;
- (d) the Commission; or
- (e) any other person who, in the discretion of the court, is the proper person to make an application under section 311 of this Act.

(2) In sections 311 to 313 of this Act, "member" includes-

- (a) the personal representative of a deceased member; and
- (b) any person to whom shares have been transferred or transmitted by operation of law.

### **311. Grounds upon which an application may be made**

(1) An application for relief on the ground that the affairs of a company are being conducted in an illegal or oppressive manner may be made to the court by petition.

(2) An application to the court by petition for an order under this section in relation to a company maybe made-

(a) by a member of the company who alleges-

(i) that the affairs of the company are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members, or in a manner that is in disregard of the interests of a member or the members as a whole; or

(ii) that an act or omission or a proposed act or omission, by or on behalf of the company or a resolution, or a proposed resolution, of a class of members, was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or was or would be in a manner which is in disregard of the interests of a member or the member as a whole; or

(b) by any of the persons mentioned under paragraphs (b) (c) and (e) of subsection (1) of section 310 of this Act who alleges –

(i) that the affairs of the company are being conducted in a manner oppressive or unfairly prejudicial to or discriminatory against or which is in a manner in disregard of the interests of that person,

(ii) that an act or omission, or a proposed act or omission was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, or which is in a manner in disregard of the interests of that person, or

(c) by the Commission in a case where it appears to it in the exercise of its powers under the provisions of this act or any other enactment that –

(i) the affairs of the company are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against a member or members or in a manner which is in disregard of the public interest; or

(ii) any actual or proposed act or omission of the company (including an act or omission on its behalf) which was or would be oppressive, or unfairly prejudicial to, or unfairly discriminatory against a member or members in a manner which is in disregard of the public interests.

### **312. Powers of the court**

(1) If the court is satisfied that a petition under sections 310 and 311 of this Act is well founded, it may make such order or orders as it thinks fit for giving relief in respect of the matter complained of.

(2) Without prejudice to the generality of subsection (1) of this section, the court may make one or more of the following orders that is, an order—

(a) that the company be wound up;

- (b) for regulating the conduct of the affairs of the company in future;
- (c) for the purchase of the shares of any member by other members of the company;
- (d) for the purchase of the shares of any member by the company and for the reduction accordingly of the company's capital;
- (e) directing the company to institute, prosecute, defend or discontinue specific proceedings, or authorising a member or the company to institute, prosecute, defend or discontinue specific proceedings in the name or on behalf of the company;
- (f) varying or setting aside a transaction or contract to which the company is a party and compensating the company or any other party to the transaction or contract;
- (g) directing an investigation to be made by the Commission;
- (h) appointing a receiver or a receiver and manager of property of the company;
- (i) restraining a person from engaging in specific conduct or from doing a specific act or thing;
- (j) requiring a person to do a specific act or thing.

(3) Where an order that a company be wound up is made under this section, the provisions of this

Act relating to winding up of companies shall apply, with such adaptations as are necessary, as if the order had been made upon an application duly filed in the court by the company.

(4) Where an order under this section makes any alteration or addition to the memorandum or articles of a company, then, notwithstanding anything in any other provision of this Act but subject to the provisions of the order, the company shall not have power, without the leave of the court, to make any further alteration or addition to the memorandum and articles inconsistent with the provisions of the order but, subject to the foregoing provisions of this subsection, the alteration or addition shall have effect as if it had been duly made by a resolution of the company.

(5) A certified true copy of an order made under this section 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 Commission for registration; and if the company makes default in complying with the provisions of this subsection, the company and every officer of it who is in default shall be guilty of an offence and liable to a fine of ₦50 and, for continued contravention, to a daily default fine of ₦25.

### **313. Penalty for failure to comply with order of the court**

Any person who contravenes or fails to comply with an order made under section 312 of this Act that is applicable to him, shall be guilty of an offence and be liable to a fine of ₦500 or imprisonment for a term of one year or to both such fine and imprisonment.

### *Investigation of companies and their affairs*

### **314. Investigation of a company on its own application or that of its members**

(1) The Commission may appoint one or more competent inspectors to investigate the affairs of a company and to report on them in such manner as it may direct.

(2) The appointment may be made-

(a) in the case of a company having a share capital, on the application of members holding not less than one quarter of the class of shares issued;

(b) in the case of a company not having a share capital, on the application of not less than one quarter in number of the persons on the company's register of members; and

(c) in any other case, on application of the company.

(3) The application shall be supported by such evidence as the Commission may require for the purpose of showing that the applicant or applicants have good reason for requiring the investigation.

### **315. Other investigations of company**

(1) The Commission shall appoint one or more competent inspectors to investigate the affairs of a company and report on them in such manner as it directs, if the court by order declares that its affairs ought be so investigated.

(2) The Commission may make such an appointment if it appears to it that there are circumstances suggesting that-

(a) the company's affairs are being or have been conducted with intent to defraud its creditors or the creditors of any other person, or in a manner which is unfairly prejudicial to some part of its members; or

(b) any actual or proposed act or omission 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

(c) 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

(d) the company's members have not been given all the information with respect to its affairs which they might reasonably expect.

(3) Subsections (1) and (2) of this section shall be without prejudice to the powers of the Commission under section 322 of this Act, and the power conferred by subsection (2) of this section shall be exercisable with respect to a body corporate, notwithstanding that it is in a course of being voluntarily wound up.

(4) Reference in subsection (2) of this section to a company's members, includes any of the following persons-

(a) the personal representatives of a deceased member; and

(b) any person to whom shares have been transferred or transmitted by operation of law.

### **316. Inspectors' powers during investigation**

(1) If an inspector appointed under section 314 or 315 of this Act to investigate the affairs of a company thinks it necessary for the purposes of his investigation to investigate also the affairs of another body corporate which is or at any relevant time has been the company's subsidiary or holding company, or a subsidiary of its holding company

or a holding company of its subsidiary, he shall report on the affairs of the other body corporate so far as he thinks that the results of his investigation of its affairs are relevant to the investigation of the affairs of the company first mentioned above.

(2) An inspector appointed under either section 314 or 315 of this Act may at any time in the course of his investigation, without the necessity of making an interim report, inform the Commission of matters coming to his knowledge as a result of the investigation tending to show that an offence has been committed.

### **317. Production of documents and evidence to inspectors**

(1) When an inspector is appointed under section 314 or 315 of this Act, it shall be the duty of all officers and agents of the company, and of all officers and agents of any other body corporate whose affairs are investigated under section 316 of this Act-

(a) to produce to the inspector all books and documents of or relating to the company or, as the case may be, the other body corporate which are in their custody or power;

(b) to attend before the inspector when required to do so; and

(c) otherwise to give the inspector all assistance in connection with the investigation which he is reasonably able to give.

(2) If the inspector considers that a person other than an officer or agent of the company or other body corporate is or may be in possession of information concerning its affairs, he may require that person to produce to him any books or documents in his custody or power relating to the company or other body corporate, to attend before him and otherwise to give him all assistance in connection with the investigation which he is reasonably able to give; and it is that person's duty to comply with the requirement.

(3) An inspector may examine on oath the officers and agents of the company or other body corporate, and any such person as is mentioned in subsection (2) of this section in relation to the affairs of the company or other body, and administer an oath accordingly.

(4) In this section, a reference to officers or to agents includes past, as well as present, officers or agents (as the case may be); and "agent" in relation to a company or other body corporate, 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 (whether as it has effect in relation to an investigation under any of sections 314 to 316 of this Act as applied by any other section in this Act) may be used in evidence against him.

### **318. Power of inspector to call for directors' bank accounts**

(1) If an inspector has reasonable grounds for believing that a director, or past director, of the company or other body corporate whose affairs he is investigating maintains or has maintained a bank account of any description (whether alone or jointly with another person and whether in Nigeria or elsewhere), into or out of which there has been paid-



(a) the emoluments or part of the emoluments of his office as such director, particulars of which have not been disclosed in the financial statements of the company or other body corporate for any financial year, contrary to the provisions of Part V of the Fourth Schedule to this Act (in relation to particular in accounts of directors);

[Fourth Schedule.]

(b) any money which has resulted from or been used in the financing of an undisclosed transaction, arrangement or agreement; or

(c) any money which has been in any way connected with an act or omission or series of acts or omissions, which on the part of that director constituted misconduct (whether fraudulent or not) towards the company or body corporate or its members,

the inspector may require the director to produce to him all documents in the director's possession, or under his control, relating to that bank account.

(2) For purposes of subsection (1) (b), of this section, an "undisclosed" transaction, arrangement or agreement is one the particulars of which have not been disclosed in the financial statement of any company or in a statement annexed thereto for any financial year, including the disclosure of contracts between companies and their directors.

### **319. Obstruction of inspectors to be treated as contempt of court**

(1) When an inspector is appointed under section 314 or 315 of this Act to investigate the affairs of a company, the following applies in the case of-

(a) any officer or agent of the company;

(b) any officer or agent of another body corporate whose affairs are investigated under section 316 of this Act; and

(c) any such person as is mentioned in section 317 (2) of this Act.

(2) Subsection (4) of section 317 of this Act shall apply with regards to references in subsection (1) of this section to an officer or agent.

(3) If that person-

(a) refuses to produce any book or document which it is his duty under section 317 or 318 of this Act to produce; or

(b) refuses to attend before the inspector when required to do so; or

(c) refuses to answer any question put to him by the inspector with respect to the affairs of the company or other body corporate (as the case may be),

the inspector may certify the refusal in writing to the court.

(4) The court may thereupon enquire into the case; and after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, the court may punish the offender in like manner as if he had been guilty of contempt of the court.

### **320. Inspector's report**

(1) The inspector may, and if so directed by the Commission shall, make interim reports to the Commission, and on the conclusion of his investigation shall make a final report to it and any such report shall be written or printed, as the Commission may direct.

(2) The Commission may direct that a copy of the inspector's report be forwarded to the company at its registered or head office.

(3) Where an inspector is appointed under section 314 of this Act in pursuance of an order of the court, the Commission shall furnish a copy of any of its reports to the court.

(4) In any other case, the Commission may, if it thinks fit-

(a) furnish a copy on request and on payment of the prescribed fee to-

(i) any member of the company or other body corporate which is the subject of the report;

(ii) any person whose conduct is referred to in the report;

(iii) the auditors of that company or body corporate;

(iv) the applicants for the investigation;

(v) any other person whose financial interests appear to the Commission to be affected by the matters dealt with in the report, whether as creditors of the company or body corporate, or otherwise; and

(b) cause any such report to be printed and published.

### **321. Power to bring civil proceedings on company's behalf**

(1) If, from any report made under section 320 of this Act it appears to the Commission that any civil proceedings ought in the public interest to be brought by the company or any body corporate, the Commission may itself bring such proceedings in the name and on behalf of the company or the body corporate.

(2) The Commission shall indemnify the body corporate against any costs or expenses incurred by it in or in connection with proceedings brought under this section; and any costs or expenses so incurred shall, if not otherwise recoverable, be defrayed out of the Consolidated Revenue Fund.

### **322. Criminal proceedings and other proceedings by the Attorney-General of the Federation**

(1) If, from any report made under section 320 of this Act, it appears that any person has, in relation to the company or any body corporate whose affairs have been investigated by virtue of section 316 of this Act, been guilty of any offence for which he is criminally liable, the report shall be referred to the Attorney-General of the Federation.

(2) If the Attorney-General of the Federation considers that the case referred to him is one in which a prosecution ought to be instituted, he shall direct action accordingly, and it shall be the duty of all officers and agents of the company or other body corporate, as the case may be (other than the defendant in the proceedings), to give all assistance in connection with the prosecution which they are reasonably able to give.

(3) If, from any report made under section 320 of this Act, it appears to the Commission that proceedings ought in the public interest to be brought by any body corporate dealt with by the report for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation of that body corporate or the management of its affairs, or for the recovery of any property of the body corporate which has been misapplied or wrongfully retained, it may refer the case to the Attorney-General of the Federation for his opinion as to the bringing of proceedings for that purpose in the name of the body corporate and if proceedings are brought, it shall be the duty of all officers and agents of the company or other body corporate as the case may be (other than the defendants in proceedings), to give him all assistance in connection with the proceedings which they are reasonably able to give.

(4) Costs and expenses incurred by a body corporate in or in connection with any proceedings brought by it under subsection (3) of this section shall, if not otherwise recoverable, be defrayed out of the Consolidated Revenue Fund.

### **323. Power of the Commission to present winding-up petition**

If, in the case of any body corporate liable to be wound up under this Act, it appears to the Commission from a report made by an inspector under section 320 of this Act that it is expedient in the public interest that the body corporate should be wound up, the Commission may (unless the body corporate is already wound up by the court) present a petition for it to be so wound up if the court thinks it just and equitable to do so.

### **324. Expenses of investigation**

(1) The expenses of an incidental to, an investigation by an inspector appointed by the Commission under the foregoing provisions of this Act, shall be defrayed in the first instance out of the Consolidated Revenue Fund, but the following persons shall, to the extent mentioned, be liable to make repayment, that is to say-

(a) any person who is convicted on a prosecution instituted, as a result of the investigation by the Attorney-General of the Federation, or who is ordered to pay damages or restore any property in proceedings brought by virtue of subsection (3) of section 322 of this Act, may in the same proceedings be ordered to pay the said expenses to such extent as are specified in the order;

(b) any body corporate in whose name proceedings are brought as aforesaid shall be liable to the extent of the amount or value of any sums or property recovered by it as a result of those proceedings;

(c) unless as the result of the investigation a prosecution is instituted by the Attorney-General of the Federation, the applicants for the investigation, where the inspector was appointed under section 314 of this Act, shall be liable to such extent (if any) as the Commission may direct,

and any amount for which a body corporate is liable by virtue of paragraph (b) of this subsection, shall be a first charge on the sums or property mentioned in that paragraph.

(2) For the purposes of this section, any costs or expenses incurred by the Commission in or in connection with proceedings brought by virtue of subsection (2) of section 321 of this Act, shall be treated as expenses of the investigation giving rise to the proceedings.

(3) Expenses to be defrayed by the Commission under this section shall, so far as not recovered thereunder, be paid out of the appropriate Consolidated Revenue Fund.

### **325. Inspectors' report to be used as evidence in legal proceedings**

(1) A copy of any report of an inspector appointed under sections 314 and 315 of this Act, certified by the Commission to be a true copy, shall be admissible in any legal proceedings as evidence of the opinion of the inspector 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.

### **326. Appointment, etc., of inspectors to investigate ownership of a company**

(1) Where it appears to the Commission that there is good reason so to do, it 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 the policy of the company.

(2) The appointment of an inspector under this section may define the scope of his investigation, whether as respects the matter or the period to which it is to extend or otherwise, and in particular may limit investigation to matters connected with particular shares or debentures.

(3) Where an application for an investigation under this section with respect to particular shares or debentures of a company is made to the Commission by members of the company, and the number of applicants or the amount of the shares held by them is not less than that required for an application for the appointment of an inspector under paragraphs (a) and (b) of subsection (2) of section 314 of this Act-

(a) the Commission shall appoint an inspector to conduct that investigation, unless it is satisfied that the application is vexatious; and

(b) the inspector's appointment shall not exclude from the scope of his investigation any matter which the application seeks to include, except in so far as the Commission is satisfied that it is reasonable for the matter to be investigated.

(4) Subject to the terms of an inspector's appointment, his powers shall 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 his investigation.

### **327. Provisions applicable to investigation**

(1) For the purposes of any investigation under section 326 of this Act, the provisions of sections 316 to

320 of this Act shall apply with the necessary modifications to references to the affairs of the company or those of any body corporate, so however, that-

(a) the said sections shall apply in relation 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 any other body corporate whose membership is investigated with that of the company; or able to control or materially to influence the policy thereof, including persons concerned only on behalf of others, as they apply in relation to officers and agents of the company or of the other body corporate, as the case may be; and

(b) the Commission shall not be bound to furnish the company or any other person with a copy of any report by an inspector appointed under this section or with a complete copy thereof if he is of opinion that there is good reason for not divulging the contents of the reports or of part thereof, but shall keep a copy of any such report, or, as the case may be, the parts of any report, as regards which he is not of that opinion.

(2) The expenses of any investigation under section 326 of this Act shall be defrayed out of the Consolidated Revenue Fund.

### **328. Power to require information as to persons interested in shares, etc.**

(1) Where it is made to appear to the Commission that there is good reason to investigate the ownership of any shares in or debentures of a company and that it is unnecessary to appoint an inspector for the purpose, the Commission may require any person who it has reasonable cause to believe-

(a) to be or to have been interested in those shares or debentures; or

(b) to act or to have acted in relation to those shares or debentures as a legal practitioner or an agent of someone interested therein,

to give to the Commission any information which the person has or might reasonably be expected to obtain as to the present and past interest in those shares or debentures and the names and addresses of the persons interested, and of any persons who act or have acted on their behalf in relation to the shares or debentures.

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

(3) Any person who fails to give any information required of him under this section, or who, in giving any such information, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular shall be guilty of an offence and liable to a fine of ₦500 or to imprisonment for a term of six months or to both.

### **329. Power to impose restrictions on shares, etc.**

(1) Where, in connection with an investigation under section 326 or 328 of this Act, it appears to the Commission that there is difficulty in finding out the relevant facts about any share (whether issued or to be issued), and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned, or any of them, to assist the investigation as required by this Act, the Commission may in writing direct that the shares shall until further notice be subject to the restrictions imposed by this section.

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

(a) any transfer of those shares, or in case of unissued shares, any transfer of the right to be issued therewith and any issue thereof, shall be void;

(b) no voting rights shall be exercisable in respect of those shares;

(c) no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder thereof;

(d) except in a liquidation, no payment shall be made of any sums due from the company on those shares, whether in respect of capital or otherwise.

(3) Where the Commission directs shares to be subject to restrictions under this section, or refuses to direct that shares shall cease to be subject thereto, any person aggrieved thereby may appeal to the court, and the court may, if it sees fit, direct that the shares shall cease to be subject to the said restrictions.

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

(5) Any person who-

(a) exercises or purports to exercise any right to dispose of any shares which, to his knowledge, are for the time being subject to restrictions under this section; or

(b) votes in respect of any such shares, whether as holder or proxy, or appoints a proxy to vote in respect thereof; or

(c) being the holder of any such shares, fails to notify that they are subject to the said restrictions,

shall be guilty of an offence and liable to a fine of ₦500 or imprisonment for a term of six months, or to both.

(6) Where shares in any company are issued in contravention of the said restrictions, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine of ₦500.

(7) A prosecution shall not be instituted under this section except by or with the consent of the Attorney-General of the Federation.

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

### **330. Savings for legal practitioners and bankers**

Nothing in the foregoing provisions of this Part of this Act shall require disclosure to the Commission or to an inspector appointed by it by-

(a) a legal practitioner of any privileged communication made to him in that capacity, except as regards the name and address of his client; or

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

## PART XI

### *Financial statements and audit*

#### CHAPTER 1

### *Financial statements*

## *Accounting records*

### **331. Companies to keep accounting records**

- (1) Every company shall cause accounting records to be kept in accordance with this section.
- (2) The accounting records shall be sufficient to show and explain the transactions of the company and shall be such as to-
  - (a) disclose with reasonable accuracy, at any time, the financial position of the company; and
  - (b) enable the directors to ensure that any financial statements prepared under this Part comply with the requirements of this Act as to the form and content of the company's financial statements.
- (3) The accounting records shall, in particular, contain-
  - (a) entries from day to day of all sums of money received and expended by the company, and the matters in respect of which the receipt and expenditure took place; and
  - (b) a record of the assets and liabilities of the company.
- (4) If the business of the company involves dealing in goods, the accounting records shall contain-
  - (a) statements of stocks held by the company at the end of each year of the company;
  - (b) all statements of stocktakings from which any such statement of stock as is mentioned in paragraph (a) of this subsection has been or is to be prepared; and
  - (c) 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 sellers in sufficient detail to enable all these to be identified.

### **332. Place and duration of records**

- (1) The accounting records of a company shall be kept at its registered office or such other place in Nigeria as the directors think fit, and shall at all times be open to inspection by the officers of the company.
- (2) Subject to any direction with respect to the disposal of records given under winding up rules made under section 552 of this Act, accounting records which a company is required by section 331 of this Act to keep shall be preserved by it for a period of six years from the date on which they were made.

### **333. Penalties for non-compliance with sections 331 and 332**

- (1) If a company fails to comply with any provision of section 331 or 332 (1) of this Act, every officer of the company who is in default shall be guilty of an offence unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on, the default was excusable.
- (2) An officer of a company shall be guilty of an offence if he fails to take all reasonable steps for securing compliance by the company with section 332 of this Act, or has intentionally caused any default by the company under it.

(3) A person guilty of an offence under this section, shall be liable to imprisonment for a term not exceeding six months or to a fine of ₦500.

### **334. Directors' duty to prepare annual accounts**

(1) In the case of every company, the directors shall in respect of each year of the company, prepare financial statements for the year.

(2) Subject to subsection (3) of this section, the financial statements required under subsection (1) of this section shall include-

(a) statement of the accounting policies;

(b) the balance sheet as at the last day of the year;

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

(d) notes on the accounts;

(e) the auditors' reports;

(f) the directors' report;

(g) a statement of the source and application of fund;

(h) a value-added statement for the year;

(i) a five-year financial summary; and

(j) in the case of a holding company, the group financial statements.

(3) The financial statements of a private company need not include the matters stated in paragraphs (a), (g), (h) and (i) of subsection (2) of this section.

(4) The directors shall at their first meeting after the incorporation of the company, determine to what date in each year financial statements shall be made up, and they shall give notice of the date to the Commission within 14 days of the determination.

(5) In the case of a holding company, the directors shall ensure that, except where in their opinion there are good reasons against it, the year of each of its subsidiaries shall coincide with the year of the company.

#### *Form and content of company individual and group financial statements*

### **335. Form and content of individual financial statements**

(1) The financial statements of a company prepared under section 334 of this Act, shall comply with the requirements of the Second Schedule to this Act (so far as applicable) with respect to their form and content, and with the accounting standards laid down in the Statements of Accounting Standards issued from time to time by the Nigerian Accounting Standards Board to be constituted by the Minister after due consultation with such accounting bodies as he may deem fit in circumstances for this purposes:



[Second Schedule.]

Provided that such accounting standards do not conflict with the provisions of this Act or the Second Schedule to this Act.

(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 year; and the profit and loss account shall give a true and fair view of the profit or loss of the company for the year.

(3) The statement of the source and application of funds shall provide information on the generation and utilisation of funds by the company during the year.

(4) The value added statement shall report the wealth created by the company during the year and its distribution among various interest groups such as the employees, the government, creditors, proprietors and the company.

(5) The five-year financial summary shall provide a report for a comparison over a period of five years or more of vital financial information.

(6) Subsection (2) of this section shall override-

(a) the requirements of the Second Schedule to this Act; and

[Second Schedule.]

(b) all other requirements of this Act as to the matters to be included in the accounts of a company or in notes to those accounts; and accordingly the provisions of subsections (7) and (8) of this section shall have effect.

(7) If the balance sheet or profit and loss account drawn up in accordance with those requirements would not provide sufficient information to comply with subsection (2) of this section, any necessary additional information shall be provided in that balance sheet or profit and loss account, or in a note to the accounts.

(8) If, owing to special circumstances in the case of any company, compliance with any such requirement in relation to the balance sheet or profit and loss account would prevent compliance with subsection (2) of this section, (even if additional information were provided in accordance with subsection (4) of this section), the directors shall depart from that requirement in preparing the balance sheet or profit and loss account (so far as necessary) in order to comply with subsection (2) of this section.

(9) If the directors depart from any such requirement, particulars of the departure, the reasons for it and its effects shall be given in a note to the accounts.

(10) Subsections (1) to (9) of this section shall not apply to group accounts prepared under section 336 of this Act and subsections (1) and (2) of this section shall apply to a company's profit and loss account (or require the notes otherwise required in relation to that account) if-

(a) the company has subsidiaries; and

(b) the profit and loss account is framed as a consolidated account dealing with all or any of the subsidiaries of the company as well as the company-

(i) complies with the requirements of this Act relating to consolidated profit and loss account; and

(ii) shows how much of the consolidated profit and loss for the year is dealt with in the individual financial statements of the company.

(11) If group financial statements are prepared and advantage is taken of subsection (7) of this section, that fact shall be disclosed in a note to the group financial statements.

### **336. Group financial statements of holding company**

(1) If, at the end of a year a company has subsidiaries, the directors shall, as well as preparing individual accounts for that year, also prepare group financial statements being accounts or statements which deal with the state of affairs and profit or loss of the company and the subsidiaries.

(2) The provisions of subsection (1) of this section shall not apply if the company is a wholly owned subsidiary of another body corporate incorporated in Nigeria.

(3) A group financial statement may not deal with a subsidiary, if the directors of the company are of the opinion that-

(a) it is impracticable, or would be of no real value to the members, in view of the insignificant amounts involved; or

(b) it would involve expense or delay out of proportion to its value to members of the company; or

(c) the result would be misleading, or harmful to the business of the company or any of its subsidiaries; or

(d) the business of the holding company and that of the subsidiary are so different that they cannot reasonably be treated as a single undertaking.

(4) The group financial statements of a company shall consist of a consolidated-

(a) balance sheet dealing with the state of affairs of the company and all the subsidiaries of the company; and

(b) profit and loss account of the company and its subsidiaries.

(5) If the directors are of the opinion that it is better for the purpose of presenting the same or equivalent information about the state of affairs and profit or loss of the company and its subsidiaries, and that to so present it may be readily appreciated by the members of the company, the group financial statements may be prepared in a form not consistent with subsection (1) of this section and in particular the group financial statement may consist of-

(a) more than one set of consolidated financial statements dealing respectively with the company and one group of subsidiaries and with other groups of subsidiaries; or

(b) separate financial statements dealing with each of the subsidiaries; or

(c) statements expanding the information about the subsidiaries in individual financial statements of the company, or in any other form.

(6) The group financial statements may be wholly or partly incorporated in the individual balance sheet and profit and loss account of the holding company.

### **337. Form and content of group financial statements**

(1) The group financial statements of a holding company shall comply with the requirements of the Second Schedule to this Act, so far as applicable to group financial statements in the form in which those accounts are prepared with respect to the form and content of those statements and any additional information to be provided by way of notes to those accounts.

[Second Schedule.]

(2) Group financial statements together with any notes thereon shall give a true and fair view of the state of affairs and profit or loss of the company and the subsidiaries dealt with by those statements as a whole.

(3) Subsection (2) of this section shall override-

(a) the requirements of the Second Schedule to this Act; and

[Second Schedule.]

(b) all the requirements of this Act as to the matters to be included in group financial statements or in notes to those statements and accordingly subsections (4) and (5) of this section shall have effect.

(4) If group financial statements are not in accordance with the requirements of this Act by not providing sufficient information in compliance with subsection (2) of this section, any necessary additional information shall be provided in, or in a note to, the group financial statements.

(5) If, owing to special circumstances in the case of any company, compliance with any such requirements in relation to its group financial statements would prevent the statements from complying with subsection (2) of this section, (even if additional information were provided in accordance with subsection (4) of this section, the directors may depart from that requirement in preparing the group financial statements).

### **338. Meaning of "holding company", "subsidiary" and "wholly-owned subsidiary"**

(1) Subject to subsection (4) of this section, a company shall for the purposes of this Act be deemed to be a subsidiary of another company if-

(a) the company-

(i) is a member of it and controls the composition of its board of directors; or

(ii) holds more than half in nominal value of its equity share capital; or

(b) the first-mentioned company is subsidiary of any company which is that other's subsidiary.

(2) For the purposes of subsection (1) of this section, the composition of the board of directors of a company shall be deemed to be controlled by another company if that other company by the exercise of some power, without the consent or concurrence of any other person, can appoint or remove the holders of all or majority of the directors.

(3) For purposes of subsection (2) of this section, the other company shall be deemed to have power to appoint a director with respect to which any of the following conditions is satisfied that-

(a) a person cannot be appointed to it without the exercise in his favour by the other company of such power as is mentioned in this section; or

(b) the appointment of a person to the directorship follows necessarily from his appointment as director of the other company; or

(c) the directorship is held by the other company itself or by a subsidiary of it.

(4) In determining whether one company is a subsidiary of another-

(a) any shares held or power exercisable by the other in a fiduciary capacity shall be treated as not held or exercisable by it;

(b) subject to paragraphs (c) and (d) of this subsection, any shares held or power exercisable-

(i) by any person as nominee for the other (except where the other is concerned only in a fiduciary capacity); or

(ii) by, or by a nominee for, a subsidiary or the other (not being a subsidiary which is concerned only in a fiduciary capacity), shall be treated as held or exercisable by the other;

(c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded;

(d) any shares held or power exercisable by, or by a nominee for, the other or its subsidiary (not being held or exercisable as mentioned in paragraph (c) of this subsection), shall be treated as not held or exercisable by the other, if the ordinary business of the other or its subsidiary (as the case may be) includes the lending of money and the shares are held or the power is exercisable as above mentioned by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(5) For the purposes of this Act-

(a) a company shall be deemed to be the holding company of another, if the other is its subsidiary; and

(b) a body corporate shall be deemed to be the wholly-owned subsidiary of another, if it has no member except that other and that other's wholly owned subsidiaries are its or their nominees.

(6) In this section, "company" includes any body corporate.

### **339. Additional disclosure required in notes to financial statements**

(1) The additional matters contained in the Third Schedule to this Act shall be disclosed in the company's financial statements for the year; and in that Schedule, where a thing is required to be stated or shown or information is required to be given, it shall be construed to mean that the thing shall be stated or shown, or the information is to be given in a note to those statements.

[Third Schedule.]

(2) In the Third Schedule to this Act-

[Third Schedule.]

(a) Parts I and II deal respectively with the disclosure of particulars of the subsidiaries of the company and its shareholders;

(b) Part III deals with the disclosure of financial information relating to subsidiaries;

(c) Part IV requires a subsidiary company to disclose its ultimate holding company;

(d) Part V deals with the emoluments of directors, including emoluments waived, pensions of directors and compensation for loss of office to directors and past directors; and

(e) Part VI deals with disclosure of the number of the employees of the company who are remunerated at higher rates.

(3) Whenever it is stated in the Third Schedule to this Act that this subsection shall apply to certain particulars or information, the particulars or information shall be annexed to the annual return first made by the company after copies of its financial statements have been laid before its shareholders in a general meeting and if a company fails to satisfy an obligation thus imposed, the company and every officer of it who is in default shall be guilty of an offence and liable to a fine of ₦50 and for continued contravention, to a daily default fine of ₦10.

[Third Schedule.]

(4) It shall be the duty of any director of a company to give notice to the company of such matters relating to himself as may be necessary for the purposes of Part V of the Third Schedule to this Act and this applies to persons who are or have at any time in the preceding three years been officers as it applies to directors.

[Third Schedule.]

(5) A person who makes default in complying with the provisions of subsection (4) of this section, shall be guilty of an offence and liable to a fine of ₦10 for every day during which the default continues.

### **340. Disclosure of loans in favour of directors and connected persons**

(1) The group financial statements of a holding company for a year shall comply with Part I of the Fourth Schedule to this Act (so far as applicable) as regards the disclosure of transactions, arrangements and agreements mentioned therein, including loans, quasi loans and other dealings in favour of directors.

[Fourth Schedule.]

(2) In the case of a company other than a holding company, its individual accounts shall comply with Part I of the Fourth Schedule to this Act (so far as applicable) as regards disclosure matters contained therein.

[Fourth Schedule.]

(3) Particulars which are required to be contained in Part I of the Fourth Schedule to this Act in any financial statements shall be required in respect of shadow directors as well as a director given by way of notes.

[Fourth Schedule.]

(4) Where by virtue of subsection (2) or (3) of section 336 of this Act, a company does not prepare group financial statements for a year, it shall disclose such matters in its individual statements as would have been disclosed in group financial statements.

(5) The requirements of this section shall apply with such modifications as are necessary to bring them in line with Part I of the Fourth Schedule to this Act (including with particulars of exceptions in respect of recognised banks) it shall disclose.

[Fourth Schedule.]

### **341. Disclosure of loans, etc., to officers of the company and statements of amounts outstanding**

(1) The group financial statements of a holding company for a year shall comply with Part II of the Fourth Schedule to this Act (so far as applicable) as regards transactions, arrangements and agreements made by the company or a subsidiary of it for persons who at any time during that year were officers of the company but not directors.

[Fourth Schedule.]

(2) In the case of a company other than a holding company, its individual accounts shall comply with Part II of the Fourth Schedule to this Act (so far as applicable) as regards matters contained therein.

[Fourth Schedule.]

(3) Subsections (1) and (2) of this section shall not apply in relation to any transaction or agreement made by a recognised bank for any of its officers or for any of the officers of its holding company.

(4) Particulars required by Part II of the Fourth Schedule to this Act to be in any accounts shall be given by way of notes to the accounts.

[Fourth Schedule.]

(5) Where by virtue of subsection (2) or (3) of section 336 of this Act, a company does not prepare group financial statements for a year, it shall disclose this fact in its individual financial statements as required by subsection (1) of this section.

### *Directors' reports*

### **342. Directors' report**

(1) In the case of every company, there shall be prepared in respect of each year, a report by the directors-

(a) containing a fair view of the development of the business of the company and its subsidiaries during the year and of their position at the end of it; and

(b) stating the amount (if any) which they recommend should be paid as dividend and the amount (if any) which they propose to carry to reserves.

(2) The directors' report shall state the names of the persons who, at any time during the year, were directors of the company, and the financial activities of the company and its subsidiaries in the course of the year and any significant change in those activities in the year.

(3) The report shall also state the matters, and give the particulars, required by Part I of the Fifth Schedule to this Act.

[Fifth Schedule.]

(4) Part II of the Fifth Schedule to this Act shall apply as regards the matters to be stated in the report of the directors in the circumstances specified therein.

[Fifth Schedule.]

(5) Part III of the Fifth Schedule to this Act shall apply as regards the matters to be stated in the directors' report relative to the employment, training and advancement of disabled persons, the health, safety and welfare at work of the employees of the company and the involvement of employees in the affairs, policy and performance of the company.

[Fifth Schedule.]

(6) In respect of any failure to comply with the requirements of this Act as to the matters to be stated and the particulars to be given in the directors' report, every person who was a director of the company immediately before the end of the period prescribed for laying and delivering financial statements shall be guilty of an offence and liable on conviction to a term of imprisonment for not more than six months or to a fine of ₦500.

(7) In proceedings for an offence under subsection (6) of this section, it shall be a defence for the person to prove that he took all reasonable steps for securing compliance with the requirements in question.

*Procedure on completion of financial statements*

**343. Signing of balance sheet and documents to be annexed thereto**

(1) A company's balance sheet and every copy of it which is laid before the company in general meeting or delivered to the Commission shall be signed on behalf of the board by two of the directors of the company.

(2) If a copy of the balance sheet-

(a) is laid before the company or delivered to the Commission without being signed as required by this section; or

(b) not being a copy so laid or delivered, is issued, circulated or published in a case where the balance sheet has not been signed as so required or where (the balance sheet having been so signed) the copy does not include a copy of the signature as the case may be,

the company and every officer of it who is in default shall be guilty of an offence and liable on conviction to a fine of ₦300.

(3) A company's profit and loss account and, so far as not incorporated in its individual balance sheet or profit and loss account, any group accounts of a holding company, shall be annexed to the balance sheet, and the auditors' report and the directors' report shall also be attached to the balance sheet.

(4) The balance sheet and the profit and loss account annexed to it shall be approved by the board of directors and signed on their behalf by two directors authorised to do so.

**344. Persons entitled to receive financial statements as of right**

(1) In the case of every company, a copy of the company's financial statements for the year shall, not less than 21 days before the date of the meeting at which they are to be laid in accordance with section 345 of this Act be sent to each of the following persons-

(a) every member of the company (whether or not entitled to receive notice of general meetings);

(b) every holder of the company's debentures, (whether or not so entitled); and

(c) all persons other than members and debenture holders, being persons so entitled.

(2) In the case of a company not having a share capital, subsection (1) of this section shall not require a copy of the financial statements to be sent to a member of the company who is not entitled to receive notices of general meetings of the company, or to a holder of the company's debenture who is not so entitled.

(3) Subsection (1) of this section shall not require copies of the financial statements to be sent to-

(a) a member of the company or a debenture holder, being in either case a person who is not entitled to receive notices of general meetings, and of whose address the company is unaware; or

(b) more than one of the joint holders of any shares or debentures none of whom are entitled to receive such notices; or

(c) those who are not so entitled in the case of joint holders of shares or debentures, some of whom are not entitled to receive such notices.

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

(5) If default is made in complying with subsection (1) of this section, the company and every officer of it who is in default shall be guilty of an offence and is liable to a fine of ₦250.

### **345. Directors' duty to lay and deliver financial statements**

(1) In respect of each year, the directors shall at a date not later than 18 months after incorporation of the company and subsequently once at least in every year, lay before the company in general meeting copies of the financial statements of the company made up to a date not exceeding nine months previous to the date of the meeting.

(2) The auditors' report shall be read before the company in general meeting, and be open to the inspection of any member of the company.

(3) In respect of each year, the directors shall deliver with the annual return to the Commission a copy of the balance sheet, the profit and loss account and the notes on the statements which were laid before the general meeting as required by this section.

(4) In the case of an unlimited company, the directors shall not be required by subsection (3) of this section to deliver a copy of the accounts if-

(a) at no time during the accounting reference period has the company been, to its knowledge, the subsidiary of a company that was then limited and at no such time, to its knowledge, have there been held or been exercisable, by or on behalf of two or more companies that were then limited, shares or powers which, if they had been held or been exercisable by one of them, would have made the company its subsidiary; and



(b) at no such time has the company been the holding company of a company which was then limited.

(5) References in this section to a company that was limited at a particular time are to a body corporate (under whatever law incorporated) the liability of whose members was at that time limited.

#### **346. Penalty for non-compliance with section 345**

(1) If in a year any of the requirements of section 345 (1) or (3) of this Act is not complied with by any company, every person who immediately before the end of that period was a director of the company shall in respect of each of those subsections which is not so complied with, be guilty of an offence and liable to a daily default fine of ₦50 in the case of a small company, a company limited by guarantee or an unlimited company, and ₦500 in the case of any other company.

(2) If a person is charged with an offence in respect of any of the requirements of subsection (1) or (3) of section 345 of this Act, it shall be a defence for him to prove that he took all reasonable steps for securing that those requirements be complied with before the end of the period allowed for laying and delivering accounts.

(3) In proceedings under this section with respect to a requirement to lay a copy of a document before a company in general meeting, or to deliver a copy of a document to the Commission, it shall not be a defence to prove that the document in question was not in fact prepared as required by this Part of this Act.

#### **347. Default order in case of non-compliance**

(1) If-

(a) in respect of a year, any of the requirements of subsections (1) and (3) of section 345 of this Act has not been complied with by a company before the end of the period allowed for laying and delivering financial statements; and

(b) 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 application by any member or creditor of the company or by the Commission 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.

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

(3) Nothing in this section shall affect the provisions of section 346 of this Act.

#### **348. Penalty for laying or delivering defective financial statements**

(1) If any financial statements of a company (other than its group financial statement) of which a copy is laid before the shareholders in general meeting or delivered to the Commission do not comply with the requirement of this Act as to the matters to be included in, or in a note to, those financial statements, every person who at the time when the copy is laid or delivered is a director of the company shall be guilty of an offence and in respect of each offence, liable to a fine of ₦100.

(2) If any group financial statements of which a copy is laid before a company in a general meeting or delivered to the Commission do not comply with section 345 (4) and (5) or section 346 of this Act and with the other requirements of this Act as to the matters to be included in or in a note to those financial statements, every person

who at the time when the copy was so laid or delivered was a director of the company shall be guilty of an offence and liable to a fine of ₦250.

(3) In proceedings against a person for an offence under this section, it shall be a defence for him to prove that he took all reasonable steps for securing compliance with the requirements in question.

#### 349. Shareholders' right to obtain copies of financial statements

(1) Any member of a company, whether or not he is entitled to have sent to him copies of the company's financial statements, and any holder of the company's debentures (whether or not so entitled) shall be entitled to be furnished (on demand and without charge) with a copy of the company's last financial statements.

(2) If, when a person makes a demand for a document with which he is entitled by this section to be furnished, default is made in complying with the demand within seven days after its making, the company and every officer of it who is in default shall be guilty of an offence and liable to a daily default fine of ₦100, unless it is proved that the person has already made a demand for, and been furnished with, a copy of the documents.

#### *Modified financial statements*

#### **350. Entitlement to deliver financial statements in modified form**

(1) In certain cases a company's directors may, in accordance with Part 1 of the Seventh Schedule to this Act, deliver modified financial statements in respect of a year as a small company.

[Seventh Schedule.]

(2) For the purposes of sections 351 to 353 and the Seventh Schedule to this Act, "deliver" means deliver to the Commission.

[Seventh Schedule.]

#### **351. Qualification of a small company**

(1) A company qualifies as a small company in a year if for that year the following conditions are satisfied-

- (a) it is a private company having a share capital;
- (b) the amount of its turnover for that year is not more than ₦2 million or such amount as may be fixed by the Commission;
- (c) its net assets value is not more than ₦1 million or such amount as may be fixed by the Commission;
- (d) none of its members is an alien;
- (e) none of its members is a Government or a Government corporation or agency or its nominee; and
- (f) the directors between them hold not less than 51 *per cent* of its equity share capital.

(2) In applying subsection (1) of this section, to a period which is a company's year but not in fact a year, the maximum figures for turnover in paragraph (b) of that subsection shall be proportionately adjusted.

#### **352. Modified individual financial statements**

(1) The directors of a company may (subject to section 353 of this Act where the company has subsidiaries) deliver individual financial statements modified as for a small company in the cases specified in subsections (2) and (3) of this section; and Part 1 of the Seventh Schedule shall apply with respect to the delivery of financial statements so modified.

[Seventh Schedule.]

(2) In respect of the company's first year the directors may deliver financial statements modified as for a small company, if in that year it qualifies as small.

(3) The directors may in respect of a company's year subsequent to the first-

(a) deliver financial statements modified as for a small company if the company qualifies as small and it also so qualified in the preceding year;

(b) deliver financial statements modified as for a small company (although not qualifying in that year as small), if in the preceding year it so qualified and the directors were entitled to deliver financial statements so modified in respect of that year;

(c) deliver financial statements modified as for a small company if, in that year the company qualifies as small and the directors were entitled under paragraph (b) of this subsection to deliver financial statements so modified for the preceding year (although the company did not in that year qualify as small).

**353. Modified financial statements of holding company**

(1) This section shall apply to a holding company where in respect of a year section 336 of this Act requires the preparation of group financial statements for the company and its subsidiaries.

(2) The directors of the holding company may not under section 352 of this Act deliver financial statements modified as for a small company, unless the group (that is to say, the holding company and its subsidiaries together) is in that year a small group and the group is small if it would so qualify under section 351 of this Act (applying that section as directed by subsections (3) and (4) of this section, if it were all one company).

(3) The figures to be taken into account in determining whether the group is small shall be the group account figures, that is-

(a) where the group financial statements are prepared as consolidated financial statements, the figures for turnover and balance sheet total; and

(b) where the group financial statements are not prepared as consolidated financial statements, the corresponding figures given in the group financial statements, with such adjustment as would have been made if the statements had been prepared in consolidated form; aggregated in either case with the relevant figures for the subsidiaries (if any) omitted from the group accounts (excepting those for any subsidiary omitted under section 336 (3) (a) of this Act on the ground of impracticability).

(4) In the case of each subsidiary omitted from the group financial statements, the figures relevant as regards turnover, and balance sheet total shall be those which are included in the financial statements of that subsidiary prepared in respect of its relevant year (with such adjustment as would have been made if those figures had been included in group financial statements prepared in consolidated form).

(5) For the purposes of subsection (4) of this section, the relevant year of the subsidiary shall be-

(a) if its year ends with that of the holding company to which the group financial statements relate, that year; and

(b) if not, the subsidiary's year ending last before the end of the year of the holding company.

(6) If the directors are entitled to deliver modified financial statements, they may also deliver modified group financial statements, and such group financial statements-

(a) if consolidated, may be in accordance with Part II of the Seventh Schedule (while otherwise comprising or corresponding with group financial statements prepared under section 336 of this Act); and

[Seventh Schedule.]

(b) if not consolidated, may be such as (together with any notes) give the same or equivalent information as required by paragraph (a) of this subsection,

and Part III to the Seventh Schedule to this Act shall apply to modified group financial statements whether consolidated or not.

[Seventh Schedule.]

#### *Publication of financial statements*

#### **354. Publication by a company of full individual or group financial statements**

(1) This section shall apply to the publication by a company of full individual or group financial statements, that is to say, the statements required by section 345 of this Act to be laid before the company in general meeting and delivered to the Commission, including the directors' report, unless dispensed with under paragraph 3 of the Sixth Schedule to this Act, but does not apply to interim financial statements.

[Sixth Schedule.]

(2) If a company publishes individual financial statements (modified or other) for a year, it shall publish with them the relevant auditors' report.

(3) If a company required by section 336 of this Act to prepare group financial statements for a year, publishes individual financial statements for that year, it shall also publish with them its group financial statements (which may be modified financial statements but only if the individual financial statements are modified).

(4) If a company publishes group financial statements (modified or not) otherwise than together with its individual financial statements, it shall publish with them the relevant auditors' report.

(5) References in this section to the relevant auditor's report are to the auditors' report under section 359 of this Act or, in the case of modified financial statements (individual or group), the auditors' special report under paragraph 10 of the Sixth Schedule to this Act.

[Sixth Schedule.]

(6) A company which contravenes any provision of this section and any officer of it who is in default, shall be guilty of an offence and liable to a daily default fine of ~~₹~~100.

### **355. Publication of abridged financial statements**

(1) This section shall apply to the publication by a company of abridged financial statements, that is to say, any balance sheet or profit and loss account relating to a year of the company or purporting to deal with any such year, otherwise than as part of full financial statements (individual or group) to which section 354 of this Act applies.

(2) The reference in subsection (1) of this section to a balance sheet or profit and loss account, in relation to financial statements published by a holding company, includes an account in any form purporting to be a balance sheet or profit and loss account for the group consisting of the holding company and its subsidiaries.

(3) If the company publishes abridged financial statements, it shall publish with those statements, a statement indicating-

(a) that the statements are not full financial statements;

(b) whether full individual or full group financial statements according as the abridged statements deal solely with the company's own affairs or with the affairs of the company and any subsidiaries have been delivered to the Commission or, in the case of an unlimited company exempted under subsection (4) of section 345 of this Act, from the requirement to deliver financial statements, that the company is so exempted;

(c) whether the company's auditors have made a report under section 359 of this Act on the company's financial statements for any year with which the abridged financial statements purport to deal; and

(d) whether any report so made was unqualified (meaning that it was a report, without qualification, to the effect that in the opinion of the person making it, the company's financial statements had been properly prepared).

(4) Where a company publishes abridged financial statements, it shall not publish with those statements any such report of the auditors as is mentioned in subsection (3) (c) of this section.

(5) A company which contravenes any provision of this section and any officers of it who is in default, shall be guilty of an offence and liable to a daily default fine of ₦100.

### *Supplementary*

### **356. Power to alter accounting requirements**

(1) The Minister may after consultation with the Nigerian Accounting Standards Board by regulations in a statutory instrument-

(a) add to the classes of documents-

(i) to be comprised in a company's financial statements for a year to be laid before the company in general meeting as required by section 345, of this Act; or

(ii) to be delivered to the Commission under that section, and make provision as to the matters to be included in any document to be added to either class; or

(b) modify the requirements of this Act as to the matters to be stated in a document of any such class; or

(c) reduce the classes of documents to be delivered to the Commission under section 343 of this Act.

## CHAPTER 2

### *Audit*

#### **357. Appointment of auditors**

(1) Every company shall at each annual general meeting appoint an auditor or auditors to audit the financial statements of the company, and to hold office from the conclusion of that, until the conclusion of the next, annual general meeting.

(2) At any annual general meeting a retiring auditor, however appointed, shall be re-appointed without any resolution being passed unless-

(a) he is not qualified for re-appointment; or

(b) a resolution has been passed at that meeting appointing some other person instead of him or providing expressly that he shall not be re-appointed; or

(c) he has given the company notice in writing of his unwillingness to be re-appointed:

Provided that where notice is given of an intended resolution to appoint some person or persons in place of a retiring auditor, and by reason of the death, incapacity or disqualification of that person or of all those persons, as the case may be, the resolution cannot be proceeded with, the retiring auditor shall not be automatically re-appointed by virtue of this subsection.

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

(4) The company shall, within one week of the power of the directors under subsection (3) of this section becoming exercisable, give notice of that fact to the Commission; and if a company fails to give notice as required by this subsection, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine of ₦100 for every day during which the default continues.

(5) Subject as hereinafter provided, the first auditors of a company may be appointed by the directors at any time before the company is entitled to commence business and auditors so appointed shall hold office until the conclusion of the next annual general meeting:

Provided that-

(a) the company may at a general meeting remove any such auditors and appoint in their place any other person who has been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than 14 days before the date of the meeting; and

(b) if the directors fail to exercise their powers under this subsection; the company may, in a general meeting convened for that purpose, appoint the first auditors and thereupon the said powers of the directors shall cease.

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

#### **358. Qualification of auditors**

(1) The provisions of the Institute of Chartered Accountants of Nigeria Act shall have effect in relation to any investigation or audit for the purpose of this Act so however that none of the following persons shall be qualified for appointment as auditor of a company, that is-

[Cap. 111.]

- (a) an officer or servant of the company;
- (b) a person who is a partner of or in the employment of an officer or servant of the company; or
- (c) a body corporate,

[1990 No. 32.]

and references in the subsection to an officer or servant shall be construed as not including references to an auditor.

(2) In the application of subsection (1) of this section, the disqualification shall extend and apply to persons who in respect of any period of an audit were in the employment of the company or were otherwise connected therewith in any manner.

(3) A person shall also not qualify for appointment as an auditor of a company if he is, under subsection (6) of this section, disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company.

(4) Notwithstanding subsections (1), (2) and (3), of this section, a firm is qualified for appointment as auditor of a company if, but only if, all the partners are qualified for appointment as auditors of it.

(5) No person shall act as auditor of a company at a time when he knows that he is disqualified for appointment to that office and if an auditor of a company to his knowledge becomes so disqualified during his term of office, he shall thereupon vacate his office and give notice in writing to the company that he has vacated it by reason of that disqualification.

(6) A person who acts as auditor in contravention of subsection (5), of this section or fails without reasonable excuse to give notice of vacating his office as required by that subsection, shall be guilty of an offence and liable to a fine of ₦500 and, for continued contravention, to a daily default fine of ₦50.

### **359. Auditors' report**

(1) The auditors of a company shall make a report to its members on the accounts examined by them, and on every balance sheet and profit and loss account, and on all group financial statements, copies of which are to be laid before the company in a general meeting during the auditors' tenure of office.

(2) The auditors' report shall state the matters set out in the Sixth Schedule to this Act.

[1991 No. 46. Sixth Schedule.]

(3) In addition to the report made under subsection (1) of this section, the auditor shall in the case of a public company also make a report to an audit committee which shall be established by the public company.

(4) The audit committee referred to in subsection (3) of this section, shall consist of an equal number of directors and representatives of the shareholders of the company (subject to a maximum number of six members) and shall examine the auditors' report and make recommendations thereon to the annual general meeting as it may think fit:

Provided, however, that such member of the audit committee shall not be entitled to remuneration and shall be subject to re-election annually.

(5) Any member may nominate a shareholder as a member of the audit committee by giving notice in writing of such nomination to the secretary of the company at least 21 days before the annual general meeting.

(6) Subject to such other additional functions and powers that the company's articles of association may stipulate, the objectives and functions of the audit committee shall be to-

(a) ascertain whether the accounting and reporting policies of the company are in accordance with legal requirements and agreed ethical practices;

(b) review the scope and planning of audit requirements;

(c) review the findings on management matters in conjunction with the external auditor and departmental responses thereon;

(d) keep under review the effectiveness of the company's system of accounting and internal control;

(e) make recommendations to the Board in regard to the appointment, removal and remuneration of the external auditors of the company; and

(f) authorise the internal auditor to carry out investigations into any activities of the company which may be of interest or concern to the committee.

### **360. Auditors' duties and powers**

(1) It shall be the duty of the company's auditors, in preparing their report to carry out such investigations as may enable them to form an opinion as to the following matters whether-

(a) proper accounting records have been kept by the company and proper returns adequate for their audit have been received from branches not visited by them;

(b) the company's balance sheet and (if not consolidated) its profit and loss account are in agreement with the accounting records and returns.

(2) If the auditors are of opinion that proper accounting records have not been received from branches not visited by them, or if the balance sheet and (if not consolidated) the profit and loss account are not in agreement with the accounting records and returns, the auditors shall state that fact in their report.

(3) Every auditor of a company shall have a right of access at all times to the company's books, accounts and vouchers, and be entitled to require from the company's office such information and explanations as he thinks necessary for the performance of the auditor's duties.



(4) If the requirements of Part V and VI of the Third Schedule and Parts I to III of the Fourth Schedule to this Act are not complied with in the accounts, it shall be the auditors' duty to include in their report, so far as they are reasonably able to do so, a statement giving the required particulars.

[Third Schedule. Fourth Schedule.]

(5) It shall be the auditors' duty to consider whether the information given in the directors' report for the year for which the 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.

### **361. Remuneration of auditors**

(1) The remuneration of the auditors of a company-

(a) in the case of an auditor appointed by the directors, may be fixed by the directors; or

(b) shall, subject to the foregoing paragraph, be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

(2) For the purposes of subsection (7) of this section, "**remuneration**" includes sums paid by the company in respect of the auditors' expenses.

### **362. Removal of auditors**

(1) A company may by ordinary resolution remove an auditor before the expiration of his term of 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 that fact in the prescribed form to the Commission and if a company fails to give the notice required by this subsection, the company and every officer of it who is in default shall be guilty of an offence and liable to a daily default fine of ₹100.

(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.

### **363. Auditors' right to attend company's meetings**

(1) A company's auditors shall be entitled to attend any general meeting of the company and to receive all notices of and other communications relating to any general meeting which a member of the company is entitled to receive and to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditor.

(2) An auditor of a company who has been removed shall be entitled to attend-

(a) the general meeting at which his term of office would otherwise have expired; and

(b) any general meeting at which it is proposed to fill the vacancy caused by his removal,

and to receive all notices of, and other communications relating to, any such meeting which any member of the company is entitled to receive, and to be heard at any such meeting which he attends on any part of the business of the meeting which concerns him as former auditor of the company.

#### **364. Supplementary provisions relating to auditors**

(1) A special notice shall be required for a resolution at a general meeting of a company-

(a) appointing as auditor a person other than a retiring auditor; or

(b) filling a casual vacancy in the office of auditor; or

(c) re-appointing as auditor a retiring auditor who was appointed by the directors to fill a casual vacancy; or

(d) removing an auditor before the expiration of his term of office.

(2) On receipt of notice of such an intended resolution as is mentioned in subsection (1), the company shall forthwith send a copy of it-

(a) to the person proposed to be appointed or removed, as the case may be;

(b) in a case within subsection (1) (a) of this section, to the retiring auditors; and

(c) where, in a case within subsection (1) (b) or (c) of this section, the casual vacancy was caused by the resignation of an auditor, to the auditor who resigned.

(3) Where notice is given of such a resolution as is mentioned in subsection (1) (a) or (d) of this section and the retiring auditor (or, as the case may be, the auditor proposed to be removed) makes with respect to the intended resolution representations in writing to the company not exceeding a reasonable length, and requests their notification to members of the company, the company shall (unless the representations are received by it too late for it to do so)-

(a) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and

(b) send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent.

(4) If a copy of any such representations is not sent out as required by subsection (3) of this section because they were received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting.

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

#### **365. 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; and any such notice shall operate to bring his term of office to an end on the date of which the notice is deposited, or on such later date as may be specified in it.

(2) An auditor's notice of resignation shall not be effective unless it contains either-

(a) a statement to the effect that there are no circumstances connected with his resignation which he considers should be brought to the notice of the members or creditors of the company; or

(b) a statement of any such circumstances as are mentioned above.

(3) Where a notice under this section is deposited at a company's registered office, the company shall within 14 days send a copy of the notice-

(a) to the Commission; and

(b) if the notice contained a statement under subsection (2) (b) of this section, to every person who under section 344 of this Act is entitled to be sent copies of the financial statements.

(4) The company or any person claiming to be aggrieved may, within 14 days of the receipt by the company of a notice containing a statement under subsection (2) (b) of this section, apply to the court for an order under subsection (5) of this section.

(5) If on such an application the court is satisfied that the auditor is using the notice to secure needless publicity for defamatory matter, it may, by order, direct that copies of the notice need not be sent out; and the court may further order the company's costs on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

(6) The company shall, within 14 days of the court's decision, send to the persons mentioned in subsection (3) of this section-

(a) if the court makes an order under subsection (5) of this section, a statement setting out the effect of the order;

(b) if not, a copy of the notice containing the statement under subsection (2) (b) of this section.

(7) If default is made in complying with the provisions of subsection (3) or (6) of this section, the company and every officer of it who is in default shall be guilty of an offence and liable to a daily default fine of ₦100.

### **366. Right of resigning auditor to requisition company meeting**

(1) Where an auditor's notice of resignation contains a statement under section 365 (2) (b) of this Act, there may be deposited with the notice a requisition signed by the auditor 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.

(2) Where an auditor's notice of resignation contains such a statement, the auditor may request the company to circulate to its members before-

(a) the general meeting at which his term of office would otherwise have expired; or

(b) any general meeting at which it is proposed to fill the vacancy caused by his resignation or convened on his requisition,

a statement in writing (not exceeding a reasonable length) of the circumstances connected with his resignation.

(3) If a resigning auditor requests the circulation of a statement by virtue of subsection (2) of this section, the company shall (unless the statement is received by it too late for it to comply)-

(a) in any notice of the meeting given to members of the company, state the fact of the statement having been made; and

(b) send a copy of the statement to every member of the company to whom notice of the meeting is or has been sent.

(4) 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 fails to take all reasonable steps to secure that a meeting is convened as mentioned above shall be guilty of an offence and liable to a fine of ₦500.

(5) If a copy of the statement mentioned in subsection (2) of this section is not sent out as required by subsection (3) of this section because it was received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the statement shall be read out at the meeting.

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

(7) An auditor who has resigned his office shall be entitled to attend any such meeting as is mentioned in subsection (2) (a) or (b) of this section and to receive all notices of and other communications relating to any such meeting which any member of the company is entitled to receive, and to be heard at any such meeting which concerns him as former auditor of the company.

### **367. Powers of auditors in relation to subsidiaries**

(1) Where a company has a subsidiary, then-

(a) if the subsidiary is a body corporate incorporated in Nigeria it shall be the duty of the subsidiaries and its auditors to give the auditors of the holding company such information and explanation as those auditors may reasonably require for the purposes of their duties as auditors of the holding company;

(b) in any other case, it shall be the duty of the holding company, if required by its auditors to do so, to take all such steps as are reasonably open to it to obtain from the subsidiary such information and explanation as are mentioned above.

(2) If a subsidiary or holding company fails to comply with the provisions of subsection (1) of this section, the subsidiary or holding company, and every officer of it who is in default, shall be guilty of an offence and liable to a fine; and if an auditor fails without reasonable excuse to comply with paragraph (a) of the subsection, he shall be guilty of an offence and so liable.

### **368. Liability of auditors for negligence**

(1) A company's auditor shall in the performance of his duties, exercise all such care, diligence and skill as is reasonably necessary in each particular circumstance.

(2) Where a company suffers loss or damage as a result of the failure of its auditor to discharge the fiduciary duty imposed on him by subsection (1) of this section, the auditor shall be liable for negligence and the directors may institute an action for negligence against him in the court.

(3) If the directors fail to institute an action against the auditor under subsection (2) of this section, any member may do so after the expiration of 30 days' notice to the company of his intention to institute such action.

### **369. False statements to auditors**

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

(a) conveys or purports to convey any information or explanation which the auditors require, or are entitled to require, as auditors of the company; and

(b) is misleading, false or deceptive in a material particular.

(2) A person guilty of an offence under this section shall be liable to imprisonment for one year or to a fine of ₦500 or both.

## PART XII

### *Annual returns*

#### **370. Annual return by company limited by shares or guarantee**

Every company shall, once at least in every year, make and deliver to the Commission an annual return in the form, and containing the matters specified in sections 371, 372 or 373 of this Act as may be applicable:

Provided that a company need not make a return under this section either in the year of its incorporation or, if it is not required by section 213 of this Act to hold an annual general meeting during the following year, in that year.

#### **371. Annual return by company having shares other than small company**

(1) The annual return by a company having shares other than a small company shall contain with respect to the registered office of the company, registers of members and debenture holders, shares and debentures, indebtedness, past and present members and directors and secretary, the matters specified in Part I of the Eighth Schedule to this Act, and the said return shall be in the form set out in Part II of that Schedule or as near to it as circumstances admit.

[Eighth Schedule.]

(2) Where the company has converted any of its shares into stock and given notice of the conversion to the Commission, the list referred to in paragraph 5 of Part I of the Eighth Schedule to this Act shall state the amount of stock held by each of the existing members instead of the amount of shares and the particulars relating to shares required by that paragraph.

[Eighth Schedule.]

(3) The return may, in any year, if the return for either of the two immediately preceding years has given, as at the date of that return, the full particulars required by the said paragraph 5 of the Eighth Schedule to this Act, give only such particulars required by that paragraph as relate to persons ceasing to be or becoming members since the date of the last return and to shares transferred since that date in the amount of stock held by a member.

[Eighth Schedule.]

### **372. Annual return by small company**

The annual return by a small company shall contain the matters specified in Part I of the Ninth Schedule to this Act and the return shall be in the form set out in Part II of that Schedule or as near to it as circumstances admit.

[Ninth Schedule.]

### **373. Annual return by company limited by guarantee**

(1) The annual return by a company limited by guarantee shall be in the form prescribed in the Tenth Schedule to this Act or as near to it as circumstances admit.

[Tenth Schedule.]

(2) There shall be annexed to the return a statement containing particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Commission under this Act.

### **374. Time for completion of annual return**

The annual return shall be completed within 42 days after the annual general meeting for the year, whether or not that meeting is the first or only ordinary general meeting of the company in that year, and the company shall forthwith forward to the Commission a copy signed both by a director and by the secretary of the company.

### **375. Documents to be annexed to annual return**

(1) Subject to the provisions of section 377 of this Act, there shall be annexed to the annual return-

(a) a written copy, certified both by a director and by the secretary of the company to be a true copy, of every balance sheet and profit and loss account laid before the company in general meeting held in the year to which the return relates (including every document required by law to be annexed to the balance sheet); and

(b) a copy, certified as aforesaid, of the report of the auditors on, and of the report of the directors accompanying, each such balance sheet.

(2) If any such balance sheet as is mentioned in subsection (1) of the section or document required by law to be annexed does not comply with the requirement of the law as in force at the date of the audit with respect to the form of balance sheets or documents aforesaid, as the case may be, there shall be made such additions to and corrections in the copy as would have been required to be made in the balance sheet or document in order to comply with the requirements, and the fact that the copy has been so amended shall be stated on it.

### **376. Certificates by private company and small company in annual return**

(1) A private company shall send with the annual return required by sections 371, 372 or 373 of this Act a certificate signed both by a director and by the secretary of the company that the company has not, since the date of the last return, or, in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company, and, where the annual return discloses the fact that the number of members of the company exceeds fifty, also a certificate so signed that the excess consists wholly of persons who under subsection (3) of section 22 of this Act are not included in reckoning the number of fifty.

(2) A small company shall in addition to the certificate required under subsection (1) of this section, send with the annual return a certificate signed by a director and the secretary that-

(a) it is a private company limited by shares;

(b) the amount of its turn-over for that year is not more than ₦2 million or such amount as may be fixed by the Commission;

(c) its net assets value is not more than ₦1 million or such amount as may be fixed by the Commission;

(d) none of its members is an alien;

(e) none of its members is a Government, a Government agent or nominee; and

(f) the directors among them hold not less than 51 *per cent* of the equity share capital of the company.

### **377. Exception in certain cases of unlimited companies and small companies from requirements of section 375**

(1) An unlimited company shall be exempted from the requirements imposed by section 375 of this Act as to documents to be annexed to the annual return if, but only if-

(a) at no time during the period to which the return relates has it been, to its knowledge, the subsidiary of a company that was then limited and at no such time, to its knowledge, have there been held or exercisable by or on behalf of two or more companies that were limited, shares or powers which, had they been held or exercisable by one of them, would have made the company its subsidiary;

(b) at no such time has it been the holding company of a company that was then limited.

(2) A small company shall also be exempted from the requirements imposed by section 375 of this Act provided that it complies with the provision of section 351 of this Act.

### **378. Penalty for non-compliance with sections 370 to 376**

(1) If a company required to comply with any of the provisions of sections 370 to 376 of this Act fails to do so, the company and every director or officer of the company who is in default shall be guilty of an offence and liable to a fine of ₦ 1,000 in the case of a public company and ₦ 100 in the case of a private company.

(2) For the purposes of subsection (1) of this section, "**officer**" includes any person in accordance with those directions or instructions the directors of the company are accustomed to act.

## PART XIII

### *Dividends and profits*

### **379. Declaration of dividends and payment of interim dividend**

- (1) A company may, in general meeting, declare dividends in respect of any year or other period only on the recommendation of the directors.
- (2) The company may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.
- (3) The general meeting shall have power to decrease the amount of dividend recommended by the directors, but shall have no power to increase the recommended amount.
- (4) Where the recommendation of the directors of a company with respect to the declaration of a dividend is varied in accordance with subsection (3) of this section by the company in general meeting, a statement to that effect shall be included in the relevant annual return.
- (5) Subject to the provisions of this Act, dividends shall be payable to the shareholders only out of the distributable profits of the company.

### **380. Distributable profits**

Subject to the company being able to pay its debts as they fall due, the company may pay dividends out of the following profits-

- (a) profits arising from the use of the company's property although it is a wasting asset;
- (b) revenue reserves;
- (c) realised profit on a fixed asset sold, but where more than one asset is sold, the net realised profit on the assets sold.

### **381. Restriction on declaration and payment of dividends**

A company shall not declare or pay dividend if there are reasonable grounds for believing that the company is or would be, after the payment, unable to pay its liabilities as they become due.

### **382. Unclaimed dividends**

- (1) Where dividends are returned to the company unclaimed, the company shall send a list of the names of the persons entitled with the notice of the next annual general meeting to the members.
- (2) After the expiration of three months of the notice mentioned in subsection (1) of this section, the company may invest the unclaimed dividend for its own benefit in an investment outside the company and no interest shall accrue on the dividends against the company.
- (3) Where dividends have been sent to members and there is an omission to send to some members due to the fault of the company, the dividends shall earn interest at the current bank rate from three months after the date on which they ought to have been posted.
- (4) For the purpose of liability, the date of posting the dividend warrant shall be deemed to be the date of payment and proof of whether it has been sent is a question of fact.



### **383. Reserve and capitalisation**

(1) The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit; and the directors may also without placing the same to reserve, carry forward any profits which they may think prudent not to distribute.

(2) The company in general meeting may upon the recommendation of the directors resolve that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the company's reserve accounts or to the credit of the profit and loss account or otherwise available for distribution.

(3) Such sum may be set free for distribution among the members who would have been entitled to dividends in the same proportions on condition that the same be not paid in cash but be applied either on or towards paying up any amounts for the time being unpaid on any shares held by such members respectively or paying up in full unissued shares or debentures of the company to be allotted and distributed to creditors as fully paid up.

(4) The company may decide by a resolution what part is to be distributed in cash or in shares and the directors shall give effect to such resolution.

(5) Share premium account and a capital redemption reserve fund may, for the purposes of this subsection, only be applied in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares.

(6) Where a resolution is under subsections (2) to (5) of this section passed, the directors shall make all appropriations and applications of the undivided profits resolved to be capitalised thereby, and all allotments and issues of fully-paid shares or debentures, if any, and generally do all acts and things required to give effect to it.

(7) The directors shall have power to make such provision by the issue of fractional certificates or by payment in cash or otherwise as they think fit in the case of shares or debentures becoming distributable in fractions.

(8) Any person may be authorised by the directors to enter on behalf of all the members entitled under this section into an agreement with the company to provide for the allotment to them respectively, credited as fully paid up, of any further shares or debentures to which they may be entitled upon such capitalisation, or (as the case may require) for the payment up by the company on their behalf, of the amounts or any part of the amounts remaining unpaid on their existing shares, and any agreement made under such authority shall be effective and binding on all such members.

### **384. Employees' shares and profit sharing**

If under his contract of service, an employee is entitled to share in the profits of the company as an incentive, he shall be entitled to share in the profits of the company, whether or not dividends have been declared.

### **385. Right of the shareholders to sue for dividends**

Dividends shall be special debts due to, and recoverable by, shareholders within 12 years, and actionable only when declared.

### **386. Liability for paying dividend out of capital**

(1) All directors who knowingly pay, or are party to the payment of dividend out of capital or otherwise in contravention of this Part of this Act, shall be personally liable jointly and severally to refund to the company any amount so paid.

(2) Such directors shall have the right to recover the dividend from shareholders who receive it with knowledge that the company had no power to pay it.

#### PART XIV

##### *Receivers and managers*

##### *Appointment of receivers and managers*

#### **387. Disqualification for appointment as a receiver or manager**

(1) The following persons shall not be appointed or act as receivers or managers of any property or undertaking of any company-

(a) an infant;

(b) any person found by a competent court to be of unsound mind;

(c) a body corporate;

(d) an undischarged bankrupt, unless he shall have been given leave to act as a receiver or manager of the property or undertaking of the company by the court by which he was adjudged bankrupt;

(e) a director or auditor of the company;

(f) any person convicted of any offence involving fraud, dishonesty, official corruption or moral turpitude and who is disqualified under section 254 of this Act.

(2) Any appointment made in contravention of the provisions of subsection (1) of this section shall be void and if any of the persons named in paragraphs (c), (d), (e) and (f) of that subsection shall act as a receiver or manager, he shall be guilty of an offence and liable to a fine not exceeding ₦2,000 in the case of a body corporate or, in the case of an individual, to imprisonment for a term not exceeding six months or to a fine not exceeding ₦500.

(3) Where any of the persons mentioned in subsection (1) of this section is at the commencement of this Act acting as a receiver or manager, he may be removed by the court on an application by a person interested.

#### **388. Power of the court to appoint official receiver for debenture holders and others**

Where an application is made to the court to appoint a receiver on behalf of the debenture holder or other creditors of a company which is being wound up by the court, an official receiver may be appointed.

#### **389. Appointment of receivers and managers by the court**

(1) Notwithstanding the provisions of paragraph (d) of subsection (1) of section 209 of this Act, the court may, on the application of a person interested, appoint a receiver or a receiver and manager of the property or undertaking of a company if-

(a) the principal money borrowed by the company or the interest is in arrears; or

(b) the security or property of the company is in jeopardy.

(2) A receiver or manager of any property or undertaking of a company appointed by the court shall be deemed to be an officer of the court and not of the company and shall act in accordance with the directions and instructions of the court.

### **390. Receivers and managers appointed out of court**

(1) A receiver or manager of any property or undertaking of a company appointed out of court under a power contained in any instrument shall, subject to section 393 of this Act, be deemed to be an agent of the person or persons on whose behalf he is appointed and, if appointed manager of the whole or any part of the undertaking of a company, he shall be deemed to stand in a fiduciary relationship to the company and observe the utmost good faith towards it in any transaction with it or on its behalf.

(2) Such a manager-

(a) shall act at all times in what he believes to be the best interests of the company as a whole so as to preserve its assets, further its business, and promote the purposes for which it was formed, and in such manner as a faithful, diligent, careful and ordinarily skilful manager would act in the circumstances;

(b) in considering whether a particular transaction or course of action is in the best interest of the company as a whole, may have regard to the interests of the employees, as well as the members of the company, and, when appointed by, or as a representative of, a special class of members or creditors may give special, but not exclusive, consideration to the interests of that class.

(3) Nothing contained in the articles of a company, or in any contract, or in any resolution of a company, shall relieve any manager from the duty to act in accordance with subsection (2) of this section or relieve him from any liability incurred as a result of any breach of such duty.

### **391. Power of a receiver or manager appointed out of court to apply to the court for directions**

A receiver or manager of the property of a company appointed in accordance with the provisions of subsection (1) of section 390 of this Act may apply to the court for direction in relation to any particular matter arising in connection with the performance of his functions, and on any such application, the court may give such directions or make such order declaring the rights of persons before the court or otherwise, as it thinks just.

### **392. Notification that a receiver or manager has been appointed**

(1) Where a receiver or manager of the property of a company has been appointed, notice shall be given to the Commission within 14 days, indicating the terms of and remuneration for the appointment, and every invoice, order for goods or business letter issued by or on behalf of the company, or the receiver or manager or the liquidator of the company, being a document on or in which the company's name appears, shall contain a statement that a receiver or manager has been appointed.

(2) If default is made in complying with this section, the company and any of the following persons, who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be guilty of an offence and liable to a fine not exceeding ₦25 for every day during which the default continues.

*Duties, powers and liabilities of receivers and managers*

**393. Duties, powers, etc, of receivers and managers**

(1) A person appointed a receiver of any property of a company shall, subject to the rights of prior incumbrancers, take possession of and protect the property, receive the rents and profits and discharge all out-goings in respect thereof and realise the security for the benefit of those on whose behalf he is appointed, but unless appointed manager, he shall not have power to carry on any business or undertaking.

(2) A person appointed manager of the whole or any part of the undertaking of a company shall manage the same with a view to the beneficial realisation of the security of those on whose behalf he is appointed.

(3) Without prejudice to subsection (1) or (2) of this section, where a receiver or manager is appointed for the whole or substantially the whole of a company's property, the powers conferred on him by the debentures by virtue of which he was appointed shall be deemed to include (except in so far as they are inconsistent with any of the provisions of those debentures) the powers specified in the Eleventh Schedule to this Act.

[Eleventh Schedule.]

(4) As from the date of appointment of a receiver or manager, the powers of the directors or liquidators in a members' voluntary winding up to deal with the property or undertaking over which he is appointed shall cease unless and until the receiver or manager is discharged.

(5) If, on the appointment of a receiver or manager, the company is being wound up under the provision relating to creditors' voluntary winding up, or the property concerned is in the hands of some other officer of the court, the liquidator or officer shall not be bound to relinquish control of such property to the receiver or manager except under the order of the court.

**394. Liabilities of receivers and managers on contracts**

(1) A receiver or manager of any property or undertaking of a company shall be personally liable on any contract entered into by him except in so far as the contract otherwise expressly provides.

(2) As regards contracts entered into by a receiver or manager in the proper performance of his functions, such receiver or manager shall, subject to the rights of any prior incumbrancers, be entitled to an indemnity in respect of liability thereon out of the property over which he has been appointed to act as receiver or manager.

(3) A receiver or manager appointed out of court under a power contained in any instrument shall also be entitled, as regards contracts entered into by him with the express or implied authority of those appointing him, to an indemnity in respect of liability thereon from those appointing him to the extent to which he is unable to recover in accordance with subsection (2) of this section.

**395. Power of court to fix remuneration on application of liquidator**

(1) The court may, on the application of the company or the liquidator of a company, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the company.

(2) The powers of the court under subsection (1) of this section shall, where no previous order has been made with respect thereto under that subsection-

(a) extend to fixing the remuneration for any period before the making of the order or the application therefore; and

(b) be exercisable notwithstanding that the receiver or manager has died or ceased to act before the making of the order or the application therefore; and

(c) extend, where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that so fixed for that period, to requiring him or his personal representatives to account for the excess or such part thereof as may be specified in the order:

Provided that the power conferred by paragraph (c) of this subsection shall not be exercised as respects any period before the making of the application for the order unless in the opinion of the court there are special circumstances making it proper for the power to be so exercised.

(3) The court may, from time to time, on an application made either by the company or the liquidator or by the receiver or manager, vary or amend an order made under subsection (1) of this section.

(4) This section shall apply whether the receiver or manager has been appointed before or after the commencement of this Act, and to periods before, as well as to periods after, the commencement of this Act.

#### Procedure after appointment

#### 396. Provisions as to information where receiver or manager appointed

(1) Where a receiver or manager of the whole or substantially the whole of the property of a company (in this section and in section 397 of this Act referred to as "the receiver") has been appointed on behalf of the holders of any debentures of the company secured by a floating charge, then, subject to the provisions of this section and of section 397 of this Act-

(a) the receiver shall forthwith send notice to the company of his appointment and the terms; and

(b) there shall, within 14 days after receipt of the notice, or such longer period as may be allowed by the court or by the receiver, be made out and submitted to the receiver in accordance with section 397 of this Act, a statement in the prescribed form as to the affairs of the company; and

(c) the receiver shall within two months after receipt of the said statement send-

(i) to the Commission or to the court a copy of the statement and of any comments he sees fit to make thereon and in the case of the Commission also a summary of the statement and of his comments, if any, thereon;

(ii) to the company a copy of any such comments as aforesaid or if he does not see fit to make any comment, a notice to that effect; and

(iii) to any trustees for the debenture holders on whose behalf he has been appointed and, so far as he is aware of their addresses, to all such debenture holders, a copy of the said summary.

(2) The receiver shall within two months, or such longer period as the court may allow after the expiration of the period of 12 months from the date of his appointment and of every subsequent period of 12 months, and within two months, or such longer period as the court may allow after he ceases to act as receiver or manager of the property of the company, send to the Commission, to any trustees for the debenture holders of the company on

whose behalf he was appointed, to the company and (so far as he is aware of their addresses) to all such debenture holders, an abstract in the prescribed form showing his receipts and payments during that period of 12 months, or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract relates up to the date of his so ceasing, and the aggregate amounts of his receipts and of his payments during all preceding periods since his appointment.

(3) Where the receiver is appointed under the powers contained in any instrument, this section shall have effect-

(a) with the omission of the references to the court in subsection (1) of this section; and

(b) with the substitution for the references to the court in subsection (2) of this section, of references to the Commission; and in any other case references to the court shall be taken as referring to the court by which the receiver was appointed.

(4) Subsection (1) of this section shall not apply in relation to the appointment of a receiver or manager to act with an existing receiver or manager or in place of a receiver or manager dying or ceasing to act, except that, where that subsection applies to a receiver or manager who dies or ceases to act before it has been fully complied with, the references in paragraphs (b) and (c) thereof to the receiver shall, subject to subsection (5) of this section, include references to his successor and to expression "the receiver" where used in, or in relation to, subsection (2) of this section.

(5) This section and section 397 of this Act, where the company is being wound up, shall apply notwithstanding that the receiver or manager and the liquidator are the same person.

(6) Nothing in subsection (2) of this section shall be taken to prejudice the duty of the receiver to render proper accounts of his receipts and payments to the persons to whom, and at the times at which, he may be required to do so apart from that subsection.

(7) If the receiver makes default in complying with the requirements of this section, he shall be guilty of an offence and liable to a fine of ~~£~~25 for every day during which the default continues.

### **397. Special provisions as to statement submitted to receiver**

(1) The statements as to the affairs of a company required by section 396 of this Act, to be submitted to the receiver (or his successor) shall show as at the date of the receiver's appointment, the particulars of the company's assets, debts and liabilities, the names, residences and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be prescribed.

(2) The statement shall be submitted by, and be verified by, affidavit of one or more of the persons who are at the date of the receiver's appointment the directors, and by the person who is at that date the secretary of the company, or by such of the persons hereafter in this subsection mentioned as the receiver (or his successor), subject to the direction of the court, may require to submit and verify the statement, that is to say, persons-

(a) who are or have been officers of the company;

(b) who have taken part in the formation of the company at any time within one year before the date of the receiver's appointment;

(c) who are in the employment of the company, or have been in the employment of the company within the year, and are in the opinion of the receiver capable of giving the information required;

(d) who are or have been within the said year officers of or in the employment of a company which is, or within the said year was, an officer of the company to which the statement relates.

(3) Any person making the statement and affidavit shall be allowed, and shall be paid by the receiver (or his successor) out of his receipts, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the receiver (or his successor) may consider reasonable, subject to an appeal to the court.

(4) Where the receiver is appointed under the powers contained in any instrument, this section shall have effect with the substitution for references to the court of references to the Commission and references to an affidavit, of references to a statutory declaration; and in any other case references to the court shall be taken as referring to the court by which the receiver was appointed.

(5) If any person without reasonable excuse makes default in complying with the requirements of this section, he shall be guilty of an offence and liable to a fine of ₦50 for every day during which the default continues.

(6) References in this section to the receiver's successor shall include a continuing receiver or manager.

#### *Accounts by receiver or manager*

### **398. Delivery to Commission of accounts of receivers and managers**

(1) Except where section 396 (2) of this Act applies, every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument shall, within one month or such longer periods as the Commission may allow, after the expiration of the period of six months from the date of his appointment, and of every subsequent period of six months, and within one month after he ceases to act as receiver or manager, deliver to the Commission for registration an abstract in the prescribed form showing his receipts and his payments during that period of six months, or where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract relates, up to the date of his ceasing, and the aggregate amount of his receipts and of his payments during all preceding periods since his appointment.

(2) Every receiver or manager who makes default in complying with the provisions of this section shall be guilty of an offence and liable to a fine of ₦25 for every day during which the default continues.

#### *Duty as to returns*

### **399. Enforcement of duty of receivers and managers to make returns, etc.**

(1) If any receiver or manager of the property of a company having-

(a) made default in filing, delivering or making any returns, account or other document, or in giving any notice which a receiver or manager is by law required to file, delivers, makes or gives or fails to make good the default within 14 days after the service on him of a notice requiring him to do so; or

(b) been appointed under the powers contained in any instrument has, after being required at any time by the liquidator of the company so to do, fails to render proper accounts of his receipts and payment and to vouch the same and to pay over to the liquidator the amount properly payable to him,

the court may, on an application made for the purpose, make an order directing the receiver or manager, as the case may be; to make good the default within such time as may be specified in the order.

(2) In the case of any such default as is mentioned in paragraph (a) of subsection (1) of this section, an application for the purposes of this section may be made by any member or by the Commission, and in the case of any such default as is mentioned in paragraph (b) of that subsection, the application shall be made by the liquidator, and in either case the order may provide that all costs shall be borne by the receiver or manager, as the case may be.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on receivers in respect of any such default as is mentioned in subsection (1) of this section.

#### *Construction of references*

#### **400. Construction of references to receivers and managers**

It is hereby declared that, except where the context otherwise requires-

(a) any reference in this Act to a receiver or manager of the property of a company, or to a receiver thereof, includes a reference to a receiver or manager, or as the case may be to a receiver of part only of that property and to a receiver only of the income arising from that property or from part thereof; and

(b) any reference in this Act to the appointment of a receiver or manager under powers contained in any instrument, includes a reference to an appointment made under powers which, by virtue of any enactment, are implied in and have effect as if contained in an instrument.

### PART XV

#### *Winding up of companies*

### CHAPTER 1

#### *Preliminary*

#### *Modes of winding up*

#### **401. Modes of winding up**

(1) The winding up of a company may be effected-

(a) by the court; or

(b) voluntarily; or

(c) subject to the supervision of the court.

(2) The provisions of this Act with respect to winding up shall apply, unless the contrary appears, to the winding up of a company in any of those modes.

#### *Contributories*

#### **402. Liability as contributories of present and past members**



In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company as provided in section 92 of this Act.

#### **403. 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, the expression shall include any person alleged to be a contributory.

#### **404. Nature of liability of contributory**

The liability of a contributory shall create a debt of the nature of a speciality accruing and due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

#### **405. Contributories in case of death of member**

(1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives and his heirs and devisees, shall be liable in due course of administration to contribute to the assets of the company in discharge of his liability and they shall be contributories accordingly.

(2) Where the personal representatives are placed on the list of contributories, the heirs or devisees need not be added; but they may be added as and when the court thinks fit.

(3) If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the whole or any part of the estate of the deceased contributory, and for compelling payment out of it of the money due.

#### **406. Contributories in case of bankruptcy of member**

(1) If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories, then-

(a) his trustee in bankruptcy shall represent him for all the purposes of the winding-up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the assets of the company; and

(b) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

(2) The provisions of this section shall extend and apply with all necessary changes to the case of an insolvent person.

## CHAPTER 2

### *Winding up by the court*

#### *Jurisdiction*

#### **407. Jurisdiction as to winding up**

(1) The court having jurisdiction to wind up a company shall be the Federal High Court within whose area of jurisdiction the registered office or head office of the company is situate.

(2) For the purpose of this section, "**registered office**" or "**head office**" means the place which has longest been the registered office or head office of the company during the six months immediately preceding the presentation of the petition for winding up.

*Cases in which company may be wound up by court*

**408. Circumstances in which companies may be wound up by court**

A company may be wound up by the court if-

- (a) the company has by special resolution resolved that the company be wound up by the court;
- (b) default is made in delivering the statutory report to the Commission or in holding the statutory meeting;
- (c) the number of members is reduced below two;
- (d) the company is unable to pay its debts;
- (e) the court is of opinion that it is just and equitable that the company should be wound up.

**409. Definition of inability to pay debts**

A company shall be deemed to be unable to pay its debts if-

- (a) a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding ~~N~~2,000, then due, has served on the company, by leaving it at its registered office or head office, 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
- (b) execution or other process issued on a judgment, Act or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
- (c) the court, after taking into account any contingent or prospective liability of the company, is satisfied that the company is unable to pay its debts.

*Petitions for winding up and effects thereof*

**410. Provisions as to application 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-

- (a) the company;
- (b) a creditor, including a contingent or prospective creditor of the company;
- (c) the official receiver;
- (d) a contributory;

(e) a trustee in bankruptcy to, or a personal representative of, a creditor or contributory;

(f) the Commission under section 323 of this Act;

(g) a receiver, if authorised by the instrument under which he was appointed; or

(h) by all or any of those parties, together or separately.

(2) Notwithstanding anything in subsection (1) of this section-

(a) a contributory shall not be entitled to present a petition for winding up a company unless-

(i) the number of members is reduced below two; or

(ii) the shares in respect of which he is contributory or some of them, were originally allotted to him or have been held by him, and registered in his name, for at least six months during the 18 months before the commencement of the winding up, or have devolved on him through the death of a former holder;

(b) a winding-up petition shall not, if the ground of the petition is default in delivering the statutory report to the Commission or in holding the statutory meeting, be presented by any person except a shareholder, or before the expiration of 14 days after the last day on which the meeting should have been held;

(c) the court shall not hear a winding-up petition presented by a contingent or prospective creditor until sufficient security for costs has been given, and a *prima facie* case for winding up has been established to its satisfaction;

(d) in any case falling within section 320 or 321 of this Act (proceedings on inspector's reports) or paragraph (e) of section 408 of this Act, a winding-up petition may be presented by the Commission with the approval of the Attorney-General of the Federation.

(3) Where a company is being wound up voluntarily or subject to supervision, a winding-up petition may be presented by the official receiver attached to the court, as well as by any other person authorised in that behalf under the other provisions of this section; but the court shall not make a winding-up order on any such petition unless it is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

(4) A contributory shall be entitled to present a winding-up petition notwithstanding that there may not be assets available on the winding up for distribution to contributories.

#### **411. Powers of 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 any interim order, or any other order that it thinks fit; but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) Unless it appears to the court that some other remedy is available and that the petitioners are acting unreasonably in seeking a winding-up order instead of pursuing that remedy, the court, on hearing a petition by contributory members of a company for relief by winding up on the ground that it would be just and equitable so to do, shall make the order as prayed if of opinion that the petitioners are entitled to the relief sought.

(3) Where a petition is presented on the ground of default in delivering the statutory report to the Commission or in holding the statutory meeting, the court, instead of making a winding-up order, may direct the delivery of the statutory report or the holding of a meeting, as the case may require, and order the costs to be paid by the persons who, in the opinion of the court, are responsible for the default.

#### **412. Power to stay or restrain proceedings against company**

Where a winding-up petition has been presented and an action or other proceeding against a company is instituted or pending in any court (in this section referred to as "the court concerned"), the company or any creditor or contributory may, before the making of the winding-up order, apply to the court concerned for an order staying proceedings; and the court concerned may, with or without imposing terms, stay or restrain proceedings, or if it thinks fit, refer the case to the court hearing the winding-up petition.

#### **413. Avoidance of dispositions of property, etc., after commencement of winding up**

In a winding up by the court, any disposition of the property of the company, including things in action and any transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding up shall, unless the court otherwise orders, be void.

#### **414. Avoidance of attachments, etc.**

Where a company is being wound up by the court, any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void.

#### *Commencement of winding up*

#### **415. Commencement of a 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 voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the court, on proof of fraud or mistake, thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case, the winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up.

#### *Consequences of winding-up order*

#### **416. Copy of order to be forwarded to Commission**

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 Commission, which shall make a minute thereof in its books relating to the company.

#### **417. Actions stayed on winding-up order**

If a winding-up order is made or a provisional liquidator is appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court given on such terms as the court may impose.

#### **418. 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*

#### **419. Definition of official receiver**

(1) For the purpose of this Act and so far as it relates to the winding up of companies by the court, "**official receiver**" means the Deputy Chief Registrar of the Federal High Court or an officer designated for the purpose by the Chief Judge of the Court.

(2) Any such officer shall, for the purpose of his duties under this Act, be styled "**the official receiver**".

#### **420. Statement of company's affairs to be submitted to official receiver**

(1) Where the court has made a winding-up order or appointed a provisional liquidator 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, residences and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, the list of members and the list of charges and such further or other information as may be prescribed or as the official receiver may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and the person who is at that date the secretary of the company, or by such of the persons mentioned in this subsection as the official receiver, subject to the direction of the court, may require to submit and verify the statement, that is to say persons who-

(a) are or have been officers of the company;

(b) have taken part in the formation of the company at any time within one year before the relevant date;

(c) have been or are in the employment of the company within the said year, and are in the opinion of the official receiver capable of giving the information required;

(d) are or have been within the said year officers of or in the employment of a company which is, or within the said year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within 14 days from the 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 shall be allowed, and shall be paid by the official receiver or provisional liquidator, as the case may be, out of the assets of the company such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official receiver may consider reasonable, subject to an appeal to the court.

(5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be guilty of an offence and liable to a fine of ₦25 for every day during which the default continues.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on a payment of the prescribed fee to inspect the statement submitted in pursuance of this section, and to a copy of or extract from it.

(7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of contempt of court and shall, on the application of the liquidator or of the official receiver, be punishable accordingly.

(8) In this section, the expression "**the relevant date**" means, in a case where a provisional liquidator is appointed, the date of his appointment and in a case where no such appointment is made, the date of the winding-up order.

#### **421. Report by official receiver**

(1) If a winding-up order is made, the official receiver shall as soon as practicable after receipt of the statement to be submitted under section 420 of this Act or where the court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the court-

(a) as to the amount of capital issued, subscribed and paid up, and the estimated amount of assets and liabilities; and

(b) if the company has failed, as to the causes of the failure; and

(c) whether, in his opinion, further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company.

(2) The official receiver may if he thinks fit, make further reports, stating the manner in which the company was formed and whether in his opinion 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 its formation and the reports may include any other matters which, in his opinion, it is desirable to bring to the notice of the court.

(3) If any further report under this section indicates the commission of fraud, the court shall have the further powers provided in section 450 of this Act (which confers authority to order public examination of certain officials).

#### *Liquidators*

#### **422. Appointment, remuneration and title of liquidators**

(1) The court may appoint a liquidator or 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 and where there is a vacancy, the official receiver shall by virtue of his office, act as liquidator until such time as the vacancy is filled.

(2) At any time after the presentation of a petition and before the making of a winding-up order, the appointment shall be provisional and the court making the appointment may limit and restrict the powers of the liquidator by the order appointing him.

(3) In the application of the foregoing provisions of this section-

(a) if a provisional liquidator is to be appointed before the making of a winding-up order, the official receiver, or any other fit person, may be so appointed;

(b) on the making of a winding-up order, if no liquidator is appointed, the official receiver shall by virtue of his office become the liquidator;

(c) the official receiver in his capacity as provisional liquidator shall, and in any other case may, summon meetings of creditors and contributories of the company to be held separately 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;

(d) if a person other than the official receiver is appointed liquidator, he shall not be capable of acting in that capacity until he has notified his appointment to the Commission and given security in the prescribed manner to the satisfaction of the court.

(4) If more than one liquidator of a company is appointed by the court, the court shall declare whether anything by this Act required or authorised to be done by a liquidator is to be done by all or anyone or more of them.

(5) A liquidator appointed by the court may resign, or, on cause shown, be removed by the court; and any vacancy in the office of a liquidator so appointed shall be filled by the court.

(6) Where a person other than the official receiver is appointed a liquidator, he shall receive salary in an amount, 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.

(7) Where a liquidator of a company is appointed, he shall, after his individual name-

(a) if he is the official receiver, be described as "official receiver and liquidator of (add here name of the company)"; and

(b) in any other case be described as "liquidator of (add here name of the company)".

(8) The acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

(9) If a liquidator is appointed under this section, all the powers of the directors shall cease, except so far as the court may by order sanction the continuance thereof.

#### **423. Custody of company's property**

In a winding up by the court the liquidator shall take into his custody, or under his control, all the property and choses in action to which the company is or appears to be entitled.

#### **424. 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 in the liquidator by his official name, and thereupon, but subject to the requirements of registration under any particular enactment, the property to which the order relates 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 purpose of effectually winding up the company and recovering its property.

#### **425. Powers of liquidator**

(1) The liquidator in a winding up by the court shall have power, with the sanction either of the court or of the committee of inspection, to-

- (a) bring or defend any action or other legal proceeding in the name and on behalf of the company;
- (b) carry on the business of the company so far as may be necessary for its beneficial winding up;
- (c) appoint a legal practitioner or any other relevant professional to assist him in the performance of his duties;
- (d) pay any classes of creditors in full;
- (e) 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;
- (f) compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect thereof;

(2) The liquidator in winding up by the court shall have power to-

- (a) sell the property of the company of whatever nature by public auction or private contract, with power to transfer the whole thereof to any person or company or to sell the same in parcels;
- (b) do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the company's seal;
- (c) prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors;
- (d) draw, accept, make and indorse 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 indorsed by or on behalf of the company in the course of its business;
- (e) raise on the security of the assets of the company any money requisite;
- (f) take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself;
- (g) appoint an agent to do any business which the liquidator is unable to do himself;



(h) do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(3) The exercise by the liquidator in a winding up by the court of the powers conferred by this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

#### **426. Liquidator to give information, etc., to official receiver**

If during the winding up of a company by the court a person other than the official receiver is appointed liquidator, he shall give the official receiver such information and access to and facilities for inspecting the books and documents of the company, and generally any aid requisite or necessary for enabling that officer to perform his duties under this Act.

#### **427. Exercise and control of liquidator's powers**

(1) Subject to the provisions of this Act, the liquidator of a company being wound up by the court shall, in the administration and distribution of the assets of the company among its creditors, have regard to directions given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection; so however that directions given by the creditors or contributories at any general meeting shall, in case of conflict, override directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories by resolution either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one tenth in value of the creditors or contributories, as the case may be.

(3) The liquidator may apply to the court in the manner prescribed for directions in relation to any particular matter arising under the winding up.

(4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(5) Any persons aggrieved by an act or decision of the liquidator, may apply to the court for such order in the premises as it thinks just; and the court may confirm, reverse, or modify the act or decision.

#### **428. Payments by liquidator into companies' liquidation account**

(1) Every liquidator of a company being wound up by the court shall, in such manner and at such times as the Commission directs, pay moneys received by him into the public fund of the Federation kept by the Commission under and for the purposes of this Act and known as "the Companies Liquidation Account", and the Accountant-General of the Federation shall furnish him with a certificate of receipt for the money so paid:

Provided that, if the committee of inspection satisfies the Commission that for the purpose of carrying on the business of the company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any bank, the Commission shall, on the application of the committee of inspection, authorise the liquidator to make his payments into and out of such bank in Nigeria as the committee may select, and thereupon those payments shall be made in the prescribed manner.

(2) If the liquidator of a company being wound up as aforesaid, at any time retains for more than ten days an amount in excess of either ₦500 or, in any particular case, such other amount as the Commission may approve, and fails to satisfy the Commission as to the need for the retention beyond that time, the liquidator shall pay interest on the amount so retained in excess, at the rate of twenty per cent per annum, and shall be liable to-

(a) disallowance of the whole or such part of his remuneration as the Commission thinks fit; and

(b) removal from office,

and in addition, he shall be liable to pay any expenses occasioned by the retention.

(3) A liquidator of a company which is being wound up by the court shall not pay any sums received by him as liquidator into his private banking account.

#### **429. Audit, etc., of liquidator's account**

(1) Every liquidator of a company 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 Commission an account of his receipts and payments as liquidator.

(2) The account shall be in duplicate in the prescribed form, and shall be verified by a statutory declaration in the prescribed form.

(3) The Commission shall cause the account to be audited, and for the purpose of the audit the liquidator shall furnish the Commission with such vouchers and information as the Commission may require, and the Commission may at any time require the production of, and may inspect, any books or accounts kept by the liquidator.

(4) When the account has been audited, one copy shall be filed and kept by the Commission, and the other copy shall be with the court and each shall be open to inspection by any creditor or other person interested, on payment of the prescribed fee.

(5) The Commission shall cause the account when audited, or a summary thereof, to be printed, and shall send a printed copy of the account or summary by post to every creditor and contributory.

#### **430. Books to be kept by liquidator**

Every liquidator of a company which is being wound up by the court shall, in the manner prescribed, keep proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the court, personally or by his agent inspect any such books.

#### **431. Release of liquidator**

(1) Where the liquidator of a company being wound up by the court has realised all the property of the company, or so much of it as may, in his opinion, be realised without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Commission shall, on the application of the liquidator, cause a report on the accounts of the liquidator to be prepared.

(2) The Commission shall consider the report referred to in subsection (1) of this section together with any objection that may be raised by any creditor, or contributory, or person interested against the release of the liquidator, and may grant or withhold the release as it deems fit subject nevertheless to an appeal to the court.

(3) If the release of a liquidator is withheld, the court may, on the application of any creditor, or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(4) An order of the Commission 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.

(5) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

#### **432. Control over liquidators**

(1) The Commission shall take cognisance of the conduct of liquidators of companies which are being wound up by the court and if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by any enactment, or other-wise with respect to the performance of his duties, or if any complaint is made to the Commission by any creditor or contributory in regard thereto, the Commission shall inquire into the matter, and may take such action thereon as it thinks fit, including the direction of a local investigation of the books and vouchers of the liquidator.

(2) The Commission may at any time require the liquidator of a company being wound up by the court to answer any inquiry in relation to any winding up in which he is engaged and if the Commission thinks fit, it may apply to the court to examine the liquidator or any other person on oath concerning the winding up.

*Committee of inspection, special manager, etc.*

#### **433. Power to appoint committee of inspection after meeting of creditors and others**

(1) Where a winding-up order is made by the court, it shall be the business of the separate meetings of creditors and contributories summoned for the purpose of determining whether or not to apply to the court for an order appointing a liquidator in place of the official receiver, to determine whether or not application should 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 the appointment is made.

(2) The court may make any appointment and order required to give effect to any determination under this section and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matters aforesaid, the court shall decide the difference and make any order it thinks necessary.

#### **434. Powers, etc., of committee of inspection**

(1) A committee of inspection appointed under this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories or as, in case of difference, may be determined by the court.

(2) A committee of inspection shall meet at the time or times appointed, so however that there shall be a meeting at least once in every month during its existence; but the liquidator or any member of the committee may convene a meeting as and when necessary.

(3) A meeting of a committee of inspection shall be deemed convened if a majority of members are present; but at any such meeting the committee may act by a majority of the members present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt or compounds or arranges with his creditors or is absent from five consecutive meetings of the committee without leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories, of which seven days' notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the committee, the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, reappoint the same or appoint another creditor or contributory to fill the vacancy:

Provided that if the liquidator, having regard to the position in the winding up, is of the opinion that it is unnecessary for the vacancy to be filled he may apply to the court and the court may make an order that the vacancy shall not be filled, or shall not be filled except in such circumstances as may be specified in the order.

(8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

#### **435. Powers where no committee of inspection is appointed**

Where, in the case of winding up, there is no committee of inspection, the Commission may, on the application of the liquidator, if he thinks fit, do any act or thing or give any direction or permission which is by this Act authorised or required to be done or given by the committee.

#### **436. Power to appoint special manager**

(1) Where the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court for an order appointing a special manager to act during such time as the court may direct, with such powers, including those of a receiver or manager, as may be entrusted to him by the court, and the court may make any order necessary.

(2) A special manager appointed under this section shall receive remuneration as fixed by the court, and shall give security and account in such manner as the Commission directs.

#### **437. Official receiver as receiver for debenture holders, etc.**

It is hereby declared that where application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company being wound up by the court, the official receiver may be so appointed.

### *General powers of court in case of winding up by court*

#### **438. Power to stay winding up**

(1) The court may at any time after an order for winding up, on the application either of a 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.

(2) The court may, at any time after an order for winding up, on the application either of the liquidator or a creditor, and after having regard to the wishes of the creditors and contributories, make an order directing that the winding up, ordered by the court, shall be conducted as a creditors' voluntary winding up, and if the court does so, the winding up shall be so conducted.

(3) On any application under this section, the court may, before making an order, require the official receiver to furnish to the court a report with respect to any facts or matters which are in his opinion relevant to the application.

(4) A copy of every order made under this section shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Commission, which shall make a minute of the order in its books relating to the company.

(5) If default is made in lodging a copy of an order made under this section with the Commission as required by subsection (4) of this section, every officer of the company or other person who knowingly authorises or permits the default shall be guilty of an offence punishable by a daily default fine of ~~₹~~25.

#### **439. 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, and may rectify the register of members in all cases where rectification is required in pursuance of this Act, and the court shall cause the assets of the company to be collected, and applied in discharge of its liabilities:

Provided that where it appears to the court that it will not be necessary to make calls on or adjust the rights of contributories, the court may dispense with the settlement of a list of contributories.

(2) In settling the list of contributories, the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

#### **440. 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 and any trustee, receiver, banker, agent, or officer of the company to pay, deliver, convey, surrender or transfer forthwith, or within such time as the court directs, to the liquidator any money, property, or books and papers in his hands, to which the company is *prima facie* entitled.

#### **441. Payments by contributory to company and set-off allowance**

(1) 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 the manner directed by the order; any money due from him or from

the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) The court making an order under this section-

(a) in the case of an unlimited company, may allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company of any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit;

(b) in the case of a limited company, may make to any director or manager whose liability is unlimited or to his estate, the like allowance as in paragraph (a) of this subsection.

(3) In the case of any company, limited or unlimited, when all the creditors are paid in full, the money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

#### **442. Power of court to make calls**

(1) The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.

(2) In making a call under this section, the court shall take into consideration the probability that some of the contributories may fail, wholly or partially to pay the call.

#### **443. Power to order payment into companies' liquidation account**

(1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay it into the company's liquidation account referred to in section 428 of this Act to the account of the liquidator instead of direct to the liquidator and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) Moneys and securities paid or delivered into the company's liquidation account in the event of a winding up by the court shall be subject in all respects to any relevant order of the court.

#### **444. Order on contributory to be conclusive evidence**

(1) An order made by the court on a contributory shall, subject to any right of appeal, be conclusive evidence that money, if any thereby appearing to be due or ordered to be paid, is due.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings, except proceedings against the land of a deceased contributory, when the order shall be only *prima facie* evidence for the purpose of charging his land, unless his heirs or devisees were on the list of contributories at the time the order was made.

#### **445. 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 be excluded from the benefit of any distribution made before those debts are proved.

#### **446. Adjustment of rights of contributories**

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

#### **447. Inspection of books by creditors and contributories**

(1) The court may, at any time after making a winding-up order, make such order for inspection of the books and papers of the company by creditors and contributories as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

(2) Nothing in this section shall be taken as excluding or restricting any statutory rights of a government department or person acting under the authority of a government department.

#### **448. Power to order costs 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.

#### **449. Power to summon persons suspected of having property of company, etc.**

(1) The court may, at any time after the appointment of a provisional liquidator or the making of a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person who the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company.

(2) The court may examine on oath any person so summoned concerning the matters aforesaid either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The court may require any person summoned under subsection (1) of this section, to produce books and papers in his custody or power relating to the company but, where any such person claims a lien on books or papers produced by him, the production shall be without prejudice to the lien, and the court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned as aforesaid, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having lawful impediment (made known to the court at the time of its sitting and allowed by it), the court may cause him to be apprehended and brought before the court for examination.

#### **450. Power to order public examination of promoters, etc.**

(1) Where an order is made for winding up a company by the court and the official receiver makes 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 director or other officer of the company in relation to the company since its formation, the court may, after consideration of the report, direct that any person who has taken any part in the promotion

or formation of the company, or has been a director or officer of the company, shall attend before the court on a day appointed by the court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealing as director or officer thereof.

(2) The official receiver shall take part in the examination, and for that purpose may, if specially authorised by the Commission in that behalf, employ a legal practitioner.

(3) The liquidator, where the official receiver is not the liquidator, and any creditor or contributory, may also take part in the examination, either personally or by a legal practitioner.

(4) The court may put such questions to the person examined as the court thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the court may put or allow to be put to him.

(6) A person ordered to be examined under this section shall at his own cost, before his examination, be furnished with a copy of the official receiver's report, and may at his own cost employ a legal practitioner who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him:

Provided that if any such person applies to the court to be exculpated from any charges made or suggested against him, it shall be the duty of the official receiver to appear on the hearing of the application and call the attention of the court to any matters which appear to the official receiver to be relevant, and if the court after hearing any evidence given or witnesses called by the official receiver, grants the application, the court may allow the applicant such costs as in its discretion it may think fit.

(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(8) The Court may, if it thinks fit, adjourn the examination from time to time.

(9) An examination under this section may, if the court so directs, and subject to general rules made under section 453 of this Act, be held before any magistrate, and the powers of the court under this section as to the conduct of the examination but not as to costs, may be exercised by the magistrate before whom the examination is held.

#### **451. Power to arrest absconding contributory**

The court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit Nigeria or otherwise to abscond, or to remove or conceal any of his property for the purpose of evading payment of calls, or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested, and his books and papers and movable personal property, to be seized, and him and them to be safely kept until such time as the court may order.

#### **452. Powers of court cumulative**

Any powers by this Act conferred on the court shall be in addition to and not in restriction of any

existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.



#### **453. Delegation to liquidator of certain powers of court**

(1) Provision may be made by rules for enabling or requiring all or any of the powers and duties conferred and imposed on the court by this Act, in respect of the matters following, to be exercised or performed by the liquidator as an officer of the court, and subject to the control of the court, that is to say, the powers and duties of the court in respect of-

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

(2) Nothing in this section shall authorise the liquidator, without the special leave of the court, to rectify the register of members, or, without either the special leave of the court or the sanction of the committee of inspection, to make any call.

#### **454. Dissolution of company**

(1) If the affairs of a company have been fully wound up and the liquidator makes an application in that behalf, the court shall order the dissolution of the company and the company shall be dissolved accordingly from the date of the order.

(2) A copy of the order shall, within 14 days from the date when made, be forwarded by the liquidator to the Commission who shall make in its books a minute of the dissolution of the company.

(3) If the liquidator makes default in complying with the requirements of this section, he shall be guilty of an offence and liable to a fine of ₦25 for every day during which he is in default.

#### *Enforcement of and appeals from orders*

#### **455. Power to enforce orders**

An order made by a court under this Act may be enforced in the same manner as orders made in any action pending therein.

#### **456. Appeals from orders**

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

### CHAPTER 3

#### *Voluntary winding up*

*Resolutions for and commencement of voluntary winding up*

**457. Circumstances in which company may be wound up voluntarily**

Any company may be wound up voluntarily-

(a) when the period, if any, fixed for the duration of the company by the articles expires, or the event, if any, occurs, on occurrence of which the articles provided that the company is to be dissolved and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;

(b) if the company resolves by special resolution that the company be wound up voluntarily and references in this Act to a "**resolution for voluntary winding up**" means a resolution passed under any of the paragraphs of this section.

**458. Notice of resolution to wind up voluntarily**

(1) If a company passes a resolution for voluntary winding up it shall, within 14 days after the passing of the resolution, give notice of the resolution by advertisement in the Gazette or two daily newspapers and to the Commission.

(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 fine of ₹500 and for the purposes of this subsection the liquidator of the company shall be deemed to be an officer of the company.

**459. Commencement of voluntary winding up**

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

*Consequences of voluntary winding up*

**460. Effect of voluntary winding up on business, etc., of company**

In case of 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:

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

**461. Avoidance of transfer, etc., after commencement of voluntary winding up**

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.

*Declaration of solvency*

**462. Statutory declaration of solvency where proposal to wind up voluntarily**

(1) Where on or after the commencement of this Act, 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 statutory declaration to the effect that they have made a full

inquiry into the affairs of the company and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within such period, not exceeding 12 months from the commencement of the winding up, as is specified in the declaration.

(2) A declaration made as aforesaid shall have no effect for the purposes of this Act unless-

(a) it is made within the five weeks immediately preceding the date of the passing of the resolution for winding up the company and is delivered to the Commission for registration before that date; and

(b) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.

(3) 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 guilty of an offence and liable on conviction to a fine of ~~₹~~1,500 or to imprisonment for a term of three months, or to both; and if the company is wound up in pursuance of a resolution passed within the period of five weeks after the making of the declaration, but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed, until the contrary is shown, that the director did not have reasonable grounds for his opinion.

(4) A winding up in any case where a declaration has been made and delivered in accordance with this section, shall in this Act be referred to as "a members' voluntary winding up" and a winding up in any case where a declaration has not been made and delivered as aforesaid shall in this Act be referred to as "a creditors' voluntary winding up".

(5) Subsections (1) to (3) of this section shall not apply to a winding up commenced before the commencement of this Act.

*Provisions applicable to a members' voluntary winding-up*

**463. Provisions applicable to a members' voluntary winding-up**

The provisions following, that is to say, sections 464 to 470 of this Act, shall, subject to the alternative provision in section 469 of this Act, apply in relation to a members' voluntary winding up.

**464. Power to appoint, etc., 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) If a liquidator is appointed under this section, all the powers of the directors shall cease, except so far as the company in general meeting or the liquidator sanctions the continuance thereof.

**465. Power to fill vacancy in office of liquidators**

(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; and for that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(2) The general meeting shall be held in the manner provided by this Act or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

#### **466. Liquidator to call creditors' meeting on insolvency**

(1) If, in the case of a winding up commenced after the commencement of this Act, 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 462 of this Act, he shall forthwith summon a meeting of the creditors, and lay before the meeting a statement of the assets and liabilities of the company.

(2) If the liquidator fails to comply with this section, he shall be guilty of an offence and liable to a fine of ₦500.

#### **467. Liquidator to call general meeting at end of each year**

(1) Subject to the provisions of section 469 of this Act, in the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within three months from the end of the year or such longer period as the Commission 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 guilty of an offence and liable to a fine of ₦50.

#### **468. Final meeting and dissolution**

(1) Subject to the provisions of section 469 of this Act, as soon as the affairs of the company are fully wound up, the liquidator shall prepare an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of; and when the account is prepared, he 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 notice published in the *Gazette* and in some newspaper printed in Nigeria and circulating in the locality where the meeting is being called, specifying the time, place and object thereof, and published one month at least before the meeting.

(3) Within seven days after the meeting, the liquidator shall send to the Commission a copy of the account, and shall make a return to it of the holding of the meeting and of its date and if the copy is not sent or the return is not made in accordance with this subsection, the liquidator shall be guilty of an offence and liable to fine of ₦15 for every day during which the default continues:

Provided that, if a quorum is not present at the 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 be deemed to have been complied with.

(4) The Commission, on receiving the account and the appropriate return, shall forth-with register them, and on the expiration of three months from the registration of the return, the company shall be deemed to be dissolved:

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to deliver to the Commission an office copy of the order for registration, and if that person fails so to do he shall be liable to a fine of ~~₹~~20 for every day during which the default continues.

(6) If the liquidator fails to call a general meeting of the company as required by this section, he shall be guilty of an offence and liable to a fine of ~~₹~~50.

#### **469. Alternative provisions as to annual and final meetings in insolvency cases**

Where section 466 of this Act has effect, sections 477 and 478 thereof shall apply to the winding up to the exclusion of the two last foregoing sections, as if the winding up were a creditors' voluntary winding up and not a members' voluntary winding up:

Provided that the liquidator shall not be required to summon a meeting of creditors under section 477 of this Act at the end of the first year from the commencement of the winding up, unless the meeting held under section 466 of this Act is held more than three months before the end of that year.

#### **470. Books and accounts during members' voluntary winding up**

(1) The liquidator in a members' voluntary winding up shall keep proper records and books of account with respect to his acts and dealings and of the conduct of the winding up and of all receipts and payments by him and so long as he carries on the business of the company, shall keep a distinct account of the trading.

(2) In the event of the winding up continuing for more than a year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up and of each succeeding year, or at the first convenient date within three months of the end of the year or such longer period as the Commission 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 and of the trading during such time as the business of the company has been carried on, and within 28 days thereafter shall send a copy of such accounts to the Commission for registration.

(3) So soon as the affairs of the company are fully wound up, the liquidator shall prepare and send to every member of the company final accounts of the winding up showing how the winding up has been conducted, the result of the trading during such time as the business of the company has been carried on, and how the property of the company has been disposed of, and thereupon shall convene a general meeting of the company for the purpose of laying before it such accounts and of giving an explanation thereof.

(4) Within 28 days after the meeting referred to in the immediately preceding subsection, the liquidator shall send to the Commission for registration copies of the accounts laid before the meeting and a statement of the holding of the meeting and of its date:

Provided that if a quorum was not present at the meeting the liquidator, in lieu of the statement hereinbefore mentioned, shall send a statement that the meeting was duly convened and that no quorum was present thereat.

(5) The records, books and accounts referred to in this section shall be in such form, if any, as the Commission may from time to time prescribe and shall give a true and fair view of the matters therein recorded and of the administration of the company's affairs and of the winding up.

(6) The accounts referred to in subsections (2) and (3) of this section, shall be audited by the auditor of the company prior to being laid before the company in general meeting in accordance with such subsections and the auditors shall state in a report annexed thereto whether, in their opinion and to the best of their information-

(a) they have obtained all the information and explanations necessary for the purpose of their audit;

(b) proper books and records have been maintained by the liquidator in accordance with this Act, and such accounts are in accordance with the books and records and give all the information required by this Act in the manner therein required and give a true and fair view of the matters stated in such accounts:

Provided that such audit and auditors' report shall not be required if-

(i) the liquidator, or one of the liquidators if more than one, is duly qualified under the provisions of this Act for appointment as auditor of a public company; and

(ii) on or after his appointment as liquidator, the company resolved by special resolution that the accounts shall not be audited in accordance with this subsection.

(7) Meetings required to be convened under this section or the immediately foregoing section, shall be convened and held, so far as may be, in accordance with the provisions of this Act and the regulations of the company relating to general meetings.

(8) The liquidator shall preserve the books and papers of the company and of the liquidator for a period of five years from the dissolution of the company but thereafter may destroy such books and papers unless the Commission shall otherwise direct, in which event he shall not destroy the same until the Commission consents in writing.

(9) If a liquidator should fail to comply with any of the provisions of this section, he shall be guilty of an offence and liable to a fine not exceeding ₦230 for each default.

*Provisions applicable to a creditors' voluntary winding up*

**471. Provisions applicable to creditors' winding up voluntarily**

The provisions following, that is to say sections 472 to 478 of this Act, shall apply in relation to a creditors' voluntary winding up.

**472. Meeting of creditors**

(1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meetings of the company.

(2) The company shall cause notice of the meeting of the creditors to be published once in the *Gazette* and once at least in two newspapers printed in Nigeria and circulating in the district where the registered office or principal place of business of the company is situate.

(3) The directors of the company shall-

(a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of the creditors to be held as aforesaid; and

(b) appoint one of their number to preside at the said meeting.

(4) It shall be the duty of the director so appointed to attend the meeting and preside thereat.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed, is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of subsection (1) of this section shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

(6) If default is made by-

(a) the company in complying with subsection (1) or (2) of this section;

(b) the directors of the company in complying with subsection (3) of this section;

(c) any director of the company appointed to preside, in complying with subsection (4) of this section,

the company, directors or director, as the case may be, shall be guilty of an offence and liable to a fine of ₦250 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.

#### **473. Appointment of liquidator and cesser of directors' powers**

(1) The creditors and the company at their respective meetings mentioned in section 472 of this Act may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person if any, nominated by the company, shall be liquidator:

Provided that in the case of different persons being nominated, any director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the court for an order directing that the persons nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors.

(2) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction the continuance thereof.

#### **474. Appointment of committee of inspection**

(1) The creditors at the meeting to be held in pursuance of section 472 of this Act or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and if such a committee is appointed, the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number:

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company shall 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 under this provision the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(2) Subject to the provisions of this section and to general rules made under this Act, the provisions of section 434 of this Act (except subsection (1) of this section), 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.

#### **475. Fixing of liquidators' remuneration**

The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

#### **476. Power to fill vacancy in the office of liquidator**

If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by, or by the direction of the court, the creditors may fill the vacancy.

#### **477. Liquidator to call meetings of company and others 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 and a meeting of the creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within three months from the end of year, or such longer period as the Commission may allow, and shall lay before the meetings 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 the provisions of this section, he shall be guilty of an offence and liable to a fine of ₦50.

#### **478. Final meeting and dissolution**

(1) As soon as the affairs of the company are fully wound up, the liquidator shall prepare an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon he shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving any explanation thereof.

(2) Each such meeting shall be called by notice published in the *Gazette* and in some newspapers printed in Nigeria and circulating in the locality where the meeting is being called, specifying the time, place and object thereof, and published one month at least before the meeting.

(3) Within seven days after the date of the meeting, or if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the Commission a copy of the account, and shall make a return to it of the holding of the meetings and of their dates, and if the copy is not sent or the return is not made in accordance with this subsection, the liquidator shall be guilty of an offence and liable to a fine of ₦25 for every day during which the default continues:

Provided that, if a quorum is not present at either such meetings 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;



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 Commission, on receiving the account, and, in respect of each such meeting, either of the returns mentioned above, 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 of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to deliver to the Commission an office copy of the order for registration, and if that persons fails so to do he shall be guilty of an offence and liable to a fine of ₦25 for every day during which the default continues.

(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 guilty of an offence and liable to a fine of ₦250.

*Provisions applicable to every voluntary winding up*

**479. Provisions applicable to every voluntary winding up**

The provisions following, that is to say, sections 480 to 485 of this Act, shall apply to every voluntary winding up, whether a members' or a creditors' winding up.

**480. Distribution of property of company**

Subject to the provisions of this Act as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities *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.

**481. Powers, etc., of liquidator in every voluntary winding up**

(1) The liquidator may-

(a) in the case of a members' voluntary winding up, with the sanction of special resolution of the company, and, in the case of a creditors' voluntary winding up, with the sanction of the court or, the committee of inspection or if there is no such committee, a meeting of the creditors, exercise any of the powers given by paragraphs (d), (e) and (f) of section 425 (1) of this Act to a liquidator in a winding up by the court;

(b) without sanction, exercise any of the other powers given by this Act to the liquidator in a winding up by the court;

(c) exercise the power of the court under this Act of settling a list of contributories, and the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories;

(d) exercise the court's power of making calls;

(e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or for any other purpose he may think fit.

(2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(3) Where several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined by any number not less than two.

#### **482. Power of court to appoint, etc., liquidator**

If, in any voluntary winding up, there is no liquidator acting, the court may appoint a liquidator and in any case the court may, on cause shown, remove a liquidator and appoint another liquidator.

#### **483. Power to apply to court to determine questions or exercise powers**

(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, to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.

(2) If the court is satisfied that the determination of the question or the required exercise of power will be just and beneficial, it may give effect wholly or partially to the application on such terms and conditions as it thinks fit, or make such other order as the case may require.

(3) A copy of an order made under this section staying the proceedings in the winding up, shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Commission, which shall make a minute of the order in its books relating to the company.

#### **484. 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.

#### **485. Saving of rights of creditors and contributories**

The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the court; but where the applicant for winding up is a contributory, an order shall not be made unless the court is satisfied that the rights of contributories shall be prejudiced by the members' or creditors' voluntary winding up, as the case may be.

### CHAPTER 4

#### *Winding up subject to supervision of court*

#### **486. Power to order winding up subject to supervision**

If a company passes a resolution for voluntary winding up, the court may on petition 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.

#### **487. 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.

#### **488. Application of sections 413 and 414**

A winding up subject to the supervision of the court shall, for the purposes of sections 413 and 414 of this Act, be deemed to be a winding up by the court.

#### **489. Power of court to appoint, etc., liquidators**

(1) Where an order is made for a winding up subject to supervision, the court may by the same or any subsequent order 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 provisions of this Act 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 may fill any vacancy occasioned by the removal, or by death or resignation.

#### **490. Effect of supervision order**

(1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the court, exercise all his powers, without the sanction or intervention of the court, in the same manner as if the company were being wound up voluntarily:

Provided that the powers specified in paragraphs (d), (e) and (f) of section 425 (1) of this Act shall not 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' voluntary winding up, with the sanction of the court or the committee of inspection, or (if there is no such committee) a meeting of the creditors.

(2) A winding up subject to the supervision of the court shall not amount to a winding-up by the court for the purpose of the provisions of this Act as specified in the Twelfth Schedule to this Act (dealing with provisions which do not apply in the case of winding up subject to the supervision of the court) but, subject to this, an order for a winding up subject to supervision shall for all purposes be an order for winding up by the court:

[Twelfth Schedule.]

Provided that where the order for winding up subject to supervision of the committee 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 purposes of section 434 of this Act, (except subsection (1) thereof) save insofar as the operation of that section is excluded in a voluntary winding up by general rules made under this Act.

### **CHAPTER 5**

#### *Provisions applicable to every mode of winding up*

#### **491. Liquidator to give notice of appointment**

(1) The liquidator shall, within 14 days after his appointment, publish in the Gazette and in two daily newspapers and deliver to the Commission for registration a notice of his appointment in such form as the Commission may from time to time approve.

(2) If the liquidator fails to comply with the requirements of this section, he shall be guilty of an offence and liable to a fine of ₦25 for every day during which the default continues.

#### *Proof and ranking of claims*

#### **492. Debts of all descriptions may be proved**

In every winding up (subject, in the case of insolvent companies, to the application in accordance with the provisions of this Act of the law of bankruptcy), all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reasons do not bear a certain value.

#### **493. Application of bankruptcy rules in certain cases**

In the winding up of an insolvent company registered in Nigeria 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 in Nigeria with respect to the estates of persons adjudged bankrupt, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up and make such claims against the company as they respectively are entitled to by virtue of this section.

#### **494. Preferential payments**

(1) In a winding up there shall be paid in priority to all other debts-

(a) all local rates and charges due from the company at the relevant date, and having become due and payable within 12 months next before that date, and all pay-as-you-earn tax deductions, assessed taxes, land tax, property or income tax assessed on or due from the company up to the annual day of assessment next before the relevant date, and in the case of pay-as-you-earn tax deductions not exceeding deductions made in respect of one year of assessment and, in any other case, not exceeding in the whole one year's assessment;

(b) deductions under the Nigeria Social Insurance Trust Fund Act;

[Cap. N88.]

(c) all wages or salary of any clerk or servant in respect of services rendered to the company;

(d) all wages of any workman or labourer, whether payable for time or for piece work, in respect of services rendered to the company;

(e) all accrued holiday remuneration becoming payable to any clerk, servant, workman or labourer (or in the case of his death to any other person in his rights) on the termination of his employment before or by the effect of the winding up order or resolution;

(f) unless the company is being wound up voluntarily merely for the purpose of reconstruction or of amalgamation with another company or unless the company has at the commencement of the winding up under such a contract with insurers as is mentioned in section 26 of the Workmen's Compensation Act, rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the Act aforesaid, accrued before the relevant date.

[Cap. W6.]

(2) Where any compensation under the Workmen's Compensation Act is a weekly payment, the amount due in respect thereof shall, for the purpose of paragraph (e) of subsection (1) of this section, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the aforesaid Act.

(3) Where any payment on account of wages or salary has been made to any clerk, servant, workman or labourer in the employment of a company out of the money advanced by some persons for that purpose, that person shall in a winding up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which that clerk, servant, workman or labourer would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

(4) The foregoing debts shall-

(a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and

(b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company and be paid accordingly out of any property comprised in or subject to that charge.

(5) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.

(6) In this section "**the relevant date**" means-

(a) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding-up order; and

(b) in any other case, the date of the commencement of the winding up.

*Effect of winding up on antecedent and other transactions*

**495. Fraudulent preference**

(1) Any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property which would, if made or done by or against an individual, be deemed in his bankruptcy a fraudulent preference, shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly.

(2) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

(3) For the purposes of this section, the presentation of a petition for winding up in the case of a winding up by or subject to the supervision of the court, and a resolution for winding up in the case of a voluntary winding up, shall be deemed to correspond with the act of bankruptcy in the case of an individual.

#### **496. Liabilities and rights of certain fraudulently preferred persons**

(1) Where anything made or done after the commencement of this Act is void under section 495 of this Act as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, the person preferred shall, without prejudice to any liabilities or rights arising apart from this provision, be subject to the same liabilities, and have the same rights, as if he had undertaken to be personally liable as surety for the debt, to the extent of the charge on the property or have value of his interest, whichever is the less, and the value of the said person's interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all incumbrances other than those to which the charge for the company's debt was the subject.

(2) Where for the purposes of this section, application is made to the court with respect to any payment on the ground that the payment was fraudulent preference of a surety or guarantor, the court shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor, and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up, and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of an action for the recovery of the sum paid.

(3) Subsection (2) of this section shall apply, with the necessary modifications, in relation to transactions other than the payment of money, as it applies in relation to payments.

#### **497. Avoidance of attachments, etc., on winding up subject to supervision of the court**

Where a company is being wound up subject to the supervision of the court, any attachment, sequestration or execution put in force against the estate or effects of the company after the commencement of the winding up, shall be void.

#### **498. Effect of floating charge**

Where a company is being wound up, a floating charge on the undertaking or property of the company created within three months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the current bank rate.

#### **499. Disclaimer of onerous property**

(1) Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto, may, with the leave of the court, and subject to the provisions of this section, by writing signed by him, at any time within 12 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 12 months after he has become aware thereof or such extended period as may be allowed by the court.

(2) A disclaimer under this section shall operate to determine, as from the date of the 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.

(3) The court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the court thinks just.

(4) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any persons interested in the property requiring him to decide whether or not he will disclaim, and the liquidator has not, within a period of 28 days after the receipt of the application or such further period as may be allowed by the court, given notice to the applicant that he intends to apply to the court for leave to disclaim, and, in the case of a contract, if the liquidator, after such an application, does not within that period or further period disclaim the contract, the company shall be deemed to have adopted it.

(5) The court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract on such terms as to payment by or to either party, of damages for the non-performance of the contract, or otherwise as the court thinks just and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) The court may, on an application by any person who claims any interest in any property disclaimed under this section, or is under any liability not discharged by this Act in respect of any disclaimed property, and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any persons entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the court thinks just and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose.

(7) Where the property disclaimed is of a leasehold nature the court shall not make a vesting order in favour of any person claiming under the company, whether as an under-lessee or as a mortgagee by demise, a mortgage by way of legal charge or mortgage, as the case may be, except upon the terms of making that person-

(a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or

(b) if the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

and in either event if the case so requires, as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and if there is no person claiming under the company who is willing to accept an order upon such terms, the court shall have power to vest the estate and interest of the

company in the property in any person liable, either personally or in a representative character, and either alone or jointly with the company, to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company.

(8) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.

#### **500. Restriction of rights of creditor as to execution, etc., on winding up of company**

(1) Where a creditor issues execution against any goods or land of a company, or attaches any debt due to the company, and the company is subsequently wound up, the creditor shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the company, unless he has completed the execution or attachment before the commencement of the winding up:

Provided that-

(a) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice shall, for the purposes of the foregoing provision, be substituted for the date of the commencement of the winding up;

(b) if a person purchases in good faith under a sale by the sheriff any goods of a company on which an execution has been levied, he shall acquire a good title to them against the liquidator;

(c) the rights conferred by this subsection on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit.

(2) For the purposes of this section, an execution against goods shall be taken to be completed by seizure and sale, and an attachment of a debt shall be deemed to be completed by receipt of the debt, and an execution against land shall be deemed to be completed by seizure and, in the case of an equitable interest, by the appointment of a receiver.

#### **501. Duty of sheriff as to goods taken in execution**

(1) Subject to the provisions of subsection (3) of this section, where any goods of a company are taken in execution and before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the sheriff that a provisional liquidator has been appointed or that a winding-up order has been made or that a resolution for voluntary winding up has been passed, the sheriff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.

(2) Subject to the provisions of subsection (3) of this section, where under an execution in respect of a judgment for a sum exceeding ₦100 the goods of a company are sold or money is paid in order to avoid the sale, the sheriff shall deduct the costs of the execution from the proceeds of the sale or the money paid, and retain the balance for 14 days and if within that time notice is served on him of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up of the company and an order is made or a resolution is passed, as the case may be, for the winding up of the company, the sheriff shall pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor.



(3) The rights conferred by this section on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit.

(4) In this section and section 500 of this Act-

(a) "**goods**" includes chattels personal; and

(b) "**sheriff**" includes any officer charged with the execution of a writ or other process.

*Offences antecedent to or in course of winding up*

**502. Offences by officers of company in liquidation**

(1) If any person, being a past or present officer of a company which at the time of the commission of the alleged offence is being wound up, whether by or under the supervision of the court or voluntarily, or is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up-

(a) does not to the best of his knowledge and belief fully and truly discover or deliver to the liquidator all the property, landed and personal, of the company, and how and to whom, for what consideration and when, the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company; or

(b) does not deliver up to the liquidator, or as he directs, all such part of the real and personal property of the company as is in his custody or under his control, and which he is required by law to deliver up; or

(c) does not deliver up to the liquidator; or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up; or

(d) within 12 months next before the commencement of the winding up or at any time thereafter, conceals any part of the property of the company to the value of ₦100 or upwards, or conceals any debt due to or from the company; or

(e) within 12 months next before the commencement of the winding up or at any time thereafter, fraudulently removes any part of the property of the company to the value of ₦100 or upwards; or

(f) makes any material omission in any statement relating to the affairs of the company; or

(g) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of one month to inform the liquidator thereof; or

(h) after the commencement of the winding up, prevents the production of any book or paper affecting or relating to the property or affairs of the company; or

(i) within 12 months next before the commencement of the winding up or at any time thereafter -

(i) conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of the book or paper affecting or relating to the property or affairs of the company; or

(ii) makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company; or

(iii) fraudulently parts with, alters or makes any omission in, or is privy to the fraudulently parting with, altering or making any omission in any document affecting or relating to the property or affairs of the company; or

(iv) at any meeting of the creditors of the company, attempts to account for any part of the property of the company by fictitious losses or expenses; or

(v) made false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for; or

(vi) under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company any property which the company does not subsequently pay for; or

(vii) pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging, or disposing is in the ordinary way of the business of the company; or

(j) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up,

he shall be guilty of an offence and shall, in the case of the offences mentioned respectively in sub-paragraphs (iv), (v) and (vi) of this subsection, be liable on conviction to imprisonment for a term of 12 months, and in the case of any other offence under this subsection, shall be liable on conviction to imprisonment for a term of two years:

Provided that it shall be a good defence to a charge under any of paragraphs (a), (b), (c), (d), (f), (v) and (vi) of this subsection, if the accused proves that he had no intent to defraud, and to a charge under any of paragraphs (h), (i) and (j), if he proves he had no intention to conceal the state of affairs of the company or to defeat the law.

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under sub-paragraph (vii) of paragraph (i) of subsection (1) of this section, every person who takes in pawn or pledge, or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid, shall be guilty of an offence, and on conviction thereof liable to be punished in the same way as if he had received the property knowing it to have been obtained in circumstances amounting to an offence.

(3) For the purposes of this section, "**officer**" includes any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

### **503. Falsification of books**

If any officer or contributory of any company being wound up destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the company with intent to defraud or deceive any person, he shall be guilty of an offence and liable on conviction to imprisonment for a term of two years or a fine of ₦2,500.

### **504. Frauds by officers of companies in liquidation**

If any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the court, or subsequently passes a resolution for voluntary winding up-

(a) has by false pretences or by means of any other fraud induced any person to give credit to the company; or

(b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company; or

(c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against the company,

he shall be guilty of an offence and liable on conviction to imprisonment for a term of two years.

#### **505. Liability where proper accounts not kept**

(1) If, where a company is wound up, it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up or the period between the incorporation of this company and the commencement of the winding up, whichever is the shorter, every officer of the company who is in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on the default was excusable, be guilty of an offence and be liable on conviction in the court to a fine of ₦250.

(2) For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of any company if there have not been kept such books of accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid; and, where the trade or business has involved dealing in goods, statements of the annual stocktakings and (except in case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient details to enable those goods and those buyers and sellers to be identified.

#### **506. Responsibility for fraudulent trading**

(1) If, in the course of the winding up of a company, it appears that any business of the company has been carried on in a reckless manner or with intent to defraud creditors of the company or creditors of any other person for any fraudulent purpose, the court, on the application of the official receiver, or the liquidator or any creditor or contributory of the company, may, if it thinks proper so to do, declare that any persons who were knowingly parties to the carrying on of the business in manner aforesaid shall be personally responsible, without any limitation of liability for all or any of the debts or other liabilities of the company as the court may direct.

(2) Where the court makes a declaration as to responsibility for debts or liabilities under subsection (1) of this section, it may give any direction it thinks proper for the purpose of giving effect to that declaration, and in particular the court may make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge or any assets of the company held by or vested in him, or any company or person on his behalf, or any person claiming as assignee from or through the person liable or any company or person acting on his behalf, and may from time to time make any further order necessary for enforcing any charge imposed under this subsection.

(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in subsection (1) of this section (other than recklessly), every person who was knowingly a party to the carrying on of the business in manner aforesaid, shall be guilty of an offence, and liable on conviction to a fine of ₦2,500 or to imprisonment for a term of two years, or to both.

(4) In its operation, this section shall have effect, so however that-

(a) a declaration may be made notwithstanding that the person concerned may be criminally liable in respect of matters which are grounds for the declaration and a declaration, if made, shall be deemed to be a final judgment of the court;

(b) the official receiver or the liquidator, as the case may be, on the hearing of an application to the court, may himself give evidence or call witnesses;

(c) there shall be included in the expression "**assignee**" any person to whom or in whose favour by the direction of the person liable the debt, obligation, mortgage, or charge was created, issued or transferred, or the interest created, other than any person being an assignee for valuable consideration given in good faith and without notice of any of the matters on the ground of which the declaration is made;

(d) "**valuable consideration**" shall not include consideration by way of marriage.

#### **507. Power of court to assess damages against delinquent directors, etc.**

(1) If, in the course of winding up a company, it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager or liquidator, or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of duty in relation to the company which would involve civil liability at the suit of the company, the court may, on the application of the official receiver, or of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, liquidator or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rates as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the court thinks just.

(2) The provisions of this section shall extend to any receiver of the property of a company, and shall in any case have effect notwithstanding that the offence is one for which the offender may be criminally liable.

(3) Where an order for payment of money is made under this section, the order shall be deemed to be a final judgment of the court.

#### **508. Prosecution of delinquent officers and members of a company**

(1) If it appears to the court, in the course of winding up by, or subject to the supervision of the court, that any past or present officer, or any member of the company has been guilty of any offence in relation to the company for which he is criminally liable, the court may, either on the application of any person interested in the winding up or of its own motion direct the liquidator to refer the matter to the Attorney-General of the Federation.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer, or any member of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the Attorney-General of the Federation and shall furnish him such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as he may require.

(3) Where any report is made under subsection (2) of this section to the Attorney-General of the Federation he may, if he thinks fit, apply to the court for an order conferring on him or any person designated by him for the purpose with respect to the company concerned, all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the court.

(4) If it appears to the court in the course of a voluntary winding up that any past or present officer, or any member of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the Attorney-General of the Federation under subsection (2) of this section, the court may on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly, the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of subsection (2) of this section.

(5) If, where any matter is reported or referred to the Attorney-General of the Federation under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall institute proceedings accordingly, and it shall be the duty of the liquidator and of every other officer and agent of the company past and present (other than the defendant in the proceedings) to give him all assistance in connection with the prosecution which he is reasonably able to give and it is hereby declared for the purposes of this subsection, that the expression "**agent**" in relation to a company includes any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(6) If any person fails or neglects to give assistance in the manner required by subsection (3) of this section, the court may, on the application of the Attorney-General of the Federation, direct that person to comply with the requirements of the said subsection, and where any such application is made with respect to a liquidator, the court, may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

*Supplementary provisions as to winding up*

**509. Disqualifications for appointment as liquidator**

(1) The following persons shall not be competent to be appointed or to act as liquidator of a company, whether in a winding up by, or under the supervision of the court, or in a voluntary winding up-

(a) an infant;

(b) anyone found by the court to be of unsound mind;

(c) a body corporate;

(d) an undischarged bankrupt;

(e) any director of the company under liquidation;

(f) any person convicted of any offence involving fraud, dishonesty, official corruption or moral turpitude and in respect of whom there is a subsisting order under section 254 of this Act.

(2) Any appointment made in contravention of the provisions of subsection (1) of this section shall be void and if any of the persons named in paragraphs (c), (d) (e), and (f) of that subsection shall act as a liquidator of the company, he shall be guilty of an offence and liable to a fine not exceeding ~~N~~2,500 in the case of a body corporate

or, in the case of an individual, to imprisonment for a term not exceeding six months or to a fine not exceeding ₦500 or to both such imprisonment and fine.

#### **510. Corrupt inducement affecting appointment as liquidator**

Any person who gives or agrees or offers to give to any member or creditor of a company any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself as the company's liquidator, shall be guilty of an offence and liable to a fine of ₦250.

#### **511. Enforcement of duty of liquidator to make returns, etc.**

(1) If a liquidator makes default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, and fails to make good the default within 14 days after the service on him of a notice requiring him to do so, the court may, on an application made to the court by any contributory or creditor of the company or by the Commission, make an order directing the liquidator to make good the default within such time as is specified in the order.

(2) Any order under this section may provide that the costs of any expenses incidental to the application shall be borne by the liquidator and nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a liquidator in respect of any such default.

#### **512. Notification that a company is in liquidation**

(1) Where a company is being wound up, whether by or under the supervision of the court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

(2) If default is made in complying with the provisions of this section, the company and any of the following persons who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be guilty of an offence and liable to a fine of ₦100.

#### **513. Exemption from stamp duty**

(1) In the case of a winding up by the court, or a creditors' voluntary winding up-

(a) every assurance relating to any property of the company, or to any mortgage, charge or other encumbrance thereon or any right or interest in any property, in any event forming part of the assets of the company and which, after the execution of the assurance, either at law or in equity is, or remains part of the assets of the company; and

(b) every power of attorney, proxy paper, writ, order, certificate, affidavit, bond or other instrument or writing relating solely to the property of any company which is being so wound up, or to any proceeding under any such winding up, shall be exempted from duties chargeable under any law, enactment relating to stamp duties.

(2) In this section, "assurance" includes any deed, conveyance, instrument, discharge, assignment or surrender.

#### **514. Books of company to be evidence**

Where a company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

#### **515. Disposal of books, etc., of company**

(1) Where a company is being wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows, that is to say-

(a) in the case of a winding up by or subject to the supervision of the court, in such way as the court directs;

(b) in the case of a members' voluntary winding up, in such way as the company by special resolution directs and, in the case of a creditors' voluntary winding up, in such way as the committee of inspection or, if there is no such committee, as the creditors of the company, may direct.

(2) After five years from the dissolution of the company no responsibility shall rest on the company, the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

(3) Provisions may be made by general rules for enabling the Commission to prevent, for such period (not exceeding five years from the dissolution of the company) as it may think proper, the destruction of the books and papers of a company which has been wound up, and for enabling any creditor or contributory of the company to make representations to it and to appeal to the court from any direction which may be given by it in the matter.

(4) If any person acts in contravention of any general rules made for the purposes of this section or of any direction of the Commission thereunder, he shall be guilty of an offence and liable to a fine of ₦ 1,000.

#### **516. Information as to pending liquidations and disposal of unclaimed assets**

(1) If where a company is being wound up, the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the Commission a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom; but any person untruthfully so stating himself to be creditor or contributory shall be guilty of contempt of court, and shall be punishable accordingly on the application of the liquidator or of the official receiver.

(3) If a liquidator fails to comply with the requirements of this section, he shall be guilty of an offence and liable to a fine of ₦50 for each day during which the default continues.

(4) If it appears from any such statement or otherwise that a liquidator has in his custody or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt, the liquidator shall forthwith pay the same to the companies liquidation account mentioned in section 257 of this Act and shall be entitled to a certificate of receipt in the prescribed form for the money so paid, which shall be an effectual discharge to him.

(5) For the purposes of ascertaining and getting in any money payable into the companies liquidation account in pursuance of this section, the following powers may be exercised by the authorities named, that is to say-

(a) the Commission may at any time order any such liquidator to submit to it an account verified by affidavit of the sums received and paid by him under or in pursuance of the liquidation, and may direct and enforce an audit of the account and if the liquidator fails to submit the account within such reasonable time as the Commission directs, he shall be guilty of contempt of court and may, on the application of the Commission to the court made for the purpose, be punished accordingly; and

(b) the court may, if default is made in submitting the account referred to in paragraph (a) of this section-

(i) by warrant addressed to any police officer, cause the liquidator to be arrested, and all books, papers and money or goods, relating to the liquidation in his possession to be seized and him and them to be safely kept until such time as the court may order;

(ii) at any time by order addressed to the Postmaster-General of the Nigerian Postal Service require that, for a period of not more than three months, letters addressed to the liquidator and sent through the post, be in course of post, redirected, sent or delivered to or at any place or places mentioned in the order;

(iii) summon the liquidator or his wife, or any person known or suspected to have in his possession any books, or papers relating to the liquidation, and any money or goods belonging to the liquidator or representing any unclaimed or undistributed assets of the company as aforesaid, or summon any person whom the court deems capable of giving information respecting any such books, papers, money, goods or other assets, and require any person summoned under this paragraph to produce documents in his custody or under his control relating to the liquidator's dealings with the property of the company;

(iv) where any person on examination before it admits that he is indebted to the company, by order made on the application of the official receiver or liquidator, direct payment to the official receiver or liquidator, as the case may be, of the amount admitted, or any part thereof, either in full discharge of the whole amount in question or not at such time and in such manner as the court thinks fit, with or without costs of the examination;

(v) examine on oath, either by word of mouth or written interrogatories, any person so brought before it concerning the liquidator and his dealings with the property of the company;

(vi) if any person on examination before the court admits that he has in his possession any money properly payable into the company's liquidation account in pursuance of this section, order him to pay any such money forthwith into that account.

(6) Any person claiming to be entitled to money paid into the company's liquidation account in pursuance of this section may apply to the Commission for payment, and the Commission, if the liquidator certifies the claim, may make an order for payment accordingly.

(7) An appeal shall lie to the court by any person claiming to be dissatisfied with the decision of the Commission in respect of any claim made under this section.

#### **517. Resolutions passed at adjourned meetings of creditors, etc.**



Where a resolution is passed at an adjourned meeting of any creditors or contributories of a company, the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

#### **518. Power to make over assets to employees**

(1) On the winding up of a company (whether by the court or voluntarily), the liquidator may, subject to the following provisions of this section, make any payment which the company has, before the commencement of the winding up, decided to make under section 566 of this Act.

(2) The power which a company may exercise by virtue only of section 566 of this Act may be exercised by the liquidator after the winding up has commenced if, after the company's liabilities have been fully satisfied and provision has been made for the costs of the winding up, the exercise of that power has been sanctioned by such resolution of the company as would be required of the company itself by subsection (3) of section 566 of this Act before that commencement, as if paragraph (b) of that subsection were omitted and any other requirement applicable to its exercise by the company had been met.

(3) Any payment which may be made by a company under this section may be made out of the company's assets which are available to the members on the winding up.

(4) On a winding up by the court, the exercise by the liquidator of his powers under this section shall be subject to the court's control and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of the power.

(5) Subsections (1) and (2) of this section shall have effect notwithstanding any rule or law or section 480 of this Act.

#### *Supplementary powers of court*

#### **519. Meetings to ascertain wishes of creditors and others**

(1) The court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any sufficient evidence, and may, if it thinks fit, for the purposes of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the court directs and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or the articles.

#### **520. Judicial notice of signatures of officers of court, etc.**

In all proceedings under this Part of this Act, all courts, Judges, and persons judicially acting, and all officers, judicial or ministerial, of any court or employed in enforcing the process of any court, shall take judicial notice of the signature of any officer of court and also of the official seal or stamp of a court appended to or impressed on any document made, issued or signed under the provisions of this Part of this Act, or on any official copy of any such document.

### **521. Judicial notice of signatures of certain government officials**

(1) Documents purporting to be orders or certificates made or issued by the Attorney-General of the Federation or the Commission for the purposes of this Act and to be signed by the Attorney-General of the Federation or the Accountant-General of the Federation, or under the seal of the Commission or signed by any person authorised in that behalf by them or, it, and in proper case to be sealed where necessary, shall be received in evidence and deemed to be such orders, or certificates without further proof, unless the contrary is shown.

(2) A certificate signed by the Attorney-General of the Federation or the Accountant-General of the Federation or under the seal of the Commission that any order made, certificate issued, or act done, is the order, certificate or act of the Attorney-General of the Federation, Accountant-General of the Federation or the Commission, as the case may be, shall be conclusive of the fact so certified.

### **522. Special commissioners for receiving evidence**

(1) Where a company is in course of being wound up, all magistrates shall be commissioners for the purpose of taking evidence under this Act and the court may refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed commissioner.

(2) Every commissioner shall, in addition to any powers which he might lawfully exercise as a magistrate, have in the matter so referred to him all the same powers as the court of summoning and examining witnesses, of requiring the production or delivery of documents, of punishing defaults by witnesses and of allowing costs and expenses to witnesses.

(3) The examination so taken shall be returned or reported to the court in such manner as that court directs.

### **523. Affidavits in Nigeria and elsewhere**

An affidavit required to be sworn under the provisions or for the purposes of this Part of this Act may be sworn in Nigeria or elsewhere in accordance with the provisions of the Oaths Act or under any other enactment or law providing for the administration of oaths and all courts, Judges, commissioners, and persons acting judicially shall take judicial notice of the seal or stamp or signatures (as the case may be) of any court, Judge, person, consul, or vice-consul, attached, appended, or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part of this Act.

[Cap. O1.]

### *Provisions as to dissolution*

### **524. Power of court to avoid dissolution of company**

(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 being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court may think fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within seven days after the making of the order, or such further time as the court may allow, to deliver to the Commission for registration an office

copy of the order, and if that person fails so to do he shall be liable to a fine of N25 for every day during which the default continues.

#### **525. Power of Commission to strike off defunct company**

(1) Where the Commission has reasonable cause to believe that a company is not carrying on business or in operation, it may send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the Commission does not within one month of sending the letter receive any answer thereto, it shall within 14 days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, notice shall be published in the *Gazette* with a view to striking the name of the company off the register.

(3) If the Commission receives an answer to the effect that the company is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, it may publish in the *Gazette*, and send to the company by post, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein shall, unless cause is shown to the contrary, be struck off the register and the company shall be dissolved.

(4) If, in any case where a company is being wound up, the Commission 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 Commission shall publish in the *Gazette* and send to the company or the liquidator, if any, a like notice as is provided in subsection (3) of this section.

(5) At the expiration of the time mentioned in the notice the Commission may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the *Gazette* and on the publication in the *Gazette* of notice as aforesaid, the company shall be dissolved:

Provided that-

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

(b) nothing in this subsection shall affect the power of the court to wind up a company the name of which has been struck off the register.

(6) Any company or member or creditor aggrieved by the striking off the register of the company under this section may apply to the court at any time before the expiration of 20 years from the publication of the notice under subsection (5) of this section, for an order restoring the company to the register; and if the court is satisfied that, at the time of the striking off, the company was carrying on business or in operation, or that otherwise it is just to restore it to the register, the court may order the name of the company to be restored to the register; and an order under this subsection may include any directions the court thinks fit, and provision may be made therein for placing the company and all other persons in the same position, as nearly as may be as, if the name of the company had not been struck off the register; and upon delivery of an office copy to the Commission for registration, the order shall have effect according to its tenor and may be registered accordingly.

(7) Any notice to a liquidator to be sent under this section may be addressed to the liquidator at his last known place of business, and any letter or notice to be sent under this section to a company may be addressed to the company at its registered or head office.

#### **526. Property of dissolved company to be declared as *bona vacantia***

Where a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution, including leasehold property (but not including property held by the company on trust for any other person) shall, subject and without prejudice to any order which may at any time be made by the court under section 524 or 525 of this Act, be deemed to be vested in the State without further assurance, as *bona vacantia*.

#### *Central accounts*

#### **527. Companies liquidation account defined**

(1) There shall continue to be an account called the companies liquidation account, kept on behalf of the Commission by the Accountant-General of the Federation, into which shall be paid all moneys received by the Commission in respect of proceedings under this Act in connection with the winding up of companies.

(2) All payments out of money standing to the credit of the Commission in the companies liquidation account shall be made by the Accountant-General in the prescribed manner.

#### **528. Investment of surplus funds in government securities, etc.**

(1) If the cash balance standing to the credit of the companies liquidation account is in excess of the amount which in the opinion of the Commission is required for the time being to answer demands in respect of companies' estates, the Commission shall notify the excess to the Accountant-General of the Federation and the Accountant-General of the Federation may invest the excess or any part thereof, in Government securities, to be placed to the credit of such account as he may deem fit in the circumstances.

(2) If any part of the money so invested is, in the opinion of the Commission, required to answer any demands in respect of companies' estates, the Commission shall notify to the Accountant-General of the Federation the amount so required, and the Accountant-General of the Federation shall thereupon repay to the Commission such sum as may be required to the credit of the companies liquidation account, and for that purpose may direct the sale of such part of the securities as may be necessary.

(3) The dividends on investments under this section shall be paid to such account as the Accountant-General of the Federation may direct, and regard shall be had to the amount thus derived in fixing the fees payable in respect of proceedings in the winding up of companies.

#### **529. Separate accounts of particular estates**

(1) An account shall be kept by the Commission of the receipts and payments in the winding up of each company, and, when the cash balance standing to the credit of the account of any company is in excess of the amount which, in the opinion of the committee of inspection, is required for the time being to answer demands in respect of that company's estate, the Commission shall, on the request of the committee, invest the amount not so required in Government securities, to be placed to the credit of the said account for the benefit of the company.

(2) If any part of the money so invested is, in the opinion of the committee of inspection, required to answer any demands in respect of the estate of the company, the commissioner shall, on the request of that committee, raise such sum as may be required by the sale of such part of the said securities as may be necessary.

(3) The dividends on investments under this section shall be paid to the credit of the company.

(4) Where the balance at the credit of any company's account in the hands of the Commission exceeds ₦10,000 and the liquidator gives notice to the Commission that the excess is not required for the purposes of the liquidation, the company shall be entitled to interest on the excess at the current bank rate.

#### *Returns by officers of courts*

### **530. Returns by officers in winding up**

The officers of the courts acting in the winding up of companies shall make to the Commission such returns of the business of their respective courts and offices, at such times, and in such manner and form as may be prescribed, and from those returns the Commission shall cause books to be prepared which shall be opened for public information and searches.

#### *Accounts to be prepared annually*

### **531. Annual accounts of company winding up and disposal**

(1) The Commission and every officer by whom fees are taken under this Act in relation to the winding up of companies, shall make returns and give information to the Accountant-General of the Federation in such form as he may require; and the accounts of the Commission relating to the winding up of companies shall be audited as soon as may be after the end of each year in the manner prescribed by the Constitution of the Federal Republic of Nigeria, 1999.

[Cap. C23.]

(2) The Accountant-General of the Federation shall, before the end of each year in which the audit is made, prepare for submission to the President an account of the winding up of companies, as audited by the Accountant-General for the Federation, showing in respect of such winding up, the receipts and expenditure during the previous year, and any other matters which the President or the Minister, as the case may be, may require.

[Cap. C23.]

## **CHAPTER 6**

### *Winding up of unregistered companies*

### **532. Winding up of unregistered company**

Subject to the provisions of this Part of this Act, an unregistered company may be wound up under this Act and all the provisions of this Act, with respect to winding up shall apply to an unregistered company, with the following exceptions-

(a) the principal place of business of an unregistered company shall for all the purposes of the winding up be deemed to be the registered office of the company;

(b) an unregistered company shall not be wound up under this Act voluntarily or subject to supervision;

(c) an unregistered company may be wound up if-

(i) the company is dissolved, or has ceased to carry on business or is carrying on business only for the purpose of winding up its affairs;

(ii) the company is unable to pay its debts;

(iii) the court is of opinion that it is just and equitable that the company should be wound up;

(d) an unregistered company shall, for purposes of this Act, be deemed to be unable to pay its debts if-

(i) a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding ₦100 then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary or some director, manager, or principal officer of the company, or by otherwise serving in such manner as the court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for 21 days after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor;

(ii) any action or other proceedings has been instituted against any member for any debt or demand due from the company, or from him in his capacity as a member, and notice in writing of the institution of the action or proceeding having been served on the company by leaving it at its principal place of business, or by delivering it to the secretary, or some director, manager, or principal officer of the company, or by otherwise serving the notice in such manner as the court may approve or direct, the company has not within 28 days after service of the notice secured, or compounded for the debt or demand or procured the action or proceeding to be stayed, or within that period has not indemnified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same;

(iii) execution or other process issued on a judgment, act or order obtained in any court in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied;

(iv) it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts.

### **533. Contributories in winding up unregistered company**

(1) In the event of an unregistered company being wound up every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the costs and expenses of winding up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid.

(2) In the event of the death, bankruptcy, or insolvency of any contributory, the provisions of this Act with respect to the personal representatives, heirs, and devisees of deceased contributories, and the trustees of bankrupt or insolvent contributories, as the case may be, shall apply.

### **534. Power of court to stay or restrain proceedings**

The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

#### **535. Action, etc., stayed on winding-up order**

Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company except by leave of the court, and subject to such terms as the court may impose.

#### **536. Provisions of this Part to be cumulative**

The provisions of this Part of this Act with respect to unregistered companies shall be in addition to and not in restriction of any provisions hereinbefore in this Act contained with respect to winding up companies by the court, and the court or liquidator may exercise any powers to do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Act; but an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part of this Act.

### PART XVI

#### *Arrangements and compromise*

#### **537. Definition of "arrangement"**

In this Part of this Act, the expression "**arrangement**" means any change in the rights or liabilities of members, debenture holders or creditors of a company or any class of them or in the regulation of a company, other than a change effected under any other provision of this Act or by the unanimous agreement of all parties affected thereby.

#### **538. Arrangement on sale of company's property during members' voluntary winding up**

(1) With a view to effecting any arrangement, a company may by special resolution resolve that the company be put into members' voluntary winding up and that the liquidator be authorised to sell the whole or part of its undertaking or assets to another body corporate, whether a company within the meaning of this Act or not (in this section called "the transferee company") in consideration or part consideration of fully paid shares, and to distribute the same in specie among the members of the company in accordance with their rights in the liquidation.

(2) Any sale or distribution in pursuance of a special resolution under this section shall be binding on the company and all members thereof and each member shall be deemed to have agreed with the transferee company to accept the fully paid shares, debentures, policies, cash or other like interests to which he is entitled under such distribution:

Provided that if-

(a) within one year from the date of the passing of any special resolution as is referred to in subsection (1) of this section, an order is made under sections 310 to 312 of this Act dealing with relief on the grounds of unfairly

prejudicial and oppressive conduct or for the winding up of the company under a creditors' voluntary winding up, the arrangement for the sale and distribution shall not be valid unless sanctioned by the court;

(b) any member of the company, by writing addressed to the liquidator and left at the registered office or head office of the company, within 30 days after the passing of the resolution, dissents therefrom in respect of any of the shares held by him, the liquidator shall either abstain from carrying the resolution into effect or shall purchase such shares at a price to be determined in the manner provided by subsection (4) of this section.

(3) Any member who fails to signify his dissent in accordance with subsection (2) of this section shall be deemed to have accepted the resolution.

(4) If the liquidator elects to purchase the shares of any member who has expressed his dissent in accordance with subsection (2) of this section, the price payable therefore shall be determined by agreement in the case of a private company in which aliens do not participate, and in the case of a public company or a private company in which aliens participate, by the Securities and Exchange Commission:

Provided that in the case of a private company in which no aliens participate-

(a) such price shall be determined by estimating what the member concerned would have received had the whole of the undertaking of the company been sold as a going concern for cash to a willing buyer and the proceeds, less the cost of winding up, been divided amongst the members in accordance with their rights;

(b) the purchase money shall be paid by the company before the company is dissolved and be raised by the liquidator or, in default of any direction in the special resolution, in such manner as he may think fit as part of the expenses of the winding up.

(5) Nothing contained in this section shall authorise any variation or abrogation of the rights of any creditor of the company.

(6) If any company, otherwise than under the foregoing provisions of this section, sells or resolves to sell the whole or part of its undertaking or assets to another body corporate in consideration or part consideration of any shares, debentures, policies or other like interest in that body corporate, and resolves to distribute the same in specie among members of the company (whether in liquidation or by way of dividend), any member of the company may by notice in writing addressed to the company and left at the registered office or head office of the company within 30 days after the passing of the resolution authorising such distribution, require the company either to abstain from carrying the resolution into effect or to purchase any of his shares at a price to be determined in the manner provided by subsection (4) of this section.

(7) Nothing contained in subsection (6) of this section shall authorise any company to purchase its own shares or make any distributions to its shareholders except in accordance with the provisions of this Act.

### **539. Power 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, the court may, on the application, in a summary way, of the company or any of its creditors or members or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company, or class of members, as the case may be, to be summoned in such a manner as the court directs.



(2) If a majority representing not less than three quarters in value of the shares of members or class of members, or of the interest of creditors or class of creditors, as the case may be, being present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement may be referred by the court to the Securities and Exchange Commission which shall appoint one or more inspectors to investigate the fairness of the said compromise or arrangement and to make a written report thereon to the court within a time specified by the court.

(3) If the court is satisfied as to the fairness of the compromise or arrangement, it shall sanction the same and the compromise or arrangement shall be binding on all the creditors or the class of creditors or on the members or the class of members as the case may be, and also the company or in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(4) An order made under subsection (3) of this section shall have no effect until a certified true copy of the order has been delivered by the company to the Commission for registration and a copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made.

(5) If a company makes default in complying with subsection (4) of this section, the company and every officer of the company who is in default shall be liable to a fine of ₦5 for each copy in respect of which default is made.

(6) In this section and section 540 of this Act, "**company**" means any company liable to be wound up under this Act.

#### **540. Information as to compromise with creditors and members**

(1) Where a meeting of creditors or any class of creditors or of members or any class of members is summoned under section 539 of this Act, there shall-

(a) with every notice summoning the meeting which is sent to a creditor or member, be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors of the company, whether as directors or as members or as creditors of the company or otherwise, and the effect thereon of the compromise or arrangement in so far as it is different from the effect on the like interest of other persons; and

(b) in every notice summoning the meeting which is given by advertisement, be included such a statement as aforesaid, or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement as aforesaid.

(2) Where the compromise or arrangement affects the rights of debenture holders of the company, the statement shall give the like explanation as respects the trustees of any deed for securing the issue of the debenture as it is required to give as respects the company's directors.

(3) Where a notice given by advertisement includes a notification that copies of a statement explaining the effects of the compromise or arrangement proposed can be obtained by creditors or members entitled to attend the meeting, every such creditor or member shall, on making application in the manner indicated by the notice, be furnished by the company free of charge with a copy of the statement.

(4) Where a company makes default in complying with any requirement of this section, the company and every officer of the company who is in default shall be liable to a fine of ₦1,500 and for the purpose of this subsection

any liquidator of the company and any trustee of a deed for securing the issue of debentures of the company shall be deemed to be an officer of the company:

Provided that a person shall not be liable under this subsection, if that person shows that the default was due to refusal of any other person, being a director or trustee for debenture holders, to supply the necessary particulars as to his interests.

(5) It shall be the duty of any director of the company and of any trustee for debenture holders of the company to give notice to the company of such matters relating to himself as may be necessary for the purpose of this section, and any person who makes default in complying with this subsection shall be liable to a fine of ₦100.

## PART XVII

### *Miscellaneous and supplemental*

#### *Application of this Part of this Act*

#### **541. Application of this Part of this Act**

(1) Except as otherwise provided, this Part, that is, Part A of this Act, shall apply to-

- (a) all companies formed and registered under this Act;
- (b) all existing companies;
- (c) all companies incorporated, formed or registered under other enactments; and
- (d) unregistered companies.

(2) This Act shall not apply to unions of workers or of employers; and registration of any such union whether described as such a union or as trade union shall, if effected under the Companies Act, 1968 before its repeal by this Act, be void.

[1968 No. 51.]

#### **542. Act to over-ride memorandum, articles, etc.**

(1) Except as otherwise expressly provided in this Act-

(a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed, by it, or in any resolution passed by the company in general meeting or by its board of directors whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act; and

(b) any provision contained in the memorandum or articles, agreement or resolution as in paragraph (a) of this subsection shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.

(2) Any provision of this Act overriding or interpreting a company's articles as if a re-enacted provision of the Companies Act, 1968 shall, except as provided by this Act, apply in relation to articles in force at the

commencement of this Act, as well as to articles coming into force thereafter, and shall apply also in relation to a company's memorandum as it applies in relation to its articles.

[1968 No. 51.]

#### **543. Application of Act to companies under former enactments**

In the application of this Act to existing companies, it shall apply in the same manner-

(a) in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by shares;

(b) in the case of a company limited by guarantee, as if the company has been formed and registered under this Act as a company limited by guarantee; and

(c) in the case of a company, other than a limited company, as if the company had been formed and registered under this Act as an unlimited company:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Companies Act, 1912 as the first Nigerian enactment in respect of companies, or as the case may be, any enactment relating to companies thereafter in force in Nigeria before the commencement of this Act.

[Vol. VIII of 1912.]

#### **544. Application of Act to companies registered but not formed**

This Act shall apply to every company registered but not formed under the Companies Act, 1912 referred to in section 543 of this Act or, as the case may be, any enactment relating to companies thereafter in force in Nigeria before the commencement of this Act:

[Vol. VIII of 1912.]

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the enactment in force in Nigeria at the date when it was registered.

#### **545. Application of Act to unlimited companies registered under former enactments**

This Act shall apply to every unlimited company registered as a limited company in pursuance of section 52 of the Companies Act, 1968 or of any enactment replaced by that section, as the case may be, in the same manner as it applies to an unlimited company registered in pursuance of this Act as a limited company:

[1968 No. 51.]

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered as a limited company under the said section 52 or any enactment replaced by that section, as the case may be.

#### **546. Restricted application of Act to unregistered companies**

(1) The provisions of this Act specified in column 2 of the Thirteenth Schedule to this Act (which respectively related to all bodies corporate, incorporated in and having a principal place of business in Nigeria, other than those mentioned in subsection (2) of this section as if they were companies registered under this Act, but subject to any limitations mentioned in relation to those provisions respectively in the third column of that Schedule and to such adaptation and modifications (if any) as may be specified by order made by the Minister and published in the *Gazette*.

[Thirteenth Schedule.]

(2) The provisions of subsection (1) of this section shall not apply by virtue of this section to any of the following, that is to say-

(a) any body incorporated under any enactment other than this Act;

(b) any body not formed for the purpose of carrying on a business which has for its objects the acquisition of gain by the body or by the individual members thereof; and

(c) any body for the time being exempted by the direction of the President.

(3) This section shall not repeal or revoke in whole or in part any enactment or other instrument constituting or regulating any body in relation to which the said provisions are applied by virtue of this section; but in relation to any such body, the operation of any such enactment or instrument shall be suspended in so far as it is inconsistent with any of the said provisions as they apply for the time being to that body.

#### *Administration*

#### **547. Registered and head office of company**

(1) The address of the registered or head office of a company given to the Commission in accordance with paragraph (e) of subsection (2) of section 35 of this Act or any change in the address made in accordance with the provisions of this section, shall be the office to which all communications and notices to the company may be addressed.

(2) Notice of any change in the address of the registered or head office of the company shall be given within 14 days of the change to the Commission which shall record the same:

Provided that a postal box address or a private mailbag address shall not be accepted by the Commission as the registered or head office.

(3) If a company carries on business without complying with subsection (2) of this section, the company and every officer in default shall be guilty of an offence liable on conviction to a fine of ₦50 for every day during which the company so carries on business.

(4) The fact that a change in the address of a company is included in its annual return shall not be taken to satisfy the obligation imposed by this section.

(5) Where a company incorporated before the commencement of this Act has provided an address not in accordance with this section or section 35 of this Act, as the case may be, it shall within 14 days after such commencement comply with the requirements of this section and the failure shall be an offence punishable as prescribed by this section.

#### **548. Publication of name by company**

(1) Every company, after incorporation, shall-

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

(b) have its name engraved in legible characters on its seals; and

(c) have its name and registration number mentioned in legible characters in all business letters of the company and in all notices, advertisements, and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills or parcels, invoices, receipts, and letters of credit of the company.

(2) If a company fails to paint or affix, and keep painted or affixed its name in the manner directed by this Act, it shall be liable to a fine of ₦100 for not so painting or affixing its name, and for every day during which its name is not so kept, painted or affixed; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

(3) If a company fails to comply with the provisions of paragraph (b) or (c) of subsection (1) of this section, the company shall be guilty of an offence and liable to a fine of ₦500.

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

(a) uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraved as aforesaid; or

(b) issues or authorises the issue of any business letter of the company or any notice, or other official publication of the company, or signs or authorises to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque or order for money or goods wherein its name is not mentioned in the manner aforesaid; or

(c) issues or authorises to be issued any bill or parcel, invoice, receipt, or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be guilty of an offence and on conviction liable to a fine of ₦500 and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless it is duly paid by the company.

#### **549. Fees**

(1) There shall be paid to the Commission in respect of the several matters mentioned in the Fifteenth Schedule to this Act the fees thereon specified; and where no provision is made for fees in particular cases, the Minister may with the approval of the President by order published in the *Gazette* prescribe fees and amend the said Schedule to give effect to it.

[Fifteenth Schedule.]

(2) Subject to subsection (3) of this section, any fees paid to the Registrar of Companies before the commencement of this Act shall be deemed to have been validly paid under this Act.

(3) The fees referred to in subsection (2) to this section shall cease to be payable immediately the fees specified in the Fifteenth Schedule of this Act become operative and payable.

[Fifteenth Schedule.]

(4) All fees paid to the Commission and not otherwise directed by this Act for payment into a particular account, shall be paid into the Consolidated Revenue Fund of the Federation.

#### **550. Form of register, etc.**

(1) Any register, record, index, minute book or book of account required by this Act to be made and kept by a company may be made by making entries in bound books or in loose leaves, whether pasted or not, or in a photographic film form, or may be entered or recorded by any information storage device that is capable of reproducing the required information in intelligible written form within a reasonable time, or by recording the matters in question in any other manner in accordance with accepted commercial usage.

(2) Where any such register, record, index, minute book or book of account is not kept by making entries in a bound book, but by some other means, adequate precautions shall be taken for guarding against falsification and for facilitating its discovery and where default is made in complying with the provisions of this subsection, the company and every officer of the company who is in default shall be liable to a fine of ₦50 and where the offence is a continuing one, shall in addition be liable to a fine of ₦50 for every day during which the default continues.

(3) Where any such register, index, minute book or accounting record is not kept by making entries in a bound book, but by some other means including electronic means, adequate precautions shall be taken for guarding against falsification and facilitating its discovery.

(4) If default is made in complying with the provisions of subsection (3) of this section, the company and every officer of it who is in default shall be guilty of an offence and liable to a fine of ₦50 and for continuing contravention, to a daily default fine of ₦5.

(5) The power conferred on a company by subsection (1) of this section to keep a register, or other record by recording the matters in question otherwise than by making entries in bound books, includes power to keep the register or other record by recording those matters otherwise than in legible form, so long as the recording is capable of being reproduced in a legible form.

(6) Any provisions of an instrument made by a company before 1 October, 1968 which requires a register of holders of the company debentures to be kept in a legible form, shall be read as requiring the register to be kept in a legible or non-legible form.

(7) If any such register or other record of a company as is mentioned in subsection (2) of this section or a register of holders of a company's debentures, is kept by the company by recording the matters in question otherwise than in a legible form, the duty imposed on the company by this Act to allow inspection of or to furnish a copy of the register or other record or any part of it, shall be treated as a duty to allow inspection of, or to furnish a reproduction of the recording or of the relevant part of it in a legible form.

#### **551. Inspection, etc., of documents kept by the Commission**

(1) Any person may, on payment of the fees prescribed in Part III of the Fifteenth Schedule to this Act, inspect documents or obtain certificates of incorporation or copies of or extracts from documents held by the Commission for the purposes of this Act.

[Fifteenth Schedule.]

(2) Where a copy or extract from any document registered under this Act is certified by the Commission to be a true copy or extract, it shall in all proceedings be admissible in evidence as of equal validity with the original document, and it shall be unnecessary to prove the official position of the person certifying the copy or extract.

(3) No process for compelling the production of any document kept by the Commission shall issue from any court, except with the leave of that court, and such process, if issued, shall bear thereon a statement that it is issued with the leave of the court.

#### **552. Rules of court for winding-up of companies, etc.**

(1) The Chief Judge of the Federal High Court may make rules of court for carrying into effect the objects of this Act so far as they relate to the winding up of companies or generally in respect of other applications to a court under this Act.

(2) For the purpose of this section, it is declared that rules made for the purpose of any enactment passed or made on or before, or to have effect on or after, the commencement of this Act shall, on its commencement, ensure and have effect where they are not inconsistent with rules of court made or deemed to have been made, under this section.

#### **553. Certain companies to publish statement in prescribed form**

(1) Every banking company or an insurance company or a deposit, provident, or benefit society shall, before it commences business, and also on the first Monday in February and the first Tuesday in August in every year during which it carries on business, submit to the Commission a statement in the form in the Fourteenth Schedule to this Act or as near thereto as circumstances may admit.

[Fourteenth Schedule.]

(2) A copy of the statement shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.

(3) Every member and every creditor of the company shall be entitled to a copy of the statement, on payment of a sum not exceeding N1.

(4) If default is made in compliance with this section, the company shall be guilty of an offence and liable to a fine of ₦100 for every day during which the default continues; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

(5) For the purposes of this Act, a company that carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance company.

*Legal proceedings, etc.*

#### **554. Prosecution of offences**

(1) All offences under this Act may be tried by a court of competent jurisdiction in the place where the offence is alleged to have been committed.

(2) Where provision is made in this Act for a criminal sanction to be imposed in case of an act, omission or default without reference therein to the default being an offence, or without reference to conviction thereof in a court, as the case may be, the reference to the act, omission or default shall be construed as referable to an offence, and the expression "**offences**" as used in this section shall have effect in relation to any such act, omission or default.

#### **555. Production, etc., of books where offences suspected**

(1) If, on application made to a Judge of the Federal High Court in chambers by the Attorney-General of the Federation, there is shown to be reasonable cause to believe that a person has, while an officer of a company, committed an offence in connection with the management of the company's affairs and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company, an order may be made-

(a) authorising any person named therein to inspect the said books or papers or any of them for the purpose of investigating and obtaining evidence of the offence; or

(b) requiring the secretary of the company or any other officer thereof as may be named in the order to produce the said books or papers, to a person and at a place named in the order.

(2) The provisions of subsection (1) of this section shall apply also in relation to any books or papers of a person carrying on the business of banking so far as they relate to the company's affairs, as it applies to any books or papers of or under the control of the company, except that no such order as is referred to in paragraph (b) of that subsection shall be made by virtue of this subsection.

(3) No appeal shall lie from the decision of a Judge of the Federal High Court on any application under this section.

#### **556. Costs in actions by certain limited companies**

Where a limited company is the plaintiff in any action or other legal proceedings, any Judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company may be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

#### **557. Saving for privileged communications**

Where proceedings are instituted under this Act against any person by the Attorney-General of the Federation, nothing in this Act shall be taken to require any person who has acted as legal practitioner for the defendant to disclose any privileged communication made to him in that capacity.

#### **558. Power of court to grant relief in certain cases**

(1) If in any proceeding for negligence, default or breach of duty or breach of trust against an officer of a company or a person employed by a company as auditor, it appears to the court hearing the case that the officer or person is or may be liable in respect of the negligence, default, or breach of duty or breach of trust, but that he has acted honestly and reasonably and that, having regard to all the circumstances of the case, including those connected with his appointment he ought fairly to be excused for the negligence, default or breach of duty or breach of trust, that court may relieve him, either wholly or partly, from this liability on such terms as the court may deem fit.



(2) When any such officer or person aforesaid has reason to apprehend that any claim may be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the court for relief, and the court on any such application shall have the same power to relieve him as under this section it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

#### **559. Penalty for improper use of certain words**

If any person trades or carries on business under any name or title of which the last word or words are "Unlimited", "Limited", "Public Limited Company" or "Limited by Guarantee" or their abbreviations, he shall, unless duly incorporated as an unlimited company, a private company limited by shares, a public company limited by shares, or a company limited by guarantee, respectively, be guilty of an offence and liable to a fine of ₦50 for every day during which the name or title is used.

#### **560. Penalty for false statements**

(1) Where a penalty is not elsewhere prescribed in this Act and subject to the provisions of subsection (2) of this section, if any person in any return, report, certificate, balance sheet, or other document required by or for the purpose of any of the provisions of this Act, wilfully makes a statement which is false in any material particular knowing it to be false, he shall be guilty of an offence and liable-

(a) on conviction in the High Court to imprisonment for a term of two years; or

(b) on conviction in a lower court, to a fine of ₦1000 or to imprisonment for a term of four months, or to both such fine and imprisonment.

(2) Nothing in this section shall affect the provisions of any enactment imposing penalties in respect of perjury in force in Nigeria.

#### **561. Extended effect of penalty for offence of fraudulent trading**

The provisions of section 506 (3) of this Act (which imposes a penalty for certain offences connected with fraudulent trading discovered on winding up a company) shall extend and apply to cases where fraudulent trading is discovered in circumstances other than on winding up a company.

#### **562. Application of fines**

Any court imposing a fine under this Act may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings, or in or towards rewarding the person on whose information or at whose suit the fine is recovered and subject to any such direction, all fines under this Act shall, notwithstanding anything in any other enactment, be paid into the appropriate Consolidated Revenue Fund.

#### **563. Application by the Commission to the court for directions**

(1) The Commission may apply to court for directions in respect of any matter concerning its duties, powers and functions under this Act and on any such application, the court may give such directions and make such further order as it thinks fit in the circumstances.

(2) The Commission may conduct enquires with respect to the compliance with the provisions of this Act by any person or company.

## Miscellaneous

### **564. Schedules, Tables and Forms; alteration and application**

(1) The Commission may, with the approval of the President, by regulation or order, published in the *Gazette*, add to, delete from or otherwise alter the whole or any part of any of the Schedules, Tables or Forms prescribed or in force under this Act.

(2) It is hereby declared that until regulations, rules or orders are made under and for the purposes of this Act prescribing forms for use, the forms in force at the commencement of this Act shall be deemed to have been made under it and shall have effect accordingly.

### **565. Enforcement of duty of company to make returns to Commission**

(1) If a company, having made default in complying with any provision of this Act requiring it to file with, deliver or send to the Commission any return, account or other document, or to give notice to it of any matter, fails to make good the default within 14 days after the service of a notice on the company requiring it to do so, the court may, on the application of any member or creditor of the company or of the Commission, order the company and any officer to make good the default within such time as may be specified in the order.

(2) Any order under this section may provide that all costs of or incidental to the application shall be borne by the company or by any officer of the company responsible for the default.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default as aforesaid.

### **566. Power of company to provide for employees on cessation or transfer of business**

(1) The powers of a company include (if they would not otherwise do so apart from this section) power to make the following provisions for the benefit of persons employed or formerly employed by the company or any of its subsidiaries, that is to say, provision in connection with the cessation or the transfer, to any person of the whole or part of the undertaking of the company or subsidiary.

(2) The power conferred by subsection (1) of this section shall be exercisable notwithstanding that its exercise is not in the best interest of the company.

(3) The power which a company may exercise by virtue only of subsection (1) of this section shall only be exercised by the company if sanctioned-

(a) in a case not falling within paragraph (b) or (c) of this subsection, by a resolution of the company; or

(b) if so authorised by the memorandum or articles, a resolution of the directors; or

(c) if the memorandum or articles require the exercise of the power to be sanctioned by a resolution other than a simple resolution of the company, with the sanction of that other resolution.

(4) Any payment which may be made by a company under this section may, if made before the commencement of any winding up of the company, be made out of profits of the company which are available for dividend.

### **567. Interpretation of certain words used in Part A of this Act**

(1) In this Part, that is, Part A of this Act, unless the context otherwise requires-

**"accounts"** includes a company's group accounts, whether prepared in the form of accounts or not;

**"agent"** does not include a legal practitioner acting as counsel for any person;

**"alien"** means a person or association, whether corporate or unincorporated, other than a Nigeria citizen or association;

**"annual return"** means the return required to be made, in the case of a company limited by shares under sections 371 and 372 and, in the case of a company limited by guarantee, under section 373 of this Act;

**"the appointed day"** means a period of one year from the commencement of this Act;

**"arrangement"** has the meaning assigned to it under section 537 of this Act;

**"articles"** means the articles of association of a company, as originally framed or as altered by special resolution, including so far as they apply to the regulations contained in Table A in the First Schedules of the Companies Act, 1922 or in that Table as altered by any subsequent enactment or reprint of the laws, or in Table A in the First Schedule to this Act;

[First Schedule.]

**"authorised minimum share capital"** means ~~₦~~10,000 in the case of a private company and ~~₦~~500,000 in the case of a public company;

**"authorised share capital"** means the share capital of a company at any given time;

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

**"circulating capital"** means a portion of the subscribed capital of the company intended to be used by being temporarily parted with and circulated in business, in the form of money, goods and other assets, and which, or the proceeds of which, are intended to return to the company with an increment, and are intended to be used again and again, and to always return with some accretion;

**"Commission"** means the Corporate Affairs Commission established under section 1 of this Act;

**"company"** or **"existing company"** means a company formed and registered under this Act or, as the case may be, formed and registered in Nigeria before and in existence on the commencement of this Act;

**"company limited by guarantee"** and **"company limited by shares"** have the meanings assigned to them respectively by section 21 of this Act;

**"companies liquidation account"** means the account kept on behalf of the Commission pursuant to section 428 of this Act;

**"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, the expression includes any person alleged to be contributory;

"**court**" or "**the court**" used in relation to a company, means the Federal High Court, and to the extent to which application may be made to it as; court includes the Court of Appeal and the Supreme Court of Nigeria;

"**creditors voluntary winding up**" has the meaning assigned to it by section 462 (4) of this Act;

"**debenture**" means a written acknowledgement of indebtedness by the company, setting out the terms and conditions of the indebtedness, and includes debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of the company or not;

"**director**" includes any person occupying the position of director by whatever name called; and includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;

"**dividend**" means a proportion of the distributed profits of the company which may be a fixed annual percentage, as in the case of preference shares, or it may be variable according to the prosperity or other circumstances of the company, as in the case of equity shares;

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

"**equity share**" means a share other than a preference share; and "**equity capital**" shall be construed accordingly;

"**fixed capital**" means that capital which a company retains in the form of assets upon which the subscribed capital or other sum has been expended, and which assets either themselves produced income, independent of any further action by the company, or being retained by the company are made use of to produce income or gain profits;

"**foreign company**" means a company incorporated elsewhere than in Nigeria;

"**forename**" includes a Christian name and a personal name, and "**surname**" includes a patronymic;

"**Gazette**" means the official *Gazette* of the Federation;

"**group financial statements**" has the meaning assigned to it by section 336 (1) of this Act;

"**holding company**" means a holding company as defined by section 338 of this Act;

"**inability to pay debts**" in relation to a company has the meaning assigned by section 409 of this Act;

"**insolvent person**" where used in this Act means any person in Nigeria who, in respect of any judgment, Act or court order against him, is unable to satisfy execution or other process issued thereon in favour of a creditor, and the execution or other process remains unsatisfied for not less than six weeks;

"**issued generally**" means, in relation to a prospectus, issued to persons who are not existing members or debenture holders of the company;

"**issued share capital**" in relation to any reduction has the meaning assigned by section 105 (2) of this Act;

"**legal practitioner**" has the meaning assigned to it by the Legal Practitioners Act;

"**member**" includes the heir, executor, administrator or other personal representative, as the case may be, of the member;

"**members' voluntary winding up**" has the meaning assigned to it by section 462 (4) of this Act;

"**memorandum**" means the memorandum of association of a company as originally framed or as altered in pursuance of any enactment;

"**Minister**" means the Minister charged with responsibility for trade; and "Ministry" shall be constituted accordingly;

"**non-cash asset**" means any property or interest in property other than cash and for this purpose, cash includes foreign currency;

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

"**official receiver**" means the officer by whatever name called or known charged with control of affairs in bankruptcy and if the appointment is vacant for any reason whatsoever, means the sheriff;

"**personal representative**" where customary law is applicable, includes successors appointed in respect of deceased contributories;

"**preference share**" means a share, by whatever name designated, which does not entitle the holder of it to any right to participate beyond a specified amount in any distribution whether by way of dividend or on redemption, in a winding up, or otherwise;

"**prescribed**" means, as respects the provisions of this Act (other than as to the winding up of companies), prescribed by court or, as the case may be, by other proper authority by regulations or order, and as to winding up, means as prescribed by rules of court, or deemed so to be;

"**private company**" has the meaning assigned to it by section 22 (1) of this Act;

"**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 and includes any document which, save to the extent that it offers securities for a consideration other than cash, is a prospectus;

"**receiver**" includes a manager;

"**recognised stock exchange**" means any body of persons for the time being recognised by the Securities and Exchange Commission as a stock exchange dealing in shares, debentures and other securities;

"**registered company**" means a company incorporated or deemed to be incorporated under this Act;

"**the Registrar-General**" means the Registrar-General appointed under section 8 of this Act;

"**resolution for reducing share capital**" has the meaning assigned to it by section 106 of this Act;

"**resolution for voluntary winding up**" has the meaning assigned to it by section 457 of this Act;

"**rules**" includes rules made by the Chief Judge of the Federal High Court for the purpose of section 453 or 516 of this Act, and includes rules of court made or deemed to have been made under section 552 of this Act and all

incidental forms; and also rules made by the Corporate Affairs Commission and the Securities and Exchange Commission under this Act;

"**securities**" includes shares, debentures, debenture stock, bonds, notes (other than promissory notes) and units under a unit trust scheme;

"**share**" means the interests in a company's share capital of a member who is entitled to share in the capital or income of such company; and except where a distinction between stock and shares is expressed or implied, includes stock;

"**small company**" has the meaning assigned to it under section 351 of this Act;

"**statutory declaration**" means a declaration voluntarily made under the Oaths Act and in Nigeria includes one so made under any other enactment or law providing for the taking of a voluntary declaration;

[Cap. 01.]

"**statutory meeting**" means the meeting required to be held by section 211 (1) of this Act;

"**statutory report**" has the meaning assigned to it by section 211 (2) of this Act;

"**subsidiary**" means, in relation to a body corporate, a subsidiary as defined by section 338 of this Act;

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

"**unlimited company**" has the meaning assigned to it by section 21 (1) of this Act;

"**unregistered company**" where used in Part XV of this Act, includes any partnership, association or company with the following exceptions-

(a) a company and any existing company registered under this Act; and

(b) a partnership, association or company which consists of less than eight members and is not a foreign partnership, association or company.

(2) References in this Act to bodies corporate or to corporations exclude corporations sole; but unless the context otherwise requires, they shall include references to companies incorporated outside Nigeria.

(3) For the purpose of any provision in this Act which stipulates that an officer of a company who is in default shall be liable to a fine or other penalty, or personally liable to any third party, reference to "**officer who is in default**" shall be construed as a reference to any officer of the company who knowingly and wilfully authorises or permits or connives at default, refusal or contravention specified in the provision.

#### **568. Repeal and savings**

(1) Subject to the provisions of this section, the Companies Act 1968 and the Companies (Special Provisions) Act shall, on the commencement of this Act, be repealed.

[1968 No. 51.]

(2) Nothing in this Act shall affect any order, rule, regulation, appointment, conveyance, mortgage, deed or agreement, made, resolution passed, direction given, proceeding taken, instrument issued or thing done under the enactment hereby repealed; but any such order, rule, regulation, appointment, conveyance, mortgage, deed, agreement, resolution, direction, proceeding, instrument or thing if in force immediately before the commencement of this Act shall, on the commencement of this Act, continue in force, and so far as it could have been made, passed, given, taken, issued or done under this Act shall have effect as if so made, passed, given, taken, issued or done.

(3) Nothing in this Act shall be construed so as to prohibit the continuation of an inspection by inspectors appointed under any enactment hereby repealed, begun before the commencement of this Act, and section 325 of this Act shall apply to a report of inspectors appointed under any enactment hereby repealed as it applies to a report of inspectors appointed under section 314 of this Act.

(4) Where, under the provisions of section 261 of the Companies Act 1968 a prosecution by a liquidator has been directed by the court and has not been completed on the commencement of this Act, subsection (2) of that section shall have effect and be construed as if all expenses properly incurred by the liquidator in the prosecution are to be defrayed as directed by the court under section 438 of this Act, and not in accordance with that subsection.

[1968 No. 51.]

(5) Any register kept under the enactment hereby repealed shall be deemed to be kept under the corresponding provisions of this Act.

(6) Funds and accounts constituted under this Act shall be deemed to be in continuation of the corresponding funds and accounts constituted under the enactment hereby repealed.

(7) Nothing in this Act shall affect-

(a) the incorporation of any company registered under any enactment hereby repealed; or

(b) Table A in the First Schedule of the Companies Act in so far as it applies to any company existing at the commencement of this Act, except as otherwise provided in this Act.

[1968 No. 51.]

(8) Where any offence, being an offence for the continuance of which a penalty was provided, has been committed under any enactment hereby repealed, proceedings may be taken under this Act in respect of the continuance of the offence after the commencement of this Act, in the same manner as if the offence had been committed under the corresponding provisions of this Act.

(9) Where by any enactment repealed by this Act a time is fixed for the doing of an act or the performance of a duty and in any particular case that time has expired or but for this Act would have expired between the date of the commencement of this Act and the date of its signing, the time so fixed shall, for the avoidance of doubt, be deemed to have been extended so as to expire not later than 7 days after the date of commencement of this Act, so however that nothing herein shall be construed to authorise any extension of time for the doing or performance, as the case may be, of an act or duty otherwise to be done or performed within a period of time limited by any such repealed enactment.

(10) The provisions of this Act with respect to winding up (other than section 510 which imposes a penalty for corrupt inducement affecting appointment of a liquidator, shall not apply to any company of which the winding up commenced before the coming into operation of this Act, but every such company shall be wound up in the same manner and with the same incidents as if this Act (apart from section 510) had not been made and, for the purposes of the winding up, the enactment under which the winding up commenced shall be deemed to remain in force.

(11) A copy of every order staying the proceedings in a winding up commenced as aforesaid shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Commission, which shall make a minute of the order in its books relating to the company.

(12) In this section "**enactment hereby repealed**" includes any enactment repealed or replaced by the Companies Act 1968, which itself is repealed by this Act.

## PART B

### *Business names*

#### **569. The Commission to administer business names**

This Part of this Act and Part C thereof shall be administered by the Corporate Affairs Commission established under Part A of this Act.

#### **570. Establishment of business names' registry in each State**

There shall be established in each State of the Federation, a register office of business names where there shall be kept a register in the prescribed form in which shall be entered such matters as are required by this Act or any regulation made thereunder to be entered in it.

#### **571. Appointment of Registrar and other officers**

(1) The Registrar-General of Companies appointed under section 8 of this Act shall be the Registrar of Business Names.

(2) There may be appointed from time to time fit persons to be Assistant Registrars of Business Names or other officers as may be necessary for the administration of this part of this Act.

#### **572. Functions of Registrar and Assistant Registrars**

(1) The Registrar shall cause business names to be registered in accordance with the provisions of this part of this Act.

(2) For the purpose of the registration under this Part of this Act, of the business names of a firm, individual or corporation at any of the register offices of business names, any Assistant Registrar may, subject to any direction that the Commission may give, perform any act or discharge any duty which the Registrar may lawfully perform or discharge or is required by this Act to perform or discharge, and, subject to that, any reference in this Part of this Act to the Registrar, unless the context otherwise admits, shall accordingly be deemed to include a reference to an Assistant Registrar.



(3) Without prejudice to the generality of the foregoing provisions of subsection (1) of this section, an Assistant Registrar may be assigned to the registry of business names in a State for the purpose of registering business names and keeping a register of business names.

### **573. Registration of business names**

(1) Every individual, firm or corporation having a place of business in Nigeria and carrying on business under a business name shall be registered in the manner provided in this Part of this Act if-

(a) in the case of a firm, the name does not consist of the true surname of all partners without any addition other than the true forenames of the individual partners or the initials of such forenames;

(b) in the case of an individual, the name does not consist of his true surname without any addition other than his true forenames or the initials thereof;

(c) in the case of a corporation, whether or not registered under this Act, the name does not consist of its corporate name without any addition.

(2) Notwithstanding subsection (1) of this section where-

(a) the addition merely indicates that the business is carried on in succession to a former owner of the business, that addition shall not of itself render registration necessary;

(b) two or more individual partners have the same surname, the addition of an "s" at the end of that surname shall not of itself render registration necessary; and

(c) the business is carried on by a receiver or manager appointed by any court, registration shall not be necessary.

### **574. Procedure for registration**

(1) Every firm, individual or corporation required under this Act to be registered shall, within 28 days after the firm, individual or corporation commences the business in respect of which registration is required or within three months of the coming into operation of this Act, furnish to the Registrar at the registry in the State in which the principal place of business of the firm, company or individual is situated, a statement in writing in the prescribed form, signed as required by this section and containing the following particulars-

(a) the business name or, if the business is carried on under two or more business names, each of those business names;

(b) the general nature of the business;

(c) the full postal address of the principal place of business;

(d) the full postal address of every other place of business;

(e) where the registration to be effected is that of a firm-

(i) the present forenames and surname, any former forenames or surname, the nationality and, if that nationality is not the nationality of origin, the nationality of origin, the age, the sex, the usual residence and any other business occupation of each of the individuals who are partners; and

(ii) the corporate name and registered office of such corporation which is a partner;

(f) where the registration to be effected is that of an individual, the present forenames and surname, any former forenames or surnames, the nationality and, if that nationality is not the nationality of origin, the nationality of origin, the age, the sex, the usual residence and any other business occupation of the individual;

(g) where the registration to be effected is that of a company, the name and registered office of the company;

(h) the date of commencement of the business, whether before or after the coming into operation of this Act.

(2) Where the registration to be effected is that of an individual or a firm consisting only of individuals, there shall be submitted to the Registrar copies of the passport photographs of the individual certified in a manner required by the Registrar.

(3) Where the registration to be effected is that of a firm or individual carrying on business on behalf of another individual, firm or corporation whether as nominee or trustee, the statement required by subsection (1) of this section to be furnished shall contain the following particulars in addition to the particulars required by that subsection-

(a) the present forenames and surname, any former forenames or surname, the nationality and, if that nationality is not the nationality of origin, the nationality of origin and the usual residence of each individual on whose behalf the business is carried on;

(b) the name of each firm or corporation in whose behalf the business is carried on.

(4) Where the registration to be effected is that of a firm or individual carrying on business as general agent for any concern carrying on business outside Nigeria and not having a place of business in Nigeria, the statement required by subsection (1) of this section to be furnished shall, in addition to the particulars required by that subsection, state the name and full postal address of each such concern, provided that in the case of a firm or individual carrying on business as general agent for three or more such concerns, it shall be sufficient to state the fact that the business is so carried on and the countries in which the concerns carry on business.

(5) A statement furnished in accordance with subsections (1) to (4) of this section shall-

(a) in the case of a statement furnished by an individual, be signed by him;

(b) in the case of a statement furnished by a firm, be signed by each individual who is a partner and by a director or the secretary of each corporation which is partner;

(c) in the case of a company, be signed by a director or the secretary:

Provided that, if the statement is accompanied by a statutory declaration made by any person to the effect that he is a partner of the firm or is a director or the secretary of a corporation which is a partner of the firm, the statement may be signed by that person alone.

(6) A statement furnished in accordance with subsections (1) to (4) of this section by an individual who is a minor or by a firm of which one of the partners is a minor shall, in addition to the requirements of subsection (1) of this section, be signed by a magistrate, legal practitioner or police officer of or above the rank of Assistant Superintendent of Police.

### **575. Entry of business name in the register**

(1) On receipt by the Registrar of the statement of particulars required to be furnished under section 574 of this Act, he shall, subject to subsection (2) of this section and to the provisions of any regulations made under this Act, cause to be entered in the register the business name of the individual, company or firm and file the statement.

(2) The Registrar shall add to the business name in the register the identification letters of the State which shall be in brackets at the end of the business name, and these shall form part of the business name.

### **576. Certificate of registration**

(1) On the registration of any firm, company or individual under this Act, the Registrar shall issue a certificate in the prescribed form containing the business name together with the distinguishing State identification letters in brackets at the end of the name.

(2) On the registration of any change in the particulars registered in respect of any firm, company or individual, the Registrar may in his discretion either amend the certificate previously issued or issue a fresh certificate.

(3) A certificate issued under this section shall be sent by registered post or delivered to the firm, company or individual registering, who shall thereupon exhibit and thereafter maintain the same in a conspicuous position at the principal place of the business so registered:

Provided that-

(a) where a fresh certificate has been issued under subsection (2) of this section, the provisions of this subsection shall apply to such fresh certificate only and not to the certificate originally issued; and

(b) where any certificate has been lost or destroyed or rendered illegible, a copy of such certificate certified by the Registrar may be exhibited in place of the original.

(4) Where a firm, company or individual registered under this Act has more than one place of business, the original certificate shall be exhibited and maintained as required by subsection (3) of this section at the principal place of business and a copy of the certificate certified by the Registrar shall be exhibited and thereafter maintained in a conspicuous position in each of the other places of business.

### **577. Registration of changes**

(1) Whenever a change is made or occurs in the particulars required by section 657 of this Act to be furnished in respect of any firm, company or individual registered under that section, other than particulars as to the age of an individual, the firm or individual shall within 28 days after such change notify the change to the Registrar at the register office at which the firm, company or individual is registered.

(2) The notice required under subsection (1) of this section shall be in writing signed as provided in section 574 of this Act.

### **578. Removal of name from register**

(1) If any firm, company or individual registered under this Act ceases to carry on business, it shall be the duty of the partner in the firm at the time when it ceased to carry on business or of the individual or if he is dead his

personal representative, within three months after the business has ceased to be carried on, to send by post or deliver to the Registrar a notice, stating that the firm or individual has ceased to carry on business.

(2) On receipt of such a notice as mentioned in subsection (1) of this section, the Registrar may remove the firm, company or individual from the register.

(3) Where the Registrar has reasonable cause to believe that any firm, company or individual registered under this Act is not carrying on business, he may send to the firm, company or individual by registered post a notice that, unless an answer is received to such notice within two months from the date thereof, the firm, company or individual may be removed from the register.

(4) If the Registrar either receives an answer from the firm, company or individual to the effect that the firm, company or individual is not carrying on business or does not within two months from the date of the notice receive an answer, he may remove the firm, company or individual from the register.

### **579. Prohibited and restricted names**

(1) Where any business name under which the business of a person is carried on or to be carried on-

(a) contains the word "National", "Government", "Municipal", "State", "Federal", or any other word which imports or suggests that the business enjoys the patronage of the Federal, State or Local Government; or

(b) contains the word "co-operative" or its equivalent in any other language or any abbreviation thereof; or

(c) contains the words "Chamber of Commerce", "Building Society", "Guarantee", "Trustee", "Investment", "Bank", "Insurance", or any word of similar connotation; or

(d) is identical with or similar to a name by which any firm, company or individual is registered under this Part of this Act or any company is registered under this Act; or

(e) is similar to any trade mark registered in Nigeria,

and the Registrar is of opinion that registration would likely mislead the public, then the Registrar shall, unless the consent of the Commission has been first obtained by the person, refuse to register the business name or, as the case may be, cancel the registration thereof.

(2) Where any business name under which the business of a person is carried on-

(a) contains any word which, in the opinion of the Registrar, is likely to mislead the public as to the nationality, race or religion of the persons by whom the business is wholly or mainly owned or controlled; or

(b) is, in the opinion of the Registrar, deceptive or objectionable in that it contains a reference direct or otherwise to any personage, practice or institution, or is otherwise unsuitable as a business name,

the Registrar shall refuse to register the business name, or, as the case may be, cancel the registration thereof, but any person aggrieved by a decision of the Registrar under this subsection may, within one month of such refusal or cancellation, appeal to the Commission.

(3) The Registrar may refuse to register an individual or firm under this Part of this Act if the age of the individual or of any individual who is a partner is stated in the statement furnished under section 574 of this Act to be less than 18 years.

(4) Where the Registrar has irrefutable evidence to the effect that an individual, firm or corporation that has previously been involved in fraudulent trade malpractices, either in local or international trade, is submitting an application for the registration of a new business name, the Registrar shall refuse to register such a business name.

#### **580. Searches**

The Registrar shall allow searches to be made at all reasonable times in any register book, register or file of registered documents in his possession.

#### **581. Copies of entries in registers**

(1) The Registrar shall upon request give a certified copy of any entry in any register book, register or filed documents in his possession.

(2) Every such certified copy shall be received in evidence, without any further or other proof, in all legal proceedings, civil or criminal.

#### **582. Publication of true name**

(1) Every individual or firm required by this Act to be registered shall in all trade catalogues, trade circulars, show cards and business letters issued or sent by the individual or firm to any person, have mentioned in legible characters-

(a) in the case of an individual, his present forenames or the initials thereof and present surname and any former forenames or surname and his nationality; and

(b) in the case of a firm, the present forenames or the initials thereof and present surname, and any former forenames or surnames and the nationality of all the partners in the firm or in the case of a corporation being a partner, the corporate name; and

(c) the registration number of the business name.

(2) Where the individual referred to in subsection (1) of this section is a minor, the words "a minor" shall be added, in brackets, after his name.

#### **583. Liability of person in default**

Where any firm or individual required under this Act to furnish a statement of particulars or of any change in particulars, makes default in so doing, the rights of such defaulter under or arising out of any contract made or entered into by or on behalf of such defaulter in relation to the business in respect of which particulars were required at any time while he is in default, shall not be enforceable by action or other legal proceedings either in the business name or otherwise:

Provided that-

(a) the defaulter may apply to a High Court in which any such contract would otherwise be enforceable for relief against the disability imposed by this section and a High Court in which any such contract would otherwise be enforceable, on being satisfied that the default was accidental, or due to inadvertence, or some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may grant such relief either generally as regards all contracts enforceable by the court or as respect any particular contract and on such conditions as the court may impose;

(b) nothing herein contained shall prejudice the rights of any other parties as against the defaulter in respect of such contract as aforesaid;

(c) if any action or proceeding shall be commenced by any other party against the defaulter to enforce the rights of such party in respect of such contract, nothing herein contained shall preclude the defaulter from enforcing in that action or proceeding by way of counterclaim, set-off or otherwise such rights as he may have against that party in respect of such contract.

#### **584. Offences and penalties**

(1) If any firm or individual required under this Act to be registered-

(a) fails to comply with the provisions of section 574 of this Act; or

(b) fails to comply with the provisions of section 577 of this Act; or subsection (4) of section 576 of this Act; or

(c) fails to comply with the provisions of subsection (3) or subsection (4) of section 576 of this Part; or

(d) carries on business under a business name, registration of which has been refused or cancelled under section 579 of this Act,

every partner in the firm or the individual shall be guilty of an offence and liable on conviction to a fine of ₦50 for every day during which the default continues, and the court shall order a statement of the required particulars to be furnished to the Registrar within such time as may be specified in the order.

(2) If any person whose duty it is under subsection (1) of section 578 of this Act to give notice that any firm or individual has ceased to carry on business, fails to comply with the provisions of that subsection, he shall be guilty of an offence and liable on conviction to a fine of ₦520.

(3) If any firm, company or individual in issuing any trade catalogues, trade circular, show card or business letter fails to comply with the provisions of section 582, of this Act, every partner in the firm or the individual shall be guilty of an offence and liable on conviction to a fine of ₦250.

(4) If any statement required to be furnished under this Act contains any matter which is false in any material particular to the knowledge of any person signing it, such person shall be guilty of an offence and liable on conviction to a fine of ₦500 or to imprisonment for six months or to both such fine and imprisonment.

#### **585. Regulations**

The Minister may with the approval of the President, make regulations-

(a) for the governance and guidance of the Registrar and Assistant Registrars and of all persons acting under them;

- (b) prescribing the forms to be used for the purpose of this Part of this Act;
- (c) prescribing the fees to be taken by the officers by or before whom the acts for which the fees are payable are done under this Part of this Act;
- (d) generally for the conduct and regulation of registration under this Part of this Act and any matters incidental thereto.

#### **586. Validity of previous registration**

Any firm or company or individual who immediately before the coming into operation of this Act was registered under the Registration of Business Names Act 1961, hereby repealed, shall be deemed to be registered under and in accordance with this Act and the provisions of this Act shall apply in respect of such firm, company or individual accordingly, and any statement furnished under the said Act hereby repealed shall be deemed to have been furnished under and in accordance with this Act.

[1961 No. 17.]

#### **587. Annual returns**

- (1) Every firm, company or individual carrying on business under a registered business name shall, not later than the 30th day of June in each year, except the calendar year in which the business name is registered, deliver to the Commission a return in a prescribed form showing the particulars of the firm, company or individuals, the nature of the business carried on and the state of the financial affairs of the business carried on by the firm, company or individual in the business name during the preceding period of January 1 to December 31.
- (2) The returns shall be signed, in the case of an individual or firm consisting only of individuals, by the individuals and in the case of a company or a partner who is a company, by a director and the secretary.
- (3) Failure to comply with any of the provisions of this section shall be punishable with a fine of ₦200, and a daily default fine of ₦25.

#### **588. Interpretation of words used in this Part**

- (1) In this Part of this Act, unless the context otherwise requires-

**"Assistant Registrar"** means an Assistant Registrar of Business Names appointed under section 571 of this Act;

**"business"** includes any trade, industry and profession and any occupation carried on for profit;

**"business name"**, means the name or style under which any business is carried on whether in partnership or otherwise;

**"firm"** means an unincorporated body of two or more individuals or one or more individual and one or more corporations, or two or more corporations, who or which have entered into partnership with one another with a view to carrying on business for profit;

**"forename"** when used with a surname includes any first name;

**"initials"** includes any recognised abbreviation of a forename;

"**Minister**" means the Minister charged with responsibility for matters relating to the registration of business names;

"**minor**" means a person who has not attained the age of 18 years;

"**person**" includes a firm, individual or corporation;

"**Registrar**" means the Registrar of Business Names;

"**show cards**" means a card containing or exhibiting articles dealt with, or samples or representations thereof.

(2) The Registration of a business name under this Act shall not be construed as authorising the use of that name if, apart from such registration, the use thereof could be prohibited.

### **589. Repeal of 1961 No. 17**

The Registration of Business Names Act 1961 is hereby repealed.

[1961 No. 17.]

## PART C

### *Incorporated trustees*

### **590. Incorporation of trustees of certain communities, bodies and associations**

(1) Where one or more trustees are appointed by any community of persons bound together by custom, religion, kinship or nationality or by any body or association of persons established for any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose, he or they may, if so authorised by the community, body or association (in this Act referred to as "the association") apply to the Commission in the manner hereafter provided for registration under this Act as a corporate body.

(2) Upon being so registered by the Commission, the trustee or trustees shall become a corporate body in accordance with the provisions of section 679 of this Part of this Act.

### **591. Method of application**

(1) Application under section 596 of this Act shall be in the form prescribed by the Commission and shall state-

(a) the name of the proposed corporate body which must contain the words "Incorporated Trustees of";

(b) the aims and objects of the association which must be for the advancement of any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose, and must be lawful;

(c) the names, addresses and occupations of the secretary of the association, if any.

(2) There shall be attached to the application-

(a) two printed copies of the constitution of the association; (b) duly signed copies of the minutes of the meeting appointing the trustees and authorising the application, showing the people present and the votes scored;

(c) the impression or drawing of the proposed common seal.



(3) The application shall be signed by the person making it.

(4) The Commission may require such declaration or other evidence in verification of the statements and particulars in the application, and such other particulars, information, and evidence, if any, as it may think fit.

(5) If any person knowingly makes any false statement or gives any false information for the purpose of incorporating trustees under this Part of this Act, he shall be guilty of an offence and liable on conviction to imprisonment for one year or to a fine of ₦100

#### **592. Qualification of trustees**

(1) A person shall not be qualified to be appointed as a trustee if-

(a) he is an infant; or

(b) he is a person of unsound mind having been so found by a court;

(c) he is an undischarged bankrupt; or

(d) he has been convicted of an offence involving fraud or dishonesty within five years of his proposed appointment.

(2) If a person disqualified under paragraph (c) or (d) of subsection (1) of this section acts as a trustee, he shall be liable to a fine of ₦50 for every day during which he so acts.

#### **593. Constitution**

The constitution of the association shall in addition to any other matter-

(a) state the name or title of the association which shall not conflict with that of a company, or with a business name or trade mark registered in Nigeria;

(b) the aims and objects of the association; and

(c) make provisions, in respect of the following-

(i) appointment, powers, duties, tenure of office and replacement of the trustees;

(ii) the use and custody of the common seal;

(iii) the meetings of the association;

(iv) the number of members of the governing body, if any, the procedure for their appointment and removal, and their powers; and

(v) where subscriptions and other contributions are to be collected, the procedure for disbursement of the funds of the association, the keeping of accounts and the auditing of such accounts.

#### **594. Advertisement and objections**

(1) If the Commission is satisfied that the application has complied with the provisions of sections 591,592 and 593 of this Act, it shall cause the application to be published in a prescribed form in two daily newspapers circulating in the area where the corporation is to be situated and at least one of the newspaper shall be a national newspaper.

(2) The advertisement shall invite objections, if any, to the registration of the body.

(3) The objection shall state the grounds on which it is made and shall be forwarded to reach the Commission within 28 days of the date of the last of the publications in the newspapers.

(4) If any objections are made, the Commission shall consider them and may require the objections and applicants to furnish further information or explanation, and may uphold or reject the objections as it considers fit and inform the applicant accordingly.

#### **595. Registration and certificate**

(1) If, after the advertisement, no objection is received within the period specified in section 596 of this Act or, where any objection is received, and the same is rejected, the Commission, having regard to all the circumstances, may assent to the application or withhold its assent.

(2) If the Commission assents to the application, it shall register the trustees and issue a certificate in the prescribed form.

#### **596. Effect of registration and certificate**

(1) From the date of registration, the trustee or trustees shall become a body corporate by the name described in the certificate, and shall have perpetual succession and a common seal, and power to sue and be sued in its corporate name as such trustee or trustees and subject to section 602 of this Part of this Act to hold and acquire, and transfer, assign or otherwise dispose of any property, or interests therein belonging to, or held for the benefit of such association, in such manner and subject to such restrictions and provisions as the trustees might without incorporation, hold or acquire, transfer, assign or otherwise dispose of the same for the purposes of such community, body or association of persons.

(2) The certificate of incorporation shall vest in the body corporate all property and interests of whatever nature or tenure belonging to or held by any person in trust for such community, body or association of persons.

(3) A certificate of incorporation when granted shall be prima facie evidence that all the preliminary requisitions herein contained and required in respect of such incorporation have been complied with, and the date of incorporation mentioned in such certificate shall be deemed to be the date on which incorporation has taken place.

#### **597. Changes of names or objects**

(1) Where the association is desirous of changing or altering its name or objects or any of them, the trustees shall apply to the Commission in the prescribed form setting out the alterations desired and attaching a copy of the resolution approving the change and duly certified by the trustees.

(2) The Commission on receipt of the application shall consider it and, if satisfied that the change or alteration is *prima facie* lawful shall-

(a) cause the application to be published in two daily newspapers in the manner specified in subsection (1) of section 593 of this Act; and

(b) direct the corporation to display for at least 28 days a notice of the proposed change or alteration conspicuously mounted at the corporation headquarters, or at any branch offices, or any such places where a majority of the members are likely to see it, as the Commission may require,

(3) The publication and notices shall call for objections which, if any, shall state the grounds of objection and be forwarded to reach the Commission not later than 28 days after the last of the publications in the newspapers.

(4) The provisions of section 593 and of subsection (1) of section 594 of this Part of this Act shall apply to this section as they apply to an application for registration.

(5) If the Commission assents to the application, the alterations shall be made and in the case of a change of name, the Commission shall issue a new certificate in the new name in place of the former certificate.

#### **598. Alteration of provisions of the constitution**

Subject to sections 593 and 594 of this Part of this Act, an association whose trustees are incorporated under this Part of this Act may alter its constitution by a resolution passed by a simple majority of its members and approved by the Commission.

#### **599. Replacement and appointment of additional trustees**

(1) Where a body or association intends to replace some or all its trustees or to appoint additional trustees, it may by resolution at a general meeting do so and apply in the prescribed form for the approval of the Commission.

(2) Upon such application the provision of subsections (2) to (4) of section 597 of this Act shall apply to this section as they apply to the change of name or object.

(3) If the Commission assents to the application, it shall signify its assent in writing to the corporation and the appointment shall become valid as from the date of the resolution appointing the trustees.

#### **600. Changes in contravention of certain provisions of this Part of this Act**

Any change or alterations purported to be made in contravention of section 597, 598 or 599 of this Part of this Act shall be void.

#### **601. Council or governing body**

The association may appoint a council, or governing body, which shall include the trustees and may, subject to the provisions of this Part of this Act, assign to it such administrative and management functions as it deems expedient.

#### **602. Exercise of powers of trustee**

The powers vested in the trustees by or under this Act shall be exercised subject to the directions of the association, or of the council or governing body appointed under section 601 of this Part of this Act, as the case may be.

#### **603. Application of income and property**

(1) The income and property of a body or association whose trustee or trustees are incorporated under this Part of this Act shall be applied solely towards the promotion of the objects of the body as set forth in its constitution and no portion thereof shall be paid or transferred directly or indirectly, by way of dividend, bonus, or otherwise by way of profit to any of the members of the association.

(2) Nothing in subsection (1) of this section shall prevent the payment, in good faith, of reasonable and proper remuneration to an officer or servant of the body in return for any service actually rendered to the body or association:

Provided that-

(a) with the exception of *ex-officio* members of the governing council, no member of a council of management or governing body shall be appointed to any salaried office of the body, or any office of the body paid by fees; and

(b) no remuneration or other benefit in money or money's worth shall be given by the body to any member of such council or governing body, except repayment of out-of-pocket expenses or reasonable and proper rent for premises demised, or let to the body or reasonable fee for services rendered.

(3) If any person knowingly acts or joins in acting in contravention of this section, he shall be liable to refund such income or property so misapplied to the association.

#### **604. Common seal**

The common seal of the body corporate shall have such device as may be approved by the

Commission; and any instrument to which the common seal of the corporate body has been affixed in apparent compliance with the regulations for the use of the common seal shall be binding on the corporate body, notwithstanding any defect or circumstance affecting the execution of such instrument.

#### **605. Contract of corporate body**

Subject to the provisions of this Part of this Act and of the constitution of the association, the corporate body may contract in the same form and manner as an individual.

#### **606. Documents and inspection**

(1) The Commission shall preserve all documents delivered to it under this Part of this Act.

(2) Any person may on application to the Commission be permitted to inspect the documents kept under subsection (1) of this section on payment of a prescribed fee and may require a copy or extract of any such document to be certified by the Commission on payment of a prescribed fee.

#### **607. Annual returns**

(1) The trustees of the corporation shall not earlier than 30 June or later than 31 December each year (other than the year in which it is incorporated), submit to the Commission a return showing, among other things, the name of the corporation, the names, addresses and occupations of the trustees, and members of the council or governing body, particulars of any land held by the corporate body during the year, and of any changes which have taken place in the constitution of the association during the preceding year.

(2) If the trustees fail to comply with subsection (1) of this section they shall be liable to a fine of ~~£~~5 for each day during which the default continues.

#### **608. Dissolution of a corporate body formed under this Act**

(1) A body corporate formed under this Part of this Act may be dissolved by the court on a petition brought for that purpose by-

- (a) the governing body or council; or
- (b) one or more trustees; or
- (c) members of the association constituting not less than 50 per cent of the total membership; or
- (d) the Commission.

(2) The grounds on which the body corporate may be dissolved are-

- (a) that the aims and objects for which it was established have been fully realised and no useful purpose would be served by keeping the corporation alive;
- (b) that the body corporate is formed to exist for a specified period and that period has expired and it is not necessary for it to continue to exist;
- (c) that all the aims and objects of the association have become illegal or otherwise contrary to public policy; and
- (d) that it is just and equitable in all the circumstances that the body corporate be dissolved.

(3) At the hearing of the petition, all persons whose interest or rights may, in the opinion of the court, be affected by the dissolution shall be put on notice.

(4) If in the event of a winding up or dissolution of the corporate body there remains after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the association, but shall be given or transferred to some other institutions having objects similar to the objects of the body, such institutions to be determined by the members of the association at or before the time of dissolution.

(5) If effect cannot be given to the provisions of subsection (4) of this section, the remaining property shall be transferred to some charitable object.

#### **609. Regulations**

The Minister may, with the approval of the President, make regulations generally for the purpose of this Part of this Act and, in particular, without prejudice to the generality of the foregoing provisions, make regulations-

- (a) prescribing the forms and returns and other information required under this Part of this Act;
- (b) prescribing the procedure for obtaining any information required under this Part of this Act;
- (c) requiring returns to be made within the period specified therein by any body corporate to which this Part of this Act applies.

#### **610. Interpretation of words used in this Part**

In this Part of this Act, unless the context otherwise requires-

"**Commission**" means the Corporate Affairs Commission established under section 1 of this Act;

"**court**" means the Federal High Court;

"**Federal Gazette**" means the Federal Government Official Gazette; and

"**Minister**" means the Minister charged with responsibility for matters relating to trade.

#### **611. Repeal of Cap. 98 of 1958 Edition**

The Land (Perpetual Succession) Act, is hereby repealed.

[Cap. 98 of 1958 Edition.]

#### **612. Validity of previous registrations**

All trustees duly registered as bodies corporate under the Land (Perpetual Succession) Act shall, as from the date of coming into operation of this Act, be deemed to be registered under and in accordance with this Part of this Act and the provisions of this Part of this Act shall apply in respect of such trustees accordingly.

PART D

*Short title*

#### **613. Short title**

This Act may be cited as the Companies and Allied Matters Act.

SCHEDULES

First Schedule

[Sections 28 and 34.]

*Table A*

*Form of articles of association*

PART I

*Regulations for the management of a public company limited by shares*

*Interpretation*

1. (1) In these Regulations "**the Act**" means the Companies and Allied Matters Act.

(2) Unless the context otherwise requires, words or expressions contained in these Regulations bear the same meaning as in the Act.

### *Classes of shares*

**2.** The company may from time to time issue classes of shares. It shall be the responsibility of the directors to determine the classes of shares to be issued. All the rights or restrictions attached to each particular class of shares shall be specified in the terms of issue but such rights may at any time be varied in accordance with the provisions of section 141 of the Act.

### *Commissions and brokerage*

**3.** The company may exercise the powers of paying commissions conferred by section 131 of the Act, provided that the rate per cent or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the said section. Such commissions may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in one way and partly in the other.

**4.** The company may also on any issue of shares pay such brokerage as may be lawful.

### *Alteration of capital*

**5.** The company may from time to time by ordinary resolution effect an alteration of its share capital in any of the ways set out in section 100 of the Act.

**6.** Subject to the provisions of the Act on reduction of capital, the company may, whenever it considers it expedient to do so, by special resolution reduce its share capital, any capital redemption fund or any share premium account.

### *Meetings*

**7.** The annual general meeting shall be held at such time and place as the directors shall appoint.

**8.** The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he is not present within thirty minutes after the time appointed for the holding of the meeting or is unwilling to act, the directors present shall elect one of their number to be chairman of the meeting.

**9.** If at any meeting no director is willing to act as chairman or if no director is present within thirty minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

### *Voting*

**10.** No member shall be entitled to vote at any general meeting unless all calls or other sums payable by him in respect of shares in the company have been paid.

### *The seal*

**11.** The directors shall provide for the safe custody of the seal, which shall only be used by the authority of the directors or of a committee of the directors authorised by the directors in that behalf and every instrument to which the seal is affixed shall be signed by a director, and countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.

*Notices*

**12.** A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within Nigeria) to the address, if any, within Nigeria supplied by him to the company for the giving of notice to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected at the expiration of seven days after the letter containing the same is posted.

*Names, addresses and descriptions of subscribers*

1. John A1abi of ..... Businessman
  
2. Issa Kano of ..... Businessman
  
3. Caleb Okocha of ..... Businessman
  
4. Thomas Ogbobine of ..... Businessman

Dated the..... day of.....20.....

*Witness to the above signatures*

A.B., No. 13 Araba Street, Lagos

PART II

*Regulations for the management of a private company limited by shares*

*Interpretation*

1. (1) In these Regulations "**the Act**" means the Companies and Allied Matters Act.
  
- (2) Unless the context otherwise requires, words or expressions contained in these Regulations bear the same meaning as in the Act.

*Classes of shares*

**2.** The company may from time to time issue classes of shares. It shall be the responsibility of the directors to determine the classes of shares to be issued. All the rights or restrictions attached to each particular class of shares shall be specified in the terms of issue but such rights may at any time be varied in accordance with the provisions of section 141 of the Act.

*Restriction on transfer of shares*

**3.** The directors may, in their absolute discretion and without giving any reason, refuse to register any transfer of any share, whether or not it is a fully paid share.

*Pre-emptive rights of shareholders of the company*



**4.** The company shall not allot any new or unissued shares unless the same are offered in the first instance to all the shareholders or to all the shareholders of the class or classes being issued in proportion as nearly as may be to their existing holdings.

**5.** The offer to existing shareholders shall be by notice specifying the number of shares to which the shareholder is entitled to subscribe and limiting a time, not being less than 28 days after the service of the notice, after the expiration of which the offer, if not accepted, will be deemed to be declined. On the receipt of an intimation from the shareholder that he declines to accept the shares offered or after the expiration of the stipulated time, as the case may be, the board of directors may, subject to the terms of any resolution of the company, dispose of the shares at a price not less than that specified in the offer, in such manner as they think most beneficial to the company.

**6.** Regulations 4 and 5 above are not alterable except with the unanimous consent of all the members of the company.

#### *Commissions and brokerage*

**7.** The company may exercise the powers of paying commissions conferred by section 131 of the Act, provided that the rate per cent or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the said section. Such commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in one way and partly in the other.

**8.** The company may also on any issue of shares pay such brokerage as may be lawful.

#### *Alteration of capital*

**9.** The company may from time to time by ordinary resolution effect an alteration of its share capital in any of the ways set out in section 100 of the Act.

**10.** Subject to the provisions of the Act on reduction of capital, the company may, whenever it considers it expedient to do so, by special resolution reduce its share capital, any capital redemption fund or any share premium account.

#### *Meetings*

**11.** The annual general meeting shall be held at such time and place as the directors shall appoint.

**12.** The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he is not present within thirty minutes after the time appointed for the holding of the meeting or is unwilling to act, the directors present shall elect one of their number to be chairman of the meeting.

**13.** If at any meeting no director is willing to act as chairman or if no director is present within thirty minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

#### *Voting*

**14.** No member shall be entitled to vote at any general meeting unless all calls or other sums payable by him in respect of shares in the company have been paid.

*The seal*

15. The directors shall provide for the safe custody of the seal, which shall only be used by the authority of the directors or of a committee of the directors authorised by the directors in that behalf and every instrument to which the seal is affixed shall be signed by a director, and countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.

*Notices*

16. A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within Nigeria) to the address, if any, within Nigeria supplied by him to the company for the giving of notice to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected at the expiration of seven days after the letter containing the same is posted.

*Names, addresses and descriptions of subscribers*

- 1. John Alabi of ..... Businessman
- 2. Issa Kano of ..... Businessman

DATED the .....day of..... 20.....

Witness to the above signatures

A.B., No. 13 Araba Street, Lagos

PART III

*Regulations for the management of a company limited by guarantee*

*Interpretation*

1. Unless the context otherwise requires, words or expressions contained in these Regulations bear the same meaning as in the Companies and Allied Matters Act.

*Membership of the company*

2. The number of members with which the company proposes to be registered IS ten, but the directors may from time to time register an increase of members.

*Meetings*

3. The annual general meeting shall be held at such time and place as the directors shall appoint.

4. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he is not present within thirty minutes after the time appointed for the holding of the meeting or is unwilling to act, the directors present shall elect one of their number to be chairman of the meeting.

5. If at any meeting no director is willing to act as chairman or if no director is present within thirty minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

*The seal*

6. The directors shall provide for the safe custody of the seal which shall only be used by the authority of the directors or of a committee of the directors authorised by the directors in that behalf and every instrument to which the seal is affixed shall be signed by a director, and countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.

*Notices*

7. A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within Nigeria) to the address, if any, within Nigeria supplied by him to the company for the giving of notice to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected at the expiration of seven days after the letter containing the same is posted.

*Names, addresses and descriptions of subscribers*

- |    |                           |                |
|----|---------------------------|----------------|
| 1. | Okon Bassej Okon of ..... | Schoolmaster   |
| 2. | John Itam of .....        | Schoolmaster   |
| 3. | Ekanem James .....        | Schoolmistress |
| 4. | Ojo Ibidapo .....         | Schoolmaster   |
| 5. | Chike Okorochoa .....     | Schoolmaster   |
| 6. | Anna Momoh of .....       | Schoolmistress |

DATED the..... day of..... 20.....

*Witness to the above signatures*

6. B.K, No. 13 Duke Street, Ikot Ekpene

PART IV

*Regulations for the management of an unlimited company*

*Interpretation*

(1) In these Regulations “**the Act**” means the Companies and Allied Matters Act.

(2) Unless the context otherwise requires, words or expressions contained in these Regulations bear the same meaning as in the Act.

*Membership of the company*

2. The number of members with which the company proposes to be registered is twenty, but the directors may from time to time register an increase of members.

#### *Classes of shares*

3. The company may from time to time issue classes of shares. It shall be the responsibility of the directors to determine the classes of shares to be issued. All the rights or restrictions attached to each particular class of shares shall be specified in the terms of issue but such rights may at any time be varied in accordance with the provisions of section 141 of the Act.

#### *Commissions and brokerage*

4. The company may exercise the powers of paying commissions conferred by section 131 of the Act, provided that the rate per cent or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the said section. Such commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in one way and partly in the other.

5. The company may also on any issue of shares pay such brokerage as may be lawful.

#### *Alteration of capital*

6. The company may by special resolution-

(a) increase the share capital by any sum to be divided into shares of such amount as the resolution may prescribe;

(b) consolidate its shares into shares of a larger amount than its existing shares;

(c) sub-divide its shares into shares of a smaller amount than its existing shares;

(d) cancel any shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person; or

(e) reduce its share capital in any way.

#### *Meetings*

7. The annual general meeting shall be held at such time and place as the directors shall appoint.

8. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he is not present within thirty minutes after the time appointed for the holding of the meeting or is unwilling to act, the directors present shall elect one of their number to be chairman of the meeting.

9. If at any meeting no director is willing to act as chairman or if no director is present within thirty minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

#### *Voting*

10. No member shall be entitled to vote at any general meeting unless all calls or other sums payable by him in respect of shares in the company have been paid.

*The seal*

11. The directors shall provide for the safe custody of the seal, which shall only be used by the authority of the directors or of a committee of the directors authorised by the directors in that behalf and every instrument to which the seal is affixed shall be signed by a director, and countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.

*Notices*

12. A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within Nigeria) to the address, if any, within Nigeria supplied by him to the company for the giving of notice to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected at the expiration of seven days after the letter containing the same is posted.

*Names, addresses and descriptions of subscribers*

- |    |                          |               |
|----|--------------------------|---------------|
| 1. | Joan Alabi of .....      | Businesswoman |
| 2. | Issa Kano of .....       | Businessman   |
| 3. | Caleb Okocha of .....    | Businessman   |
| 4. | Thomas Ogbobine of ..... | Businessman   |
| 5. | Ojo Ibidapo of .....     | Businessman   |
| 6. | Chika Okorochoa of ..... | Businesswoman |
| 7. | Audu Momoh of .....      | Businessman   |

DATED the..... day of..... 20.....

*Witness to the above signatures*

1. B., No. 20 Sapara Street, Abuja

TABLE B

*Form of memorandum of association of a company limited by shares*

1. The name of the company is "The Victoria Beach Water Transport Limited."
2. The registered office of the company will be situated in Lagos State, Nigeria.
3. The business for which the company is established is the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine.

4. The company is a private company.
5. The liability of the members is limited by shares.
6. The share capital of the company is ₦10,000 divided into 10,000 shares of ₦1.00 each.

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

	<i>Description of</i>	<i>No of shares</i>	<i>Number of shares</i>
	<i>Names and addresses</i>	<i>Subscribers</i>	<i>Taken by each customer</i>
1.	John Alabi of .....	Businessman	5,000
2.	Issa Kano of .....	Businessman	1,000
3.	Caleb Okocha of .....	Businessman	1,500
	Total shares taken		<u>8,500</u>

DATED the..... day of..... 20.....

*Witness to the above signatures*

1. B., No. 13 Araba Street, Lagos

TABLE C

*Form of memorandum of association of a company limited by guarantee*

1. The name of the company is "The Oke-Ita School Association (Limited by Guarantee)."
2. The registered office of the company will be situated in Akwa Ibom State, Nigeria.
3. The objects for which the company is established are the carrying on of schools for boys in Ikot Ekpene and in such other places within the State as the company hereafter decide upon.
4. The company is a private company.
5. The liability of the members is limited by guarantee.
6. The income and property of the company shall be applied solely towards the promotion of its objects, and no portion of the income or property shall be paid or transferred directly to the members of the company except as permitted by or under the Companies and Allied Matters Act.

7. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding ₦2,000, so however that the total amount to be so contributed by all the members shall not be less than ₦10,000.

*Names, addresses and descriptions of subscribers*

- |    |                           |                |
|----|---------------------------|----------------|
| 1. | John Bassey Okon of ..... | Schoolmaster   |
| 2. | John Itam of .....        | Schoolmaster   |
| 3. | Ekanem James of .....     | Schoolmistress |
| 4. | Ojo Ibidapo of .....      | Schoolmaster   |
| 5. | Chike Okorochoa of .....  | Schoolmaster   |
| 6. | Anna Momoh of .....       | Schoolmistress |

DATED the..... day of..... 20.....

*Witness to the above signatures*

A. B., No. 13 Duke Street, Ikot Ekpene

TABLE D

*Form of memorandum of association of an unlimited company*

1. The name of the company is "The Patent Stereotype Unlimited."
2. The registered office of the company will be situated in the Federal Capital Territory, Abuja, Nigeria.
3. The business for which the company is established is the working of a patent method of founding and casting stereotype plates, of which method John Smith is the sole patentee.
4. The company is a public company.
5. The liability of the company is unlimited.
6. The share capital of the company is one million naira divided into 10,000 shares of ₦100 each.

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

<i>Description of</i>		<i>Number of shares</i>	
<i>Names and addresses</i>		<i>Subscribers</i>	<i>taken by each subscriber</i>
1.	Joan Alabi of .....	Businesswoman	1,000
2.	Issa Kano of .....	Businessman	500
3.	Caleb Okocha of .....	Businessman	1,000
4.	Thomas Ogbobine of .....	Businessman	500
5.	Ojo Ibidapo of .....	Businessman	500
6.	Chika Okorochoa of .....	Businessman	500
7.	Audu Momoh of .....	Businesswoman	1,000
Total shares taken			5,000

DATED the..... day of..... 20.....

*Witness to the above signatures*

A. B., No. 20 Sapara Street, Abuja

## Second Schedule

[Sections 120, 335, 337.]

### *Form and content of company's financial statements*

#### PART I

##### *General information to be disclosed*

##### *General rules and formats*

#### SECTION A

##### *General information to be disclosed*

1. All accounting information that will assist users to assess the financial liquidity, profitability and viability of a company should be disclosed and presented in a logical, clear and understandable manner.

2. The financial statements of a company shall state-

(a) the name of the company;

(b) the period of time covered;



- (c) a brief description of its activities;
- (d) its legal form;
- (e) its relationship with its significant local and overseas suppliers (if any) including the immediate and ultimate parent, associated or affiliated company.

**3.** Financial statements shall include the following-

[1991 No. 46.]

- (a) statement of accounting policies;
- (b) balance sheet;
- (c) profit and loss account or income statement;
- (d) notes on the accounts;
- (e) statement of source and application of funds;
- (f) value added statement;
- (g) five-year financial summary.

**4.** Financial implication of inter-company transfer and technical management agreements between the company and its significant local and overseas suppliers (if any) including its immediate and ultimate, associated, affiliated company should be disclosed.

**5.** Financial statements should show corresponding figures for the preceding period.

## SECTION B

### *General rules*

**6.** (1) Subject to the following provisions of this Schedule-

(a) every balance sheet of a company shall show the items listed in either of the balance sheet formats set out below in section C of this Part; and

(b) every profit and loss account of a company shall show the items listed in anyone of the profit and loss account formats so set out; in either case in the order and under the headings and sub-headings given in the format adopted.

(2) Sub-paragraph (1) above is not to be read as requiring the heading or sub-heading for any items to be distinguished by any letter or number assigned to that item in the format adopted.

**7.** (1) Where, in accordance with paragraph 1, a company's balance sheet or profit and loss account for any year has been prepared by reference to one of the formats set out in section C of this Schedule, the directors of the company shall adopt the same format in preparing the accounts for subsequent years of the company unless in their opinion there are special reasons for a change.

(2) Particulars of any change in the format adopted in preparing a company's balance sheet or profit and loss account in accordance with paragraph 1 shall be disclosed, and the reasons for the change shall be explained in a note to the accounts in which the new format is first adopted.

**8.** (1) Any item required in accordance with paragraph 1 to be shown in a company's balance sheet or profit and loss account, may be shown in greater detail than required by the format adopted.

(2) A company's balance sheet or profit and loss account may include an item representing or covering the amount of any asset or liability, income or expenditure not otherwise covered by any of the items listed in the format adopted, but the following shall not be treated as assets in any company's balance sheet-

(a) preliminary expenses;

(b) expenses or commission on any issue of shares or debentures; and

(c) research and development costs.

(3) In preparing a company's balance sheet or profit and loss account, the directors of the company shall adapt the arrangement and headings and sub-headings otherwise required by paragraph 1 in respect of the items to which an Arabic number is assigned in the format adopted, in any case where the special nature of the company's business requires such adaptation.

(4) Items to which Arabic numbers are assigned in any of the formats set out in section B below may be combined in a company's accounts for any year if either-

(a) their individual amounts are not material to assessing the state of affairs or profit or loss of the company for that year; or

(b) the combination facilitates that assessment,

but in a case within paragraph (b) the individual amounts of any item so combined shall be disclosed in a note to the accounts.

(5) Subject to paragraph 9 (3) below, a heading or sub-heading corresponding to an item listed in the format adopted in preparing a company's balance sheet or profit and loss account shall not be included if there is no amount to be shown for that item in respect of the year to which the balance sheet or profit and loss account relates.

(6) Every profit and loss account of a company shall show the amount of the company's profit or loss on ordinary activities before taxation.

(7) Every profit and loss account of a company shall show separately as additional items-

(a) any amount set aside or proposed to be set aside to, or withdrawn or proposed to be withdrawn from, reserves; and

(b) the aggregate amount of any dividends paid and proposed.

9. (1) In respect of every item shown in a company's balance sheet or profit and loss account, the corresponding amount for the year immediately preceding that to which the balance sheet or profit and loss account relates shall also be shown.

(2) Where that corresponding amount is not comparable with the amount to be shown for the item in question in respect of the year to which the balance sheet or profit and loss account relates, the former amount shall be adjusted and particulars of the adjustment and the reasons for it shall be disclosed in a note to the accounts.

(3) Paragraph 8 (5) does not apply in any case where an amount can be shown for the item in question in respect of the year immediately preceding that to which the balance sheet or profit and loss account relates, and that amount shall be shown under the heading or sub-heading required by paragraph 1 for that item.

10. Amounts in respect of items representing assets or income may not be set off against amounts in respect of items representing liabilities or expenditure (as the case may be), or vice versa.

## SECTION C

### *The required formats for accounts*

#### *Preliminary*

11. References in this Part of this Schedule to the items listed in any of the formats set out below are to those items read together with any of the notes following the formats which apply to any of those items, and the requirement imposed by paragraph 1 to show the items, listed in any such format in the order adopted in the format, is subject to any provision in those notes for alternative positions for any particular items.

12. A number in brackets following any item in any of the formats set out below is a reference to the note of that number in the notes following the formats.

13. In the notes following the formats-

(a) the heading of each note gives the required heading or sub-heading for the item to which it applies and a reference to any letters and numbers assigned to that item in the formats set out below (taking a reference in the case of Format 2 of the balance sheet formats to the item listed under "assets" or under "liabilities" as the case may require); and

(b) references to a numbered format are to the balance sheet format or as the case may require to the profit and loss account format of that number set out below.

#### *Balance sheet formats*

### FORMAT I

A. *Called up share capital not paid* (1)

B. *Fixed assets*

1. Land and buildings.
2. Plant and machinery.

3. Fixtures, fittings, tools and equipment.
4. Construction-in-progress.
5. Pre-payment for stocks in-transit.

*C. Long-term investments*

1. Shares in group companies.
2. Loans to group companies.
3. Shares in related companies.
4. Loans to related companies.
5. Other investments other than loans.
6. Other loans.
7. Own shares (Treasury shares) (4).
8. Bonds, debentures and Federal Government Development Stocks.

*D. Deferred charges*

1. Development costs.
2. Concessions, patents, licences, franchise, trade marks and similar rights and assets (2).
3. Goodwill (3).
4. Pre-payment for services to be received.

*E. Current assets*

1. Stocks.
2. Raw materials and consumables.
3. Work-in-progress.
4. Finished goods and goods awaiting sale.
5. Pre-payment for stocks in transit.

*II Debtors (5)*

1. Trade debtors.
2. Amount owed by group companies.
3. Amount owed by related companies.

4. Other debtors.
5. Called up share capital not paid (1).
6. Pre-payments and accrued income.

III *Short-term investment*

1. Shares in group companies.
2. Own shares (Treasury shares) (4).
3. Other investments.

IV *Cash at bank and in hand*

F. *Prepayments and accrued income* (6)

G. *Creditors: amounts falling due within one year*

1. Debenture loans (7).
2. Bank loans and overdrafts.
3. Payments received on account (8).
4. Trade creditors.
5. Bills of exchange payable.
6. Amounts owed to group companies.
7. Amounts owed to related companies.
8. Other creditors including taxation (P.A.Y.E.) and National Provident Fund (social security) (9).
9. Accruals and deferred income (10).

H. *Net current assets (liabilities)* (11)

I. *Total assets less current liabilities*

J. *Creditors: amount falling due after more than one year*

1. Debenture loans (7).
2. Bank loans and overdrafts.
3. Payments received on account (8).
4. Trade creditors.
5. Bills of exchange payable.

6. Amounts owed to group companies.
7. Amounts owed to related companies.
8. Other creditors including taxation and social security (9).
9. Accruals and deferred income (10).

*K. Provisions for liabilities and charges*

1. Pensions and similar obligations.
2. Taxation, including deferred taxation.
3. Other provisions.

*L. Accruals and deferred income (10)*

*M. Capital and reserves*

*I Called up share capital (12)*

*II Share premium account*

*III Revaluation reserves*

*IV Other reserves*

1. Capital redemption reserve.
2. Reserve for own shares.
3. Reserves provided for by the articles of association.
4. Other reserves.

*V Profit and loss transferred from Profit and Loss Account or Income Statement*

*Balance sheet formats*

FORMAT 2

ASSETS

*A. Called up share capital not paid (1)*

*B. Tangible assets*

1. Land and buildings.
2. Plant and machinery.
3. Fixtures, fittings, tools and equipment.

4. Payments on account and assets in course of construction.

*C. Long-term investment*

1. Shares in group companies.
2. Loans to group companies.
3. Shares in related companies.
4. Loans to related companies.
5. Other investments other than loans.
6. Other loans.
7. Own shares (Treasury Shares) (4).

*D. Deferred charges*

1. Development costs.
2. Concessions, patents, licences, trade marks and similar rights and assets (2).
3. Goodwill (3).
4. Payments on account.

*E. Current assets*

*I Stocks*

1. Raw materials and consumables.
2. Work-in-progress.
3. Finished goods and goods awaiting sale.
4. Payments for stocks in transit.

*II Debtors (5)*

1. Trade debtors.
2. Amounts owed by group companies.
3. Amounts owed by related companies.
4. Other debtors.
5. Called up share capital not paid (1).
6. Pre-payments and accrued income (6).

II *Short-term investments*

1. Shares in group companies.
2. Own shares (Treasury Shares) (4).
3. Other investments.

IV *Cash at bank and in hand*

F. *Pre-payments and accrued income* (6)

CAPITAL AND LIABILITIES

A. *Capital and reserves*

I *Called up share capital* (12)

II *Share premium account*

III *Revaluation reserve*

IV *Other reserves*

1. Capital redemption reserves.
2. Reserve for own shares (12A).
3. Reserves provided for by the articles of association.
4. Other reserves.

V *Profit and loss account (Retained earnings)* (12B)

B. *Current liabilities*

1. Debenture loans (7).
2. Trade creditors.
3. Bank loans and overdrafts.
4. Payments received in advance (8).
5. Bills of exchange payable.

C. *Non-trade current liabilities*

1. Provision for pension and other similar obligations.
2. Provisions for taxation including deferred taxes, National Provident Fund (social security) (9).
3. Other provisions.



4. Accruals and deferred income (10).
5. Transactions between and within group:
  - (a) Amount owed to group companies.
  - (b) Amount owed to related companies.
  - (c) Others.

Portions of long-term liabilities due in the current period.

*D. Long-term liabilities*

1. Debenture loans (portions not due next year).
2. Bonds (portion not due next year).
3. Other long-term debts (portion not due next year).

*Notes on the balance sheet formats*

(1) Called up share capital not paid (Formats 1 and 2, items A and E II 5).

This item may be shown in either of the two positions given in Formats 1 and 2.

(2) Concessions, patents, licences, trade marks and similar rights and assets (Formats 1 and 2, item D 2).

Amounts in respect of assets shall only be included in a company's balance sheet under this item if either-

- (a) the assets were acquired for valuable consideration and are not required to be shown under goodwill; or
- (b) the assets in question were created by the company itself.

(3) *Goodwill* - (Formats 1 and 2, items D 3) - Amounts representing goodwill shall only be included to the extent that the goodwill was acquired for valuable consideration.

(4) *Own shares* - (Formats 1 and 2, items C 7 and E III 2) - The nominal value of the shares held shall be shown separately.

(5) *Debtors* - (Formats 1 and 2, items E II 1 to 6) - The amount falling due after more than one year shall be shown separately for each item included under debtors.

(6) *Pre-payments and accrued income* - (Formats 1 and 2, items E II 6 and F) - This item may be shown in either of the two positions given in Formats 1 and 2.

(7) *Debenture loans (7)* - (Format 1, items G1 and B1 and Format 2, item C 1) - The amount of any convertible loans shall be shown separately.

(8) *Payments received on account* - (Format 1, items G 3 and J 3 and Format 2, item C 3) - Payments received on account of orders shall be shown for each of these items in so far as they are not shown as deductions from stocks.

(9) *Other creditors including taxation* - (Format 1, items G 8 and J 8 and Format 2, item C 2) The amount for creditors in respect of taxation shall be shown separately from the amount for other creditors.

(10) *Accruals and deferred income* - (Format 1, items G 9, J 9 and L 1 and Format 2, item C 4)-The two positions given for this item in Format 1 at E 9 and H 9 are an alternative to the position at J, but if the item is not shown in a position corresponding to that at J, it may be shown in either or both of the other two positions (as the case may require).

The two positions given for this item in Format 2 are alternatives.

(11) *Net current assets (liabilities)* - (Format 1, item H) - In determining the amount to be shown for this item any amounts shown under pre-payments and accrued income shall be taken into account wherever shown.

(12) *Called up share capital* - (Format 1, item K 1 and Format 2, item A) - The amount of allotted share capital and the amount of called up share capital which has been paid up shall be shown separately.

(13) *Creditors* - Amounts falling due within one year and after one year shall be shown separately for each of these items and their aggregate shall be shown separately for all of these items.

#### *Profit and loss account formats*

##### FORMAT 1

(See note (17) below)

1. Turnover.
2. Cost of sales (14).
3. Gross profit or loss.
4. Distribution expenses (14).
5. Administration expenses (14).
6. Other operating income (14).
7. Income from shares in group companies.
8. Income from shares in related companies.
9. Income from other fixed asset investments (15).
10. Other interest receivable and similar income (15).
11. Amounts written off investments.
12. Accrued interest expense and similar charges.
13. Tax on profit or loss on ordinary activities.
14. Profit or loss on ordinary activities after taxation.

15. Extraordinary income.
16. Extraordinary charges.
17. Extraordinary profit or loss.
18. Tax on extraordinary profit or loss.
19. Other taxes under the above items.
20. Profit or loss for the financial year.
21. Earnings per share.
22. Dividend per share.

*Profit and loss account formats*

FORMAT 2

1. Sales or revenue.
2. Change in stocks of finished goods and in work-in-progress.
3. Own work capitalised.
4. Other operating income.
5. (a) Raw materials and consumables.  
(b) Other external charges.
6. Staff costs:  
(a) wages and salaries;  
(b) other pension costs.
7. (a) Depreciation of fixed assets, depletion and amortisation of wasting and intangible assets;  
(b) Exceptional amounts written off current assets.
8. Other operating charges.
9. Income from shares in group companies.
10. Income from shares in related companies.
11. Income from other fixed asset investments (15).
12. Other interest receivable and similar income (15).
13. Amounts written off investments.

14. Interest payable and similar charges (16).
15. Tax on profit or loss on ordinary activities.
16. Profit or loss on ordinary activities after taxation.
17. Extraordinary income.
18. Extraordinary charges.
19. Extraordinary profit or loss.
20. Tax on extraordinary profit or loss.
21. Other taxes not shown under the above item.
22. Profit or loss for the current year transferred to Retained Earnings or Reserve.

*Profit and loss account formats*

FORMAT 3

(See note (17) below)

*A. Charges*

1. Cost of sales (14).
2. Distribution costs (14).
3. Administrative expenses (14).
4. Amounts written off investments.
5. Interest payable and similar charges (16).
6. Tax on profit or loss on ordinary activities.
7. Profit or loss on ordinary activities after taxation.
8. Extraordinary charges.
9. Tax on extraordinary profit or loss.
10. Other taxes not shown under the above items.
11. Profit or loss for the financial year.

*B. Income*

1. Turnover.
2. Other operating income.

3. Income from shares in group companies.
4. Income from shares in related companies.
5. Income from other fixed asset investments (15).
6. Other interest receivable and similar income (15).
7. Profit or loss on ordinary activities after taxation.
8. Extraordinary income.
9. Profit or loss for the financial year.

*Profit and loss account formats*

FORMAT 4

*A. Charges*

1. Reduction in stocks of finished goods and in work-in-progress.
2. (a) Raw materials and consumables;  
(b) Other external charges.
3. Staff costs:  
(a) wages and salaries;  
(b) other pension costs.
4. (a) Depreciation and other amounts written off tangible and intangible fixed assets;  
(b) Exceptional amounts written off current assets.
5. Other operating charges.
6. Amounts written off investments.
7. Interest payable and similar charges (16).
8. Tax on profit or loss on ordinary activities.
9. Profit or loss on ordinary activities after taxation.
10. Extraordinary charges.
11. Tax on extraordinary profit or loss.
12. Other taxes not shown under the above items.
13. Profit or loss for the financial year.

B. *Income*

1. Turnover.
2. Increase in stocks of finished goods and in work-in-progress.
3. Own work capitalised.
4. Other operating income.
5. Income from shares in group companies.
6. Income from shares in related companies.
7. Income from other fixed asset investments (15).
8. Other interest receivable and similar income (15).
9. Profit or loss on ordinary activities after taxation.
10. Extraordinary income.
11. Profit or loss for the financial year.

*Notes on the profit and loss account format*

(14) *Cost of sales: distribution costs: administrative expenses* - (Format 1, items 2, 4 and 5 and Format 3, items A 1, 2 and 3) - These items shall be stated after taking into account any necessary provisions for depreciation or diminution in value of assets.

(15) *Income from other fixed asset investments: other interest receivable and similar income* - (Format 1, items 9 and 10: Format 2, items 11 and 12: Format 3, items B 5 and 6: Format 4, items B 7 and 8) - Income and interest derived from group companies shall be shown separately from income and interest derived from other sources.

(16) *Interest payable and similar charges* - (Format 1, item 12: Format 2, item 14: Format 3, item A 5: Format 1, item A 7) - The amount payable to group companies shall be shown separately.

(17) *Formats 1 and 3* - The amount of any provisions for depreciation and diminution in value of tangible and intangible fixed assets falling to be shown under items 7 (a) and A 4 (a) respectively in Formats 2 and 4, shall be disclosed in a note to the accounts in any case where the profit and loss account is prepared by reference to Format 1 or Format 3.

PART II

*Accounting principles and rules*

SECTION A

*Accounting Principles*

*Preliminary*

**14.** Subject to paragraph 15, the amounts to be included in respect of all items shown in a company's financial statements shall be determined in accordance with generally accepted accounting principles, and with the accounting standards laid down from time to time by the Nigerian Accounting Standards Board.

*Departure from the accounting principles*

**15.** If it appears to the directors of a company that there are special reasons for departing from any of the principles stated above in preparing the company's financial statements in respect of any financial year they may do so, but particulars of the departure, the reasons for it and its effect shall be given in a note to the accounts.

**SECTION B**

*Historical cost accounting rules*

*Preliminary*

**16.** Subject to section C of this Part of this Schedule, the amounts to be included in respect of all items shown in a company's financial statements shall be determined in accordance with the rules set out in paragraphs 17-28.

*Fixed assets*

**17.** Subject to any provision for depreciation or diminution in value made in accordance with paragraph 18 or 19, the amount to be included in respect of any fixed asset shall be its purchase price or production cost.

**18.** In the case of any fixed asset which has a limited useful economic life, the amount of-

(a) its purchase price or production cost; or

(b) where it is estimated that any such assets will have a residual value at the end of the period of its useful economic life, its purchase price or production cost less that estimated residual value,

shall be reduced by provisions for depreciation calculated to write off that amount systematically over the period of the asset's useful economic life.

**19.** (1) Where a fixed asset investment of a description falling to be included under item B III of either the balance sheet formats set out in Part I of this Schedule had diminished in value, provisions for diminution in value may be made in respect of it and the amount to be included in respect of it may be reduced accordingly; and any such provisions which are not shown in the profit and loss account shall be disclosed (either separately or in aggregate) in a note to the accounts.

(2) Provisions for diminution in value shall be made in respect of any fixed asset which had diminished in value if the reduction in its value is expected to be permanent (whether its useful economic life is limited or not), and the amount to be included in respect of it shall be reduced accordingly; and any such provisions which are not shown in the profit and loss account, shall be disclosed (either separately or in aggregate) in a note to the accounts.

(3) Where the reasons for which any provision was made in accordance with sub-paragraph (1) or (2) have ceased to apply to any extent, that provision shall be written back to the extent that it is no longer necessary; and any

amounts written back in accordance with this sub-paragraph which are not shown in the profit and loss account, shall be disclosed (either separately or in aggregate) in a note to the accounts.

*Rules for determining particular fixed asset items*

**20.** (1) Notwithstanding that an item in respect of "development costs" is included under "fixed assets" in the balance sheet formats set out in Part I of this Schedule, an amount may only be included in a company's balance sheet in respect of development costs in special circumstances.

(2) If any amount is included in a company's balance sheet in respect of development costs the following information shall be given in a note to the accounts-

(a) the period over which the amount of those costs originally capitalised is being or is to be written off; and

(b) the reason for capitalising the development costs in question.

**21.** (1) The application of paragraphs 17 to 19 in relation to goodwill (in any case where goodwill is treated as an asset) is subject to the following provisions of this paragraph.

(2) The amount of the consideration for goodwill acquired by a company shall be reduced by provision for amortisation calculated to write off that amount systematically over a period of five years or less as may be determined by the directors of the company.

(3) In any case where any goodwill acquired by a company is shown or included as an asset in the company's balance sheet, the period chosen for writing off the consideration for that goodwill and the reasons for choosing that period shall be disclosed in a note to the accounts.

*Current assets*

**22.** Subject to paragraph 23, the amount to be included in respect of any current asset shall be its purchase price or production cost.

**23.** (1) If the net realisable value of any current asset is lower than its purchase price or production cost, the amount to be included in respect of that asset shall be the net realisable value.

(2) Where the reasons for which any provision for diminution in value was made in accordance with sub-paragraph (1) have ceased to apply to any extent, that provision shall be written back to the extent that it is no longer necessary.

*Miscellaneous and supplementary provision*

*Excess of money owed over value received as an asset item*

**24.** (1) Where the amount repayable on any debt owed by a company is greater than the value of the consideration received in the transaction giving rise to the debt, the amount of the difference may be treated as an asset.

(2) Where any such amount is so treated-



(a) it shall be written off reasonable amounts each year and must be completely written off before repayment of the debt; and

(b) if the current amount is not shown as a separate item in the company's balance sheet it must be disclosed in a note to the accounts.

*Assets included at a fixed amount*

**25.** (1) Subject to the following sub-paragraph assets which fall to be included-

(a) amongst the fixed assets of a company under the item "tangible assets"; or

(b) amongst the current assets of a company under the item "raw material and consumables",  
may be included at a fixed quantity and value.

(2) Sub-paragraph (1) applies to assets of a kind which are constantly being replaced, where-

(a) their overall value is not material to assessing the company's state of affairs; and

(b) their quantity, value and composition are not subject to material variation.

*Determination of purchase price or production cost*

**26.** (1) The purchase price of an asset shall be determined by adding to the actual price paid any expenses incidental to its acquisition.

(2) The production cost of an asset shall be determined by adding to the purchase price of the raw materials and consumables used the amount of the costs incurred by the company which are directly attributable to the production of that asset.

(3) In addition, there may be included in the production cost of an asset-

(a) a reasonable proportion of the costs incurred by the company which are only indirectly attributable to the production of that asset, but only to the extent that they relate to the period of production; and;

(b) interest on capital borrowed to finance the production of that asset, to the extent that it accrues in respect of the period of production:

Provided, however, in a case within paragraph (b) above, that the inclusion of the interest in determining the cost of that asset and the amount of the interest so included is disclosed in a note to the accounts.

(4) In the case of current assets distribution costs may not be included in production costs.

**27.** (1) Subject to the qualification mentioned below, the purchase price or production cost of-

(a) any assets which fall to be included under any item shown in a company's balance sheet under the general item "stocks"; and

(b) any assets which are tangible assets (including investments),

may be determined by the application of any of the methods mentioned in sub-paragraph (2) below in relation to any such assets of the same class.

The method chosen must be one which appears to the directors to be appropriate in the circumstances of the company.

(2) Those methods are-

- (a) the method known as "first in, first out" (FIFO);
- (b) the method known as "last in, first out" (LIFO);
- (c) a weighted average price; and
- (d) any other method similar to any of the methods mentioned above.

(3) Where in the case of any company-

- (a) the purchase price or production cost of assets falling to be included under any item shown in the company's balance sheet has been determined by the application of any method permitted by this paragraph; and
- (b) the amount shown in respect of that item differs materially from the relevant alternative amount given below in this paragraph,

the amount of the difference shall be disclosed in a note to the accounts.

(4) Subject to sub-paragraph (5) below, for the purposes of sub-paragraph (3) (b) above, the relevant alternative amount, in relation to any item shown in a company's balance sheet, is the amount which would have been shown in respect of that item if assets of any class included under that item at an amount determined by any method permitted by this paragraph had instead been included at their replacement cost as at the balance sheet date.

(5) The relevant alternative amount may be determined by reference to the most recent actual purchase price or production cost before the balance sheet date of the assets of any class included under the item in question instead of by reference to their replacement cost as at that date, but only if the former appears to the directors of the company to constitute the more appropriate standard of comparison in the case of assets of that class.

(6) For the purposes of this paragraph, assets of any description shall be regarded as tangible if assets of that description are substantially indistinguishable one from another.

*Substitution of original stated amount where price or cost unknown*

**28.** Where there is no record of the purchase price or production cost of any assets of a company or of any price, expenses or costs relevant for determining its purchase price or production cost in accordance with paragraph 26, or any such record cannot be obtained without unreasonable expense or delay, its purchase price or production cost shall be taken for the purposes of paragraph 17 to 23 to be the value record of its value made on or after its acquisition or production by the company.

SECTION C

*Alternative accounting rules*

*Preliminary*

**29.** (1) The rules set out in section B are referred to below in this Schedule as the historical cost accounting rules.

(2) Those rules, with the omission of paragraph 16, 21 and 25 to 28, are referred to below in this Part of this Schedule as the depreciation rules; and references below in this Schedule to the historical cost accounting rules do not include the depreciation rules as they apply by virtue of paragraph 32.

**30.** Subject to paragraph 32 to 34, the amount to be included in respect of assets of any description mentioned in paragraph 26 may be determined on any basis so mentioned.

*Alternative accounting rules*

**31.** (1) Intangible fixed assets, other than goodwill, may be included at their current cost.

(2) Tangible fixed assets may be included at a market value determined as at the date of their valuation or at their current cost.

(3) Investments of any description falling to be included under item B III of either of the balance sheet formats set out in Part I of this Schedule may be included either-

(a) at a market value determined as at the date of their last valuation; or

(b) at a value determined on any basis which appears to the directors to be appropriate in the circumstances of the company,

but in the latter case particulars of the method of valuation adopted and of the reasons for adopting it shall be disclosed in a note to the accounts.

(4) Investments of any description falling to be included under item C III of either of the balance sheet formats set out in Part I of this Schedule may be included at their current cost.

(5) Stocks may be included at their current cost.

*Application of the depreciation rules*

**32.** (1) Where the value of any assets of a company is determined on any basis mentioned in paragraph 31, that value shall be, or (as the case may require) be the starting point for determining, the amount to be included in respect of that asset in the company's accounts, instead of its purchase price or production cost or any value previously so determined for that asset; and the depreciation rules shall apply accordingly in relation to any such asset with the substitution for any reference to its purchase price or production cost of a reference to the value most recently determined for that asset on any basis mentioned in paragraph 31.

(2) The amount of any provision for depreciation required in the case of any fixed asset by paragraph 18 or 19 as it applies by virtue of sub-paragraph (1) is referred to below in this paragraph as

the adjusted amount, and the amount of any provision which would be required by that paragraph in the case of that asset according to the historical cost accounting rules, is referred to as the historical cost amount.

(3) Where sub-paragraph (1) applies in the case of any fixed asset, the amount of any provision for depreciation in respect of that asset-

(a) included in any item shown in the profit and loss account in respect of amounts written off assets of the description in question; or

(b) taken into account in stating any item so shown which is required by note (14) of the notes on the profit and loss account formats set out in Part I of this Schedule to be stated after taking into account any necessary provisions for depreciation or diminution in value of assets included under it,

may be the historical cost amount instead of the adjusted amount provided that the amount of any difference between the two is shown separately in the profit and loss account or in a note to the accounts.

*Additional information to be provided in case of departure from historical costs accounting rules*

**33.** (1) This paragraph applies where the amounts to be included in respect of assets covered by any items shown in a company's accounts have been determined on any basis mentioned in paragraph 31.

(2) The items affected and the basis of valuation adopted in determining the amounts of the assets in question in the case of such item shall be disclosed in a note to the accounts.

(3) In the case of each balance sheet item affected (except stocks) either-

(a) the comparable amounts determined according to the historical cost accounting rules; or

(b) the differences between those amounts and the corresponding amounts actually shown in the balance sheet in respect of that item,

shall be shown separately in the balance sheet or in a note to the accounts.

(4) In sub-paragraph (3) above references in relation to any item to the comparable amounts determined as there mentioned are references to-

(a) the aggregate amount which would be required to be shown in respect of that item if the amounts to be included in respect of all the assets covered by that item were determined according to the historical cost accounting rules; and

(b) the aggregate amount of the cumulative provisions for depreciation or diminution in value which would be permitted or required in determining those amounts according to those rules.

Revaluation reserve

**34.** (1) With respect to any determination of the value of an asset of a company on any basis mentioned in paragraph 31, the amount of any profit or loss arising from that determination (after allowing, where appropriate, for any provisions for depreciation or diminution in value made otherwise than by reference to the value to be determined and any adjustments of any such provisions made in the light of that determination) shall be credited or (as the case may be) debited to a separate reserve ("the revaluation reserve").

(2) The amount of the revaluation reserve shall be shown in the company's balance sheet under a separate sub-heading in the position given for the item "revaluation reserve" in Format 1 or 2 of the balance sheet formats set out in Part 1 of this Schedule, but need not be shown under that name.

(3) The revaluation reserve shall be reduced to the extent that the amounts standing to the credit of the reserve are in the opinion of the directors of the company no longer necessary for the purpose of the accounting policies adopted by the company; but an amount may only be transferred from the reserve to the profit and loss account if either-

(a) the amount in question was previously charged to that account; or

(b) it represents realised profit.

(4) The treatment for taxation purposes of amounts credited or debited to the revaluation reserve shall be disclosed in a note to the accounts.

### PART III

#### Notes to the accounts

##### Preliminary

**35.** Any information required in the case of any company by the following provisions of this Part of this Schedule shall (if not given in the company's accounts) be given by way of a note to those accounts.

##### *Disclosure of accounting policies*

**36.** The accounting policies adopted by the company in determining the amounts to be included in respect of items shown in the balance sheet and in determining the profit or loss of the company shall be stated (including such policies with respect to the depreciation and diminution in value of assets).

##### *Information supplementing the balance sheet*

**37.** Paragraphs 38 to 50 require information which either supplement the information given with respect to any particular items shown in the balance sheet or is otherwise relevant to assessing the company's state of affairs in the light of the information so given.

##### *Share capital and debentures*

**38.** (1) The following information shall be given with respect to the company's share capital-

(a) the authorised share capital; and

(b) where shares of more than one class have been allotted, the number and aggregate nominal value or shares of each class allotted.

(2) In the case of any part of the allotted share capital that consists of redeemable shares, the following information shall be given-

(a) the earliest and latest dates on which the company has power to redeem those shares;

(b) whether those shares must be redeemed in any event or are liable to be redeemed at the option of the company or of the shareholder; and

(c) whether any (and, if so, what) premium is payable on redemption.

39. (1) If the company has allotted any shares during the financial year, the following information shall be given-

(a) the reason for making the allotment;

(b) the classes of shares allotted; and

(c) as respects each class of shares, the number allotted, their aggregate nominal value, and the consideration received by the company for the allotment.

(2) With respect to any contingent right to the allotment of shares in the company, the following particulars shall be given-

(a) the number, description and amount of the shares in relation to which the right is exercisable;

(b) the period during which it is exercisable;

(c) the price to be paid for the shares allotted.

(3) In sub-paragraph (2) above "**contingent right to the allotment of shares**" means any option to subscribe for shares and any other right to require the allotment of shares and to any person whether arising on the conversion into shares of securities of any other description or otherwise.

40. (1) If the company has issued any debentures during the financial year to which the accounts relate, the following information shall be given-

(a) the reason for making the issue;

(b) the classes of debentures issued; and

(c) as respects each class of debentures, the amount issued and the consideration received by the company for the issue.

(2) Particulars of any redeemed debentures which the company has power to re-issue shall also be given.

(3) Where any of the company's debentures are held by a nominee of or trustee for the company, the nominal amount of the debentures and the amount at which they are stated in the accounting records kept by the company in accordance with section 331 of this Act shall be stated.

#### *Fixed assets*

41. (1) In respect of each item which is or would but for paragraph 8 (4) (b) be shown under the general item "fixed assets" in the company's balance sheet, the following information shall be given-

(a) the appropriate amounts in respect of that item as at the date of the beginning of the financial year and as at the balance sheet date respectively;

(b) the effect on any amount shown in the balance sheet in respect of that item of-

(i) any revision of the amount in respect of any asset included under that item made during that year on any basis mentioned in paragraph 31;

(ii) acquisitions during that year of any assets;

(iii) disposals during that year of any assets; and

(iv) any transfer of assets of the company to and from that item during that year.

(2) The reference in sub-paragraph (1) (a) to the appropriate amounts in respect of any item as at any date there mentioned, is a reference to amounts representing the aggregate amounts determined, as at that date, in respect of assets falling to be included under that item on either of the following bases, that is to say-

(a) on the basis of purchase price or production cost (determined in accordance with paragraphs 21 and 27); or

(b) on any basis mentioned in paragraph 31, (leaving out of account in either case any provision for depreciation or diminution in value).

(3) In respect of each item within sub-paragraph (1)-

(a) the cumulative amount of provisions for depreciation or diminution in value of assets included under that item as at each date mentioned in sub-paragraph (1) (a);

(b) the amount of any such provisions made in respect of the financial year;

(c) the amount of any adjustment made in respect of any such provisions during that year in consequence of the disposal of any assets; and

(d) the amount of any other adjustments made in respect of any such provisions during that year,

shall also be stated.

**42.** Where any fixed assets of the company, other than listed investments, are included under any item shown in the company's balance sheet at an amount determined on any basis mentioned in paragraph 31, the following information shall be given-

(a) the years (so far as they are known to the directors) in which the assets were severally valued and the several values; and

(b) in the case of assets that have been valued during the financial year, the name of the persons who valued them or particulars of their qualification for doing so and (whichever is stated) the bases of valuation used by them.

**43.** In relation to any amount which is or would but for paragraph 8 (4) (b) be shown in respect of the item "land and buildings" in the company's balance sheet, there shall be stated-

(a) how much of the amount is ascribable to land held under statutory right of occupancy and how much to land held under a sublease; and

(b) how much of the amount ascribable to land held under a sublease is ascribable to land held on long lease and how much to land held on short lease.

#### *Investments*

**44.** (1) In respect of the amount of each item which is or would for paragraph 8 (4) (b) be shown in the company's balance sheet under the general item "investments" (whether as fixed assets or as current assets) there shall be stated-

- (a) how much of that amount is ascribable to listed investments; and
  - (b) how much of any amount so ascribable is ascribable to investments as respects which there has been granted a listing on a recognised stock exchange and how much to other listed investments.
- (2) Where the amount of any listed investments is stated for any item in accordance with sub-paragraph (1) (a), the following amounts shall also be stated-
- (a) the aggregate market value of those investments where it differs from the amount so stated; and
  - (b) both the market value and the stock exchange value of any investments of which the former value is, for the purposes of the accounts, taken as being higher than the latter.

*Reserves and provisions*

**45.** (1) Where any amount is transferred-

- (a) to or from any reserves; or
- (b) to any provisions for liabilities and charges; or
- (c) from any provisions for liabilities and charges otherwise than for the purpose for which the provision was established,

and the reserves or provisions are or would but for paragraph 8 (4) (b) be shown as separate items in the company's balance sheet, the information mentioned in the following sub-paragraph shall be given in respect of the aggregate of reserves or provisions included in the same item.

(2) That information is-

- (a) the amount of the reserves or provisions as at the date of the beginning of the year and as at the balance sheet date respectively;
- (b) any amount transferred to or from the reserves or provisions during that year; and
- (c) the source and application respectively of any amount so transferred.

(3) Particulars shall be given of each provision included in the item "other provisions" in the company's balance sheet in any case where the amount of that provision is material.

*Provision for taxation*

**46.** The amount of any provisions for taxation other than deferred taxation shall be stated.

*Details of indebtedness*

**47.** (1) In respect of each item shown under "creditors" in the company's balance sheet there shall be stated-

- (a) the aggregate amount of any debts included under that item which are payable or repayable otherwise than by instalments and fall due for payment or repayment after the end of the period of five years beginning with the day next following the end of the financial year; and



(b) the aggregate amount of any debts so included which are payable or repayable by instalments and any of which fall due for payment after the end of that period,

and in the case of debts within paragraph (a) above, the aggregate amount of instalments falling due after the end of that period shall also be disclosed for each such item.

(2) Subject to sub-paragraph (3), in relation to each debt falling to be taken into account under sub-paragraph (1), the terms of payments or repayment and the rate of any interest payable on debt shall be stated.

(3) If the number of debts is such that, in the opinion of the directors, compliance with sub-paragraph (2) would result in a statement of excessive length, it shall be sufficient to give a general indication of the terms of payment or repayment and the rates of any interest payable on the debts.

(4) In respect of each item shown under "creditors" in the company's balance sheet there shall be stated-

(a) the aggregate amount of any debts included under that item in respect of which any security has been given by the company; and

(b) an indication of the nature of the securities so given.

(5) References above in this paragraph to an item shown under "creditors" in the company's balance sheet include references where amounts falling due to creditors within one year and after more than one year are distinguished in the balance sheet-

(a) in a case within sub-paragraph (1), to an item shown under the latter of those categories; and

(b) in a case within sub-paragraph (4), to an item shown under either of those categories,

and references to items shown under "creditors" include references to items which would, but for paragraph 8 (4) (b), be shown under that heading.

**48.** If any fixed cumulative dividends on the company's shares are in arrear, there shall be stated-

(a) the amount of the arrears; and

(b) the period for which the dividends or, if there is more than one class, each class of them is in arrears.

#### *Guarantee and other financial commitments*

**49.** (1) Particulars shall be given of any charge on the assets of the company to secure the liabilities of any other person, including where practicable, the amount secured.

(2) The following information shall be given with respect to any other contingent liability not provided for-

(a) the amount or estimated amount of that liability;

(b) its legal nature; and

(c) whether any valuable security has been provided by the company in connection with that liability and if so, what.

(3) There shall be stated, where practicable-

- (a) the aggregate amount or estimated amount of contracts for capital expenditure, so far as not provided for; and
- (b) the aggregate amount or estimated amount of capital expenditure authorised by the directors which has not been contracted for.

(4) Particulars shall be given of-

- (a) any pension commitments included under any provision shown in the company's balance sheet; and
- (b) any such commitments for which no provision has been made,

and where any such commitment relates wholly or partly to pensions payable to past directors of the company, separate particulars shall be given of that commitment so far as it relates to such pensions.

(5) Particulars shall also be given of any other financial commitments which-

- (a) have not been provided for; and
- (b) are relevant to assessing the company's state of affairs.

(6) Commitments within any of the preceding sub-paragraphs undertaken on behalf of or for the benefit of-

- (a) any holding company or fellow subsidiary of the company; or
- (b) any subsidiary of the company,

shall be stated separately from the other commitments within that sub-paragraph and commitments within paragraph (a) shall be stated separately from those within paragraph (b).

#### *Miscellaneous matters*

**50.** (1) Particulars shall be given of any case where the purchase price or production cost of any asset is for the first time determined under paragraph 28.

(2) Where any outstanding loans made under the authority of section 159 (3) (b) or (c) of this Act (various cases of financial assistance by a company for purchase of its own shares) are included under any item shown in the company's balance sheet, the aggregate amount of those loans shall be disclosed for each item in question.

(3) The aggregate amount which is recommended for distribution by way of dividend shall be stated.

#### *Information supplementing the profit and loss account*

**51.** Paragraphs 52 to 56 require information which either supplements the information given with respect to any particular items shown in the profit and loss account or otherwise provides particulars of income or expenditure of the company or of circumstances affecting the items shown in the profit and loss account.

#### *Separate statement of certain items of income and expenditure*

**52.** (1) Subject to the following provisions of this paragraph, each of the amounts mentioned below shall be stated.

(2) The amount of the interest on or any similar charges in respect of-

(a) bank loans and overdrafts, and loans made to the company (other than bank loans and overdrafts) which-

(i) are repayable otherwise than by instalments and fall due for repayment before the end of the period of five years beginning with the day next following the end of the financial year; or

(ii) are repayable by instalments the last of which falls due for payment before the end of that period; and

(b) loans of any other kind made to the company,

but this sub-paragraph shall not apply to interest or charges on loans to the company from group companies, but with that exception, it applies to interest or charges on all loans, whether made on the security of debentures or not.

(3) The amounts respectively set aside for redemption of share capital and for redemption of loans.

(4) The amount of income from lists investments.

(5) The amount of rents from land (after deduction of ground rents, rates and other outgoings).

This amount need only be stated if a substantial part of the company's revenue for the financial year consists of rents from land.

(6) The amount charged to revenue in respect of sums payable in respect of the hire of plant and machinery.

(7) The amount of the remuneration of the auditors (taking "**remuneration**" for the purposes of this sub-paragraph, as including any sums paid by the company in respect of the auditors' expenses).

#### *Particulars of Taxes*

**53.** (1) The basis on which the charge for Nigerian corporation tax and Nigerian income tax is computed shall be stated.

(2) Particulars shall be given of any special circumstances affecting liability in respect of taxation of profits, income or capital gains for the financial year or liability in respect of taxation of profits, income or capital gains for succeeding financial years.

(3) The following amount shall be stated-

(a) the amount of the charge for Nigerian corporation tax;

(b) if that amount would have been greater but for relief from double taxation, the amount which it would have been but for such relief;

(c) the amount of the charge for Nigerian income tax; and

(d) the amount of the charge for taxation imposed outside Nigeria profits, income and (so far as charged to revenue) capital gains,

and these amounts shall be stated separately in respect of the amount which is or would but for paragraph 8 (4) (b) be shown under the following items in the profit and loss account, that is to say "tax on profit or loss on ordinary activities" and "tax on extraordinary profit or loss."

*Particulars of turnover*

**54.** (1) If in the course of the financial year the company has carried on business of two or more lines that, in the opinion of the directors, differ substantially from each other, there shall be stated in respect of each line (describing it)-

(a) the amount of the turnover attributable to that line; and

(b) the amount of the profit or loss of the company before taxation which is in the opinion of the directors attributable to that line.

(2) If in the course of the financial year the company has supplied markets that, in the opinion of the directors, differ substantially from each other, the amount of the turnover attributable to each such market shall also be stated.

In this paragraph "**market**" means a market delimited by geographical bounds.

(3) In analysing for the purposes of this paragraph, the source, in terms of business or in terms of market, of turnover or, (as the case may be) of profit or loss, the directors of the company shall have regard to the manner in which the company's activities are organised.

(4) For the purposes of this paragraph-

(a) classes of business which, in the opinion of the directors, do not differ substantially from each other shall be treated as one class; and

(b) markets which, in the opinion of the directors, do not differ substantially from each other shall be treated as one market,

and any amounts properly attributable to one line of business or (as the case may be) to one market which are not material, may be included in the amount stated in respect of another.

*Particulars of staff*

**55.** (1) The following information shall be given with respect to the employees of the company-

(a) the average number of persons employed by the company in the financial year; and

(b) the average number of persons so employed within each category of persons employed by the company.

(2) The average number required by sub-paragraph (1) (a) or (b) shall be determined by dividing the relevant annual number by the number of weeks in the financial year.

(3) The relevant annual number shall be determined by ascertaining for each week in the financial year-

(a) for the purposes of sub-paragraph (1) (a), the number of persons employed under contracts of service by the company in that week (whether throughout the week or not);

(b) for the purposes of sub-paragraph (1) (b), the number of persons in the category in question of persons so employed,

and in either case, adding together all the weekly numbers.

(4) In respect of all persons employed by the company during the financial year who are taken into account in determining the relevant annual number for the purposes of sub-paragraph (1) (a), there shall be stated the aggregate amounts respectively of-

(a) wages and salaries paid or payable in respect of that behalf; and

(b) other pension costs so incurred,

save in so far as those amounts or any of them are stated in the profit and loss account.

(5) The categories of persons employed by the company by reference to which the number required to be disclosed by sub-paragraph (1) (b) is to be determined, shall be such as the directors may select, having regard to the manner in which the company's activities are organised.

#### *Miscellaneous matters*

**56.** (1) Where any amount relating to any preceding year is included in any item in the profit and loss account, the effect shall be stated.

(2) Particulars shall be given of any extraordinary income or charges arising in the year.

(3) The effect shall be stated of any transactions that are exceptional by virtue of size or incidence though they fall within the ordinary activities of the company.

#### *General*

**57.** (1) Where sums originally denominated in foreign currencies have been brought into account under any item shown in the balance sheet or profit and loss account, the basis on which those sums have been translated into Nigerian currency shall be stated.

(2) Subject to the following sub-paragraph, in respect of every item stated in a note to the accounts, the corresponding amount for the financial year immediately preceding that to which the accounts relate shall also be stated and where the corresponding amount is not comparable, it shall be adjusted and particulars of the adjustment and the reasons for it shall be given.

(3) Sub-paragraph (2) shall not apply in relation to any amount stated by virtue of any of the following provisions of this Act-

(a) section 339 as applying Parts I and II of the Third Schedule (proportion of share capital of subsidiaries and other bodies corporate held by the company, etc.);

(b) sections 340 and 341 and the Fourth Schedule to this Act (particulars of loans to directors; etc.); and

(c) paragraphs 41 and 45 above.

#### PART IV

*Special provisions where the company is a holding or subsidiary company*

*Company's own financial statements*

**58.** Where a company is a holding company or a subsidiary of another body corporate and any item required by Part I of this Schedule to be shown in the company's balance sheet in relation to group companies includes-

(a) amounts attributable to dealings with or interests in any holding company or fellow subsidiary of the company;  
or

(b) amounts attributable to dealings with or interests in any subsidiary of the company,

the aggregate amounts within paragraphs (a) and (b) respectively shall be shown as separate items, either by way of sub-division of the relevant item in the balance sheet or in a note to the company's accounts.

**59.** (1) Subject to the following sub-paragraph, where the company is a holding company, the number, description and amount of the shares in and debentures of the company held by its subsidiaries or their nominees shall be disclosed in a note to the company's accounts.

(2) Sub-paragraph (1) shall not apply in relation to any shares or debentures-

(a) in the case of which the subsidiary is concerned as personal representative; or

(b) in the case of which it is concerned as trustee,

provided that in the latter case neither the company nor any subsidiary of the company is beneficially interested under the trust, otherwise than by way of security only for the purposes of a transaction entered into by the ordinary course of a business which includes the lending of money.

The Second Schedule to this Act has effect for the interpretation of the reference in this sub-paragraph to a beneficial interest under a trust.

*Consolidated accounts of holding company and Subsidiaries*

**60.** Subject to paragraphs 62 and 65, the consolidated balance sheet and profit and loss account shall combine the information contained in the separate balance sheets and profit and loss accounts of the holding company and of the subsidiaries dealt with by the consolidated accounts, but with such adjustments (if any) as the directors of the holding company think necessary.

**61.** Subject to paragraphs 62 to 65, and to Part V of this Schedule, the consolidated accounts shall, in giving the information required by paragraph 60, comply so far as practicable with the requirements of this Schedule and with the other requirements of this Act as if they were the accounts of an actual company.

**62.** The following provisions of this Act, namely-

(a) section 339 as applying the Sixth Schedule, but only Parts II, III, V and VI of that Schedule; and

(b) sections 415 and 416 and the Sixth Schedule, so far as relating to accounts other than group accounts,

shall not, by virtue of paragraphs 60 and 61, apply for the purposes of the consolidated accounts.

**63.** Paragraph 61 is without prejudice to any requirement of this Act which applies (otherwise than by virtue of paragraph 61 or 62) to group accounts.

**64.** (1) Notwithstanding paragraph 61, the consolidated accounts prepared by a holding company may deal with an investment of any member of the group in the shares of any body corporate by way of the equity method of accounting in any case where it appears to the directors of the holding company that that body corporate is so closely associated with any member of the group as to justify the use of that method in dealing with investments by that or any other member of the group in the shares of that body corporate.

(2) In this paragraph, references to the group, in relation to consolidated accounts prepared by a holding company, are references to the holding company and the subsidiaries dealt with by the accounts.

**65.** (1) Notwithstanding paragraphs 60 and 61, paragraphs 17 to 19 and 21 shall not apply to any amount shown in the consolidated balance sheet in respect of goodwill arising on consolidation.

**66.** In relation to any subsidiaries of the holding company not dealt with by the consolidated accounts, paragraphs 58 and 59 shall apply for the purpose of those accounts as if those accounts were the accounts of an actual company of which they were subsidiaries.

*Group financial statements not prepared as consolidated financial statements*

**67.** Group financial statements which are not prepared as consolidated statements, together with any notes to those statements, shall give the same equivalent information as that required to be given by consolidated financial statements by virtue of paragraphs 60 to 66.

*Provisions of general application*

**68.** (1) This paragraph applies where the company is a holding company and either-

(a) does not prepare group accounts; or

(b) prepares group accounts which do not deal with one or more of its subsidiaries,

and references below in this paragraph to the company's subsidiaries shall be read in a case within paragraph (b) as references to such of the company's subsidiaries as are excluded from the group accounts.

(2) Subject to the following provisions of this paragraph-

(a) the reasons why the subsidiaries are not dealt with in group accounts; and

(b) a statement showing any qualification contained in the reports of the auditors of the subsidiaries on their accounts for their respective years ending with or during the year of the company, and any note or saving contained in those accounts to call attention to a matter which, apart from the note or saving, would properly have been referred to in such a qualification, in so far as the matter which is the subject of the qualification or note is not covered by the company's own accounts and is material from the point of view of its members, shall be given in a note to the company's accounts.

(3) Subject to the following provisions of this paragraph, the aggregate amount of the total investment of the holding company in the shares of the subsidiaries under the equity method of valuation shall be stated in a note to the company's financial statements.

(4) Sub-paragraph (3) shall not apply where the company is a wholly-owned subsidiary of another body corporate incorporated in Nigeria if there is indeed in a note to the company's accounts a statement that in the opinion of the directors of the company the aggregate value of the assets of the company consisting of shares in or amounts owing (whether on account of a loan or otherwise) from, the company's subsidiaries is not less than the aggregate of the amounts at which those assets are stated or included in the company's balance sheet.

(5) In so far as information required by any of the preceding provisions of this paragraph to be stated in a note to the company's accounts is not obtainable, a statement to that effect shall be given instead in a note to those accounts.

(6) The Commission may, on the application or with the consent of a company's directors, direct that in relation to any subsidiary, sub-paragraphs (2) and (3) shall not apply or shall apply only to such extent as may be provided by the direction.

(7) Where in any case within sub-paragraph (1) (b) the group accounts are consolidated accounts, references above in this paragraph to the company's accounts and the company's balance sheet respectively, shall be read as references to the consolidated accounts and the consolidated balance sheet.

**69.** Where a company has subsidiaries whose years did not end with that of the company, the following information shall be given in relation to each such subsidiary (whether or not dealt with in any group accounts prepared by the company) by way of a note to the company's accounts or (where group accounts are prepared) to the group accounts, that is to say-

(a) the reasons why the company's directors consider that the subsidiaries' years should not end with that of the company;

(b) the dates of which the subsidiaries' year ending last before that of the company respectively ended or the earliest and latest of those dates; and

(c) the date immediately following the last statements when the accounts will be consolidated or be re-classified where appropriate as investment properties (long time investments).

## PART V

### *Interpretation of Schedule*

**70.** The following paragraphs apply for the purposes of this Schedule and its interpretation.

#### *Assets: fixed or current*

**71.** Assets of a company are taken to be fixed assets if they are intended for use on a continuing basis in the company's activities and any assets not intended for such use shall be taken to be current assets.

#### *Balance sheet date*

**72. "Balance sheet date"** in relation to a balance sheet, means the date as at which the balance sheet was prepared.

#### *Capitalisation*



73. References to capitalising any work or costs are to treating that work or those costs as a fixed asset.

*Fellow subsidiary*

74. A body corporate is treated as a fellow subsidiary of another body corporate if both are subsidiaries of the same body corporate but neither is the other's.

*Group companies*

75. "**Group company**" in relation to any company, means any body corporate which is that company's subsidiary or holding company, or a subsidiary of that company's holding company.

*Historical cost accounting rules*

76. References to the historical cost accounting rules shall be read in accordance with paragraph 29.

*Leases*

77. (1) "**Long lease**" means a lease with respect to which the portion of the term for which it was granted remaining unexpired at the end of the year is-

(a) in case of a right of occupancy to land, not less than fifty years;

(b) in any other case, not less than twelve months.

(2) "**short lease**" means a lease which is not a long lease.

(3) "**lease**" includes an agreement for a lease.

*Listed investments*

78. "**Listed investment**" means an investment as respects which there has been granted a listing on a recognised stock exchange, or on any stock exchange of repute (other than a recognised stock exchange) outside Nigeria.

*Loans*

79. A loan is treated as falling due for repayment, and an instalment of a loan is treated as falling due for payment, on the earliest date on which the lender could require repayment or (as the case may be) payment, if he exercised all options and rights available to him.

*Materiality*

80. Amounts which in the particular context of any provision of this Schedule, the disclosure of which will influence the opinion of the reader or user of financial statements, and which are not material may be disregarded for the purposes of that provision.

*Notes to the accounts*

81. Notes to a company's accounts may be contained in the accounts or in a separate document annexed to the accounts.

*Provisions*

**82.** (1) References to provisions for depreciation or diminution in value of assets are to any amount written off by way of providing for depreciation or diminution in value of assets.

(2) Any reference in the profit and loss account formats set out in Part I of this Schedule to the depreciation of, or amounts written off, assets of any description is to any provision for depreciation or diminution in value of assets of that description.

**83.** References to provisions for liabilities or charges are to any amount retained as reasonably necessary for the purpose of providing for any liability or loss which is either likely to be incurred, or certain to be incurred, but uncertain as to amount or as to the date on which it will arise.

*Purchase price*

**84.** References (however expressed) to the purchase price of any asset of a company or of any raw materials or consumables used in the production of any such asset, include any consideration (whether in cash or otherwise) given by the company in respect of that asset or in respect of those materials or consumables (as the case may require). This includes the costs of putting it into condition ready for its intended use.

*Realised profits*

**85.** Without prejudice to-

(a) the construction of any other expression (where appropriate) by reference to accepted accounting principles or practice; or

(b) any specific provision for the treatment of profits of any description as realised,

it is hereby declared for the avoidance of doubt that references in this Schedule to realised profits, in relation to a company's accounts, are to such profits of the company's, fall to be treated as realised profits for the purposes of those accounts in accordance with principles generally accepted with respect to the determination, for accounting purposes, of realised profits at the time when accounts are prepared.

*Related companies*

**86.** (1) "**Related company**", in relation to any company, means any body corporate (other than one which is a group company in relation to that company) in which that company holds on a long-term basis a qualifying capital interest for the purpose of securing a contribution to that company's own activities by the exercise of any control or influence arising from that interest.

(2) In this paragraph "**qualifying capital interest**" means, in relation to any body corporate, an interest in shares comprised in the equity share capital of that body corporate of a class carrying rights to vote in all circumstances at general meetings of that body corporate.

(3) Where-

(a) a company holds a qualifying capital interest in a body corporate;

(b) a company exercises material influence in matters relating to dividends, commercial and financial policies; and

(c) the nominal value of any relevant shares in that body corporate held by that company is equal to twenty per cent or more of the nominal value of all relevant shares in that body corporate,

it shall be presumed to hold that interest on the basis and for the purpose mentioned in sub-paragraph (1), unless the contrary is shown.

(4) In sub-paragraph (2) "**relevant shares**" means, in relation to any body corporate, any such shares in that body corporate as are mentioned in sub-paragraph (c).

#### *Staff costs*

**87.** (1) "**Pension costs**" includes any (past or present) costs, other contributions by the company for the purposes of any pension scheme established for the purpose of providing pensions for persons employed by the company, any sums set aside for that purpose and any amounts paid by the company in respect of pensions without first being so set aside.

(2) Any amount stated in respect of either of the above items or in respect of the item "wages and salaries" in the company's profit and loss account shall be determined by reference to payments made or costs incurred in respect of all persons employed by the company during the year who are taken into account in determining the relevant annual number for the purposes of paragraph 55 (1) (a).

#### *Turnover*

**88.** "**Turnover**", in relation to a company, means the amounts derived from the provision of goods and services falling within the company's ordinary activities, after deduction of-

(a) trade discounts;

(b) value added tax; and

(c) any other taxes based on the amounts so derived.

### THIRD SCHEDULE

[Section 339.]

#### *Miscellaneous matters to be disclosed in notes to company financial statements*

##### PART I

#### *Particulars of subsidiaries*

**1.** If, at the end of the year, the company has subsidiaries there shall, in the case of each subsidiary, be stated-

(a) the name of the subsidiary; and

(i) if it is incorporated in Nigeria, the address of its registered office; and

(ii) if it is incorporated outside Nigeria, the country in which it is incorporated and the address of its registered office; and

(b) in relation to shares of each class of the subsidiary held by the company, the identity of the class and the proportion of the nominal value of the allotted shares of that class represented by the shares held.

2. The particulars required by paragraph 1 include, with reference to the proportion of the nominal value of the allotted shares of a class represented by shares held by the company, a statement of the extent (if any) to which it consists in shares held by, or by a nominee for, a subsidiary of the company and the extent (if any) to which it consists in shares held by, or by a nominee for, the company itself.

3. Paragraph 1 does not require the disclosure of information with respect to a body corporate which is the subsidiary of another and is incorporated outside Nigeria or, being incorporated in Nigeria, carries on business outside it if the disclosure would, in the opinion of the Minister, be harmful or jeopardizes national interest.

4. If, at the end of its financial year, the company has subsidiaries and the directors are of the opinion that the number of them is such that compliance with paragraph 1 would result in particulars of excessive length being given, compliance with that paragraph shall be required only in the case of the subsidiaries carrying on the business, the results of the carrying on of which (in the opinion of the directors), principally affected the amount of the profit or loss of the company and its subsidiaries or the amount of the assets of the company and its subsidiaries.

5. If advantage is taken of paragraph 4, there must be included in the statement required by this Part the information that it deals only with the subsidiaries carrying on such businesses as are referred to in that paragraph; and in that case section 339 (3) of this Act (subsequent disclosure with annual return) applies to the particulars given in compliance with paragraph 1, together with those which (but for the fact that advantage is so taken) would have to be so given.

6. For purposes of this Part, shares of a body corporate are treated as held, or not held, by another such body if they would by virtue of section 338 (4) of this Act be treated as being held or (as the case may be) not held by that other body for the purpose of determining whether the first-mentioned body is its subsidiary.

## PART II

### *Shareholding in companies, etc., other than subsidiaries*

7. If, at the end of a year, the company holds shares of any class comprised in the equity share capital of another body corporate (not being its subsidiary) exceeding in nominal value twenty per cent of the nominal value of the allotted shares of that class, there shall be stated-

(a) the name of that other body corporate; and-

(i) if it is incorporated in Nigeria and if it is registered in Nigeria, the part of Nigeria in which it is registered; and

(ii) if it is incorporated outside Nigeria, the country in which it is incorporated;

(b) the identity of the class and the proportion of the nominal value of the allotted shares of that class represented by the shares held;

(c) if the company also holds shares in that other body corporate or another class (whether or not comprised in its equity share capital), or of other classes (whether or not so comprised), the like particulars as respects that other class or (as the case may be) those other classes; and

(d) the accounting treatment, that is to say, the equity or costs.

**8.** If, at the end of its year, the company holds shares comprised in the share capital of another body corporate (not being its subsidiary) exceeding in nominal value one tenth of the allotted share capital of that other body, there shall be stated-

(a) with respect to that other body corporate, the same information as is required by paragraph 7 (a); and

(b) the identity of each class of such shares held and the proportion of the nominal value of the allotted shares of that class represented by the shares of that class held by the company.

**9.** If, at the end of its year, the company holds shares in another body corporate (not being its subsidiary) and the amount of all shares in it which the company holds (as stated or included in the company accounts) exceeds one tenth of the amount of the company's assets (as so stated), there shall be stated-

(a) with respect to the other body corporate, the same information as is required by paragraph 7 (a); and

(b) in relation to shares in that other body corporate of each class held, the identity of the class and the proportion of the nominal value of the allotted shares of that class represented by the shares held.

**10.** None of the foregoing provisions of this Part requires the disclosure by a company of information with respect to another body corporate if that other is incorporated outside Nigeria or, being incorporated in Nigeria, carries on business outside it if the disclosure would, in the opinion of the company's directors, be harmful to the business of the company or of that other body and the Minister agrees that the information need not be disclosed.

**11.** If, at the end of its year, the company falls within paragraph 7 or 8 in relation to more bodies corporate than one, and the number of them is such that, in the directors' opinion, compliance with either or both of those paragraphs would result in particulars of excessive length being given, compliance with paragraph 7 or (as the case may be) paragraph 8, is not required except in the case of bodies carrying on the business the results of the carrying on of which (in the directors' opinion) principally affected the amount of the profit or loss of the company or the amount of its assets.

**12.** If advantage is taken of paragraph 11, there shall be included in the statement dealing with the bodies last mentioned in that paragraph, the information that it deals with them; and section 339 (3) of this Act (subsequent disclosure in annual return) applies to the particulars given in compliance with paragraph 7 or 8 (as the case may be), together with those which, but, for the fact that advantage is so taken, would have to be so given.

**13.** For the purposes of this Part, shares of a body corporate are treated as held, or not held, by another such body if they would, by virtue of section 338 (4) of this Act (but on the assumption that paragraph (b) (ii) were omitted from that subsection) be treated as being held or (as the case may be), not held, by that other body for the purpose of determining whether the first-mentioned body is its subsidiary.

### PART III

#### *Financial information about subsidiaries*

**14.** If-

(a) at the end of its year the company has subsidiaries; and

(b) it is required by paragraph 1 in Part I above to disclose particulars with respect to any of those subsidiaries, the additional information specified below shall be given with respect to each subsidiary to which the requirement under paragraph 1 applies.

**15.** If-

(a) at the end of the year the company holds shares in another body corporate; and

(b) it is required by paragraph 8 in Part II above to disclose particulars with respect to that body corporate; and

(c) the shares held by the company in that body corporate exceed in nominal value fifty-one per cent of the allotted share capital of that body, the additional information specified below shall be given with respect to that body corporate.

**16.** The information required by paragraph 10, shall, in relation to any body corporate (whether a subsidiary of the company or not), contain the aggregate amount of the capital and reserves of that body corporate as at the end of its relevant year, and its profit or loss for that year; and for this purpose the relevant year is-

(a) if the year of the body corporate ends with that of the company giving the information in a note to its accounts, that financial year; and

(b) if not, the body corporate's financial year ending last before the end of the year of the company giving that information.

This is subject to the exceptions and other provisions in the next paragraph.

**17. (1)** The information otherwise required by paragraph 16 need not be given in respect of a subsidiary of a company if, either-

(a) the company is exempt under this Act from the requirement to prepare group accounts, as being at the end of its year the wholly-owned subsidiary of another body corporate incorporated in Nigeria; or

(b) the company prepares group accounts and-

(i) the accounts of the subsidiary are included in the group accounts; or

(ii) the investment of the company in the shares of the subsidiary is included in, or in a note to, the company's accounts by way of the equity method of valuation.

(2) That information need not be given in respect of another body corporate in which the company holds shares if the company's investment in those shares is included in, or in a note to, the accounts by way of the equity method of valuation.

(3) That information need not be given in respect of any body corporate if-

(a) that body is not required by any provision of this Act to deliver a copy of its balance sheet for its relevant year mentioned in paragraph 16, and does not otherwise publish that balance sheet in Nigeria or elsewhere; and

(b) the shares held by the company in that body do not amount to at least fifty-one per cent in nominal value of the body's allotted share capital.

(4) Information otherwise required by paragraph 16 need not be given if it is not material.

**18.** Where, with respect to any subsidiary of the company or any other body corporate, particulars which would otherwise be required by paragraph 1 in Part I or paragraph 8 in Part II of this Schedule to be stated in a note to the company's accounts are omitted by virtue of paragraph 4 or (as the case may be) paragraph 11, section 339 (3) of this Act (subsequent disclosure in next annual return) shall apply-

(a) to any information with respect to any other subsidiary or body corporate which is given in a note to the company's accounts in accordance with this Part; and

(b) to any information which would have been required by this Part to be given in relation to a subsidiary or other body corporate but for the exemption under paragraph 4 or 11.

**19.** For the purposes of this Part, shares of a body corporate shall be treated as held, or not held, by the company if they would, by virtue of section 338 (4) of this Act (but on the assumption that paragraph (b) (ii) were omitted from that subsection), be treated as being held or (as the case may be), not held by the company for the purpose of determining whether that body corporate is the company's subsidiary .

#### PART IV

##### *Identification of ultimate holding company*

**20.** If, at the end of its year, the company is the subsidiary of another body corporate, there shall be stated the name of the body corporate regarded by the directors as being the company's ultimate holding company and, if known to them, the country in which it is incorporated.

**21.** Paragraph 20 shall not require the disclosure by a company which carries on business outside Nigeria of information with respect to the body corporate regarded by the Minister as being its ultimate holding company if the disclosure would, in his opinion, be harmful to or jeopardise national interest.

#### PART V

##### *Chairman's and directors' emoluments, pensions and compensation for loss of office*

##### *Emoluments*

**22.** (1) There shall be shown the aggregate amount of the directors' emoluments. (2) This amount-

(a) includes any emoluments paid to or receivable by a person in respect of his services as director of the company or in respect of his services, while director of the company, as director of any subsidiary of it or otherwise in connection with the management of the affairs of the company or any subsidiary of it; and

(b) shall distinguish between emoluments in respect of services of a director, whether of the company or its subsidiary, and other emoluments.

(3) For the purposes of this paragraph, "**emolument**" in relation to a director, includes fees and percentages, any sums paid by way of expenses, allowances, (in so far as those sums are charged to Nigerian income tax), any contributions paid in respect of him under any pensions scheme and estimated money value of any other benefits received by him otherwise than in cash.

**23.** A company which is neither a holding company nor a subsidiary of another body corporate need not comply with paragraphs 24 to 27 below as respects a year in the case of which the amount shown in compliance with paragraph 22 above does not exceed ₦120,000.

**24.** (1) The following applies as respects the emoluments of the company's chairman, and for this purpose "**chairman**" means the person elected by the directors to be chairman of their meetings and includes a person, who, though not so elected, holds any office (however designated) which, in accordance with the company's constitution, carries with it functions substantially similar to those discharged by a person so elected.

(2) If one person has been chairman throughout the year, there shall be shown with respect to that person during the year, his emoluments so far as attributable to the period during which he was chairman, unless his duties as chairman were wholly or mainly discharged outside Nigeria.

(3) Otherwise, there shall be shown with respect to each person who has been chairman during the year, his emoluments so far as attributable to the period during which he was chairman, unless his duties as chairman were wholly or mainly discharged outside Nigeria.

**25.** (1) The following applies as respects the emoluments of directors.

(2) With respect to all directors (other than any who discharged their duties as such wholly or mainly outside Nigeria), there shall be shown-

(a) the number (if any) who had no emoluments or whose several emoluments amounted to not more than ₦10,000; and

(b) by reference to each pair of adjacent points on a scale whereon the lowest point is ₦10,000 and the succeeding ones are successive integral multiples of ₦10,000, the number (if any) whose several emoluments exceeded the lowest point but did not exceed the higher.

(3) If, of the directors (other than any who discharged their duties as such wholly or mainly outside Nigeria), the emoluments of each of two or more exceed the relevant amount, the emoluments of him (or them, in the case of equality) who had the greater or, as the case may be, the greatest, shall also be shown.

(4) If, of the directors (other than any who discharged their duties as such wholly or mainly outside Nigeria), the emoluments of each of two or more exceed the relevant amount, the emoluments of him (or them, in the case of equality) who had the greater or, as the case may be, the least, shall also be shown.

(5) The "**relevant amount**"-

(a) if one person has been chairman throughout the year, means the amount of his emoluments; and

(b) otherwise, means an amount equal to the aggregate of the emoluments, so far as attributable to the period during which he was chairman, of each person who has been chairman during the year.

**26.** There shall under paragraphs 24 and 25 be brought into account as emoluments of a person all such amounts (other than contributions paid in respect of him under a pension scheme) as in his case are to be included in the amount shown under paragraph 22.

*Emoluments waived*



**27.** (1) There shall be shown-

(a) the number of directors who have waived rights to receive emoluments which, but for the waiver, would have fallen to be included in the amount shown under paragraph 22; and

(b) the aggregate amount of those emoluments.

(2) For these purposes-

(a) it is assumed that a sum not receivable in respect of a period would have been paid at the time at which it was due to be paid;

(b) a sum not so receivable that was payable only on demand, being a sum the right to receive which has been waived, is deemed to have been due to be paid at the time of the waiver.

*Pensions of directors and past directors*

**28.** (1) There shall be shown the aggregate amount of directors' or past directors' pensions.

(2) This amount shall not include any pension paid or receivable under a pension scheme if the scheme is such that the contributions under it are substantially adequate for the maintenance of the scheme; but, subject to this, it includes any pension paid or receivable in respect of any such services of a director or past director as are mentioned in paragraph 22 (2) whether to or by him or, on his nomination or by virtue of dependence on or other connection with him, to or by any other person.

(3) The amount shown shall distinguish between pensions in respect of services as director, whether of the company or its subsidiary, and other pensions.

*Compensation to directors for loss of office*

**29.** (1) There shall be shown the aggregate amount of any compensation to directors or past directors in respect of loss of office.

(2) This amount-

(a) includes any sums paid to or receivable by a director or past director by way of compensation for the loss of office as director of the company or for the loss, while director of the company or on or in connection with his ceasing to be a director of it, or of any other office in connection with the management of the company's affairs or of any office as director or otherwise in connection with the management of the affairs of any subsidiary of the company; and

(b) shall distinguish between compensation in respect of the office of director, whether of the company or its subsidiary, and compensation in respect of other offices.

(3) References to compensation for loss of office includes sums paid as consideration for or in connection with a person's retirement from office.

*Supplementary*

**30.** (1) The following applies with respect to the amounts to be shown under paragraphs 22, 28 and 29.

(2) The amount in each case includes all relevant sums paid by or receivable from-

(a) the company; and

(b) the company's subsidiaries; and

(c) any other person,

except sums to be accounted for to the company or any of its subsidiaries, to past or present members of the company or any of its subsidiaries or any class of those members.

(3) The amount to be shown under paragraph 29 shall distinguish between the sums respectively paid by or receivable from the company, the company's subsidiaries and persons other than the company and its subsidiaries.

**31.** (1) The amounts to be shown for any year under paragraphs 22, 28 and 29 are the sums receivable in respect of that year (whenever paid) or, in the case of sums not receivable in respect of a period, the sums paid during that year.

(2) But where-

(a) any sums are not shown in a note to the accounts for the relevant year on the ground that the person receiving them is liable to account for them as mentioned in paragraph 30 (2), but the liability is thereafter wholly or partly released or is not enforced within a period of two years; or

(b) any sums paid by way of expenses allowance are charged to income tax after the end of the relevant year, those sums shall, to the extent to which the liability is released or not enforced or they are charged as mentioned above (as the case may be), be shown in a note to the first accounts in which it is practicable to show them, and shall be distinguished from the amounts to be shown apart from this provision,

**32.** Where it is necessary to do so for the purpose of making any distinction required by the preceding paragraphs in an amount to be shown in compliance with this Part, the directors may apportion any payments between the matters in respect of which these have been paid or are receivable in such manner as they think appropriate.

#### *Interpretation*

**33.** (1) The following shall apply for the interpretation of paragraphs 22 to 32.

(2) A reference to the company's subsidiary-

(a) in relation to a person who is or was, while a director of the company, a director also, by virtue of the company's nomination (direct or indirect) or any other body corporate includes, (subject to the following subparagraph) that body corporate, whether or not it is or was in fact the company's subsidiary; and

(b) for purposes of paragraphs 22 to 28 (including any provision of this Part referring to paragraph 22) is to a subsidiary at the time the services were rendered, and for purposes of paragraph 29, to a subsidiary immediately before the loss of office as director.

(3) The following definitions apply-

(a) "**pension**" includes any superannuation allowance, superannuation gratuity or similar payment;

(b) "**pension scheme**" means a scheme for the provision of pension in respect of services as director or otherwise which is maintained in whole or in part by means of contributions; and

(c) "**contribution**", in relation to a pension scheme, means any payment (including an insurance premium) paid for the purposes of the scheme by or in respect of persons rendering services in respect of which pensions will or may become payable under the scheme, except that it does not include any payment in respect of two or more persons if the amount paid in respect of each of them is not ascertainable.

#### *Supplementary*

**34.** This Part of this Schedule requires information to be given only so far as it is contained in the company's books and papers or the company has the right to obtain it from the persons concerned.

#### PART VI

##### *Particulars relating to number of employees remunerated at higher rates*

**35.** (1) There shall be shown by reference to each pair of adjacent points on a scale whereon the lowest point is ₦60,000 and the succeeding ones are successive integral multiples of ₦10,000 beginning with that in the case of which the multiplier is seven, the number (if any) of persons in the company's employment whose several emoluments exceeded the lower point but did not exceed the higher.

(2) The persons whose emoluments are to be taken into account for this purpose shall not include-

(a) directors of the company; or

(b) persons (other than directors of the company) who-

(i) if employed by the company throughout the financial year, worked wholly or mainly during that year outside Nigeria; or

(ii) if employed by the company for part only of that year, worked wholly or mainly during that part outside Nigeria.

**36.** (1) For these purposes, a person's emoluments include any paid to or receivable by him from the company, the company's subsidiaries and any other person in respect of his services as a person in the employment of the company or a subsidiary of it or as a director of a subsidiary of the company (except sums to be accounted for to the company or any of its subsidiaries).

(2) "**Emoluments**" here includes fees and percentages, any sums paid by way of expenses allowances in so far as those sums are charged to Nigerian income tax, and the estimated money value of any other benefits received by a person otherwise than in cash.

(3) The amounts to be brought into account for the purpose of complying with paragraph 35, are the sums receivable in respect of the year (whenever paid) or, in the case of sums not receivable sums in respect of a period, the sums paid during that year.

(4) But where-

(a) any sums are not brought into account for that year on the ground that the person receiving them is liable to account for them as mentioned in sub-paragraph (1), but the liability is wholly or partly released or is not enforced within a period of two years; or

(b) any sums paid to a person by way of expenses allowance, are charged to Nigerian income tax after the end of the year,

those sums shall, to the extent to which the liability is released or not enforced or they are charged as above mentioned (as the case may be), be brought into account for the purpose of complying with paragraph 25 on the first occasion on which it is practicable to do so.

**37. References in paragraph 36 to a company's subsidiary-**

(a) in relation to a person who is or was, while employed by the company, a director, by virtue of the company's nomination (direct or indirect), of any other body corporate, include that body corporate (but subject to the following sub-paragraph), whether or not it is or was in fact the company's subsidiary; and

(b) are to be taken as referring to a subsidiary at the time the services were rendered.

FOURTH SCHEDULE

[Sections 340 and 341.]

*Particulars in company financial statements of loan and other transactions  
favouring directors and officers*

PART 1

*Matters to be disclosed under section 340*

**1.** Group financial statements shall contain the particulars required by this Schedule of-

(a) any transaction or arrangement of a kind described in section 270 of this Act entered into by the company or by a subsidiary of the company for a person who at any time during the year was a director of the company or its holding company, or was connected with such a director;

(b) an agreement by the company or by a subsidiary of the company to enter into any such transaction or arrangement for a person who was at any time during the year a director of the company or its holding company, or was connected with such a director; and

(c) any other transaction or arrangement with the company or subsidiary of it in which a person who at any time during the year was a director of the company or its holding company had, directly or indirectly, a material interest.

**2.** The accounts prepared by a company other than a holding company shall contain the particulars required by this Schedule of-

(a) any transaction or arrangement of a kind described in section 270 of this Act entered into by the company for a person who at any time during the year was a director of it or of its holding company or was connected with such a director;

(b) an agreement by the company to enter into any such transaction or arrangement for a person who at any time during the year was a director of the company or its holding company or was connected with such a director; and

(c) any other transaction or arrangement with the company in which a person who, at any time during the year, was a director of the company or of its holding company had, directly or indirectly, a material interest.

**3.** (1) For purposes of paragraphs 1 (c) and 2 (c), a transaction or arrangement between a company and a director of it or of its holding company, or a person connected with such a director, is to be treated (if it would not otherwise be so), as a transaction, arrangement or agreement in which that director is interested.

(2) An interest in such a transaction or arrangement is not "material" for purposes of those sub-paragraphs if in the board's opinion it is not so; but this shall be without prejudice to the question whether or not such an interest is material in a case where the board have not considered the matter.

**"The board"** here means the directors of the company preparing the accounts, or a majority of those directors, but excluding in either case the director whose interest it is.

**4.** Paragraphs 1 and 2 shall not apply, for the purposes of accounts prepared by a company which is, or is the holding company of a recognised bank, in relation to a transaction or arrangement of a kind described in section 270 of this Act or an agreement to enter into such a transaction or arrangement, to which that recognised bank is a party.

**5.** Paragraphs 1 and 2 shall not apply in relation to the following transactions, arrangements and agreements-

(a) a transaction, arrangement or agreement between one company and another in which a director of the former or of its subsidiary or holding company is interested only by virtue of his being a director of the latter;

(b) a contract of service between a company and one of its directors or a director of its holding company, or between a director of a company and any of that company's subsidiaries; or

(c) a transaction, arrangement or agreement which was not entered into during the year and which did not subsist at any time during that year.

**6.** Paragraphs 1 and 2 shall apply whether or not-

(a) the transaction or arrangement was prohibited by section 270 of this Act;

(b) the person for whom it was made was a director of the company or was connected with a director of it at the time it was made;

(c) in the case of a transaction or arrangement made by a company which at any time during a financial year is a subsidiary of another company, it was a subsidiary of that other company at the time the transaction or arrangement was made.

**7.** Neither paragraph 1 (c) nor paragraph 2 (c) applies in relation to any transaction or arrangement if-

(a) each party to the transaction or arrangement which is a member of the same group of companies (meaning a holding company and its subsidiaries) as the company entered into the transaction or arrangement in the ordinary course of business; or

(b) the terms of the transaction or arrangement are not less favourable to any such party than it would be reasonable to expect if the interest mentioned in that sub-paragraph had not been an interest of a person who was a director of the company or of its holding company.

**8.** Neither paragraph 1 (c) nor paragraph 2 (c) applies in relation to any transaction or arrangement if-

(a) the company is a member of a group of companies (meaning a holding company and its subsidiaries); and

(b) either the company is a wholly-owned subsidiary or no body corporate (other than the company or a subsidiary of the company) which is a member of the group of companies, which includes the company's ultimate holding company, was a party to the transaction or arrangement; and

(c) the director in question was at some time during the relevant period associated with the company; and

(d) the material interest of the director in question in the transaction or arrangement would not have risen if he had not been associated with the company at any time during the relevant period.

*The particulars required by this Part*

**9.** (1) Subject to the next paragraph, the particulars required by this Part are those of the principal terms of the transaction, arrangement or agreement.

(2) Without prejudice to the generality of sub-paragraph (1), the following particulars are required-

(a) a statement of the fact either that the transaction, arrangement or agreement was made or subsisted (as the case may be) during the year;

(b) the name of the person for whom it was made and, where that person is or was connected with a director of the company or of its holding company, the name of that director;

(c) in a case where paragraph 1 (c) or 2 (c) applies, the name of the director with the material interest and the nature of that interest;

(d) in the case of a loan or an agreement for a loan or an arrangement within section 270 of this Act relating to a loan-

(i) the amount of the liability of the person to whom the loan was or was agreed to be made, in respect of principal and interest, at the beginning and at the end of the year;

(ii) the maximum amount of that liability during that year;

(iii) the amount of any interest which, having fallen due, has not been paid; and

(iv) the amount of any provision (within the meaning of the Second Schedule to this Act) made in respect of any failure or anticipated failure by the borrower to repay the whole or part of the loan or to pay the whole or part of any interest on it;

(e) in the case of a guarantee or security or an arrangement within section 270 of this Act relating to a guarantee or security-

(i) the amount for which the company (or its subsidiary) was liable under the guarantee or in respect of the security both at the beginning and at the end of the year;

(ii) the maximum amount for which the company (or its subsidiary) may become so liable; and

(iii) any amount paid and any liability incurred by the company (or its subsidiary) for the purpose of fulfilling the guarantee or discharging the security (including any loss incurred by reason of the enforcement of the guarantee or security); and

(f) in the case of any transaction, arrangement or agreement other than those mentioned in sub-paragraphs (d) and (e), the value of the transaction or arrangement or (as the case may be), the value to which the agreement relates.

**10.** In paragraph 9 (2) above, sub-paragraphs (c) to (f) shall not apply in the case of a loan or quasi-loan made or agreed to be made by a company to or for a body corporate which is either-

(a) a body corporate of which that company is a wholly-owned subsidiary; or

(b) a wholly-owned subsidiary of a body corporate of which that company is a wholly-owned subsidiary; or

(c) a wholly-owned subsidiary of that company, if particulars of that loan, quasi-loan or agreement for it would not have been required to be included in that company's annual accounts if the first-mentioned body corporate had not been associated with a director of that company at any time during the relevant period.

#### *Transactions excluded from section 340*

**11.** (1) In relation to a company's accounts for a year, compliance with this Part shall not be required in the case of transactions of a kind mentioned in the following sub-paragraph which are made by the company or a subsidiary of it for a person who at any time during that financial year was a director of the company or of its holding company, or was connected with such a director, if the aggregate of the values of each transaction, arrangement or agreement so made for that director or any person connected with him, less the amount (if any) by which the liabilities of the person for whom the transaction or arrangement was made has been reduced, did not at any time during the year exceed ~~£~~10,000.

(2) The transactions in question are-

(a) credit transactions;

(b) guarantees provided or securities entered into in connection with credit transactions;

(c) arrangements within section 270 of this Act relating to credit transactions;

(d) agreements to enter into credit transactions.

**12.** In relation to a company's accounts for a financial year, compliance with this Part shall not be required by virtue of paragraph 1 (c) or 2 (c) in the case of any transaction or arrangement with a company or any of its

subsidiaries in which a director of the company or its holding company had, directly or indirectly, a material interest if-

(a) the value of each transaction or arrangement within paragraph 1 (c) or 2 (c) (as the case may be) in which that director had (directly or indirectly) a material interest and which was made after the commencement of the year with the company or any of its subsidiaries; and

(b) the value of each such transaction or arrangement which was made before the commencement of the year less the amount (if any) by which the liabilities of the person for whom the transaction or arrangement was made have been reduced,

did not at any time during the year exceed in the aggregate ~~₹~~3,000 or, if more, did not exceed ~~₹~~19,000 or one per cent of the value of the net assets of the company preparing the accounts in question as at the end of the year, whichever is the less.

For this purpose, a company's net assets are the aggregate of its assets less the aggregate of its liabilities ("liabilities" to include any provision for liabilities or charges within paragraph 83 of the Second Schedule to this Act).

## PART II

### *Matters to be disclosed under section 341*

13. This Part of this Schedule shall apply in relation to the following classes of transactions, arrangements and agreements-

(a) loans, guarantees and securities relating to loans, arrangements of a kind described under section 270 of this Act relating to loans and agreements to enter into any of the foregoing transactions and agreements;

(b) quasi-loans, guarantees and securities relating to quasi-loans, arrangements of a kind described in either of those subsections relating to quasi-loans and agreements to enter into any of the foregoing transactions and arrangements;

(c) credit transactions, guarantees and securities relating to credit transactions and arrangements of a kind described in either of those subsections relating to credit transactions and agreements to enter into any of the foregoing transactions and arrangements.

**14. (1)** To comply with this Part of this Schedule, the accounts must contain a statement, in relation to transactions, arrangements and agreements, made as mentioned in section 270 (1) of this Act-

(a) the aggregate amounts outstanding at the end of the financial year under transactions, arrangements and agreements within sub-paragraphs (a), (b) and (c) respectively of paragraph 13 above; and

(b) the number of officers for whom the transactions, arrangements and agreements falling within each of those sub-paragraphs, were made.

(2) This paragraph does not apply to transactions, arrangements and agreements made by the company or any of its subsidiaries for an officer of the company if the aggregate amount outstanding at the end of the year under such transactions, arrangements, and agreement do not exceed ~~₹~~5,000.



Fifth Schedule

[Section 342.]

*Matters to be dealt with in directors' report*

PART I

*Matters of a general nature*

*Asset values*

1. (1) If significant changes in the fixed assets of the company or of any of its subsidiaries have occurred in the financial year, the report shall contain particulars of the changes.

(2) If, in the case of such of those assets as consist in interests in land, their market value (as at the end of the year) differs substantially, from the amount at which they are included in the balance sheet, and the difference is in the directors' opinion, of such significance as to require that the attention of members of the company or of holders of its debentures should be drawn to it, the report shall indicate the difference with such degree of precision as is practicable.

*Directors' interests*

2. (1) The report shall state the following with respect to each person who, at the end of the year, was a director of the company-

(a) whether or not, according to the register kept by the company for the purposes of sections 276 and 277 of this Act (director's obligation to notify his interests in the company and companies in the same group), he was at the end of that year interested in shares in, or debentures of, the company or any other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company;

(b) if he was so interested-

(i) the number and amount of shares in, and debentures of, each body (specifying it) in which, according to that register, he was then interested;

(ii) whether or not (according to that register) he was, at the beginning of that year or, if he was not then a director, when he became one, interested in shares in, or debentures of, the company or any other such body corporate; and

(iii) if he was, the number and amount of shares in and debentures of, each body (specifying it) in which, according to that register, he was interested at the beginning of the year or (as the case may be) when he became a director.

(2) An interest in shares or debentures which, under sections 276 and 277 of this Act, falls to be treated as being the interest of a director is so treated for the purposes of this paragraph; and the references above to the time when a person became a director, in the case of a person who became director on more than one occasion, is the time when he first became a director.

(3) The particulars required by this paragraph may be given by way of notes to the company's accounts in respect of the year, instead of being stated in the directors' report.

*Charitable gifts*

3. (1) Money given for charitable purposes to a person who, when it was given, was ordinarily resident outside Nigeria is to be left out of the account.

(2) "**Charitable purposes**" means purposes which are exclusively charitable.

*Miscellaneous*

4. The directors' report shall contain-

(a) particulars of any important events affecting the company or any of its subsidiaries which have occurred since the end of the year;

(b) an indication of likely future developments in the business of the company and of its subsidiaries;

(c) an indication of the activities (if any) of the company and its subsidiaries in the field of research and development;

(d) names of distributors of the company's products; and

(e) particulars of donations and gifts made for any purpose.

PART II

*Disclosure required by company acquiring its own shares, etc.*

5. This Part of this Schedule shall apply where shares in a company-

(a) are purchased by the company or are acquired by it by forfeiture or surrender in lieu of forfeiture, or in pursuance of section 160 of this Act (acquisition of own shares by company limited by shares); or

(b) are required by another person in circumstances where paragraph (b) or (c) of section 159 (3) of this Act applies (acquisition by company's nominee, or by another with company financial assistance, the company having a beneficial interest); or

(c) are made subject to a lien or other charges taken (whether expressly or otherwise) by the company and permitted by section 125 (1) or (4) of this Act.

6. The directors' report with respect to a year shall state-

(a) the number and nominal value of the shares so purchased, the aggregate amount of the consideration paid by the company for such shares and the reasons for their purchase;

(b) the number and nominal value of the shares so acquired by the company, acquired by another person in such circumstances and so charged respectively during the year;

(c) the maximum number and nominal value of shares which, having been so acquired by the company, acquired by another person in such circumstances or so charged (whether or not during that year) are held at any time by the company or that other person during the year;

(d) where the number and nominal value of the shares of any particular description are stated in pursuance of any of the preceding sub-paragraphs, the percentage of the called up share which shares of that description represent;

(e) where any of the shares have been so charged, the amount of the charge in each case;

where any of the shares have been disposed of by the company or the person who acquired them in such circumstances for money or money's worth, the amount or value of the consideration in each case; and

(g) the excess of the selling price over the purchase price of each share resold or the excess of the cost over the selling price which was taken to capital reserve.

### PART III

#### *Employment and employees*

##### *Employment of disabled persons*

**7.** The directors' report shall contain a statement showing how many disabled persons were employed during the year and describing the policy which the company has applied during the year-

(a) for giving full and fair consideration to applications for employment by the company made by disabled persons, having regard to their particular aptitudes and abilities;

(b) for continuing the employment of, and for arranging appropriate training for, employees of

the company who have become disabled persons during the period when they were employed by the company; and

(c) otherwise for the training, career development and promotion of disabled persons employed by the company.

##### *Health, safety and welfare at work of company's employees*

**8.** The directors' report shall contain a statement as to the arrangement in force in the year for securing the health, safety and welfare at work of employees of the company and its subsidiaries, and for protecting other persons against risks to health or safety arising out of or in connection with the activities at work of those employees.

##### *Employee involvement and training*

**9.** The directors' report shall contain a statement describing the action that has been taken during the year to introduce, maintain or develop arrangements aimed at-

(a) providing employees systematically with information on matters of concern to them as employees;

(b) consulting employees or their representatives on a regular basis so that the views of employees can be taken into account in making decisions which are likely to affect their interests;

(c) encouraging the involvement of employees in the company's performance through an employees' share scheme or by some other means; and

(d) achieving a common awareness on the part of all employees of the financial and economic factors affecting the performance of the company.

**10.** The directors' report shall contain a statement showing the arrangements made or facilities provided by the company for the training of employees during the year.

#### Sixth Schedule

[Sections 350,352,354,359.]

##### *Matters to be expressly stated in auditor's report*

**1.** Whether they have obtained all the information and explanations which to the best of their knowledge and belief were necessary for the purpose of their audit.

**2.** Whether, in their opinion, proper books of account have been kept by the company, so far as appears from their examination of those books, and proper returns adequate for the purposes of their audit have been received from branches not visited by them.

**3.** (1) Whether the company's balance sheet and (unless it is framed as a consolidated profit and loss account) profit and loss account dealt with by the report are in agreement with the books of account and returns.

(2) Whether, in their opinion and to the best of their information and according to the explanations given them, the said statements give the information required by this Act in the manner so required and give a true and fair view-

(a) in the case of the balance sheet, of the state of the company's affairs as at the end of its year; and

(b) in the case of the profit and loss account, of the profit and loss for its year; or as the case may be, give a true and fair view thereof subject to the non-disclosure of any matters (to be indicated in the report) which, by virtue of Part I of the Second Schedule of this Act, are not required to be disclosed.

**4.** In the case of a holding company, submitting group financial statements whether, in their opinion, the group financial statements have been properly prepared in accordance with the provisions of this Act so as to give a true and fair view of the state of affairs and profit or loss of the company and its subsidiaries and associates dealt with hereby, so far as concerns members of the company, or the case may be so as to give a true and fair view thereof subject to the non-disclosure of any matters to be indicated in the report which by virtue of Part I of the Second Schedule to this Act are not required to be disclosed.

#### Seventh Schedule

[Sections 352,353.]

##### *Modified financial statements of companies qualifying as small companies*

#### PART I

##### *Modified financial statements*

*Introductory*

*Accounts modified as for a small company*

**1.** (1) In respect of the relevant financial year, there may be delivered a copy of a modified balance sheet, instead of the full balance sheet.

(2) The modified balance sheet shall be an abbreviated version of the full balance sheet, showing only those items to which a letter or Roman number is assigned in the balance sheet format adopted under the Second Schedule Part I, to this Act but in other respects corresponding to the full balance sheet.

(3) The copy of the modified balance sheet shall be signed as required by section 343 of this Act.

**2.** A copy of the company's profit and loss account need not be delivered nor a copy of the directors' report otherwise required by section 345 of this Act.

**3.** The information required by Parts V and VI of the Third Schedule of this Act need not be given.

**4.** The information required by the Third Schedule to this Act to be given in notes to the accounts need not be given, with the exception of any information required by the following provisions of that Schedule-

paragraph 36 (accounting policies), paragraph 38 (share capital)

paragraph 39 (particulars of allotments), paragraph 47 (1) and (4) (particulars of debts)

paragraph 57 (1) (basis of translation of foreign currency amounts into naira), and

paragraph 57 (2) (corresponding amounts for preceding year); and the reference here to paragraph 57 (2) includes that sub-paragraph as applied to any item stated in a note to the company's accounts, whether by virtue of a requirement of the Third Schedule or under any other provision of this Act.

**5.** If a modified balance sheet is delivered, there shall be disclosed in it( or in a note to the company's accounts delivered)-

(a) the aggregate of the amounts required by note (5) of the notes on the balance sheet formats set out in the Second Schedule Part I to be shown separately for each item included under debtors (amounts falling due after one year); and

(b) the aggregate of the amounts required by note (13) of those notes to be shown separately for each item included under creditors in format 2 (amounts falling due within one year or after more than one year).

**6.** The company's balance sheet shall contain a statement by the directors that-

(a) they rely on sections 350 to 353 of this Act as entitling them to deliver modified accounts; and

(b) they do so on the ground that the company is entitled to the benefit of those sections as a small company, and the statement shall appear in the balance sheet immediately above the signatures of the directors.

**7.** (1) The accounts delivered shall be accompanied by a special report of the auditors stating that in their opinion-

(a) the directors are entitled to deliver modified accounts in respect of the financial year as claimed in the directors' statement; and

(b) any accounts comprised in the documents delivered as modified accounts are properly prepared as such in accordance with this Schedule.

(2) A copy of the auditors' report under section 359 of this Act need not be delivered; but the full text of it shall be reproduced in the special report under this paragraph.

(3) If the directors propose to rely on sections 350 to 353 of this Act as entitling them to deliver modified accounts, it shall be the auditors' duty to provide them with a report stating whether, in their opinion, the directors are so entitled, and whether the documents to be delivered as modified accounts are properly prepared in accordance with this Act.

**8.** Subject as above, where the directors rely on sections 350 to 353 of this Act in delivering any documents, and-

(a) the company is entitled to the benefit of those sections on the ground claimed by the directors in their statement under paragraph 6; and

(b) the accounts comprised in the documents are properly prepared in accordance with this Schedule,

then section 345 (3) of this Act shall have effect as if any document which by virtue of this Part of this Schedule is included in or omitted from the documents delivered as modified accounts were (or, as the case may be), not required by this Act to be comprised in the company's accounts in respect of the year.

## PART II

### *Modified group financial statements (in consolidated form) for small companies*

#### *Introductory*

**9.** In this Part of this Schedule paragraphs 10-16 relate to modified financial statements for a small group.

#### *Small groups*

**10.** (1) In respect of the relevant year, there may be delivered a copy of a modified balance sheet, instead of the full consolidated balance sheet.

(2) The modified balance sheet shall be an abbreviated version of the full consolidated balance sheet, showing only those items to which a letter or Roman numeral is assigned in the balance sheet format adopted under the Second Schedule Part I, but in other respects corresponding to the full consolidated balance sheet.

**11.** A copy of the profit and loss account need not be delivered nor a copy of the directors' report otherwise required by section 343 of this Act.

**12.** The information required by the Second Schedule to this Act to be given in notes to group financial statements need not be given, with the exception of any information required by provisions of that Schedule listed in paragraph 4 above.

**13.** There shall be disclosed in the modified balance sheet, or in a note to the group accounts delivered, aggregate amounts corresponding to those specified in paragraph 5 above.

14. The information required by Part V and VI of the Third Schedule need not be given.

### PART III

#### *Modified group accounts consolidated or others*

15. If modified group accounts are delivered, the following paragraphs apply.

16. The directors' statement required by paragraph 6 to be contained in the balance sheet include a statement that the documents delivered include modified group accounts, in reliance on section 353 of this Act.

17. (1) The auditors' special report under paragraph 7 shall include a statement that in their opinion-

(a) the directors are entitled to deliver modified group accounts, as claimed in their statement in the balance sheet; and

(b) any accounts comprised in the documents delivered as modified group financial statements are properly prepared as such in accordance with this Schedule.

(2) A copy of the auditors' report under section 359 need not be delivered; but the full text of it shall be reproduced in the special report under paragraph 7.

(3) If the directors propose to rely on section 353 as entitling them to deliver modified group financial statements, it is the auditors' duty to provide them with a report stating whether, in their opinion, the directors are so entitled, and whether the documents to be delivered as modified group financial statements are properly prepared in accordance with this Schedule.

18. Subject as above, where the directors rely on section 353 in delivering any documents, and-

(a) the company is entitled to the benefit of that section on the ground claimed by the directors in their statement in the balance sheet; and

(b) the accounts comprised in the documents delivered as modified financial statements are properly prepared in accordance with this Schedule,

then section 345 (3) has effect as if any document which by virtue of this Schedule is included in or omitted from the documents delivered as modified group financial statements were (or, as the case may be, were not) required by this Act to be comprised in the company's financial statements in respect of the year.

### Eighth Schedule

[Section 371.]

#### *Contents and form of annual returns of a company having shares other than a small company*

### PART I

#### *Contents*

1. The address of the registered office of the company.

**2.** (1) If the register of members is, under the provisions of this Act, kept elsewhere than at the registered office of the company, the address of the place where it is kept.

(2) If any register of holders of debentures of the company or any duplicate of any such register or part of any such register is, under the provisions of this Act kept elsewhere than at the registered office of the company, the address of the place where it is kept.

**3.** A summary, distinguishing between shares issued for cash and shares issued as fully or partly paid or otherwise than in cash, specifying the following particulars-

(a) the amount of the share capital of the company and the number of shares into which it is divided;

(b) the number of shares taken from the commencement of the company up to the date of the return;

(c) the amount called up on each share;

(d) the total amount of calls received;

(e) the total amount of calls unpaid;

(f) the total amount of the sums (if any) paid by way of commission in respect of any shares or debentures;

(g) the discount allowed on the issue of any shares issued at a discount or so much of that discount as has not been written off at the date on which the return is made;

(h) the total amount of the sums (if any) allowed by way of discount in respect of any debentures since the date of the last return; and

(i) the total number of shares forfeited.

**4.** Particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Commission under this Act.

**5.** A list-

(a) containing the names and addresses of all persons who, on the fourteenth day after the company's annual general meeting for the year, are members of the company, and of persons who have ceased to be members since the date of the last return or, in the case of the first return, since the incorporation of the company;

(b) stating the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return (or, in the case of the first return, since the incorporation of the company) by persons who are still members and have ceased to be members respectively, and the dates of registration of the transfers;

(c) if the names aforesaid are not arranged in alphabetical order, having annexed thereto an index sufficient to enable the name of any person therein to be easily found.

**6.** All such particulars with respect to the persons who at the date of the return are the directors of the company and any person who at that date is the secretary of the company as are by this Act required to be contained with respect to directors and the secretary respectively in the register of the directors and secretaries of a company.



PART II

Form

ANNUAL RETURN OF .....Limited

made up to the day of 20.....(being the fourteenth day after the date of the annual general meeting for the year.....20.....)

1. Address.....

(Address of the registered office of the company)

2. Situation of registers of members and debenture holders.

(a) (Address of place at which the register of members is kept, if other than the registered office of the company).

(b) (Address of any place in Nigeria other than the registered office of the company at which is kept any register of holders of debentures of the company or any duplicate of any such register or part of any such register).

3. Summary of share capital and debentures.

(a) Nominal share capital

Nominal share capital ₦

(Insert number and class)

divided into:

..... shares of ..... each

..... shares of ..... each

..... shares of ..... each

(b) Issued share capital and debentures

Number

Class

Shares

Number of shares of each class taken up to the date of this return (which number must agree with the total shown in the list as held by existing members).

Number of shares of each class issued subject to payment wholly in cash.

Number of shares of each class issued as partly paid up for a consideration other than cash and extent to which each such share is so paid up.

shares issued as paid up to the of ₦ per share

Number of shares (if any) of each class issued at a discount.

Amount of discount on the issue of shares which has not been written off at the date of this return.

₦

Amount called ₦ .....per share on ..... shares  
 up on number ₦ .....per share on ..... shares  
 of shares of ₦ .....share on ..... shares  
 each class ₦ .....per share . ..... shares

Total amount of calls received, including payments on application and allotment and any sums received on shares forfeited.

₦

Total amount (if any) agreed to be considered as paid on the number of shares each class issued as fully paid.....

shares

up for a consideration.....

shares

paid other than cash.....

shares

Total amount (if any) agreed as.....

shares

₦ ..... to be considered

shares

paid on number of shares or each class issued as partly paid up for a consideration other than cash .....

shares

Total amount of calls unpaid

₦

Total amount of the sums (if any) paid by way of commission in respect of any shares or debentures.

₦

Total amount of the sums (if any) allowed by way of discount in respect of any debentures since the date of the last return.

₦

Total number of shares of each class forfeited .....

shares

4. Particulars of indebtedness.

Total amount of indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Commission under the Companies and Allied Matters Act.

5. List of past and present members.

List of persons holding shares or stock in the company on the fourteenth day after the annual general meeting for 20 ..... and of persons who have held shares or stock therein at any time since the date of the last return, or, in the case of the first return, of the incorporation or the company.

<i>Folio in register containing particulars</i>	<i>Name and addresses</i>	<i>Number of shares held by existing members at date of return*</i>	<i>Account of shares</i>	<i>Remarks</i>
		Particulars of shares transferred since the date of the last return, or, in the case of the first return, of the incorporation or the company by:  (a) persons who are still members and (b) persons		

		who have ceased to be Members*		
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<i>Folio in register containing particulars</i>	<i>Name and addresses</i>	<i>Number of shares held by existing members at date of return*</i>	<i>Account of shares</i>	<i>Remarks</i>
		Number	(a) (b)	Date of registration of transfer

\*The aggregate number of shares held by each member must be stated, and the aggregate must be added up so as to agree with the number of shares stated in the Summary of Share Capital and Debentures to have been taken up.

When the shares are of different classes these columns should be subdivided so that the number of each class held, or transferred, may be shown separately. Where any shares have been converted into stock, the amount of stock held by each member must be shown.

The date of registration of each transfer should be given as well as the number of shares transferred on each date. The particulars should be placed together with that of the transferee, but the name of the transferee may be inserted in the remarks column immediately opposite the particulars of each transfer.

(i) If the return for either of the two immediately preceding years has given as at the date of that return the full particulars required as to past and present members and the shares and stock held and transferred by them, only such of the particulars need be given as relate to persons ceasing to be or becoming members since the date of the last return and to shares transferred since that date or to changes as compared with the date in the amount of stock held by a member.

(ii) If the names in the list are not arranged in alphabetical order, an index sufficient to enable the name of any person to be readily found must be annexed.

6. Particulars of directors and secretaries.

*Particulars of the persons who are directors of the company at the date of this return*

<i>Present fore-name or names and surname</i>	<i>Any former Forenames or names and surnames</i>	<i>Nationality</i>	<i>Usual residential address</i>	<i>Business occupation and particulars of other directorships</i>	<i>Date of birth</i>

*Particulars of the person who is secretary of the company at the date of this return*

<i>Name</i>		
-------------	--	--

<p><i>(In the case of an individual, present forename or names and surname, in the case of a corporation, the corporate name)</i></p>	<p><i>Any former forenames or surnames</i></p>	<p><i>Usual residential address (in the case of a corporation, the registered or principal office)</i></p>
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Signed.....*Director*

*Notes*

**"Directors"** includes any person who occupies the position of a director by whatsoever name called and any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

**"Former forename"** and **"former surname"** do not include in the case of a married woman the name or surname by which she was known previous to the marriage.

The names of all bodies corporate of which the company making the return is the wholly-owned subsidiary or bodies corporate which are the wholly-owned subsidiaries either of the company or of another company of which the company is a subsidiary of another if it has no members except that other and that other's wholly-owned subsidiaries and its or their nominees. If the space provided in the form is insufficient, particulars or both directorships should be listed on a separate statement attached to the return.

Where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated.

\*Delivered for filing by .....

\*This should be printed at the bottom of the first page of the return.

**CERTIFICATES AND OTHER DOCUMENTS ACCOMPANYING ANNUAL RETURNS**

*Certificate to be given by a director and the secretary of every private company*

We certify that the company has not since the date of the incorporation of the company/the last annual return, issued any invitation to the public to subscribe for any shares or debentures in the company.

Signed ..... *Director*

Signed..... *Secretary*

Further certificate to be given as aforesaid if the number of members of the company exceeds fifty.

We certify that the excess of the number of members of the company over fifty consists wholly of persons who, under subsection (3) of section 22 of the Companies and Allied Matters Act, are not to be included in reckoning the number fifty.

Signed ..... *Director*

Signed..... *Secretary*

*Certified copies of accounts*

There shall be annexed to this return a written copy, certified both by a director and by the secretary of the company to be a true copy, of every balance sheet laid before the company in general meeting during the period

to which this return relates (including every document required by law to be annexed to the balance sheet) and a copy (certified as aforesaid) of the report or the directors accompanying each such balance sheet. If any such balance sheet or document required by law to be annexed thereto is in a foreign language, there must also be annexed to that balance sheet a translation in English of the balance sheet or document certified in a prescribed manner to be a correct translation. If any such balance sheet as aforesaid or document required by law to be annexed thereto did not comply with the requirements of the law as in force at the date of audit with respect to the form of balance sheet or documents aforesaid, as the case may be, there shall be made such additions to and corrections in the copy as would have been required to be made in the balance sheet or document in order to make it comply with the said requirements, and the fact that the copy has been amended must be stated thereon.

NINTH SCHEDULE  
(Section 372.)

*Annual return of a small company*

PART I

*Contents*

1. The name and address of the registered office of the company.
2. If the register of members is, under the provisions of this Act, kept elsewhere than at the registered office of the company, the address of the place where it is kept.
3. If any register of holders of debentures of the company or any such register or part of any such register is, under the provisions of this Act, kept elsewhere than at the registered office of the company, the address of the place where it is kept.
4. The authorised share capital of the company.
5. The issued capital.
6. The total paid-up capital.
7. Particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Registrar under the Act.
8. Particulars of the directors and secretary.

PART II

ANNUAL RETURN OF ..... Limited  
made up to the day of ..... 20 ..... (being the fourteenth day after the date  
of the annual general meeting for the year 20 ..... )

1. Name .....
2. Address .....  
*(Address of the registered office of the company)*

3. Situation of registers of members and debenture holders.
  - (a) (Address of place at which the register of members is kept, if other than the registered office of the company).
  - (b) (Address of any place in Nigeria other than the registered office of the company at which is kept any register of holders of debentures of the company or any duplicate of any such register or part of any such register).

4. Particulars of indebtedness.

Total amount of indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Commission under the Companies and Allied Matters Act, the

particulars of which are set in the annexed statement. # .....

5. Particulars of directors and secretaries.

*Particulars of the persons who are directors of the company at the date of this return*

<i>Name present fore- name or names and surname</i>	<i>Any former forenames or names and surnames</i>	<i>Nationality</i>	<i>Usual residential address</i>	<i>Business occupation and particulars of other directorships</i>	<i>Date of birth</i>
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*Particulars of the person who is secretary of the company at the date of this return*

<i>Name (In the case of an individual, present forename or names and surname, in the case of a corporation, the corporate name)</i>	<i>Any former forenames or surnames</i>	<i>Usual residential address (in the case of a corporation, the registered or principal office)</i>
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Signed ..... Director

**"Directors"** includes any person who is appointed a director by the company, or is described as a director by the company, and any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

**"Former forename"** and **"former surname"** do not include in the case of a married woman the name or surname by which she was known previous to the marriage.

The names of all bodies corporate incorporated in Nigeria of which the director is also a director should be given, except bodies corporate of which the company making the return is the wholly-owned subsidiary or bodies corporate which are the wholly-owned subsidiaries either of the company or of another company of which the company is the wholly-owned subsidiary. A body corporate is deemed to be the wholly-owned subsidiary of another if it has no members except that other and that other's wholly-owned subsidiaries and its or their nominees. If the space provided in the form is insufficient, particulars of other directorships should be listed on a separate statement attached to this return.

Where all the partners in a firm are joint secretaries, the name and principal office of the firm should be stated.

\*Delivered for filing by .....

\*This should be printed at the bottom of the first page of the return.

*Certificate to be given by a director and the secretary of every private company*

We certify that the company has not since the date of the incorporation of the company/the last annual return, issued any invitation to the public to subscribe for any shares or debentures of the company.

Signed.....*Director*

Signed.....*Secretary*

Further certificate to be given as aforesaid if the number of members of the company exceeds fifty.

We certify that the excess of the number of members of the company over fifty consists wholly of persons, who under section 22 (3) of the Companies and Allied Matters Act, are not to be included in reckoning the number of fifty, and we also certify that the company still retains its smallness.

Signed ..... *Director*

Signed ..... *Secretary*

*Certified copies of Accounts*

There shall be annexed to this return a written copy, certified both by a director and by the secretary of the company to be a true copy, of every balance sheet laid before the company in general meeting during the period to which this return relates (including every document required by law to be annexed to the balance sheet) and a copy (certified as aforesaid) of the report of the directors accompanying each such balance sheet. If any such balance sheet or document required by law to be annexed thereto is in a foreign language, there must also be annexed to that balance sheet a translation in English of the balance sheet or document certified in prescribed manner to be a correct translation. If any such balance sheet as aforesaid or document required by law to be annexed thereto did not comply with the requirements of the law as in force at the date of audit with respect to the form of balance sheets or documents aforesaid, as the case may be, there shall be made such additions to and corrections in the copy as would have been required to be made in the balance sheet or document in order to make it comply with the said requirements, and the fact that the copy has been amended must be stated thereon.

TENTH SCHEDULE

[Section 373.]

*Annual return of a company limited by guarantee*

*(Under the Companies and Allied Matters Act)*

ANNUAL RETURN OF ..... Limited

made up to the day of 20 .....(being the fourteenth day after the date

of the annual general meeting for the year ..... 20 ..... )

1. Address .....  
*(Address of the registered office of the company)*

2. Situation of registers of members and debenture holders.

(a) (Address of place at which the register of members is kept, if other than the registered office of the company).

(b) (Address of any place in Nigeria other than the registered office of the company at which is kept any register of holders of debentures of the company or any duplicate of any such register or part of any such register).

3. Particulars of indebtedness.

Total amount of indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Commission under this Act, the particulars of which are set in the

annexed statement. ~~N~~ .....

4. Particulars of directors and secretaries.

*Particulars of the persons who are directors of the company at the date of this return*

<i>Name present fore-name or names and surname</i>	<i>Any former forenames or names and surnames</i>	<i>Nationality</i>	<i>Usual residential address</i>	<i>Business occupation and particulars of other directorships</i>	<i>Date of birth</i>

*Particulars of the person who is secretary of the company at the date of this return*

<i>Name (In the case of an individual, present forename or names and surname, in the case of a corporation, the corporate name)</i>	<i>Any former forenames or surnames</i>	<i>Usual residential address (in the case of a corporation, the registered or principal office)</i>

Signed ..... Director

Notes



"Directors" includes any person who occupies the position of a director by whatsoever name called and any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

"Former forename" and "former surname" do not include in the case of a married woman the name or surname by which she was known previous to the marriage.

The names of all bodies corporate incorporated in Nigeria of which the director is also a director, should be given, except bodies corporate of which the company making the return is the wholly-owned subsidiary of bodies corporate which are the wholly-owned subsidiaries either of the company or of another company of which the company is the wholly-owned subsidiary of another if it has no members except that other and that other's wholly-owned subsidiaries and its or their nominees. If the space provided in the form is insufficient, particulars of both directorships should be listed on a separate statement attached to the return.

Where all partners in a firm are joint secretaries, the name and principal office of the firm should be stated.

\*Delivered for filing by .....

\*This should be printed at the bottom of the first page of the return.

#### CERTIFICATES AND OTHER DOCUMENTS ACCOMPANYING ANNUAL RETURN

##### *Certificate to be given by a director and the secretary of every private company*

We certify that the company has not since the date of the incorporation of the company/the last annual return, issued any invitation to the public to subscribe for any shares or debentures of the company.

Signed ..... *Director*

Signed ..... *Secretary*

Further certificate to be given as aforesaid if the number of members of the company exceeds fifty. We certify that the excess of the number of members of the company over fifty consists wholly of persons who, under subsection (3) of section 22 of the Companies and Allied Matters Act, are not to be included in reckoning the number of fifty.

Signed ..... *Director*

Signed ..... *Secretary*

##### *Certified copies of Accounts*

There shall be annexed to this return a written copy, certified both by a director and by the secretary of the company to be a true copy, of every balance sheet laid before the company in general meeting during the period to which this return relates (including every document required by law to be annexed to the balance sheet) and a copy (certified as aforesaid) of the report of the directors accompanying each such balance sheet. If any such balance sheet or document required by law to be annexed thereto is in a foreign language, there must also be annexed to that balance sheet a translation in English of the balance sheet or document certified in prescribed manner to be a correct translation. If any such balance sheet as aforesaid or document required by law to be annexed thereto did not comply with the requirements of the law as in force at the date of audit with respect to the form of balance sheets or documents aforesaid, as the case may be, there must be made such additions to and corrections in the copy as would have been required to be made in the balance sheet or document in order to make it comply with the said requirements, and the fact that the copy has been amended must be stated thereon.

#### ELEVENTH SCHEDULE [Section 393 (3).]

##### *Powers of receivers and managers of the whole or substantially the whole of the company's property*

1. Power to take possession of, collect and get in the property of the company and, for that purpose, to take such proceedings as may seem to him expedient.

2. Power to sell or otherwise dispose of the property of the company by public auction or private contract.
3. Power to raise or borrow money and grant security therefore over the property of the company.
4. Power to appoint a solicitor or accountant or other professionally qualified person to assist him in the performance of his functions.
5. Power to bring or defend any action or other legal proceedings in the name and on behalf of the company.
6. Power to refer to arbitration any question affecting the company.
7. Power to effect and maintain insurances in respect of the business and property of the company.
8. Power to use the company's seal.
9. Power to do all acts and to execute in the name and on behalf of the company any deed, receipt or other document.
10. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company.
11. Power to appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent and power to employ and dismiss employees.
12. Power to do all such things (including the carrying out of works) as may be necessary for the realisation of the property of the company.
13. Power to make any payment which is necessary or incidental to the performance of his functions.
14. Power to carry on the business of the company.
15. Power to establish subsidiaries of the company.
16. Power to transfer to subsidiaries of the company the whole or any part of the business and property of the company.
17. Power to grant or accept a surrender of a lease or tenancy of any of the property of the company, and to take a lease or tenancy of any property required or convenient for the business of the company.
18. Power to make any arrangement or compromises on behalf of the company.
19. Power to call up any uncalled capital of the company.
20. Power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the company and to receive dividends, and to accede to trust deeds for the creditors of any such person.
21. Power to present or defend a petition for the winding up of the company.
22. Power to change the situation of the company's registered office.
23. Power to do all other things incidental to the exercise of the foregoing powers.

TWELFTH SCHEDULE  
[Section 490 (2).]

*Provisions not applicable on winding up under supervision of the court*

<i>Section</i>	<i>Subject matter</i>
388	Power to appoint official receiver for debenture holders and others.

- 420 Statement of company's affairs to be submitted to official receiver.  
 421 Report by official receiver.  
 422 Appointment, remuneration and title of liquidators (except subsection 8).  
 427 Exercise and control of liquidator's powers.  
 428 Payments by liquidator into companies' liquidation account.  
 429 Audit, etc., of liquidator's account.  
 430 Books to be kept by liquidator.  
 431 Release of liquidator.  
 432 Control over liquidators.  
 433 Power to appoint committee of inspection, etc.  
 434 Powers, etc., of committee of inspection.  
 435 Powers where no committee of inspection is appointed.  
 436 Power to appoint special manager.  
 450 Power to order public examination of promoters, etc.  
 453 Delegation to liquidator of certain powers of the court.

THIRTEENTH SCHEDULE  
 [Section 546.]

*Provision of this Act applying to unregistered companies*

<i>Provisions of this Act applied</i>	<i>Subject matter</i>	<i>Limitation on application</i>
Sections 370 to 378 and Eighth,	Annual return	Not to apply so as to require particulars in respect of any period before the commencement of this Act, and as respects any period thereafter to apply so far only as may be specified as said and to such bodies corporate as may be specified.
Sections 331 to 369 and Fifth to Ninth Schedules	Accounts and audit	To apply so far as may be specified as aforesaid and to such bodies corporate as may be so specified.
Sections 314 to 330	Investigations	
Sections 275, 276, 277, 632, 633, 634, 638, 640, 645, 647 (1) and 649, and Seventeenth Schedule	Registration of document enforcement and supplemental matters	To apply so far only as they have effect in relation to provisions applying by virtue of the foregoing entries in this Schedule.

FOURTEENTH SCHEDULE  
 [Section 553.]

*Forms of statement to be published by banking and insurance companies and deposit, provident or benefit societies*

The share capital is ..... divided into .....shares or ..... each.

The number of shares issued is

Calls to the amount of ..... naira per share have been made, under which the sum of ..... naira has been received.

The liabilities of the company on the first day of January (or July) were-

Debts owing to sundry persons by the company-

On judgment, ₦

On specialty ₦

On notes or bills, ₦

On simple contracts, ₦

On estimated liabilities, ₦

The assets of the company on that day were-

Government securities (stating them), ₦

Bills of exchange and promissory notes, ₦

Cash at the bankers, ₦

Other securities, ₦

\*If the company has no share capital, the portion of the statement relating to capital and shares must be omitted.

FIFTENTH SCHEDULE  
[Sections 549, 551. S.1. 2 of 1998.]

PART A

*Fees to be paid for matters under part A of the Act*

Registration of public companies whose nominal share capital-

(a) does not exceed ₦1,000,000	₦15,000.00
(b) exceeds ₦1,000,000	₦15,000.00 and thereafter ₦10,000.00

of private company whose nominal share capital-

not exceed ₦1,000,000	₦5,000.00
exceeds ₦1,000,000	₦5,000.00 and thereafter ₦1,000.00 or part thereof

change of company name

	₦3,000.00
--	-----------

filing of annual returns

	₦500.00
--	---------

of charges where the amount-

does not exceed ₦1,000,000.00	₦5,000.00
exceeds ₦1,000,000.00	₦5,000.00 and thereafter ₦1,000.00 for every ₦1,000,000 or part thereof

deed of release	₺500
changes in Forms CO2 and CO7	₺500
company search per document	₺250
certified true copy of certificate of incorporation	₺3,000
certified true copy of memorandum and articles of association	₺1,500
certified true copy of Forms CO2, CO6 and CO7	₺500
certified true copy of all other documents	₺500
increase of share capital on every ₺1,000,000	₺5,000
penalties for late filing of document	₺1,000 except increases and charges
re-instatement of company name	₺5,000
alteration of memorandum and articles of association	₺2,000
penalties for late filing of increase and charges	₺2,000
registration of a company not having a share capital	₺10,000
a set of company incorporation forms	₺250
miscellaneous	₺250
availability forms	₺100
single forms e.g. CO2, CO6, CO7, etc.	₺50 each

#### PART B

registration of business name form	₺100
registration of business name	₺2,000
change of name	₺250
business name search	₺200
change of partnership	₺500
change of address	₺200
certified true copy of a business name certificate	₺500

#### PART C

registration of incorporated trustees form	₺500
registration of incorporated trustees	₺10,000
change of name	₺5,000
change of trustees	₺3,000
incorporated trustees searches	₺250
certified true copy of certificate	₺3,000
certified true copy of all other documents	₺500

## SUBSIDIARY LEGISLATION

### *List of Subsidiary Legislation*

1. Companies Proceedings Rules.
2. Companies Winding-Up Rules.

### COMPANIES PROCEEDINGS RULES

[S.I. 14 of 1992.]

under section 635 (1)

[ Commencement.]

[1 st November, 1992]

#### **1. Entitlement of proceedings**

(1) Every originating summons, notice of originating motion and petition by which any such proceedings are begun and all affidavits, notices and other documents in those proceedings shall be entitled in the matter of the company in question and in the matter of the Companies and Allied Matters Act.

(2) The originating summons by which an application for leave under section 254 (1) of the Act is made shall be entitled in the matter of the company in relation to which the plaintiff was convicted or was guilty of such an offence or of such conduct as is mentioned in the said section and in the matter of the Act.

#### **2. Particular application to be made by originating summons**

(1) Except in the case of the application mentioned in rules 5 and 6 of these Rules and applications made in proceedings relating to the winding up of companies, every application under the Act shall be made by originating summons.

(2) An originating summons under these Rules shall be in Form 1 specified in the Schedule to these Rules.

(3) An application under section 317 or 638 of the Act may be made by *ex-parte* originating summons.

#### **3. Application to be made by originating motion**

The following applications under the Act shall be made by originating motion, namely, applications-

- (a) under section 23 (2) for an order that a company be relieved from the consequences of default in complying with conditions constituting the company a private company;
- (b) under section 46 (8), 129 (2) or 312 (5) for an order extending the time for delivery to the Corporate Affairs Commission of any document required by that section to be delivered;
- (c) under section 90 (1) for the rectification of the register of members of a company;
- (d) under section 315 for an order declaring that the affairs of a company ought to be investigated by an inspector appointed by the Commission;
- (e) under section 319 (3) and (4) for an inquiry into any such case as is therein mentioned;

- (f) under section 329 for an order directing that any shares in or debentures of a company shall cease to be subject to restrictions imposed by that section; and
- (g) under section 524 (1) for an order declaring a dissolution of a company which has not been wound up to have been void.

#### **4. Application to be made by petitions**

The following applications under the Act shall be made by petition, namely, applications-

- (a) under section 46 (1) and (2) to cancel the alteration of a company's objects;
- (b) under section 47 (1) to cancel the alteration of a condition contained in a company's memorandum;
- (c) under section 53 (3) to cancel a special resolution to which that section applies;
- (d) under section 120 to confirm a reduction of the share premium account of a company;
- (e) under section 121 (2) to sanction the issue by a company of shares at a discount;
- (f) under section 158 to confirm a reduction of the capital redemption reserve fund of a company;
- (g) under section 107 (1) to confirm a reduction of the share capital of a company;
- (h) under section 142 (1) to cancel any variation or abrogation of the rights attached to any class of shares in a company;
- (i) under section 31 1 (1) for relief on the ground that the affairs of a company are being conducted in an illegal or oppressive manner;
- (j) under section 525 (6) for an order restoring the name of a company to the register, where the application is made in conjunction with an application for the winding up of the company;
- (k) under section 591 (3) to sanction a scheme for a merger between two or more companies;
- (l) under section 641 for relief from liability of an officer of a company or a person employed by a company as auditor.

#### **5. Summons for direction**

(1) After presentation of a petition by which any such application as is mentioned in rule 6 of these Rules is made, the petitioner, except where his application is one of those mentioned in paragraph (2) of this rule, shall take out a summons for direction under this rule.

(2) The applications referred to in paragraph (1) of this rule are-

- (a) an application under section 121 (2) of the Act to sanction the issue by a company of shares at a discount;
- (b) an application under section 591 (3) of the Act to sanction a compromise or arrangement, unless there is included in the petition for such sanction an application for an order under paragraphs (a) to (f) of that subsection;
- (c) an application under section 525 (6) of the Act for an order restoring the name of a company to the register.

(3) On the hearing of the summons, the court may, by order, give such directions as to the proceedings to be taken before the hearing of the petition as it thinks fit, including, in particular, directions for the publication of notices and the making of any inquiry.

(4) Where the application made by the petition is to confirm a reduction of the share capital, the share premium account or the capital redemption reserve fund of a company,

then without prejudice to the generality of paragraph (3) of this rule, the court may give directions-

- (a) for an inquiry to be made as to the debts of, and claims against, the company or as to any class or classes of such debts or claims;
- (b) as to the proceedings to be taken for settling the list of creditors entitled to subject to the reduction and fixing the date by reference to which the list is to be made,

and the power of the court under section 107 (2) of the Act to direct that section 107 (2) thereof shall not apply as regards any class or classes of creditors, may be exercised on any hearing of the summons.

(5) Rules 8 to 13 of these rules shall have effect subject to any direction given by the court under this rule.

## **6. Inquiry as to debts: company to make list of creditors**

(1) Where the court orders such an inquiry as is mentioned in paragraph (4) of rule 5 of these rules, the company in question shall, within 14 days after the making of the order, file in the office of the Companies Court Registrar an affidavit made by an officer of the company competent to make it verifying a list containing-

- (a) the name and address of every creditor entitled to any debt or claim to which the inquiry extends;
- (b) the amount due to each creditor in respect of such debt or claim or in the case of a debt or claim which is subject to any contingency or sounds only in damages or for some other reason does not bear a certain value, a just estimate of the value thereof; and
- (c) the total of those amounts and values.

(2) The deponent shall state in the affidavit his belief that at the date fixed by the court as the date by reference to which the list is to be made there is no 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 other than the debts or claims to which the inquiry does not extend, and shall also state his means of knowledge of the matters deposed to.

(3) The list shall be left at the office mentioned in paragraph (1) of this rule not later than one day after the affidavit is filed.

## **7. Inspection of list of creditors**

(1) Copies of the list made under rule 6 of these Rules with the omission, unless the court otherwise directs, of the amount due to each creditor and the estimated value of any debt or claim to which any creditor is entitled, shall be kept at the registered or head office of the company and at the office of the company's solicitor.

(2) Any person shall be entitled during ordinary business hours, on payment of a fee of ₦10, to inspect the said list at any such office and to take extracts therefrom.

## **8. Notice to creditors**

Within 14 days after filing the affidavit required by rule 6 of these Rules, the company shall send by registered post to each creditor named in the list exhibited to the affidavit, at his last known address, a notice stating-

- (a) the amount of the reduction sought to be confirmed;
- (b) the effect of the order, directing an inquiry as to debts and claims;
- (c) the amount or value specified in the list as due or estimated to be due to that creditor; and



- (d) the time fixed by the court within which, if he claims to be entitled to a large amount, he shall send particulars of his debt or claim and the name and address of his solicitor, if any, to the company's solicitor.

#### **9. Advertisement of petition and list of creditors**

After filing the affidavit required by paragraph (b) of this rule, the company shall insert, in such newspapers and at such times as the court may direct, a notice stating-

- (a) the date of presentation of the petition and the amount of the reduction thereby sought to be confirmed;
- (b) the inquiry ordered by the court under rule 6 of these Rules;
- (c) the places where the list of creditors may be inspected in accordance with rule 7 of these Rules;
- (d) the time within which any creditor not named in the list who claims to be entitled to any debt or claim to which the inquiry extends shall send his name and address, the name and address of his solicitor, if any, and particulars of his debt or claim to the company's solicitor.

#### **10. Affidavit as to claims made by creditors**

Within such time as the court may, from time to time, direct, the company shall file in the office of the Companies Court Registrar, an affidavit made by the company's solicitor and an officer of the company competent to make it-

- (A) proving service of the notices mentioned in rule 8 of these rules and the advertisement of the notice mentioned in rule 9 of these Rules;
- (B) verifying a list containing the names and addresses of the persons (if any) who in pursuance of such notices sent in particulars of debts or claims, specifying the amount of each debt or claim;
- (C) distinguishing in such list those debts or claims which are-
  - (i) wholly, or as to any and what part thereof, admitted by the company;
  - (ii) disputed by the company or alleged by the company to be outside the scope of inquiry; and
  - (iii) stating which of the persons named in the list made under this rule, have been paid or consent to the reduction sought to be confirmed.

#### **11. Adjudication of disputed claim**

If the company contends that a person is not entitled to be entered in the list of creditors in respect of any debt or claim or in respect of the full amount claimed by him in respect of any debt or claim, then, unless the company is willing to secure payment of that debt or claim by appropriating the full amount of the debt or claim, the company shall, if the court so directs, send to that person by post at his last known address a notice requiring him-

- (a) within such time as may be specified in the notice, being not less than four clear days after service thereof, to file an affidavit proving his debt or claim or, as the case may be, so much thereof as is not admitted by the company; and
- (b) to attend the adjudication of his debt or claim at the place and time specified in the notice, being the time appointed by the court for the adjudication of debts and claims.

#### **12. Certifying lists of creditors entitled to object to reduction**

The list of creditors entitled to object to such reduction as is mentioned in rule 5 (4) of these Rules as settled by the court under section 107 (2) of the Act, shall be certified and filed by the Court Registrar and the certificate shall-

- (a) specify the debts or claims (if any) disallowed by the Court;
- (b) distinguish the debts or claims (if any)-
  - (i) the full amount of which is admitted by the company;
  - (ii) the debts or claims (if any) the full amount of which though not admitted by the company, the company is willing to appropriate;

- (iii) the debts or claims (if any) the amount of which has been fixed by adjudication of the Court under section 107 (2) of the Act; and
  - (iv) other debts or claims;
- (c) specify the total amount of the debts or claims payment of which has been secured by appropriating under section 107 (2) of the Act;
- (d) show which creditors consent to the reduction and the total amount of their debts or claims;
- (e) specify the creditors who sought to prove their debts or claims under rule 11 of these Rules and state which of such debts or claims were allowed.

### **13. Evidence of consent of creditors**

The consent of a creditor to such reduction as is mentioned in rule 5 (4) of these Rules, may be proved in such manner as the court may think sufficient.

### **14. Time, etc., of hearing of petition for confirmation of reduction**

(1) A petition for the confirmation of any such reduction as is mentioned in rule 5 (4) of these Rules shall not, where the court had directed an inquiry pursuant to that rule, be heard before the expiration of at least eight clear days after the filing of the certificate mentioned in rule 12 of these Rules.

(2) Before the hearing of such a petition, a notice specifying the day appointed for the hearing shall be published at such times and in such newspapers as the court may direct.

### **15. Restriction on taking effect of order under section 121 (2)**

Unless the court otherwise directs, an order under section 121 (2) of the Act sanctioning the issue of shares at a discount, shall direct that an office copy of the order be delivered to the Registrar-General of Companies within 10 days after the making of the order or such extended time as the court directed.

### **16. Affidavit to be filed in court Registry**

Where an application to which these Rules relate is proceeding in a judicial division in which the company has its registered office, all affidavits made in connection with the application shall be filed in that Registry.

### **17. Where motions, etc., can be filed**

Wherever any notice of motion or notice of originating summons or any petition is to be issued or tiled, such petition may be issued out or filed in the Registry of the court in the judicial division in which the registered office of the company is situated or in which the company is carrying on a substantial part of its business.

### **18. Non-compliance with the Rules, etc.**

No proceedings under the Act shall be invalidated by reason only that these Rules are not fully complied with or in respect of any other irregularity, unless the court before which an objection is made to the proceeding, is of the view that the injustice cannot be remedied by any order of that court.

### **19. Application of Court's Civil Procedure Rules**

In all proceedings in or before the court concerning the operations of the Act where no provision is made by these Rules, the Federal High Court (Civil Procedure) Rules shall apply.

### **20. Interpretation**

In these rules, unless the content otherwise requires-

"**Act**" means the Companies and Allied Matters Act;  
[Cap. C20]

"**the companies court registrar**" means any officer of the Court who is a registrar within the meaning of any rules for the time being in force relating to the winding up of companies;

"**the court**" means the Federal High Court.

**21. Application and Forms**

(1) These Rules shall apply to all proceedings taken out or arising from any provision of any section of Part A of the Companies and Allied Matters Act.

(2) The forms set out in the Schedule to these Rules and any other form in use in ordinary civil proceedings of the court, where applicable, or any other forms which may, from time to time, be made on order of the Chief Judge, may be used.

**22. Citation and commencement**

These Rules may be cited as the Companies Proceedings Rules and shall come into effect on the 1st day of November 1992.

SCHEDULE

FORMS

FORM I

IN THE FEDERAL HIGH COURT.....

DIVISION HOLDEN AT.....

SUIT NO. .... of 20.....

IN THE MATTER OF X LIMITED (registered name of the company as it appears in its certificate).

FORM 2

*Originating Summons*

*(Heading as in Form 1)*

Let I ..... of (address) or, if the Respondent is a Company X Limited, whose registered office is situate (address) within ..... days on or after service of this Summons on (him or it) inclusive of the day of such service, cause an appearance to be entered for (him or it) to this Summons, which is of (address and description) for an order of (specify the relief sought).

DATED the ..... day of ..... 20 .....

This Summons was taken out by A.B. & Co. of (address) Solicitors for the Applicant.

.....

FORM 3

*Petition*

*(Heading as in Form 1)*

The humble Petition of the above-named X Limited (for a company that is the same as one referred to in the heading) or Y Limited whose registered office is situate at (address) for the Company that is not the same as one referred to in the heading; or where the petitioner is not a company, just A.B. of (address) states as follows-

FORM 4

*Petition to cancel alteration of objects*

(Heading as in Form 1, preamble as in Form 3)

1. The above-mentioned company (hereinafter referred to as "the company") was incorporated on ..... as a company (limited by shares).
2. The registered office of the company is situate at (address).  
.....
3. The objects for which the company was established are set forth in clause ..... of its memorandum of association as follows: (set out the objects as set out in such clause *in extenso*).
4. The capital of the company is ~~Rs.~~ ..... divided into ..... shares of ..... each ..... of the said shares of ..... each of and the remainder are and are not fully paid up.
5. After its incorporation namely on ..... 20 ..... the company obtained a certificate that it was entitled to commence business, (and it has continued to carry on business ever since or as the case may be). The principal business of the company as always (since at least the year 20 ..... ) been that of .....  
In the year 20 ..... it acquired the business of ..... and of ..... which it has carried on ever since, but on a much smaller scale than its principal business. (It has never had any interests whatsoever in any business connected with ..... or as the case may be).
6. At an extraordinary general meeting of the company duly convened and held on ..... 20 ....., the following resolution was duly passed as a special resolution in accordance with section 46 of the Companies and Allied Matters Act namely:
  7. Your Petitioner (are or have been appointed in writing by) A.B.C.D. and P.Q., being (not less than 15 per cent of the said company's members or the holders or not less in the aggregate than 15 per cent in nominal value of the said company's issued share capital or not less than 15 per cent in nominal value of the said company's issued share capital or not less than 15 per cent of the said company's debentures entitling the holders to object to alteration of its objects).
8. Your Petitioner (and the said A.B., C.D. and P.Q) were present at the said extraordinary general meeting (in person or by proxy) and voted against the said alteration (*q*) or as the case may be.
9. The said alteration would prejudice your Petitioners (and the other persons entitled to object thereto) in that (state the reasons why the objectors would be prejudiced).  
Your Petitioners therefore humbly pray as follows-
  - (1) The alteration of the company's objects effected by the special resolution set out in paragraph 6 of this Petition may be cancelled by the court pursuant to section of the Companies and Allied Matters Act.
  - (2) That the company may be ordered to pay the costs of this petition.
  - (3) Or that such other order may be made in the premises as the court may deem necessary.

DATED the ..... day of..... . . . 20 .....

Signed .....

A.B. & Co.

*Solicitors to the Petitioners*

Address .....

- (4) Petition to cancel alteration of conditions contained in the memorandum, and petition to cancel substitution of memorandum and articles of association for deed of settlements are in the like manner and contents with modifications to suit the issue involved.

FORM 5

*Summons for directors all application to cancel alteration*

*(Heading as in Form 1)*

Let the above-named X Ltd whose registered office is situate at (address attend at the Federal High Court sitting at ..... on ..... day of ..... 20 ..... on the hearing of an application by (A.B. of address and C.D. of (address) or as the case may be) the petitions named in the petition preferred unto this court in the above matters, for an order:

- (1) that a day may be fixed for the hearing of the said petition;
- (2) that directions may be given as to advertising the said Petition; and
- (3) that such other order may be made in the premises as to the court may deem necessary .

DATED the ..... day of ..... 20 .....

This summons was taken out by F.H. & Co. Solicitors for the Petitioners.

FORM 6

*Adverusement of day fixed for hearing petition*

*(Heading as in Form 1)*

NOTICE is hereby given that a Petition was on ..... 20 ..... presented to Federal High Court silting ..... by (A.B.C. & P.S.) for the cancellation of the alteration of the (Provisions of the Memorandum of Association of the above-named company with respect to its objects or conditions of the memorandum of association of the above-named company) affected by a special resolution passed at an extraordinary general meeting of the said company held on ..... 20 ..... which resolution was in the words following that is to say (set out the resolution).

And notice is further given that the said petition is directed to be heard before the Hon. Mr Justice ..... at the Federal High Court sitting at ..... on ..... the ..... day of ..... 20 .....

Any (shareholder or debenture stockholder) of the said company does ring to support or oppose the making of an order on the said petition should appear at the time of hearing in person or by counsel for that purpose.

A copy of the said petition will be furnished to any such person requiring the same by the Registrar of the court on payment of appropriate fees.

DATED the ..... day of ..... 20 .....

Signature .....

*Solicitor for the Petitioners*

Address: .....

## COMPANIES WINDING-UP RULES

### ARRANGEMENT OF RULES

*Citation, application, etc.*

#### RULE

1. Citation, commencement and revocation of S.I. 45 of 1983.
2. Alteration of Rules.
3. Proceedings in open Court.
4. Motions.
5. Title of proceedings.
6. Issue of summons.
7. Orders.
8. File of proceedings in office of Registrar.
9. Office copies.
10. Inspection of file.
11. Use of file by the Commission and Official Receiver.
12. Service as in civil matter.
13. Validity of service.
14. Enforcement of Orders.
15. Form of petition.
16. Presentation of petition.
17. Service of petition.
18. Verification of petition.
19. Advertisement of petition.
20. Copies of petition to creditors and contributories.

#### *Provisional Liquidator*

21. Appointment of provisional Liquidator.

#### *Hearing of petition and orders made thereon*

22. Hearing to show compliance with rules.
23. Notice by persons who intend to appear.
24. List of names and addresses of persons who appear on the petition.
25. Affidavits in opposition and reply.
26. Substitution of creditor or contributory for withdrawing petition.

#### *Order to wind up a company and order under section 312 of the Act*

27. Notice that winding up has been pronounced to be given to Official Receiver.
28. Documents for drawing up and order to be left with Registrar.
29. Contents of winding-up order.
30. Transmission and advertisement of winding-up order.
31. Where written notice necessary.

#### *Transfer of actions*

32. Transfer of actions.

#### *Special manager*

33. Appointment of special manager.
34. Accounting by special manager.

#### *Statement of affairs*

35. Preparation of statement or affairs.

36. Extension of time for submitting statement of affairs.
37. Information subsequent to statement of affairs.
38. Default.
39. Expenses of statement of affairs.
40. Dispensing with statement of affairs.

*Appointment of Liquidator in a winding up by the Court*

41. Appointment of Liquidator on report of meetings of creditors and contributories.

*Security by Liquidators or special manager in a winding up by the Court*

42. Standing security.
43. Failure to give or keep up security.

*Public examination*

44. Consideration of report.
45. Procedure consequent on order for public examination.
46. Application for holding examination.
47. Appointment of time and place for public examination.
48. Notice of public examination to creditors and contributories.
49. Default in attending.
50. Notes of examination to be filed.

*Proceedings by or against directors, promoters and officers*

51. Application by or against delinquent directors, officers and promoters.
52. Notice of application.
53. Hearing of application.
54. Use of depositions taken at public examination.

*Witnesses and depositions*

55. Taking of evidence.
56. Committal of contumacious witness.
57. Depositions of private examinations.

*Disclaimer*

58. Disclaimer.

*Vesting of disclaimed property*

59. Vesting of disclaimed property.

*Arrangement with creditors and contributories in a winding up by the Court*

60. Report by Official Receiver or arrangement and compromises.

*Collection and distribution of assets in a winding up by the Court*

61. Collection and distribution of company's assets by Liquidator.
62. Power of Liquidator to require delivery of property.

*List of contributories in a winding up by the Court*

63. Liquidator to settle list of contributories.
64. Appointment of time and place for settlement of list.
65. Settlement of list of contributories.
66. Notice of contributories.
67. Application to Court to vary the list.
68. Variation of or addition to list of contributories.

*Calls*

69. Calls by Liquidator.

70. Application to the Court for leave to make a call.
71. Documents making the call.
72. Service of notice of a call.
73. Enforcement of call.
74. Proof of debt.
75. Mode of proof.
76. Verification of proof.
77. Contents of proof.
78. Statement of security.
79. Proof before whom sworn.
80. Costs of proof.
81. Discount.
82. Periodical payment.
83. Interest.
84. Proof for debt payable at a future time.
85. Where formal proof of debt not required.
86. Workmen's wages.
87. Production of bills of exchange and promissory notes.
88. Transmission of proofs to Liquidator.

*Admissions and rejection of proofs and preferential claims and appeal to Court*

89. Notice to creditors to prove.
90. Examination of proof.
91. Appeal by creditor.
92. Expunging at instance of Liquidator.
93. Expunging at instance of creditor.
94. Oaths.
95. Official Receiver's powers.
96. Filing proofs by Official Receiver.
97. Proofs to be tiled.
98. Procedure where creditor appeals.
99. Time for dealing with proofs by Official Receiver.
100. Time for dealing with proofs by Liquidator.
101. Costs of appeal from decisions as to proofs.

*Dividends in a winding up by the Court*

102. Dividends to creditors.
103. Return of capital to contributories.

*General meeting of creditors and contributories in relation to a winding up by the Court*

104. First meeting of creditors and contributories.
105. Notice of first meeting to the Ministry.
106. Summoning of first meetings.
107. Form of notices of first meetings.
108. Notice of first meeting to officers of company.
109. Summary of statement of affairs.

*General meetings of creditors and contributories in relation to winding up by the Court and of creditors in relation to a creditor's voluntary winding up*

110. Liquidator's meetings of creditors and contributories.
111. Application of rules as to meetings.
112. Summoning of meetings.



113. Evidence of dispatch of notice of meetings.
114. Place of meetings.
115. Costs of calling meetings.
116. Chairman of meetings.
117. Ordinary resolution of creditors and contributories.
118. Copy of resolution to be tiled.
119. Non-reception of notice by a creditor.
120. Adjournments.
121. Quorum.
122. Creditors entitled to vote.
123. Cases in which creditors may not vote.
124. Votes of secured creditors.
125. Creditors required to give up security.
126. Admission and rejection of proofs for purpose of voting.
127. Statement of security.
128. Minutes of meetings.

*Proxies in relation to a winding up by the Court and to meetings of creditors in a creditor's voluntary winding up*

129. Proxies.
130. Form of proxies.
131. Form of proxy to be sent with notice.
132. General proxies.
133. Special proxies.
134. Solicitation by Liquidator to obtain proxies.
135. Proxies to Official Receiver or Liquidator.
136. Holder of proxy not to vote on matters in which he is financially interested.
137. Proxies.
138. Use of proxies by deputy.
139. Proxy of blind, etc., creditor to comply with illiterates protection laws.

*Attendance and appearance of parties*

140. Attendance at proceedings.
141. Attendance of Liquidator's solicitor at meetings.

*Liquidator and Committee of Inspection*

142. Remuneration of Liquidator.
143. Limit of remuneration.
144. Dealings with assets.
145. Restriction on purchase of goods by Liquidator.
146. Committee of Inspection not to make profit.
147. Costs of obtaining sanction of Court.
148. Sanction for payments to Committee.
149. Discharge of costs before assets handed to Liquidator.
150. Resignation of Liquidator.
151. Office of Liquidator vacated by insolvency.

*Payments to and withdrawals from account*

152. Withdrawal from account.
153. Special bank account.

*Books*

154. Keeping of Record Book.

155. Cash Book.

*Investment of funds*

156. Investment of assets in securities and realisation of securities.

*Accounts and audit in a winding up by the Court*

157. Audit of Cash Book.

158. Commission's audit of Liquidator's accounts.

159. Liquidator carrying on business.

160. Copy of accounts to be filed.

161. Summary of accounts,

162. Affidavit of no receipts or payments.

163. Proceedings on resignation of Liquidator.

164. Expenses of sales.

*Final account in voluntary winding up*

165. Form of final account.

*Costs and expenses payable out of the assets of the company*

166. Liquidator's charges.

167. Costs payable out of the assets.

*Statements of Liquidator to the Registrar-General*

168. Conclusion of winding up.

169. Times for sending Liquidator's statements and regulations applicable thereto.

170. Affidavit of no receipts or payments.

*Unclaimed funds and undistributed assets in the hands of a Liquidator*

171. Payment of undistributed and unclaimed money into Companies Liquidation Account.

172. Liquidator to furnish information to the Commission.

173. Registrar-General may call for verified account.

174. Application to the Court for enforcing an account and getting in money.

175. Application for payment out to person entitled.

176. Application by Liquidator for payment out.

*Release of Liquidator in a winding up by the Court*

177. Proceedings for release of Liquidator.

178. Disposal of books and papers.

*Official Receiver*

179. Duty where no assets.

180. Accounting by Official Receiver.

181. Power of Court to extend or abridge time.

182. Defects and irregularity not to invalidate proceedings.

183. Application of Court's (Civil Procedure) Rules.

184. Interpretation.

FORMS

FORM

1. Form of summons (general).
2. Petition.
3. Petition by unpaid creditor on simple contract.
4. Petition by minority shareholder.
5. Affidavit of service of petition on members, officers, or servants.
6. Affidavit of service of petition on Liquidator.
7. Affidavit verifying petition.
8. Affidavit verifying petition of a limited company.
9. Advertisement of petition.
10. Advertisement of petition by minority shareholder.
11. Order appointing a provisional Liquidator after presentation of petition and before order to wind up.
12. Notice of intention to appear on petition.
13. List of parties attending the hearing of a petition.
14. Notification to Official Receiver of winding-up order.
15. Notification to Official Receiver of order pronounced for appointment of provisional Liquidator prior to winding-up order being made.
16. Order for winding up by the Court.
17. Order for winding up, subject to supervision.
18. Affidavit by special manager verifying account.
19. Statement of affairs.
20. Report of result of meeting of creditors or contributories.
21. Order appointing Liquidator.
22. Advertisement of appointment of Liquidator
23. Certificate that Liquidator or special manager has given security.
24. Order directing a public examination.
25. Notice to attend public examination.
26. Warrant against person who fails to attend examination.
27. Report to the Court where person examined refuses to answer to satisfaction of Registrar or officer.
28. Disclaimer of lease.
29. Notice of disclaimer of lease.
30. Notice by Liquidator requiring payment of money or delivery of books, etc., to Liquidator.
31. Provisional list of contributories to be made out by Liquidator.
32. Notice to contributories of appointment to settle list of contributories.
33. Certificate of Liquidator of final settlement of the list of contributories.
34. Notice to contributory of final settlement of list of contributories and that his name is included.
35. Order on application to vary list of contributories.
36. Notice to each member of Committee of Inspection for sanction to proposed call.
37. Advertisement of meeting of Committee of Inspection to sanction proposed call.
38. Resolution of Committee of Inspection sanctioning call.
39. Summons for leave to make a call.
40. Affidavit of Liquidator in support of proposal for call.
41. Advertisement of application for leave to make a call.
42. Order giving leave to make a call.
43. Document making a call.
44. Notice of call sanctioned by Committee of Inspection to be sent to contributory.
45. Notice to be served with the order sanctioning a call.
46. Affidavit in support of application for order for payment of call.
47. Order for payment of call due from a contributory.
48. Proof of debt (general form).

49. Proof of debt of workmen.
50. Notice of rejection of proof of debt.
51. List of proofs to be tiled under Rule 97.
52. Notice to creditors of intention to declare dividend.
53. Notice to persons claiming to be creditors of intention to declare final dividend.
54. Notice of dividend.
55. Authority to Liquidator to pay dividends to another person.
56. Notice of return to contributories.
57. Notice to creditors of first meeting.
58. Notice to contributories of first meeting.
59. Notice to officers of company to attend first meeting of creditors or contributories.
60. Notice of meeting (general form).
61. Authority to deputy to act as chairman of meeting and use proxies.
62. Memorandum of adjournment of meeting.
63. List of creditors to be used at every meeting.
64. General proxy.
65. Special proxy.
66. Application to Court to authorise a special bank account.
67. Order of Court for special bank account.
68. Certificate and request by Committee of Inspection as to investment of funds.
69. Request by Committee of Inspection to Accountant-General of the Federation.
70. Certificate by Committee of Inspection as to audit of Liquidator's cash book.
71. Liquidator's trading account under section 429.
72. Liquidator's statement of account (members' or creditors' voluntary winding-up).
73. Statement of receipts and payments and general directions as to statements.
74. Affidavit verifying statement of Liquidator's account under section 508.
75. Liquidator's trading account under section 516.
76. List of dividends or composition.
77. List of amounts paid or payable to contributories.
78. Affidavit verifying accounts of unclaimed and undistributed funds.
79. Notice to creditors and contributories of intention to apply for release.
80. Statement to accompany notice of application for release.
81. Winding up by the Court: Notice of appointment of Liquidator.
82. Members' voluntary winding-up declaration of solvency, embodying a statement of assets and liabilities.
83. Form of statement of assets and liabilities.
84. Creditors' voluntary winding up: Return of the final winding-up meetings of members and creditors.
85. Members' voluntary winding up: Return of final winding-up meeting.

## COMPANIES WINDING-UP RULES

[Commencement.] *[see rule 1 (1).1]*

*Citation, application, etc.*

### 1. Citation, commencement and revocation of S.1. 45 of 1983

(1) These Rules may be cited as the Companies Winding-Up Rules 2001, and shall come into effect three months from the date of the making of the Rules.

(2) The Companies Winding-Up Rules 1983 are hereby revoked.

## **2. Alteration of Rules**

These Rules shall apply to all proceedings in every winding up under the Act and the forms in the appendix, where applicable, shall be used:

Provided that the Chief Judge of the Court may from time to time alter any forms specified in the appendix hereto or substitute new forms in lieu thereof. Where the Chief Judge alters any form, or substitutes any new form in lieu of a form prescribed by these Rules, such altered or substituted form shall be published in the *Gazette*.

## **3. Proceedings in open court**

All proceedings in respect of winding up shall be heard in open Court unless the Court otherwise orders.

## **4. Motions**

Every application in Court other than a petition shall be made by motion, notice of which shall be served on every person against whom an order is sought not less than five clear days before the day named in the notice for hearing the motion.

## **5. Title of proceedings**

Every proceeding shall be dated and shall, with any necessary addition, be instituted in the matter of the company to which it relates and in the matter of the Companies and Allied Matters Act and otherwise as in Form 1 and shall bear a distinctive number assigned to the suit in the Court's registry.

[ Form 1.]

## **6. Issue of summons**

(1) Every summons in any proceedings shall be prepared by the applicant or his solicitor and issued from the Court's registry.

(2) A summons, when sealed, shall be deemed to be issued; and the person obtaining the summons shall leave, in the Court's registry, a duplicate which shall be stamped with the appropriate stamp and filed.

## **7. Orders**

Every order, whether made in Court or in chambers, shall be drawn up by the registrar, unless in any proceedings or classes of proceedings, the judge who makes the order shall direct that no order need be drawn up. Where a directive is given that no order need be drawn up, the note or memorandum of the order, signed or initialled by the judge, making the order, shall be sufficient evidence of the order having been made.

## **8. File of proceedings in office of Registrar**

All petitions, affidavits, summons, orders, proofs, notices, depositions and other proceedings in the Court shall be kept and remain as record in the office of the registrar and, subject to the directions of the Court, shall be placed in one continuous file.

## **9. Office copies**

All office copies of petitions, affidavits, depositions, papers and writings, or any parts thereof, required by the Official Receiver or any Liquidator, creditor, contributory, officer of a company, or other person entitled thereto, shall be provided by the registrar, and shall, except as to figures, be fairly written out at length, and be sealed and delivered out without any unnecessary delay.

[EDITORIAL NOTE: The text of rules 10-15 is not available at the time of printing this publication. These rules will be inserted and issued to subscribers in subsequent updates.]

## **16. Presentation of petition**

(1) A petition shall be presented at the Court's registry and the Chief Judge or any other judge in charge, as the case may be, shall appoint the time and place at which the petition is to be heard.

(2) Notice of the time and place appointed for the hearing of the petition shall be written on the petition.

## **17. Service of petition**

(1) Every petition shall, unless presented by the company, be served upon the company at the registered office, if any, of the company, and if there is no registered office thereat, the principal or last known principal place of business of the company, if any, if such can be found, by leaving a copy with any member, officer or servant of the company there, or in case no such member, officer or servant can be found there, then by leaving a copy at such registered office or principal place of business, or by serving it on such member, officer or servant of the company as the Court may direct; and where the company is being wound up voluntarily, the petition shall also be served upon the Liquidator (if any), appointed for the purpose of winding up the affairs of the company.

(2) Affidavit of service of any such petition shall be as in Form 5 or 6 in the Appendix with such variations as circumstances may require.

[Form 5 and 6.]

### **18. Verification of petition**

(1) Every petition shall be verified by an affidavit referring thereto. Such affidavit shall be made by the petitioner, or by one of the petitioners, if more than one or, in case the petition is presented by a company, by some director, secretary, or other principal officer thereof, and shall be sworn and filed within four days after the petition is presented, and such affidavit shall be sufficient *prima facie* evidence of the statements in the petition.

(2) Affidavit of verification should be in Form 7 or 8 in the Appendix with such variations as circumstances may require.

[Form 7 and 8.]

### **19. Advertisement of petition**

(1) No petition shall be advertised until the judge hearing the petition or a judge before whom the petition is first mentioned in open Court so orders.

(2) The order for advertisement of a petition shall be as follows-

- (a) the petition shall be advertised fifteen clear days before the hearing;
- (b) the petition shall be advertised once or as many times as the Court may direct, in the *Gazette* and in one national daily newspaper and one other newspaper circulating in the State where the registered office, or principal or last known principal place of business, as the case may be, of such company is or was situate, or in such other newspaper as shall be directed by the Court;
- (c) the advertisement shall state the day on which the petition was presented, and the name and address of the petitioner, and of his solicitor, and shall contain a note at the foot thereof stating that any person who intends to appear at the hearing of the petition, either to oppose or support, must send notice of his intention to the petitioner, or to his solicitor, within the time and manner prescribed by this rule and any advertisement of a petition for the winding up of a company by the Court which does not contain such a note shall be deemed irregular.

(3) A petition not advertised within the time prescribed or in the manner prescribed shall be struck out, unless, for sufficient reason given, the Court otherwise orders.

(4) Advertisement of the petition shall be in Form 9 or 10 in the Appendix with such variations as circumstances may require.

[Forms 9 and 10.]

### **20. Copies of petition to creditors and contributories**

After the advertisement of the petition but before the hearing date next to the date when the order for advertisement was given, every contributory, or in the case of a petition for the winding up of a company, every creditor of the company, shall be entitled to be furnished by the solicitor of the petitioner with a copy of the petition within two days after requiring same, on paying the prescribed fee for such copy.

*Provisional Liquidator*

## **21. Appointment of provisional Liquidator**

(1) After the advertisement of a petition for the winding up of a company by the Court, upon the application of a creditor, or of a contributory or of the company, and upon proof by affidavit of sufficient ground for the appointment of a provisional Liquidator, the Court, if it thinks fit and upon such terms as in the opinion of the Court shall be just and necessary, may make the appointment.

(2) The order appointing the provisional Liquidator, shall bear the number of the petition, and shall state the nature and a short description of the property of which the provisional Liquidator is ordered to take possession, and the duties to be performed by the provisional Liquidator.

(3) Subject to any order of the Court, if no order for the winding up of the company is made upon the petition, or if an order for the winding up of the company on the petition is rescinded, or if all proceedings on the petition are stayed, or if an order is made continuing the voluntary winding up of the company subject to supervision of the Court, the provisional Liquidator shall be entitled to be paid, out of the property of the company, all the costs, charges, and expenses properly incurred by him as provisional Liquidator, including such sum as is or would be payable under the scale of land fees for the time being in force; where the Official Receiver is appointed provisional Liquidator, he may retain out of such property the amounts of such costs, charges, and expenses.

(4) Where any person other than the Official Receiver has been appointed provisional Liquidator and the Official Receiver has taken any step for the purpose of obtaining a statement of affairs or has performed any other duty prescribed by these Rules, the provisional Liquidator shall pay the Official Receiver such sum, if any, as the Court may direct.

(5) The order of appointment of a provisional Liquidator shall be in Form II in the Appendix with such variations as circumstances may require.

[Form II.]

*Hearing of petition and orders made thereon*

## **22. Hearing to show compliance with rules**

(1) After the hearing at which the order to advertise the petition was given by the Court, the petitioner or his solicitor shall, on the next adjourned date, satisfy the Court that the petition has been duly advertised, that the prescribed affidavit verifying the statements therein and the affidavit of service (if any), have been duly complied with by the petitioner.

(2) No order (other than the one already made in respect of advertising the petition) shall be made on the petition of any petitioner who has not, prior to the hearing of the petition, satisfied the Court in the manner required by this rule.

## **23. Notice by persons who intend to appear**

(1) Every person who intends to appear on the hearing of a petition shall give to the petitioner notice of his intention in accordance with this rule.

(2) The notice shall contain the address of the person intending to appear, shall be signed by him (or by his solicitor) and shall otherwise be in Form 12 with such variations as circumstances may require.

[Form 12.]

(3) The notice shall be served or sent by post to the petitioner or his solicitor, at the address stated in the advertisement of the petition.

(4) The notice shall be served (or if sent by post shall be posted in such time as in ordinary course of post to reach the address) not later than five days before the hearing.

(5) A person who has failed to comply with this rule shall not, without the special leave of the Court, be allowed to appear in the hearing of the petition.

## **24. List of names and addresses of persons who appear on the petition**

(1) The petitioner, or his solicitor, shall prepare a list of the names and addresses of the persons who have given notice of their intention to appear on the hearing of the petition and of their respective solicitors; and such list shall be in Form 13 in the Appendix.

[Form 13.]

(2) On the day appointed for hearing the petition, a fair copy of the list (or if no notice of intention to appear has been given, a statement in writing to that effect) shall be filed by the petitioner, or his solicitor in the Court's registry prior to the hearing of the petition.

## **25. Affidavits in opposition and reply**

(1) An affidavit in opposition to a petition shall be filed by the respondent within ten days of the service of the petition or by any other party, within fifteen days of the date on which the petition was advertised, and notice of the filing of every affidavit in opposition to such a petition shall be given to the petitioner or his solicitor on the day on which the affidavit is filed.

(2) An affidavit in reply to an affidavit filed in opposition to a petition shall be filed within five days of the date on which notice of such affidavit is received by the petitioner or his solicitor.

## **26. Substitution of creditor or contributory for withdrawing petition**

When a petitioner for an order that a company be wound up by the Court or subject to the supervision of the Court is not entitled to present a petition, or whether so entitled or not, he -

- (a) fails to advertise his petition as ordered;
- (b) consents to withdraw his petition or to allow it to be dismissed, or the hearing adjourned;
- (c) or fails to appear in support of his petition when it is called on in Court on the day originally fixed for the hearing thereof, or on any day to which the hearing has been adjourned; or
- (d) if appearing, does not apply for an order in terms of the prayer of his petition,

the Court may, upon such terms as it may think just, substitute as petitioner any creditor or contributory who in the opinion of the Court would have a right to present a petition, and who is desirous of prosecuting the petition.

*Order to wind up a company and order under section 312 of the Act*

## **27. Notice that winding up has been pronounced to be given to Official Receiver**

(1) When an order for the winding up of a company, or for the appointment of a provisional Liquidator prior to the making of an order of the winding up or the company has been made, the registrar shall, on the same day or, at the latest not later than five days thereafter, send to the Official Receiver a notice informing him that the order has been pronounced.

(2) The notice shall be in Forms 14 and 15 respectively, with such variations as circumstances may require.

[Forms 14 and 15.]

## **28. Documents for drawing up and order to be left with Registrar**

It shall be the duty of the petitioner, or his solicitor, and of all other persons who have appeared on the hearing of the petition, at latest within two days of the day on which an order for the winding up of a company or an order under section 312 of the Act is pronounced in Court, to leave at the registrar's office all the documents required for the purpose of enabling the registrar to complete the order forthwith.

## **29. Contents of winding-up order**

(1) An order to wind up a company or for the appointment of a provisional Liquidator, shall contain at the foot thereof a notice stating that it will be the duty of such other persons who are liable to make out or concur in making out the company's statement of affairs as the Official Receiver may require, to attend on the Official Receiver at such time and place as he may appoint and to give all information he may require.

(2) The order for the winding up of a company shall be in Form 16 in the Appendix with such variations as circumstances may require.

[Form 16.]

## **30. Transmission and advertisement of winding-up order**



(1) When an order that a company be wound up, or for the appointment of a provisional Liquidator has been made--

- (a) three copies of the order sealed with the seal of the Court, shall forthwith be sent by post or otherwise by the registrar to the Official Receiver;
- (b) the Official Receiver shall cause a sealed copy of the order to be served upon the company by registered letter addressed to it at its registered office (if any) or if there is no registered office, at its principal or last known principal place of business or upon such other person or persons, or in such other manner as the Court may direct; and if the order is that the company be wound up by the Court, shall forward to the Commission, the copy of the order which by section 416 of the Act, is directed to be so forwarded by them or otherwise as may be prescribed.

(2) An order for the winding up of a company subject to the supervision of the Court, (in Form 17 in the Appendix, with such variations as circumstances may require), shall before the expiration of 28 days from the date thereof, be advertised by the petitioner, once in the *Gazette*, and once in two national daily newspapers in which notice of petition was previously advertised and shall be served on such persons (if any) and in such manner as the Court shall direct.

[Form 17.]

(3) Where an order under section 312 of the Act has been made, a sealed copy of the order shall, unless the Court otherwise orders, be served by the petitioner on the company and on the Registrar-General in like manner as under paragraph (1) (b) of this rule, the Official Receiver is required to serve a sealed copy of the order, and where such order involves a reduction of capital or the alteration of the memorandum of association, the service may be effected as the Court orders.

### **31. Where written notice necessary**

For the purposes of section 501 of the Act, a notice that-

- (a) a winding-up petition has been presented; or
- (b) a winding-up order has been made; or
- (c) a provisional Liquidator has been appointed; or
- (d) a meeting has been called at which there is to be proposed a resolution for the voluntary winding up of the company; or
- (e) a resolution has been passed for the winding up of the company,

shall be in writing and shall be addressed to the sheriff, and may be served by being delivered by hand or by registered post:

Provided that where a winding-up petition is presented or winding-up order is made or a provisional Liquidator is appointed in the Court other than in the head office of the Court, the filing of the petition or the making of the order or the appointment of the provisional Liquidator shall, for the purposes of section 501 of the Act, be sufficient notice to the registrar, that the petition has been presented or the order made or the provisional Liquidator appointed, as the case may be.

### *Transfers of action and proceedings*

### **32. Transfer of actions**

(1) Where an order has been made for the winding up of a company, then if such order was made by the Court or if the proceedings have been transferred to the Court, the judge shall, upon application of any party to the proceedings, have power, without further consent, to request the transfer to him of any action, cause or matter pending in any other Court brought or continued by or against the company, and any action or proceedings by a mortgagee or debenture holder of the company against the company, for the purpose of realising his security or by any other person for the purpose of enforcing a claim against the company's assets or property which is pending in the Court.

(2) The order of request shall be served on the registrar of the other Court in which the case to be transferred is pending.

(3) Where any action brought by or against a company against which a winding-up order has been made is transferred as stated in paragraph (1) of this rule, the judge to which the action has been transferred may hear, determine, and deal with any application, matter or proceeding which, if the action had not been transferred, would have been heard and determined in the other Court.

*Special manager*

**33. Accounting by special manager**

(1) An application by the Official Receiver for the appointment of a special manager shall be supported by an affidavit and by a report of the Official Receiver and such report shall either recommend the amount of remuneration which, in the opinion of the Official Receiver, ought to be allowed to the special manager, or request the Court to fix one.

[Form 18.]

(2) The remuneration of the special manager shall be stated in the order appointing him, but the Court may, at any subsequent time, for good cause shown, make an order for payment to the special manager of further remuneration.

**34. Appointment of special manager**

Every special manager shall submit accounts to the Official Receiver, and the special manager's accounts shall be verified by affidavit, in Form 18 in the Appendix, with such variations as circumstances may require, and when approved by the Official Receiver, the total of the receipts and payments shall be added by the Official Receiver to his accounts.

*Statement of affairs*

**35. Preparation of statement of affairs**

(1) A person who, under section 420 of the Act, has been required by the Official Receiver to submit and verify a statement of affairs of a company, shall be furnished by the Official Receiver with such forms and instructions as the Official Receiver in his discretion shall consider necessary.

(2) The statement which shall be in Form 19 in the Appendix, with such variations as circumstances may require, shall be made out in duplicate, one copy of which shall be verified by affidavit. The Official Receiver shall cause to be filed with the registrar, the verified statement of affairs.

[Form 19.]

(3) The Official Receiver may from time to time hold personal interviews with any such person as is mentioned in paragraphs (a), (b), (c), or (d) of subsection (2) of section 420 of the Act for the purpose of investigating the company's affairs, and it shall be the duty of every such person to attend on the Official Receiver at such time and place as the Official Receiver may appoint and give the Official Receiver all information that he may require.

**36. Extension of time for submitting statements of affairs**

When any person requires any extension of time for submitting the statement of affairs, he shall apply to the Official Receiver who may, if he thinks fit, give a written certificate extending the time in which the certificate shall be filed with the proceedings and shall render an application to the Court unnecessary.

**37. Information subsequent to statement of affairs**

After the statement of affairs of a company has been submitted to the Official Receiver, it shall be the duty of each person who has made or concurred in making it, if and when required, to attend on the Official Receiver and answer all such questions as may be put to him and give all such further information as may be required of him by the Official Receiver in relation to the statement of affairs.

**38. Default**

Any default in complying with the requirements of section 420 of the Act may be reported by the Official Receiver to the Court.

**39. Expenses of statement of affairs**

A person who is required to make or concur in making any statement of affairs of a company shall, before incurring any costs or expenses in and about the preparation and making of the statement, apply to the Official Receiver for his sanction and submit a statement of the estimated costs and expenses which it is intended to incur; and, except by order of the Court, no person shall be allowed out of the assets of the company any costs or expenses which have not before being incurred, been sanctioned by the Official Receiver.

#### **40. Dispensing with statement of affairs**

(1) Any application to dispense with the requirements of section 420 of the Act shall be supported by a report of the Official Receiver showing the special circumstances which, in his opinion, render such a course desirable.

(2) When the Court has made an order dispensing with the requirements of the said section, it may give such consequential directions as it may see fit and in particular it may give directions as to the sending of any notices which are by these Rules required to be sent to any person mentioned in the statement of affairs.

#### *Appointment of Liquidator in a winding up by the Court*

#### **41. Appointment of Liquidator on report of meetings of creditors and contributories**

(1) As, soon as possible after the first meetings of creditors and contributories have been held, the Official Receiver or the chairman of the meeting, as the case may be, shall report the result of each meeting to the Court in Form 20 in the Appendix, with such variations as circumstances may require.

[Form 20.]

(2) Upon the result of the meetings of creditors and contributories being reported to the Court, if there is a difference between the determinations of the meetings of the creditors and contributories, the Court shall, on the application of the Official Receiver, fix a time and place for considering the resolutions and determinations.

(3) When a time and place have been fixed for the consideration of the resolutions and determinations of the meetings, such time and place shall be advertised by the Official Receiver in such manner as the Court shall direct, but so that the first or only advertisement shall be published not less than seven days before the time so fixed.

(4) Upon the consideration of the resolutions and determinations of the meetings, the Court shall hear the Official Receiver and any creditor or contributory.

(5) If a Liquidator is appointed, a copy of the order appointing him in Form 21 in the Appendix, with such variations as circumstances may require, shall be transmitted to the Registrar-General by the Official Receiver, and the Registrar-General shall, as soon as the Liquidator has given security, cause notice of the appointment to be gazetted.

[Form 21.]

(6) The expense of gazetting the notice of the appointment shall be paid by the Liquidator, but may be charged by him on the assets of the company.

(7) Every appointment of a Liquidator or committee of inspection shall be advertised by the Liquidator in such manner as the Court directs immediately after the appointment has been made, and the Liquidator has given the required security.

(8) If a Liquidator in a winding up by the Court shall die, or resign, or be removed, another Liquidator may be appointed in his place in the same manner as in the case of a first appointment, and the Official Receiver shall, on the request of not less than one tenth in value of the creditors or contributories, summon meetings for the purpose of determining whether or not the vacancy shall be filled; but none of the provisions of this rule shall apply where the Liquidator is released under section 431 of the Act, in which case the Official Receiver shall remain the Liquidator.

#### *Security by Liquidators or special manager in a winding up by the Court*

#### **42. Standing security**

In the case of a special manager or a Liquidator other than the Official Receiver, the following provision as to security shall have effect, namely

- (a) the security shall be given to such officers or persons and in such manner as the Court may direct in each case;

- (b) the Court may, as it thinks fit, either increase or diminish the amount of the security which any person has given;
- (c) a certificate in Form 23 in the Appendix, with such variations as circumstances may require, shall be issued by the registrar that a security has been given and a copy of such certificate shall be filed in the file of the case;  
[Form 23.]
- (d) the cost of furnishing the required security by a Liquidator or special manager, including any premium which he may pay to a bank, shall be borne by him personally and shall not be charged against the assets of the company as an expense incurred in the winding up.

#### **43. Failure to give or keep up security**

(1) If a Liquidator or special manager fails to give the required security within the time stated for that purpose in the order appointing him, or any extension thereof, the Official Receiver shall report such failure to the Court who may thereupon rescind the order appointing the Liquidator or special manager.

(2) If a Liquidator or special manager fails to keep up his security, the Official Receiver shall report such failure to the Court, who may thereupon remove the Liquidator or special manager, and make such order as to costs as the Court shall think fit.

(3) Where an order is made under this rule rescinding an order for the appointment of or removing a Liquidator, the Court may direct that meetings shall be held for the purpose of determining whether an application shall be made to the Court for another Liquidator to be appointed, and thereupon the same meeting shall be summoned and the same proceedings may be taken as in the case of a first appointment of a Liquidator.

#### *Public examination*

#### **44. Consideration of report**

The consideration of a report made by the Official Receiver pursuant to subsection (2) of section 421 of the Act shall be before a Judge in Court or in chambers, and the Official Receiver shall personally or by counsel, attend the consideration of the report and give the Court any further information or explanation with reference to the matters stated in the report which the Court may require.

#### **45. Procedure consequent on order for public examination**

Where the judge makes an order under section 450 of the Act directing any person or persons to attend for public examination in Form 24 in the Appendix, with such variations as circumstances may require--  
[Form 24.]

- (a) the examination shall be held before the judge and the judge may direct that the whole or any part of the examination of any such person or persons, be held and heard and determined before any of the persons mentioned in subsection (9) of the said section;
- (b) the judge may, if he thinks fit, either in the order for examination or by any subsequent order, give directions as to the special matters on which any such person is to be examined;
- (c) where on an examination held before one of the persons mentioned in subsection (9) of the said section, he is of the opinion that such examination is being unduly or unnecessarily protracted, or for any other sufficient cause, he may adjourn the examination of any person or any part of the examination, to be held before the judge.

#### **46. Application for holding examination**

Upon an order directing a person to attend for public examination being made, the Official Receiver shall, unless the judge shall otherwise direct, without further order, make an appointment for the public examination to be held.

#### **47. Appointment of time and place for public examination**

A day and place shall be appointed for holding the public examination and notice of the day and place so appointed shall be given by the Official Receiver in Form 25 in the Appendix, with such variations as circumstances may require, to the person who is to be examined by sending such notice in a registered letter addressed to his usual or last known address.

[Form 25.]

#### **48. Notice of public examination to creditors and contributories**

(1) The Official Receiver shall give notice of the time and place appointed for holding a public examination to the creditors and contributories by advertisement in such newspaper as the Court may direct and in the *Gazette*.

(2) Where an adjournment of the public examination has been directed, notice of the adjournment shall not, unless otherwise directed by the Court, be advertised in any newspaper, but it shall be sufficient to publish in the *Gazette*, a notice of the time and place fixed for the adjourned examination.

#### **49. Default in attending**

If any person who has been directed by the Court to attend for public examination fails to attend at the time and place appointed for holding or proceeding with the same, and no good cause is shown by him for such failure, or if before the day appointed for the examination, the Official Receiver satisfied the Court that such person has absconded, or that there is reason for believing that he is about to abscond with the view of avoiding examination, it shall be lawful for the Court, upon it being proved to the satisfaction of the Court, that notice of the order and of the time and place appointed for attendance at the public examination was duly served, without any further notice to issue a warrant in Form 26 in the Appendix, with such variations as circumstances may require, for the arrest of the person required to attend, or to make such other order as the Court shall think just.

#### **50. Notes of examination to be filed**

The notes of every public examination shall, after being signed as required by sub-section (7) of section 450 of the Act, be filed in the Court to form part of the Court's record.

*Proceedings by or against directors, promoters and officers*

#### **51. Application by or against delinquent directors, officers and promoters**

(1) An application made to the Court under any of the following provisions of the Act-

(a) section 254;

(b) subsection (1) or (2) of section 506;

(c) section 507;

(d) subsection (2) of section 64,

shall be made by summons returnable in the first instance in chambers.

(2) The summons shall state the nature of the declaration or order for which application is made, and the grounds of the application, and unless otherwise ordered, shall be served in the manner in which an originating summons is required by the Rules of Court to be served on every person against whom an order is sought, not less than eight days before the day named in the summons for hearing the application. No affidavit or report shall be filed before the return of the summons.

(3) On the return of the summons, the Court may give such directions as it thinks fit as to whether points of claim and defence are to be delivered, as to the taking of evidence wholly or in part by affidavit or orally, as to the cross-examination either before the judge in the hearing in Court or in chambers of any deponents to affidavits in support of or in opposition to the application, as to any report it may require the Official Receiver or Liquidator to make and generally as to the procedure on the summons and for the hearing thereof.

(4) Where any such order as is mentioned in paragraph 2 of this rule has directed that points of claim and defence shall be delivered then, if subsequently to such order and before the summons has been set down for trial or adjourned for mention, either party wishes to apply for any further direction as to any interlocutory matter or thing, he shall apply and shall give two clear days' notice in writing to the other party stating the grounds of the application before the application can be heard.

## **52. Notice of application**

Where the application is made by motion, the Court may at any time before making an order, require the Official Receiver or Liquidator to furnish to the Court, a report with respect to any facts or matters which are in his opinion relevant to the application and give any directions it may see fit with regard to any of the matters mentioned in paragraph (2) of the last preceding rule. Notice of any such intended motion shall be served on every person against whom an order is sought, not less than eight days before the day named in the notice for hearing the motion. A copy of every report and affidavit intended to be used in support of the motion shall be served on every person to whom notice of motion is given not less than four days before the hearing of the motion.

## **53. Hearing of application**

(1) Where any application under section 254 of the Act is made or heard after a public examination under section 450 of the Act which has been held before the registrar or any of the persons mentioned in subsection (9) of the said section 450, then unless the judge shall otherwise direct, such application shall be heard and determined by such registrar or either person; but the judge shall personally hear all other applications under the said section 254.

(2) Where any order has been made under the said section, any application for leave arising out of such order shall be made in the winding up of the company in relation to which such order was made and the dissolution of the company or the stay of all proceedings in such winding up shall not be a bar to such application or to the granting of leave.

## **54. Use of depositions taken at public examination**

(1) Where in the course of the proceedings in a winding up by the Court, an order has been made for the public examination of persons named in the order pursuant to section 450 of the Act, then in any proceedings subsequently instituted under any of the provisions of the Act mentioned in paragraph (1) of rule 51, the verified notes of the examination of each person who was examined under the order shall, subject as hereinafter mentioned, and to any order or directions of the Court as to the manner and extent in and to which the notes shall be used, and subject to all just exceptions to the admissibility in evidence against any particular person or persons of any of the statements contained in the notes of the examinations, be admissible in evidence against any of the persons against whom the application is made who, under section 450 of the Act and the order for the public examination, was or had the opportunity of being present at the taking part in the examination.

(2) Before any such notes of a public examination shall be used on any such application, the person intending to use the same shall, not less than 21 days before the day appointed for hearing the application, give notice of such intention to each person against whom it is intended to use such notes, or any of them, specifying the notes or parts of the notes which it is intended to use against him, and furnish him with copies of such notes or parts of notes (except notes of the person's own depositions):

Provided also that every person against whom the application is made shall be at liberty to cross-examine or re-examine (as the case may be), any person the notes of whose examination are read, in all respects as if such person had made an affidavit on the application.

### *Witnesses and depositions*

## **55. Taking of evidence**

(1) The Court may order the way and manner the evidence of any person to be examined under the Act and these Rules before any person other than the Court, may be taken.

(2) Where any person other than an official of the Court is nominated to take notes of evidence as mentioned in paragraph (1) of this rule, the Court shall decide the necessary fees to be paid to such person.

## **56. Committal of contumacious witness**

(1) If a person examined before any person other than a judge refuses to answer to the satisfaction of the person examining him any question which he may allow to be put, the person examining shall report such refusal to the judge, and upon such report being made, the person in default shall be in the same position, and be dealt with in the same manner as if he had made default in answering before the judge.

(2) The report shall be in writing, but without affidavit and shall set forth the question put, and the answer (if any) given by the person examined.

(3) Form 27 in the Appendix, with such variations as circumstances may require, shall be used for the report.  
[Form 27.]

(4) The person examining shall, before the conclusion of the examination at which the default in answering is made, name the time when and the place where the default will be reported to the judge, and upon receiving the report, the judge may take such action thereon as he shall think fit.

#### **57. Depositions of private examinations**

(1) The Official Receiver may attend in person, or by an assistant Official Receiver, or by counsel employed for that purpose, any examination of a witness under section 449 of the Act, on whoever application the same has been ordered, and may take notes of the examination for his own use, and, put such questions to the persons examined as the Court may allow.

(2) The notes of the depositions of a person examined under section 449 of the Act, or under any order of the Court before the Court, or before any person appointed to take such an examination (other than the notes of the depositions of a person examined at a public examination under section 450 of the Act) shall be forthwith filed in the Court registry and be opened to the inspection of any creditor, contributory, or other person, except the Official Receiver or Liquidator, or any provisional Liquidator other than the Official Receiver, while he is acting as provisional Liquidator, unless and until the Court shall so direct, and the Court may, from time to time, give such general or special directions as it shall think expedient as to the custody or inspection of such notes and the furnishing of copies or extracts therefrom.

#### *Disclaimer*

#### **58. Disclaimer**

(1) Any application for leave to disclaim any part of the property of a company pursuant to subsection (1) of section 499 of the Act shall be by *ex parte* summons which shall be supported by an affidavit showing who are the parties interested and what their interests are.

(2) On the hearing of the summons, the Court shall give such directions as it sees fit and in particular directions as to the notices to be given to the parties interested or any of them and the Court may adjourn the application to enable any such party to attend.

(3) Where a Liquidator disclaims a leasehold interest, he shall forthwith file the disclaimer at the office of the registrar.

(4) The disclaimer shall contain particulars of the interest disclaimed and a statement of the persons to whom notice of the disclaimer has been given. Until the disclaimer is filed by the Liquidator, the disclaimer shall be inoperative.

(5) A disclaimer shall be in the Form 28 and a notice of disclaimer in the Form 29 in the Appendix, with such variations as circumstances may require.

(6) Where any person claims to be interested in any part of the property of a company which the Liquidator wishes to disclaim, he shall at the request of the Liquidator, furnish a statement of the interest so claimed by him.

#### *Vesting of disclaimed property*

#### **59. Vesting of disclaimed property**

(1) Any application under subsection (2) of section 499 of the Act for an order for the vesting of any disclaimed property in or the delivery of any such property to any person shall be supported by the affidavit filed on the application for leave to disclaim such property.

(2) Where such an application as aforesaid is to disclaimed property of a leasehold nature and it appears that there is any mortgages by demise (including a charge by way of legal mortgage), or under lease of such property, the Court may direct that notice shall be given to such mortgagee or under-lessee that, if he does not elect to accept and apply for such a vesting order as aforesaid upon the terms required by subsection (2) of section 499 of

the Act and imposed by the Court within a time to be fixed by the Court and stated in the notice, he will be excluded from all interest in and security upon the property.

(3) The Court may adjourn the application for such notice to be given and for such mortgagee or under-lessee to be added as a party to and served with the application and if he sees fit, to make such election and application as it mentioned in the notice.

(4) If at the expiration of the time so fixed by the Court such mortgagee or under-lessee fails to make such election and application, the Court may make an order vesting the property in the applicant and excluding such mortgagee or under-lessee from all interest in or security upon the property.

*Arrangement with creditors and contributories in a winding up by the Court*

**60. Report by Official Receiver or arrangement and compromises**

In a winding up by the Court, if application is made to the Court to sanction any compromise or arrangement, the Court may, before giving its sanction thereto, hear a report by the Official Receiver as to the terms of the scheme, and as to the conduct of the directors and other officers of the company, and as to any other matters which, in the opinion of the Official Receiver or the Ministry ought to be brought to the attention of the Court. The report shall not be placed upon the file, unless and until the Court shall direct it to be filed.

*Collection and distribution of assets in a winding up by the Court*

**61. Collection and distribution of company's assets by Liquidator**

(1) The duties imposed on the Court by subsection (1) of section 439 of the Act in a winding up by the Court with regard to the collection of the assets of the company and the application of the assets in discharge of the company's liabilities shall be discharged by the Liquidator as an officer of the Court subject to the control of the Court.

(2) For the purpose of the discharge by the Liquidator of the duties imposed by subsection (1) of section 439 of the Act, and paragraph (1) of this rule, the Liquidator in a winding up by the Court shall, for the purpose of acquiring or retaining possession of the property of the company, be in the same position as if he were a receiver of the property appointed by the Court, and the Court may, on his application, enforce such acquisition or retention accordingly.

**62. Power of Liquidator to require delivery of property**

The powers conferred on the Court by section 440 of the Act shall be exercised by the Liquidator. Any contributory for the time being on the list of contributories, trustee, receiver, banker or agent or officer of a company which is being wound up under order of the Court shall, on notice (in Form 30 in the Appendix, with such variations as circumstances may require) from the Liquidator and within such time as he shall by notice in writing require, pay, deliver, convey, surrender or transfer to or into the hands of the Liquidator any money, property, books or papers, which happened to be in his hands for the time being and which the company is *prima facie* entitled.

[Form 30.]

*List of contributories in a winding up by the Court*

**63. Liquidator to settle list of contributories**

(1) Unless the Court shall dispense with the settlement of a list of contributories, the Liquidator shall, with all convenient speed after his appointment, settle a list of contributories of the company, and shall appoint a time and place for that purpose.

[Form 31.]

(2) The list of contributories in Form 31, in the Appendix, with such variations as circumstances may require, shall contain a statement of the address of, and the number of shares or extent of interest to be attributed to each contributory, and the amount called up and the amount paid up in respect of such shares or interest and shall distinguish the several classes of contributories.



(3) As regards representative contributories, the Liquidator, so far as practicable, shall observe the requirements of subsection (2) of section 439 of the Act.

#### **64. Appointment of time and place for settlement of list**

The Liquidator shall give notice in writing of the time and place appointed for the settlement of the list of contributories to every person whom he proposes to include in the list, and shall state in the notice to each person in what character and for what number of shares or interest he proposes to include such person in the list and what amount has been called up and what amount paid up in respect of such shares or interest. The notice shall be in Form 32 in the Appendix, with such variations as circumstances may require.

[Form 32]

#### **65. Settlement of list of contributories**

On the day appointed for settlement of the list of contributories, the Liquidator shall hear any person who objects to being settled as a contributory, and after such hearing, shall finally settle the list and issue a certificate in Form 33 in the Appendix, with such variations as circumstances may require; and the list so settled, shall be the list of contributories of the company.

[Form 33]

#### **66. Notice of contributories**

The Liquidator shall forthwith give notice in Form 34 in the Appendix, with such variations as circumstances may require, to every person whom he has finally placed on the list of contributories stating in what character and for what number of shares or interest he has been placed on the list and what amount has been called up and what amount paid up in respect of such shares or interest and in the notice he shall inform such person that any application for the removal of his name from the list, or for a variation of the list, must be made to the Court by summons within thirty days from the date of the service on the contributory or alleged contributory of notice of the fact that his name is settled on the list of contributories.

[Form 34.]

#### **67. Application to Court to vary, the list**

(1) Subject to the power of the Court to extend the time or to allow an application to be made notwithstanding the expiration of the time limited for that purpose, no application to the Court by any person who objects to the list of contributories as finally settled by the Liquidator shall be entertained after the expiration of 21 days from the date of the service of such person of notice of the settlement of the list.

(2) The Court may on an application under rule 66 make an order in Form 35 in the Appendix, with such variations as circumstances may require, for the setting aside or variation of the list.

[Form 35.]

(3) The Official Receiver shall not in any case be personally liable to pay any costs of or in relation to an application to set aside or vary his act or decision settling the name of a person on the list of contributories of a company.

#### **68. Variation of or addition to list of contributories**

The Liquidator may from time to time, vary or add to the list of contributories but any such variation or addition shall be made in the same manner in all respects as the settlement of the original list.

*Calls*

#### **69. Calls by Liquidator**

The powers and duties of the Court in relation to making calls upon contributories conferred by section 442 of the Act, shall and may be exercised, in a winding up by the Court, by the Liquidator as an officer of the Court subject to the proviso to section 453 of the Act, and to the following conditions--

- (a) where the Liquidator desires to make any call on the contributories, or any of them for any purpose authorised by the Act, if there is a Committee of Inspection, he may summon a meeting of such Committee for the purpose of obtaining their sanction to the intended call;
- (b) the notice of the meeting, in Form 36 in the Appendix, with such variations as circumstances may require, shall be sent to each member of the Committee of Inspection in sufficient time to reach him not less than fourteen days before the day appointed for holding the meeting and such notice shall contain a statement of the proposed amount of the call, and the purpose for which it is intended;
- (c) notice of the intended call and the intended meeting of the Committee of Inspection shall also be advertised in Form 37 in the Appendix, with such variations as circumstances may require, once at least in a national newspaper, or, where the winding up is not in the head office of the Court, in a newspaper circulating in the district of the Court in which the proceedings are pending;

[Form 37.]

- (d) the advertisement shall state the time and place of the intended meeting of the Committee of Inspection to be laid before the meeting, in reference to the said intended call;
- (e) at the meeting of the Committee of Inspection, any statements or representations made either to the meeting personally or addressed in writing to the Liquidator or members of the Committee by any contributory shall be considered before the intended call is sanctioned;
- (f) the sanction of the Committee shall be given by resolution in Form 38 in the Appendix, with such variations as circumstances may require, which shall be passed by a majority of the members present;

[Form 38.]

- (g) where there is no Committee of Inspection, the Liquidator shall not make a call without obtaining the leave of the Court.

#### **70. Application to the Court for leave to make a call**

In a winding up by the Court, an application to the Court for leave to make any call on the contributories of a company, or any of them, for any purpose authorised by the Act, shall be made by summons in the Forms 39 and 40 in the Appendix, with such variations as circumstances may require, stating the proposed amount of such call, which summons shall be served seven clear days at the least before the day appointed for making the call on every contributory proposed to be included in such call; or if the Court so directs, notice of such intended call may be given by advertisement in Form 41 in the Appendix, with such variations as circumstances may require, without a separate notice to each contributory.

[Forms 39, 40 and 41.]

#### **71. Documents making the call**

When the Liquidator is authorised by resolution or order in Form 42 in the Appendix with such variations as circumstances may require, to make a call on the contributories, he shall file with the registrar, a document making the call in the Form 43 in the Appendix with such variations as circumstances may require.

[Forms 42 and 41.]

#### **72. Service of notice of call**

When a call has been made by the Liquidator in a winding up by the Court, a copy of the resolution of the Committee of Inspection or order of the Court (if any) in Forms 38, 42 and 44 in the Appendix, with such variations as circumstances may require, as the case may be, shall forthwith, after the call has been made, be served upon each of the contributories included in such call, together with a notice in Form 45 in the Appendix, with such variations as circumstances may require, from the Liquidator specifying the amount or balance due from such contributory in respect of such call, but such resolution or order need not be advertised unless for any special reason the Court so directs.

[Forms 38, 42, 44 and 45.]

### **73. Enforcement of call**

The payment of the amount due from each contributory on a call may be enforced by order of the Court, to be made in chambers in Form 47 in the Appendix, on summons by the Liquidator supported by an affidavit in Form 46 in the Appendix.

[Forms 46 and 47.]

#### *Proofs*

### **74. Proof of debt**

In a winding up by the Court, every creditor shall, subject as hereinafter provided, prove his debt, unless the judge in any particular winding up shall give directions that any creditor or class of creditors shall be admitted without proof.

### **75. Mode of proof**

(1) A debt may be proved in any winding up by delivering or sending through the post, an affidavit verifying the debt.

(2) In a winding up by the Court, the affidavit shall be so sent to the Official Receiver or if a Liquidator has been appointed, to the Liquidator; and in any other winding up, the affidavit may be so sent to the Liquidator.

### **76. Verification of proof**

An affidavit proving a debt may be made by the creditor himself or by some person authorised by or on behalf of the creditor. If made by a person so authorised, it shall state his authority and means of knowledge.

### **77. Contents of proof**

(1) An affidavit proving a debt shall contain or refer to a statement of account showing the particulars of the debt in Form 48 in the Appendix, and shall specify the vouchers if any, by which the same can be substantiated.

[Form 48.]

(2) The Official Receiver or Liquidator to whom the proof is sent may at any time call for the production of the vouchers.

### **78. Statement of security**

An affidavit proving a debt shall state whether the creditor is or is not a secured creditor.

### **79. Proof before whom sworn**

An affidavit proving a debt may in a winding up by the Court, be sworn before any Commissioner of Oaths.

### **80. Costs of proof**

A creditor shall bear the cost of proving his debt unless the Court otherwise orders.

### **81. Discount**

A creditor proving his debt shall deduct therefrom--

(a) any discount which he may have agreed to allow for paying in cash in excess of five per cent of the net amount of his claim; and

(b) all trade discounts.

### **82. Periodical payment**

When any rent or other payment falls due at stated periods, and the order or resolution to wind up is made at any time other than one of those periods, the persons entitled to the rent or payment may prove for a

proportionate part thereof up to the date of the winding-up order or resolution as if the rent or payment grew due from day to day:

Provided that where the Liquidator remains in occupation or premises demised to a company which is being wound up, nothing herein contained shall prejudice or affect the right of the landlord of such premises to claim payment by the company, or the Liquidator, of rent during the period of the company's or the Liquidator's occupation.

### **83. Interest**

On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the commencement of the winding up, the creditor may prove for interest at a rate not exceeding four per cent per annum to that date from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made, giving notice that interest will be claimed from the date of the demand until the time of payment.

### **84. Proof for debt payable at a future time**

A creditor may prove for a debt not payable at the date of the winding-up order or resolution, as if it were payable presently, and may receive dividends equally with the other creditors, deducting debt only thereout, a rebate of interest at the rate of five per cent per annum computed from the declaration of a dividend to the time when the debt would have become payable according to the terms on which it was contracted.

### **85. Where formal proof of debt not required**

Unless the Official Receiver or Liquidator shall in any special case otherwise direct formal proof of the debts mentioned in paragraph (e) of subsection (1) of section 494 of the Act shall not be required.

### **86. Workmen's wages**

(1) In any case in which it appears that there are numerous claims for wages or accrued holiday remuneration by workmen and others employed by the company, it shall be sufficient if one proof for all such claims in the Form 49 in the Appendix is made either by a foreman or by some other person on behalf of all such creditors.

[Form 49.]

(2) Such proof shall have annexed thereto as forming part thereof, a schedule setting forth the names of the workmen and others and the amounts severally due to them.

(3) Any proof made in compliance with this rule shall have the same effect as if separate proofs have been made by each of the said workmen and others.

### **87. Production of bills of exchange and promissory notes**

Where a creditor seeks to prove in respect of a bill of exchange, promissory note, or other negotiable instrument or security on which the company is liable, such bill of exchange, note, instrument, or security must, subject to any special order of the Court made to the contrary, be produced to the Official Receiver, chairman of a meeting or Liquidator, as the case may be, and be marked by him before the proof can be admitted either for voting or for any purpose.

### **88. Transmission of proofs to Liquidator**

Where a Liquidator is appointed in a winding up by the Court, all proofs of debts that have been received by the Official Receiver shall be handed over to the Liquidator, but the Official Receiver shall first make a list of such proofs, and take a receipt thereon from the Liquidator for such proofs.

*Admissions and rejection of proofs and preferential claims and appeal to Court*

### **89. Notice to creditors to prove**

(1) Subject to the provisions of the Act, and unless otherwise ordered by the Court, the Liquidator in any winding up may from time to time fix a certain day, which shall be not less than thirty days from the date of the notice, on or before which the creditors of the company are to prove their debts or claims, and to establish any

title they may have to priority under Section 494 of the Act, or to be excluded from the benefit of any distribution made before such debts are proved, or as the case may be, from objecting to such distribution.

(2) The Liquidator shall give notice in writing of the day so fixed by advertisement in such newspaper as he shall consider convenient, and in a winding up by the Court to every person mentioned in the statement of affairs as a creditor, who has not proved his debt, and to every person mentioned in the statement of affairs as a preferential creditor whose claim to be a preferential creditor has not been established and is not admitted, and in any other winding up to the last known address or place of abode of each person who, to the knowledge of the Liquidator, claims to be a creditor or preferential creditor of the company and whose claim has not been admitted.

(3) All the rules hereinafter set out as to admission and rejection of proofs shall apply with the necessary variations to any such claim to priority as aforesaid.

#### **90. Examination of proof**

The Liquidator shall examine every proof of debt lodged with him and the grounds of the debt, and in writing, admit or reject it, in whole or in part, or require further evidence in support of it. If he rejects a proof he shall state in writing to the creditor the grounds of the rejection in Form 50 in the Appendix.

[Form 50.]

#### **91. Appeal by creditor**

If a creditor or contributory is dissatisfied with the decision of the Liquidator in respect of a proof, the Court may, on the application of the creditor or contributory, reverse or vary the decision, but subject to the power of the Court to extend the time, no application to reverse or vary the decision of the Liquidator in a winding up by the Court rejecting a proof sent to him by a creditor, or person claiming to be a creditor, shall be entertained, unless notice of the application is given before the expiration of thirty days from the date of the service of the notice of rejection.

#### **92. Expunging at instance of Liquidator**

If the Liquidator thinks that a proof has been improperly admitted, the Court may, on the application of the Liquidator, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

#### **93. Expunging at instance of creditor**

The Court may also expunge or vary a proof upon the application of a creditor or contributory if the Liquidator declines to interfere in the matter.

#### **94. Oaths**

For the purpose of any of his duties in relation to proofs, the Liquidator, in a winding up by the Court, may cause oaths to be administered by affidavits taken before a commissioner for oaths.

#### **95. Official Receiver's powers**

In a winding up by the Court, the Official Receiver, before the appointment of a Liquidator, shall have all the powers of a Liquidator with respect to the examination, admission, rejection of proofs, and any act or decision of his in relation thereto shall be subject to the like appeal.

#### **96. Filing proofs by Official Receiver**

In a winding up by the Court, the Official Receiver, where no other Liquidator is appointed, shall, before payment of a dividend, file all proofs tendered in the winding up, with a list thereof, distinguishing in such list the proofs which were wholly or partly admitted, and the proofs which were wholly or partly rejected.

#### **97. Proofs to be filed**

Every Liquidator in a winding up by the Court other than the Official Receiver, shall on the first day of every month, file with the registrar, a certified list in Form 51 in the Appendix of all proofs, if any, received by him during the month next preceding, distinguishing in such lists the proofs admitted, those rejected, and such as stand over

for further consideration; and, in the case of proofs admitted or rejected, he shall cause the proofs to be filed with the registrar.

[Form 51.]

#### **98. Procedure where creditor appeals**

The Liquidator in a winding up by the Court, including the Official Receiver when he is Liquidator, shall within five days after receiving notice from a creditor of his intention to appeal against a decision rejecting a proof, file such proof with the registrar with a memorandum thereon of his disallowance thereof.

#### **99. Time for dealing with proofs by Official Receiver**

Subject to the power of the Court to extend the time in a winding up by the Court, the Official Receiver as Liquidator, not later than 21 days from the latest date specified in the notice of his intention to declare a dividend as the time within which such proofs must be lodged, shall in writing either admit or reject wholly, or in part, every proof lodged with him, or require further evidence in support of it.

#### **100. Time for dealing with proofs by Liquidator**

(1) Subject to the power of the Court to extend the time, the Liquidator in a winding up by the Court, other than the Official Receiver, within 35 days after receiving a proof, which has not previously been dealt with shall in writing either admit or reject it wholly or in part or require further evidence in support of it:

Provided that where the Liquidator has given notice of his intention to declare a dividend, he shall, within 21 days after the date mentioned in the notice as the latest date up to which proofs must be lodged, examine, and in writing admit or reject or require further evidence in support of, every proof which has not been already dealt with, and shall give notice of his decision, rejecting a proof wholly or in part, to the creditors affected thereby.

(2) Where a creditor's proof has been admitted, the notice of dividend shall be a sufficient notification of the admission.

#### **101. Costs of appeal from decisions as to proofs**

The Official Receiver shall in no case be personally liable for costs in relation to an appeal from his decision rejecting any proof wholly or in part.

*Dividends in a winding up by the Court*

#### **102. Dividends to creditors**

(1) Not more than two months before declaring a dividend, the Liquidator in a winding up by the Court, shall give notice of his intention to do so in the Form 52 in the Appendix to the Ministry in order that the same may be gazetted, and shall at the same time give notice in the Form 53 in the Appendix to such of the creditors mentioned in the statement of affairs as have not proved their debts. Such notice shall specify the latest date up to which proofs must be lodged, which shall not be less than 21 days from the date of such notice.

[Forms 52 and 53.]

(2) Where any creditor, after the date mentioned in the notice of intention to declare a dividend at the latest date up to which proofs may be lodged, appeals against the decision of the Liquidator rejecting a proof, notice of appeal shall, subject to the power of the Court to extend the time in special cases, be given within fifteen days from the date of the notice of the decision against which the appeal is made, and the Liquidator may in such case make provision for the dividend upon such proof, and the probable cost of such appeal in the event of the proof being admitted.

(3) Where no notice of appeal has been given within the time specified in this rule, the Liquidator shall exclude all proofs which have been rejected from participation in the dividend.

(4) Immediately after the expiration of the time fixed by this rule for appealing against the decision of the Liquidator, he shall proceed to declare a dividend, and shall give notice to the Ministry (in order that the same may be gazetted), and shall also send a notice of dividend in the Form 54 in the Appendix to each creditor whose proof has been admitted.

[Form 54.]

(5) If it becomes necessary, in the opinion of the Liquidator and the Committee of Inspection, to postpone the declaration of the dividend beyond the limit of two months, the Liquidator shall give a fresh notice of his intention to declare a dividend to the Ministry in order that the same may be gazetted; but it shall not be necessary for the Liquidator to give a fresh notice to such of the creditors mentioned in the statement of affairs as have not proved their debts. In all other respects, the same procedure shall follow the fresh notice as would have followed the original notice.

(6) Upon the declaration of a dividend, the Liquidator shall forthwith transmit to the Ministry a list of the proofs with the registrar under rule 96.

(7) In every winding up by the Court, the Liquidator shall, if so required by the Ministry, transmit to the Ministry office copies of all lists of proof filed by him up to the date of the declaration of the dividend.

(8) Dividends may, at the request and risk of the person to whom they are paid, be transmitted to him by post.

(9) If a person to whom dividends are payable desires that they shall be paid to some other person, he may lodge with the Liquidator a document in the Form 55 in the Appendix which shall be a sufficient authority for payment of the dividend to the person therein named.

[Form 55.]

### **103. Return of capital to contributories**

(1) Every order by which the Liquidator in a winding up by the Court is authorised to make a return to contributories of the company shall, unless the Court shall otherwise direct, contain or have appended thereto, a schedule or list (which the Liquidator shall prepare) selling out in a tabular form, the full names and addresses of the persons to whom the return is to be paid, and the amount of money payable to each person, and particulars of the transfers of shares (if any) which have been made or the variations in the list of contributories which have arisen since the date of the settlement of the list of contributories and such other information as may be requisite to enable the return to be made.

(2) The schedule or list shall be in the Form 56 in the Appendix, with such variations as circumstances may require, and the Liquidator shall send a notice of return to each contributory.

[Form 56.]

*General meeting of creditors and contributories in relation of a winding up by the Court*

### **104. First meeting of creditors and contributories**

Unless the Court otherwise directs, the meeting of creditors and contributories under section 519 of the Act (hereinafter referred to as the first meetings of creditors and contributories) shall be held within one month or if a special manager has been appointed, then within six weeks after the date of the winding-up order. The dates of such meetings shall be fixed and they shall be summoned by the Official Receiver.

### **105. Notice of first meeting to the Ministry**

The Official Receiver shall forthwith give notice of the dates fixed by him for the first meetings of creditors and contributories to the Ministry, who shall gazette the same.

### **106. Summoning of first meetings**

The first meetings of creditors and contributories shall be summoned as hereinafter provided.

### **107. Form of notices of first meetings**

The notice of the first meetings of creditors and contributories may be in Forms 57 and 58 in the Appendix, and the notices to creditors shall state a time within which the creditors must lodge their proofs in order to entitle them to vote at the first meeting.

[Forms 57 and 58.]

### **108. Notice of first meeting to officers of company**

(1) The Official Receiver shall also give to each of the officers of the company who, in his opinion, ought to attend the first meetings of creditors and contributories, fifteen days' notice of the time and place appointed for each meeting. The notice may either be delivered personally or sent by prepaid post letter, as may be convenient.

[Form 59.]

(2) It shall be the duty of every officer who receives notice of such meeting to attend if so required by the Official Receiver, and if such officer fails to attend, the Official Receiver shall report such failure to the Court.

#### **109. Summary of statement of affairs**

(1) The Official Receiver shall also, as soon as practicable, send to each creditor mentioned in the company's statement of affairs, and to each person appearing from the company's books or otherwise to be a contributory of the company a summary of the company's statement of affairs, including the causes of its failure, and any observations thereon which the Official Receiver may think fit to make.

(2) The proceedings at a meeting shall not be invalidated by reason of any summary or notice required by these rules not having been sent or received before the meeting.

(3) Where prior to the winding-up order, the company has commenced to be wound up voluntarily, the Official Receiver may, if in his absolute discretion he sees fit to do so, send to the persons aforesaid or any of them, an account of such voluntary winding up, showing how such winding up has been conducted and how the property of the company has been disposed of and any observations which the Official Receiver may think fit to make on such account or on the voluntary winding up.

*General meetings of creditors and contributories in relation to winding up by the Court and of creditors in relation to a creditor's voluntary winding up*

#### **110. Liquidator's meetings of creditors and contributories**

(1) In addition to the first meetings of creditors and contributories and in addition also to meetings of creditors and contributories directed to be held by the Court under section 519 of the Act (hereinafter referred to as Court meetings of creditors and contributories), the Liquidator in any winding up by the Court may himself from time to time, subject to the provisions of the Act and the control of the Court, summon, hold, and conduct meetings of the creditors or contributories (hereinafter referred to as Liquidator's meetings of creditors and contributories), for the purpose of ascertaining their wishes in all matters relating to the winding up.

(2) In any creditors' voluntary winding up, the Liquidator may himself from time to time summon, hold and conduct meetings of creditors for the purpose of ascertaining their wishes in all matters relating to the winding up (such meetings and all meetings of creditors which a Liquidator of a company is by the Act required to convene in or immediately before such a voluntary winding up and all meetings convened by a creditor in a voluntary winding up under these Rules, are hereinafter called voluntary liquidation meetings).

#### **111. Application of rules as to meetings**

Except where and in so far as the nature of the subject matter or context may otherwise require, the rules as to meetings hereinafter set out shall apply to first meetings, Court meetings, Liquidator's meetings of creditors and contributories, and voluntary liquidation meetings, but so however that the said rules shall take effect as to first meetings subject and without prejudice to any express provisions of the Act and as to Court meetings, subject and without prejudice to any express directions of the Court.

#### **112. Summoning of meetings**

(1) The Official Receiver or Liquidator shall summon all meetings of creditors and contributories by giving not less than fifteen days' notice in Form 60 in the Appendix of the time and place thereof in the *Gazette* and in a local paper; and shall not, less than fifteen days before the day appointed for the meeting, send by post to every person appearing by the company's books to be a creditor of the company, notice of the meeting of creditors, and to every person appearing by the company's books or otherwise to be a contributory of the company, notice of the meeting of contributories.

[Form 60.]



(2) The notice to each creditor shall be sent to the address given in his proof or if he has not proved, to the address given in the statement of affairs of the company, if any, or to such other address as may be known to the person summoning the meeting.

(3) The notice to each contributory shall be sent to the address mentioned in the company's books as the address of such contributory, or to such other address as may be known to the person summoning the meeting.

(4) In the case of meetings under section 465 of the Act, the continuing Liquidator, or if there is no continuing Liquidator, any contributory, may summon the meeting.

(5) This rule shall not apply to meetings under section 472 or section 478 of the Act.

### **113. Evidence of dispatch of notice of meetings**

A certificate by the Official Receiver or other officer of the Court, or by the clerk of any such person, or an affidavit by the Liquidator, or his solicitor or the clerk of either of such persons, or as the case may be, by some officer of the company or its solicitor or the clerk of such company or solicitor, that the notice of any meeting has been duly posted shall be sufficient evidence of such notice having been duly sent to persons to whom the same was addressed.

### **114. Place of meetings**

Every meeting shall be held at such place as is in the opinion of the person convening the same most convenient for the majority of the creditors or contributories or both, and different times or places or both may, if thought expedient, be named for the meetings of creditors and for the meetings of contributories.

### **115. Costs of calling meetings**

(1) The costs of summoning a meeting of creditors or contributories at the instance of any person other than the Official Receiver or Liquidator, shall be paid by the person at whose instance it is summoned, who shall before the meeting is summoned, deposit with the Official Receiver or Liquidator, as the case may be, such sum as may be required by the Official Receiver or Liquidator as security for the payment of such cost.

(2) The costs of summoning a meeting under paragraph (1) above, including all disbursements for printing, stationery, postage and the hire of room, shall be decided by the Official Receiver or Liquidator and shall be repaid out of the assets of the company if the Court shall by order or if the creditors or contributories (as the case may be) shall by resolution, so direct.

### **116. Chairman of meetings**

Where a meeting is summoned by the Official Receiver or the Liquidator, he or someone nominated by him under the authority as in the Form 61 in the Appendix, shall be chairman of the meeting. At every other meeting of creditors or contributories, the chairman shall be such person as the meeting by resolution shall appoint. This rule shall not apply to meetings under section 472 of the Act.

[Form 61.]

### **117. Ordinary resolution of creditors and contributories**

At a meeting of creditors, a resolution shall be deemed to be passed when a majority in number and value of the creditors present personally or by proxy and voting on the resolution have voted in favour of the resolution, and at a meeting of the contributories a resolution shall be deemed to be passed when a majority in number and value of the contributories being determined according to the number of votes conferred on each contributory by the regulations of the company.

### **118. Copy of resolution to be filed**

The Official Receiver or as the case may be, the Liquidator, shall file with the registrar a copy certified by him of every resolution of a meeting of creditors or contributories in a winding up by the Court.

### **119. Non-reception of notice by a creditor**

Where a meeting of creditors or contributories is summoned by notice, the proceedings and resolutions at the meeting shall, unless the Court otherwise orders, be valid, notwithstanding that some creditors or contributories may not have received the notice sent to them.

#### **120. Adjournments**

The chairman may, with the consent of those present at the meeting, adjourn it from time to time and from place to place using the Form 62 in the Appendix, but the adjourned meeting shall be held at the same place as the original meeting unless in the resolution for adjournment another place is specified or unless the Court otherwise orders.

[Form 62.]

#### **121. Quorum**

(1) A meeting may not act for any purpose except the election of a chairman, the proving of debts and the adjournment of the meeting unless there are present or represented thereat in the case of a creditor's meeting at least three creditors entitled to vote or in the case of a meeting of contributories at least three contributories or all the creditors entitled to vote or all the contributories if the number of creditors entitled to vote or the number of contributories, as the case may be, shall not exceed three.

(2) If within half an hour from the time appointed for the meeting, a quorum of creditors or contributories, as the case may be, is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place or to such other day or time or place as the chairman may appoint, but so that the day appointed shall be not less than fifteen nor more than thirty days from the day from which the meeting was adjourned.

#### **122. Creditors entitled to vote**

(1) In the case of a first meeting of creditors or of an adjournment thereof, a person shall not be entitled to vote as a creditor unless he has duly lodged with the Official Receiver, not later than the time mentioned for that purpose in the notice convening the meeting, or adjourned meeting, a proof of the debt which he claims to be due to him from the company. In the case of a Court meeting or Liquidator's meeting of creditors, a person shall not be entitled to vote as creditor unless he has lodged with the Official Receiver or Liquidator a proof of the debt which he claims to be due to him from the company and such proof has been admitted wholly or in part before the date on which the meeting is held:

Provided that this and the next four following rules shall not apply to a Court meeting of creditors held prior to the first meeting of creditors.

(2) This rule shall not apply to any creditors or class of creditors who, by virtue of these Rules or any directions given thereunder, are not required to prove their debts or to any voluntary liquidation meeting.

#### **123. Cases in which creditors may not vote**

A creditor shall not vote in respect of any unliquidated or contingent debt or any debt the value of which is not ascertained, nor shall a creditor vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the company, and against whom a Receiving Order in Bankruptcy has to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

#### **124. Votes of secured creditors**

For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof or in a voluntary liquidation in such a statement as is hereinafter mentioned, the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him after deducting the value of his security. If he votes in respect of his whole debt, he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.

#### **125. Creditors required to give up security**

The Official Receiver or Liquidator may, within thirty days after a proof or in a voluntary liquidation after a statement estimating the value of a security as aforesaid, has been used in voting at a meeting, require the

creditor to give up security for the benefit of the creditors generally on payment of the value so estimated with an addition thereto of twenty per cent:

Provided that where a creditor has valued his security, he may at any time before being required to give it up, correct the valuation by a new proof and deduct the new value from his debts, but in that case the said addition of twenty per cent shall not be made if the security is required to be given up.

#### **126. Admission and rejection of proofs for purpose of voting**

The chairman shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether a proof shall be admitted or rejected, he shall mark it as objected to and allow the creditor to vote subject to the vote being declared invalid in the event of the objection being sustained.

#### **127. Statement of security**

For the purpose of voting at a voluntary liquidation meeting, a secured creditor shall, unless he surrenders his security, lodge with the Liquidator or, where there is no Liquidator, at the registered office of the company, before the meeting, a statement giving the particulars of his security, the date when it was given and the value at which he assesses it.

#### **128. Minutes of meetings**

(1) The chairman shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for that purpose and the minutes shall be signed by him or by the chairman of the next ensuing meeting.

(2) A list of creditors and contributories present at every meeting shall be made and kept as in Form 63 in the Appendix.

[Form 63.]

*Proxies in relation to a winding up by the Court and to meetings of creditors in a creditor's voluntary winding up*

#### **129. Proxies**

(1) A creditor or a contributory may vote either in person or by proxy where a person is authorised in the manner provided by section 231 of the Act to represent a corporation at any meeting of creditors or contributories such person shall produce to the Official Receiver or Liquidator or other person who is the chairman of the meeting, a copy of the resolution so authorising him.

(2) Such copy must either be under the seal of the corporation or must be certified to be a true copy by the secretary or a director of the corporation. The succeeding rules as to proxies shall not (unless otherwise directed by the Court), apply to a Court meeting of creditors or contributories prior to the first meeting.

#### **130. Form of proxies**

Every instrument of proxy shall be in accordance with the Form 64 or 65 in the Appendix.

[Form 64 and 65.]

#### **131. Form of proxy to be sent with notice**

General and special forms of proxy shall be sent to the creditors and contributories with the notice summoning the meeting, and neither the name nor description of the Official Receiver or Liquidator or any other person shall be printed or inserted in the body of any instrument of proxy before it is so sent.

#### **132. General proxies**

A creditor or a contributory may give a general proxy to any person.

#### **133. Special proxies**

A creditor or a contributory may give a special proxy to any person to vote at any specified meeting or adjournment thereof--

- (a) for or against the appointment or continuance in office of any specified person as Liquidator or member of the Committee of Inspection; and
- (b) on all questions relating to any matter other than those above referred to and arising at the meeting or an adjournment thereof.

#### **134. Solicitation by Liquidator to obtain proxies**

Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of a Liquidator in obtaining proxies or in procuring his appointment as Liquidator except by the direction of a meeting of creditors or contributories, the Court, if it thinks fit, may order that no remuneration be allowed to the person by whom or on whose behalf the solicitation was

exercised notwithstanding any resolution of the Committee of Inspection or of the creditors or contributories to the contrary.

#### **135. Proxies to Official Receiver or Liquidator**

A creditor or a contributory in a winding up by the Court may appoint the Official Receiver or Liquidator and in a voluntary winding up the Liquidator or if there is no Liquidator, the chairman of a meeting to act as his general or special proxy.

#### **136. Holder of proxy not to vote on matters in which he is financially interested**

No person acting either under a general or a special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer in a position to receive any remuneration out of the estate of the company otherwise than as creditor rateably with other creditors of the company:

Provided that where any person holds special proxies to vote for an application to the Court in favour of the appointment of himself as Liquidator, he may use the said proxies and vote accordingly.

#### **137. Proxies**

(1) A proxy intended to be used at the first meeting shall be lodged with the Official Receiver not later than the time mentioned for that purpose in the notice convening the meeting or the adjourned meeting, which time shall be not earlier than twelve o'clock at noon of the day but before one, nor later than twelve o'clock at noon of the day before the day appointed for such meeting, unless the Court otherwise directs.

[Form 64 and 65.]

(2) In every other case, a proxy shall be lodged with the Official Receiver or Liquidator in a winding up by the Court, with the company at its registered office for a meeting under section 472 of the Act, and with the Liquidator or, if there is no Liquidator, with the person named in the notice convening the meeting, to receive the same in a voluntary winding up not later than three o'clock in the afternoon of the day before the meeting or adjourned meeting at which it is to be used.

(3) No person shall be appointed a general or special proxy who is a minor.

#### **138. Use of proxies by deputy**

Where an Official Receiver who holds any proxies cannot attend the meeting for which they are given, he may, in writing, deputise some person under his official control to use the proxies on his behalf and in such manner as he may direct.

#### **139. Proxy of blind, etc., creditor to comply with illiterates protection laws**

The proxy or a creditor blind or incapable of writing, may be accepted if such creditor has attached his signature or mark thereto in the presence of a witness and the witness shall comply with the provisions of the illiterates protection laws.

*Attendance and appearance of parties*

#### **140. Attendance at proceedings**

(1) Every person for the time being on the list of contributories or the company, and every person whose proof has been admitted, shall be at liberty, at his own expense, to attend proceedings, and shall be entitled, upon payment of the costs occasioned thereby, to have notice or all such proceedings as he shall, by written request, desire to have of. If the Court shall have the opinion that the attendance of any such person upon any proceedings has occasioned any additional costs which ought not to be borne by the funds of the company, it may direct such costs, or a gross sum in lieu thereof, to be paid by such person who shall not be entitled to attend any further proceedings until he has paid the same.

(2) The Court may, from time to time, appoint anyone or more of the creditors or contributories to represent before the Court, at the expense of the company, all or any class of the creditors or contributories, upon any question or in relation to any proceedings before the Court, and may remove the person so appointed. If more than one person is appointed under this rule to represent one class, the persons appointed shall employ the same solicitor to represent them.

(3) No creditor or contributory shall be entitled to attend any proceedings in chambers unless and until he has entered in a book, to be kept by the registrar for that purpose, his name and address, and the name and address of his solicitor (if any) and upon any change of his address, or of his solicitor, his new address, and the name and address of his new solicitor.

#### **141. Attendance of Liquidator's solicitor at meetings**

Where the attendance of the Liquidator's solicitor is required on any proceeding in Court or chambers, the Liquidator need not attend in person, except in cases where his presence is necessary in addition to that of his solicitor, or the Court directs him to attend.

#### *Liquidator and Committee of Inspection*

#### **142. Remuneration of Liquidator**

(1) The remuneration of a Liquidator, unless the Court shall otherwise order, shall be fixed by the Committee of Inspection, (or the creditors, as the case may be) and shall be in the nature of a commission or percentage of which one part shall be payable on the amount realised, after deducting the sums (if any) paid to secured creditors (other than debenture holders) out of the proceeds of their securities and the other part on the amount distributed in dividend.

(2) If the Ministry is of the opinion that the remuneration of a Liquidator as fixed by the Committee of Inspection or the creditors, as the case may be, is unnecessarily large, the Ministry may apply to the Court, and thereupon the Court shall fix the amount of the remuneration of the Liquidator.

(3) This rule shall only apply to a Liquidator appointed in a winding up by the Court.

#### **143. Limit of remuneration**

Except as provided by the Act or these Rules, a Liquidator shall not, under any circumstances whatever, make any arrangement for, or accept from any solicitor, auctioneer, or any other person connected with the company of which he is Liquidator, or who is employed in or in connection with the winding up of the company, any gift, remuneration, or pecuniary or other consideration of benefit whatever beyond the remuneration to which under the Act and these Rules he is entitled as Liquidator, nor shall he make any arrangement for giving up, or give up any part of such remuneration to such solicitor, auctioneer or other person.

#### **144. Dealings with assets**

Neither the Liquidator, nor any member of the Committee of Inspection of a company shall, while acting as Liquidator or member of such Committee, except by leave of Court, either directly or indirectly, by himself or any employer, clerk, agent or servant, become purchaser of any part of the company's assets; and any purchase made contrary to the provisions of this rule may be set aside by the Court on the application of the Ministry in a winding up by the Court or of any creditor or contributory in any winding up, and the Court may make such order as to costs as the Court shall think fit.

#### **145. Restriction on purchase of goods by Liquidator**

Where the Liquidator carries on the business of the company, he shall not, without the express sanction of the Court, purchase goods for the carrying on of such business from any person whose connection with him is of such a nature as would result in his obtaining any portion of the profit (if any) arising out of the transaction.

#### **146. Committee of Inspection not to make profit**

(1) No member of a Committee of Inspection shall, except under and with the sanction of the Court, directly or indirectly, by himself, any employer, partner, clerk, agent, or servant, be entitled to derive any profit from any transaction arising out of the winding up or to receive, out of the assets, any payment for services rendered by him in connection with the administration of the assets, or for any goods supplied by him to the Liquidator for or on account of the company.

(2) In a winding up by the Court, if it appears to the Ministry or in a voluntary winding up, if it appears to the Committee of Inspection or to any meeting of creditors or contributories, that any profit or payment has been made contrary to the provisions of this rule, the Ministry, Committee of Inspection or meeting, as the case may be, may disallow such payment or recover such profit, on the audit of the Liquidator's accounts or otherwise.

#### **147. Costs of obtaining sanction of Court**

In any case in which the sanction of the Court is obtained under rules 145 and 146, the cost of obtaining such sanction shall be borne by the person in whose interest such sanction is obtained, and shall be payable out of the company's assets.

#### **148. Sanction for payments to Committee**

Where the sanction of the Court to a payment to a member of a Committee of Inspection for services rendered by him in connection with the administration of the company's assets is obtained, the order of the Court shall specify the nature of the service, and such sanction shall only be given where the service performed is of a special nature; and except by the express sanction of the Court, no remuneration shall, under any circumstances, be paid to a member of a committee for services rendered by him in the discharge of the duties attaching to his office as a member of such committee.

#### **149. Discharge of costs before assets handed to Liquidator**

(1) When a Liquidator appointed by the Court has notified his appointment to the Registrar-General and has given security to the Court, the Official Receiver shall forth-with put the Liquidator into possession of all property of the company of which the Official Receiver may have custody:

Provided that such Liquidator, before the assets are handed over to him by the Official Receiver, shall have discharged any balance due to the Official Receiver on account of fees, costs, and charges properly incurred by him, and on account of any advances properly made by him in respect of the company, together with interest on such advances at the rate of ten per cent per annum, and the Liquidator shall pay all fees, costs, and charges of the Official Receiver which may not have been discharged by the Liquidator before being put into possession of the property of the company, whether incurred before or after he has been put into such possession.

(2) The Official Receiver shall be deemed to have a lien upon the company's assets until such balance shall have been paid and other liabilities shall have been discharged.

(3) It shall be the duty of the Official Receiver, if so requested by the Liquidator, to communicate to the Liquidator, all such information respecting the estate and affairs of the company as may be necessary or conducive to the due discharge of the duties of the Liquidator.

(4) This rule and rule 150 shall only apply in winding up by the Court.

#### **150. Resignation of Liquidator**

(1) A Liquidator who desires to resign his office shall summon separate meetings of the creditors and contributories of the company to decide whether or not the resignation shall be accepted.

(2) If the creditors and contributories by ordinary resolution both agree to accept the resignation of the Liquidator, he shall file with the Registrar-General a memorandum of his resignation and shall send notice thereof to the Official Receiver and the resignation shall thereupon take effect.

(3) In any other case, the Liquidator shall report to the Court the result of the meetings and shall send a report to the Official Receiver and thereupon the Court may, upon the application of the Liquidator or the Official Receiver, determine whether or not the resignation of the Liquidator shall be accepted, and may give such directions and make such orders as in the opinion of the Court shall be necessary.

### **151. Office of Liquidator vacated by insolvency**

If a Receiver Order in Bankruptcy is made against a Liquidator, he shall thereby vacate his office, and for the purpose of the application of the Act and these Rules, shall be deemed to have been removed.

#### *Payments to and withdrawals from account*

### **152. Withdrawal from account**

All payments out of the Companies Liquidation Account shall be made in such manners as the Ministry may, from time to time, direct.

### **153. Special bank account**

(1) Where the Liquidator in a winding up by the Court is authorised to have a special bank account, he shall forthwith pay all moneys received by him into that account to the credit of the Liquidator of the company.

(2) All payments out of the special bank account shall be made by cheque payable to order, and every cheque shall have marked or written on the face of it, the name of the company and shall be signed by the Liquidator, and shall be countersigned by at least one member of the Committee of Inspection, and by such other person, if any, as the Committee of Inspection may appoint.

(3) Where application in Form 66 in the Appendix is made to the Court to authorise the Liquidator in a winding up by the Court to make his payments into and out of a special bank account, the Court may grant such authorisation as in Form 67 in the Appendix for such time and on such terms as it may think fit, and may, at any time, order the account to be closed if it is of the opinion that the account is no longer required for the purpose mentioned in the application.

[Forms 66 and 67.]

#### *Books*

### **154. Keeping of Record Book**

In a winding-up by the Court, the Official Receiver, until a Liquidator is appointed by the Court and thereafter the Liquidator, shall keep a book to be called the "Record Book" in which he shall record all minutes, all proceedings had and resolutions passed at any meeting of creditors or contributories, or of the Committee of Inspection, and all such matters as may be necessary to give a correct view of his administration of the company's affairs; but he shall not be bound to insert in the Record Books any document of a confidential nature (such as the opinion of counsel on any matter affecting the interest of the creditors or contributories), nor need he exhibit such document to any person other than a member of the Committee of Inspection, the Official Receiver or the Ministry.

### **155. Cash Book**

(1) In a winding up by the Court, the Official Receiver, until a Liquidator is appointed by the Court, and thereafter the Liquidator, shall keep a book to be called the "Cash Book" (which shall be in such form as the Ministry may from time to time direct) in which he shall (subject to the provisions of the rules as to trading accounts), enter from day to day the receipts and payments made by him.

(2) In a winding up by the Court, a Liquidator other than the Official Receiver shall submit the Record and Cash Books together with any other requisite books and vouchers, to the Committee of Inspection (if any) when required, and not less than once every three months.

(3) In a creditors' voluntary winding up the Liquidator shall keep such books as the Committee of Inspection, or if there is no such committee, as the creditors direct, and all books kept by the Liquidator shall be submitted to the Committee of Inspection or if there is no such committee, to the creditors with any other books, documents, papers and accounts in his possession relating to his office as Liquidator or to the company as and when the Committee of Inspection, or if there is no such committee, the creditors direct.

#### *Investment of funds*

### **156. Investment of assets in securities and realisation of securities**

(1) Where in a winding up by the Court or in a creditors' voluntary winding up, the Committee of Inspection are of the opinion that any part of the cash balance standing to the credit of the account of the company should be invested, they shall sign a certificate and request in Forms 68 and 69 in the Appendix, and the Liquidator shall transmit such certificate and request to the Commission.

[Forms 68 and 69.]

(2) Where the Committee of Inspection in any such winding up are of the opinion that it is advisable to sell any of the securities in which the moneys of the company's assets are invested, they shall sign a certificate and request to the effect, and the Liquidator shall transmit such certificate and request to the Commission.

(3) Where there is no Committee of Inspection in any such winding up as is mentioned in paragraphs (1) and (2) of this rule and in every members' voluntary winding up whether under the supervision of the Court or not, if a case has in the opinion of the Liquidator arisen under section 529 of the Act for an investment of funds of the company or a sale of securities in which the company's funds have been invested, the Liquidator shall sign and transmit to the Commission a certificate of the facts on which his opinion is founded, and a request to the Registrar-General so that the Accountant-General can make the investment or sale mentioned in the certificate and the Accountant-General may thereupon if he thinks fit, invest or sell the whole or any part of the said funds and securities, as provided in the said section, and the said certificate and request shall be a sufficient authority to the Accountant-General for the said investment or sale.

#### *Accounts and audit in a winding up by the Court*

### **157. Audit of Cash Book**

The Committee of Inspection shall not less than once every three months, audit the Liquidator's Cash Book and certify therein in Form 70 in the Appendix under their hands, the day on which the said book was audited.

[Form 70.]

### **158. Commission's audit of Liquidator's accounts**

(1) The Liquidator shall, at the expiration of six months from the date of the winding-up order, and at the expiration of every succeeding six months thereafter until his release, transmit to the Registrar-General, a copy of the Cash Book for such period in duplicate, together with the necessary vouchers and copies of the certificates of audit by the Committee of Inspection and he shall also forward--

- (a) with the accounts, a summary of the company's statement of affairs showing thereon the amounts realised, and explaining the cause of the non-realisation of such assets as may be unrealised;
- (b) at the end of every six months, forward to the Registrar General, with his accounts, a report upon the position of the liquidation of the company in such form as the Registrar-General may direct.

(2) When the assets of the company have been fully realised and distributed, the Liquidator shall forthwith send in his accounts to the Registrar General although the six months may not have expired.

(3) The accounts sent in by the Liquidator shall be verified by him by affidavit and be in Form 71 in the Appendix.

[Form 71.]

### **159. Liquidator carrying on business**

(1) Where the Liquidator carries on the business of the company, he shall keep a distinct account of the trading and shall incorporate in the Cash Book, the total weekly amounts of the receipts and payments on such trading account.

(2) The trading account in Form 71 in the Appendix shall, from time to time, and not less than once in every month, be verified by affidavit, and the Liquidator shall thereupon submit such account to the Committee of Inspection (if any) or such member thereof as may be appointed by the Committee of that purpose who shall examine and certify the same.



#### **160. Copy of accounts to be filed**

When the Liquidator's account have been audited, the Commission shall certify that fact upon the account, and thereupon the duplicate copy, bearing a like certificate, shall be filed with him, and that copy, together with a copy of the said account delivered to the Court for filing in accordance with section 429 of the Act, shall be open to the inspection of any person on payment of the same fee as is payable with respect to the inspection of the file of proceedings under rule 10.

#### **161. Summary of accounts**

(1) The Liquidator shall prepare a summary of such of accounts and shall, subject to any dispensation granted by the Registrar-General under subsection (5) of section 429 of the Act, send a printed copy of that summary by post to every creditor and contributory.

(2) The cost of printing and posting such copy shall be a charge upon the assets of the company.

#### **162. Affidavit of no receipts or payments**

When a Liquidator has not since the date of his appointment or since the last audit of his accounts, as the case may be, received or paid any sum of money on account of the assets of the company, he shall, at the time when he is required to transmit his accounts to the Commission, forward to the Commission, an affidavit of no receipts or payments.

#### **163. Proceedings on resignation of Liquidator**

(1) Upon a Liquidator resigning or being released or removed from his office, he shall deliver over to the Official Receiver or, as the case may be, to the new Liquidator, all books kept by him, and all other books, documents, papers and accounts in his possession relating to the office of Liquidator.

(2) The release of a Liquidator shall not take effect unless and until he has delivered over to the Official Receiver or, as the case may be, to the new Liquidator, all the books, documents, papers and accounts which he is by these Rules, required to deliver on his release.

(3) The Court may, at any time during the progress of the liquidation, on the application of the Liquidator or the Official Receiver, direct that such of the books, papers and documents of the company or of the Liquidator as are no longer required for the purpose of the liquidation may be sold, destroyed or otherwise disposed of.

#### **164. Expenses of sales**

(1) Where property forming part of a company's assets is sold by the Liquidator through an auctioneer or other agent, the gross proceeds of the sale shall be paid over by such auctioneer or agent, and the charges and expenses connected with the sale shall afterwards be paid to such auctioneer or agent.

(2) Every Liquidator by whom such auctioneer or agent is employed shall, unless the Court otherwise orders, be acceptable for the process of every such sale.

#### *Final account in voluntary winding up*

#### **165. Form of final account**

The account required by sections 468 and 478 of the Act to be made up by the Liquidator as soon as the affairs of the company are fully wound up, shall be in Form 72 in the Appendix.

#### *Costs and expenses payable out of the assets of the company*

#### **166. Liquidator's charges**

(1) Where a Liquidator or special manager in a winding up by the Court receives remuneration for his services as such, no payment shall be allowed on his accounts in respect of the performance by any other person of the ordinary duties which are required by statute or rules to be performed by himself.

(2) Where a Liquidator is a solicitor, he may contract that the remuneration for his services as Liquidator shall include all professional services.

### **167. Costs payable out of the assets**

(1) The assets of a company in a winding up by the Court remaining after payment of the fees and expenses properly incurred in preserving, realising or getting in the assets, including where the company was previously to be wound up voluntarily, such remuneration, costs and expenses, as the Court may allow to a Liquidator appointed in such voluntary winding up shall, subject to any order of the Court, be liable to the following payments, which shall be in the following order of priority, namely-

- (a) the costs of the petition, including the costs of any person appearing on the petition whose costs are allowed by the Court;
- (b) the remuneration of the special manager (if any);
- (c) the costs and expenses of any person who makes or concurs in making the company's statement of affairs;
- (d) the charges of any shorthand writer appointed to take an examination:

Provided that where the shorthand writer is appointed at the instance of the Official Receiver, the cost of the shorthand notes shall be deemed to be an expense incurred by the Official Receiver in getting in and realising the assets of the company;

- (e) the necessary disbursements of any Liquidator appointed in the winding up by the Court, other than property incurred in preserving, realising or getting in the assets heretofore provided for;
- (f) the costs of any person's property employed by any such Liquidator;
- (g) the remuneration of any such Liquidator;
- (h) the actual out-of-pocket expenses necessarily incurred by the Committee of Inspection, subject to the approval of the Ministry.

(2) No payments in respect of bills or charges of solicitors, managers, accountants, auctioneers, brokers or other persons, other than payments for costs and expenses incurred and sanctioned under rule 39 and payments of bills which have been allowed, shall be allowed out of the assets of the company without proof that the same have been considered and allowed by the registrar.

(3) The Official Receiver when acting as Liquidator may pay and allow the costs and charges of any person employed by him where such costs and charges are within the scale usually allowed by the Court.

(4) Nothing contained in this rule shall apply to or affect costs which, in the course of legal proceedings by or against a company which is being wound up by the Court, are ordered by the Court in which such proceedings are pending or a judge thereof to be paid by the company or the Liquidator, or the rights of the person to whom such costs are payable.

#### *Statements of Liquidator to the Registrar-General*

### **168. Conclusion of winding up**

The winding up of a company shall, for the purposes of section 516 of the Act, be deemed to be concluded--

- (a) in the case of a company wound up by order of the Court, at the date on which the order dissolving the company has been reported by the Liquidator to the Commission, or at the date of the order of the Attorney-General of the Federation releasing the Liquidator pursuant to section 431 of the Act;
- (b) in the case of a company wound up voluntarily, or under the supervision of the Court, at the date of the dissolution of the company, unless at such date any funds or assets of the company remain unclaimed or undistributed in the hands or under the control of the Liquidator, or any person who has acted as Liquidator, in which case the winding up shall not be deemed to be concluded until such funds or assets have either been distributed or paid into the Companies Liquidation Account kept with the Accountant-General of the Federation.

### **169. Times of sending Liquidator's statements and regulations applicable thereto**

In a voluntary winding up or a winding up under the supervision of the Court, the statements with respect to the proceedings in and position of the liquidation of a company the winding up of which is not concluded within a year after its commencement, shall be sent to the Registrar-General twice in every year as follows-

- (a) the first statement, commencing at the date when a Liquidator was first appointed and brought down to the end of the twelfth month from the commencement of the winding up, shall be sent within thirty days from the expiration of such twelve months, or within such extended period as the Commission may sanction, and the subsequent statements shall be sent at intervals of half a year, each statement being brought down to the end of the half year for which it is sent; and in cases in which the assets of the company have been fully realised and distributed before the expiration of a half-yearly interval, a final statement shall be sent forthwith;
- (b) subject to the next succeeding rule, Form 73 in the Appendix and where applicable Forms 75, 76 and 77 in the Appendix, with such variations as circumstances may require, shall be used, and the directions specified in the Form be observed in reference to every statement;  
[Use of Forms 73, 75, 76 and 77.]
- (c) every statement shall be sent in duplicate, and shall be verified by an affidavit in the Form 74 in the Appendix, with such variations as circumstances may require.  
[Form 74.]

### **170. Affidavit of no receipts or payments**

Where, in a voluntary winding up or a winding up under the supervision of the Court, a Liquidator has not during any period for which a statement has to be sent, received or paid any money on account of the company, he shall, at the period when he is required to transmit his statement, send to the Registrar-General, the prescribed statement in the Form 73 in the Appendix in duplicate, containing the particulars therein required with respect to the proceedings in and position of the liquidation, and with such statement shall also send an affidavit of no receipts or payments in Form 74 in the Appendix.

[Form 73 and 74.]

#### *Unclaimed funds and undistributed assets in the hands of a Liquidator*

### **171. Payment of undistributed and unclaimed money into Companies Liquidation Account**

(1) All money in the hands or under the control of a Liquidator of a company representing unclaimed dividends, which for six months from the date when the dividend became payable have remained in the hands or under the control of the Liquidator shall forthwith on the expiration of the six months, be paid into the Companies Liquidation Account.

(2) In a voluntary winding up or a winding up under the supervision of the Court, all other money in the hands or under the control of a Liquidator of a company, representing unclaimed or undistributed assets or held by the company in trust which, under subsection (4) of section 516 of the Act, the Liquidator is to pay into the Companies Liquidation Account, shall be ascertained as on the date to which the statement of receipts and payments sent in to the Registrar-General is brought down, and the amount to be paid to the Companies Liquidation Account shall be the minimum balance of such money which the Liquidator has had in his hands or under his control during the six months immediately preceding the date to which the statement is brought down, less such part (if any) thereof as the Commission may authorise him to retain for immediate purposes of liquidation.

(3) Such amount shall be paid into the Companies Liquidation Account within 28 days from the date to which the statement of account is brought down.

(4) Notwithstanding anything in this rule, any moneys in the hands of the Liquidator at the date of the dissolution of the company representing unclaimed or undistributed assets or dividends or held by the company in trust in respect of dividends or other sums due to any person as a member of the company shall forthwith be paid by him into the Companies Liquidation Account.

(5) A Liquidator whose duty it is to pay into the Companies Liquidation Account kept by the Accountant-General of the Federation money representing unclaimed or undistributed assets of the company or held by the company in trust in respect of dividends or other sums due to any person as a member of the company, shall apply

in such manner as the Minister shall direct to the Ministry for a paying-in order, which paying-in order shall be an authority to the Accountant-General of the Federation to receive the payment.

(6) In a voluntary winding up or a winding up under the supervision of the Court, money invested or deposited at interest by a Liquidator shall be deemed to be money under his control, and when such money from part of the minimum balance is payable into the Companies Liquidation Account pursuant to paragraph (2) of this rule, the Liquidator shall realise the investment or withdraw the deposit, and shall pay the proceeds into the Companies Liquidation Account:

Provided that where the money is invested in Government securities, such securities may, with the permission of the Ministry, be transferred to the control of the Ministry instead of being forthwith realised and the proceeds thereof paid into the Companies Liquidation Account; and if and when the money represented by the securities is required wholly or in part for the purposes of the liquidation, the Ministry may realise the securities wholly or in part and pay the proceeds of realisation into the Companies Liquidation Account and deal with the same in the same way as other moneys paid into the said Account may be dealt with.

#### **172. Liquidator to furnish information to the Commission**

(1) In a voluntary winding up or a winding up under the supervision of the Court, whether the liquidation has been concluded or not, the Liquidator shall furnish to the Commission, particulars of any money in his hands or under his control representing unclaimed or undistributed assets of the company or held by the company in trust in respect of dividends or other sums due to any person as a member of the company, and such other particulars as the Commission may require for the purpose of ascertaining or getting in any money payable into the Companies Liquidation Account with the Accountant-General of the Federation.

(2) The Commission may require such particulars to be verified by affidavit in Form 78 in the Appendix.

[Form 78.]

#### **173. Registrar-General may call for verified account**

(1) In a voluntary winding up or a winding up under the supervision of the Court, the Registrar-General may at any time, order any such person as is mentioned in the preceding rule to submit to him an account verified by affidavit of the sums received and paid by him as Liquidator of the company and may direct and enforce an audit of the account.

(2) For the purpose of subsection (4) of section 516 of the Act, and these Rules, the Court may, if it thinks fit, make any appropriate order with respect to the discovery and realisation of the property of a debtor.

(3) Forms 72 to 76 in the Appendix shall be used as appropriate for the purposes of this rule.

#### **174. Application to the Court for enforcing an account and getting in money**

An application to the Commission for the purpose of ascertaining and getting in money payable to the Accountant-General of the Federation pursuant to subsection (4) of section 516 of the Act shall be made by motion, and when the winding up is by or under the supervision of the Court or in a voluntary winding up, shall be made to and dealt with by the judge in Court.

#### **175. Application for payment out to person entitled**

An application by a person claiming to be entitled to any money paid to Accountant-General of the Federation in pursuance of subsection (4) of section 516 of Act, shall be in such form and manner as the Commission may from time to time direct, and shall, unless the Commission otherwise directs, be accompanied by the certificate of the Liquidator that the person claiming is entitled and such further evidence as the Commission may direct.

#### **176. Application by Liquidator for payment out**

A Liquidator who requires to make payments out of money paid to the Accountant-General of the Federation in pursuance to subsection (4) of section 516 of the Act either by way of distribution or in respect of the cost and expenses of the proceedings, shall apply in such form and manner as the Commission may direct, and the Commission may thereupon either make an order for payment to the Liquidator of the sum required by him for

purposes aforesaid, or may direct cheques to be issued to the Liquidator for transmission to the persons to whom the payments are to be made.

*Release of Liquidator in a winding up by the Court*

**177. Proceedings for release of Liquidator**

(1) A Liquidator in a winding up by the Court before making application to the Registrar for his release, shall give notice of his intention so to do in Form 79 in the Appendix, to all the creditors who have proved their debts, and all the contributories and shall send, with the notice, a summary of all receipts and payments in the winding up in Form 80 in the Appendix.

[Forms 79 and 80.]

(2) When the registrar having complied with the provisions of section 431 of the Act, grants to a Liquidator his release, a notice of the order granting the release shall be gazetted; and the Liquidator shall pay for the expenses of such gazetting and he may charge such expenses against the company's assets.

**178. Disposal of books and papers**

(1) The Attorney-General of the Federation may order that the books and papers of a company which has been wound up shall not be destroyed for such period (not exceeding five years from the dissolution of the company) as he thinks proper, notwithstanding any resolution of creditors or contributories to the contrary.

(2) Any creditor or contributory may apply to the Court with regard to the destruction of such books and papers.

*Official Receiver*

**179. Duty where no assets**

Where a company against which a winding up order been made has no available assets, the Official Receiver shall not be required to incur any expense in relation to the winding up without order of the Court.

**180. Accounting by Official Receiver**

(1) Where a Liquidator is appointed by the Court in a winding up by the Court, the Official Receiver shall account to the Liquidator.

(2) If the Liquidator is dissatisfied with the account, he may apply to the Court to order the Official Receiver to give better and further particulars of the issue in disagreement.

(3) The provisions of these Rules as to Liquidators and their accounts shall not apply to the Official Receiver when he is a Liquidator, but he shall account in such manner as the Court may direct.

**181. Power of Court to extend or abridge time**

The Court may, in any case in which shall see fit, extend or abridge the time appointed by the Rules or fixed by any order of the Court for doing any act or taking any proceeding.

**182. Defects and irregularity not to invalidate proceedings**

(1) No proceedings under the Act or these Rules shall be invalidated by any formal defect or by any irregularity, unless the Court before which an objection is made to the proceeding is of the opinion that injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of that Court.

(2) No defect or irregularity in the appointment or election of an Official Receiver, Liquidator or member of a Committee of Inspection shall vitiate any act done by him in good faith.

**183. Application of Court's (Civil Procedure) Rules**

In any proceedings in or before the Court where no provision is made by these Rules, the Court's (Civil Procedure) Rules shall apply.

**184. Interpretation**

(1) Unless the context otherwise requires words or expressions contained in these Rules shall bear the same meaning as in the Act or any statutory modification thereof.

(2) In these Rules, unless the context or subject-matter otherwise requires-

"**Act**" means the Companies and Allied Matters Act;

"**Commission**" means the Corporate Affairs Commission established under section of the Act;

"**company**" means a company which is being wound up or against which proceedings to have it wound up or proceedings under section 410 of the Act have been commenced;

"**Court**" means the Federal High Court established by section 228 of the Constitution of the Federal Republic of Nigeria;

"**(Civil Procedure) Rules**" means the Federal High Court (Civil Procedure) Rules 2000, as amended or replaced from time to time;

"**Gazette**" means Federal *Gazette*;

"**head office of the Court**" means where the Chief Judge is stationed;

"**Ministry**" means the Federal Ministry charged with responsibility for commerce;

"**registrar**" includes the Chief Registrar and all other registrars of the Court and any subordinate officer acting under the registrar's instructions;

"**Registrar-General**" means the Registrar-General of the Corporate Affairs Commission appointed under section 8 of the Act;

"**sealed**" means sealed with the seal of the Court.

(3) The Forms prescribed for use under these Rules shall be used with such variations as circumstances may require.

FORMS

**FORM 1**  
[Rule 5.]

*Form of summons (general)*

IN THE FEDERAL HIGH COURT

..... DIVISION

No..... of 20 .....

In the matter of (a) ....., Limited and in the matter of the Companies and Allied Matters Act.

*[(a) Insert full name and company.]*

Let (b) .....

*[(b) Name of Respondent]*

attend at .....

on..... the..... day of .....

20 ..... at..... O'clock in the .....noon on the hearing

of an application of (c).....

*[(c) Name and description of applicant.]*

for an order that (d) .....

*[(d) State object of application.]*

DATED the .....day of .....20.....

This summons was taken

Out by.....of.....

Solicitors for .....

To

NOTE.-If you do not attend, either in person or by your solicitor, at the time and place above mentioned, such order will be made, and proceedings taken as the judge (or registrar) may think just and expedient.

**FORM 2**

[Rule 15.]

*Petition*

IN THE FEDERAL HIGH COURT

..... DIVISION

The humble petition of (a) ..... shows as follows-

*(a) Insert full name, title and company of petitioner.i*

1. The .....Limited (hereinafter called the company), was in the month of..... incorporated under the Companies and Allied Matters Act:

2. The registered office of the company is at (b).....

*[(b) State the full address of the registered office so as to show sufficiently, the district in which it is situate.]*

3. The nominal capital of the company is ₦ ..... divided into .....shares of ₦ .....each. The amount of the capital paid up or credited as paid up is ₦ .....

4. The objects for which the company was established are as follows-

To ..... and other objects set forth in the memorandum of association thereof.

(Here set out in paragraphs, the facts on which the petitioner relies, and conclude as follows)-

Your petitioner therefore humbly prays as follows-

(1) That the ..... Limited may be wound up by the Court under the provisions of the Companies and Allied Matters Act.

(c) (That the voluntary winding up of the ..... Limited may be continued but subject to the supervision or the Court.)

*[(c) As words in brackets ( ) if supervision order is asked for.]*

(2) Or that such other order may be made in the premises as shall be just.

NOTE.-(d) It is intended to serve this petition on .....

*[(d) This note will be unnecessary if the company is petitioner+]*

**FORM 3**  
[Rule 15.]

*Petition by unpaid creditor on simple contract*

(Title)

Paragraphs 1, 2, 3, and 4 as in Form 2.

5. The company is indebted to your petitioner in the sum of ₦ ..... for (a).

*[(a) State consideration for the debt, with particulars so as to establish that the debt claimed is due.]*

6. Your petitioner has made application to the company for payment of his debt, but the company has failed and neglected to pay the same or any part thereof.

7. The company is (insolvent and) unable to pay its debts.

8. In the circumstances it is just and equitable that the company should be wound up.

Your petitioner, therefore, etc. (as in Form 2).

**FORM 4**  
[Rule 15.]

*Petition by minority shareholder*

(Title)

Paragraphs 1, 2, 3, and 4 as in Form 2.

Then set out in paragraphs the facts on which the petitioner relies and continue as follows-

In these circumstances your petitioner submits that the affairs of the company are being conducted in a manner oppressive to a part of the members of the company (including your petitioner) and that while it would be just and equitable that the company should be wound up to do so would unfairly prejudice your petitioner and that part of the members.

(1) (Here set out remedy sought and conclude).

(2) Or that such other order may be made in the premises as shall be just.

NOTE.-It is intended to serve this petition on .....

**FORM 5**  
[Rule 17]

*Affidavit of service of petition on members, officers, or servants*

(Title)

In the matter of a petition dated.....

I ....., of ....., make oath and say:

1. (In the case of service of petition on a company by leaving it with a member, officer or servant at the registered office, or if no registered office, at the principal or last known principal place of business of the company).

That I did on..... day, the ..... day of ..... 20 .....  
serve the above-named company with the above-mentioned petition by delivering to and leaving with (name and description) a member (or officer) (or servant) of the said company a copy of the above-mentioned petition duly sealed with the seal of the Court at (office or place of business as aforesaid), before the hour of ..... in the .... noon.....

2. (In the case of no member, officer or servant of the company being found at the registered office or place of business.)



That I did on ..... day, the ..... day of ..... 20.....  
having failed to find any member, officer or servant of the above-named company at (here state  
registered office or place of business), leave there a copy of the above-mentioned petition duly  
sealed with the seal of the Court, before the hour of the ..... in the ..... noon (add  
where such sealed copy was left e.g. affixed to door of offices, or placed in letter box or other-  
wise).

3. (In the case of directions by the Court as to the member, officer or servant of the company to be  
served).

That I did on ..... day, the ..... day of ..... 20 .....;  
serve (name or names and description) (with a copy of the above-mentioned petition duly  
sealed with the seal of the Court, by delivering the same together with a true copy of the order for  
substituted service dated ..... 20 .....personal to the said ..... ,  
at (place) before the hour of ..... in the ..... noon.

4. The said petition is now produced and shown to me marked A. Sworn at, & c etc.

**FORM 6**

[Rule 17.]

*Affidavit of service of petition on Liquidator*

*(Title)*

In the matter of a petition, dated ..... , for winding-up the above  
company (by) or (under the supervision of the Court (as the case may be) .....  
.....

I, ..... of ..... , make oath and say-

That I did, on ..... day, the ..... day of  
20 ..... , serve (name and description), duly sealed with the seal of the Court, by delivering  
the same personally to the said at (place) before the hour of .....in the  
..... noon.

The said petition is now produced and shown to me, marked A. Sworn at, etc.

**FORM 7**

[Rule 18.]

*Affidavit verifying petition*

*(Title)*

I, A.B., of ..... , make oath and say that such  
of the statements in the petition now produced and shown to me, and marked with the letter A, as  
relate to (a) my own acts and deeds are true, and such of the said statements as relate to the acts  
and deeds of any other person or persons I believe to be true.

Sworn, etc.

**FORM 8**

[Rule 18.]

*Affidavit verifying petition of a limited company*

*(Title)*

I, A.B., of ..... , make oath and say as follows-

1. I am ..... (state capacity) of ..... Limited, the petitioner in the above matter.

2. I have been concerned in this matter in such capacity and am duly authorised by the said petitioner to make this affidavit on its behalf.

3. Such of the statements in the petition now produced and shown to me marked with the letter A as relate to the acts and deeds of the said petitioner are true, and such of the statements as relate to the acts and deeds of any other person or persons I believe to be true.

Sworn, etc .

..... (capacity; e.g. director, secretary, manager, solicitor.)

**FORM 9**

[Rule 19.]

*Advertisement of petition*

*(Title)*

Notice is hereby given that a petition for the winding-up of the above-named company by (a) the Court holden at ....., was, on the ..... day of ..... , 20 .....

And that the said petition is directed to be advertised and sat down for mention before the Court

sitting at ..... on the ..... day of ..... , 20 .....; and any creditor or contributory of the said company desirous to support or oppose the making of an order on the said petition may appear at the time of hearing in person or by his counsel for that purpose; and a copy of the petition will be furnished by the undersigned to any creditor or contributory of the said company requiring such copy on payment of the regulated charge for the same.

*[Subject to the supervision of (b) insert name and address of petitioner.]*

Signed (c) (Name) .....

(Address) .....

*[(c) To be signed by the solicitor to the petitioner or by the petitioner if he has no soiiicator.]*

NOTE.-Any person who intends to appear on the hearing of the said petition must serve on or send by post to the above-named, notice in writing of his intention so to do. The notice must state the name and address of the person or, if a firm, the name and address of the firm, and must be signed by the person or firm, or his or their solicitor (if any), and must be served, or if posted, must be sent by post in sufficient time to reach the above-named not later than 48 working hours before the date the petition is for mention in Court.

**FORM 10**

[Rule 19.]

*Advertisement of petition by minority shareholder*

*(Title)*

Notice is hereby given that petition for an order that (a) or for such other order as shall be just was presented to the Court holden at ..... on the ..... day of ..... 20 .....; by (b). And that the said petition is directed to be advertised and sat down for mention before the Court sitting at .....on the

..... day of ....., 20 ; and any creditor or contributory of the said company desirous to support or oppose the making of an order on the said petition may appear at the time of hearing in person or by his counsel for that purpose; and a copy of the petition will be furnished by the undersigned to any creditor or contributory of the said company requiring such copy on payment of the regulated charge for the same.

*[(a) Insert remedy sought in prayer of petitioner.]*

*(b) Insert name and address of petitioner]*

Signed (c) (Name) .....

(Address) .....

*[(c) To be signed by the solicitor to the petitioner or by the petitioner if he has no solicitor.]*

NOTE.-Any person who intends to appear on the hearing of the said petition must serve or send by post to the above-named, notice in writing of his intention so to do. The notice must state the name and address of the person or, if a firm, the name and address of the firm, and must be signed by the person or firm, or his or their solicitor (if any), and must be served, or if posted, must be sent by post in sufficient time to reach the above-named not later than 48 working hours before the date the petition is for mention in Court.

**FORM 11**  
[Rule 21.]

*Order appointing a provisional liquidator after presentation of petition and before order to wind up*

.....the day of ....., 20 .....

*(Title)*

Upon the application, & c., and upon reading, & c the Court doth hereby appoint (one of) the Official Receiver(s) attached to the Court (or as may be) to be provisional Liquidator of the above-named company. And the Court doth hereby limit and restrict the powers of the said provisional Liquidator to the following acts, that is to say (describe the acts which the provisional Liquidator is to be authorised to do and the property of which he is to take possession.)

NOTE.-It will be the duty of such of the persons as are liable to make out or to concur in making out a statement of affairs as the Official Receiver may require to attend on the Official Receiver at such time and place as he may appoint and to give him all information he may require.

**FORM 12**  
[Rule 23.]

*Notice of intention to appear on petition*

*(Title)*

Take notice that A.B., of (a) a creditor for N ..... of (or contributory holding (b) ..... shares in) the above-named company intends to appear on the hearing of the petition advertised to be heard on the ..... day of ..... 20 ....., and to support (or oppose) such petition.

*[(a) State full name and address, or if a firm, the name of the firm and address.  
(b) State number and class of shares held.]*

(Signed) (c)

(Address).....

[(c) To be signed by the person or his solicitor or age

**FORM 13**  
[Rule 24.]

*List of parties attending the hearing of a petition*  
(Title)

The following are the names of those who have given notice of their intention to attend the hearing of the petition herein, on the .....day of ..... 20 .....

<i>Name</i>	<i>Address</i>	<i>Name and address of solicitor of party who has given notice</i>	<i>Creditors amount of debt</i>	<i>Contributories number of shares</i>	<i>Opposing</i>	<i>Supporting</i>
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**FORM 14**  
[Rule 27.]

*Notification to official receiver of winding-up order*  
(Title)

To the Official Receiver or the Court

(Address)

Order pronounced this day by the Honourable Mr. Justice .....  
for winding-up the under-mentioned company under the Companies and Allied Matters Act.

<i>Name of company</i>	<i>Registered office of company</i>	<i>Petitioner's solicitor</i>	<i>Date of presentation of petition</i>
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**FORM 15**  
[Rule 27.]

*Notification to official receiver of order pronounced for appointment of provisional liquidator prior to winding-up order being made*

*(Title)*

Order pronounced this day by the Honourable Mr. Justice .....for the appointment of (a) as provisional Liquidator of the undermentioned company prior to any winding-up order being made.

<i>Name of company</i>	<i>Registered office of company</i>	<i>Petitioner's solicitor</i>	<i>Date of presentation of petition</i>
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**FORM 16**  
[Rule 29.]

*Order for winding up by the Court*

.....day of ....., 20 .....

*(Title)*

Upon the petition of the above-named company (or A.B., of etc., a creditor (or contributory) of the above-named company), on the ..... day of ..... 20....., preferred unto the Court, and upon hearing ..... for the petitioner, and .....for ....., and upon reading the said petition, an affidavit of (the said petition). L.M., filed and company verifying the said .....day of , 20 the *Gazette* of the ..... day of ..... 20 ....., the newspapers of the ..... day of ....., 20 , (enter any other papers), each containing an advertisement of the said petition (enter any other evidence) this Court doth order that the said company be wound up by this Court under the provisions of the Companies and Allied Matters Act, and that (one of) the Official Receiver(s) attached to this Court be constituted provisional Liquidator of the affairs of the company.

And it is ordered that the cost of the said petition be paid out of the assets of the said company.

*NOTE:*-It will be the duty of such of the persons as are liable to make out or to concur in making out a statement of affairs as the Official Receiver may require to attend on the Official Receiver at such time and place as he may appoint and to give him all information he may require.

**FORM 17**  
[Rule 30 (2)]

*Order for winding up, subject to supervision*

.....day, the ..... day of ....., 20 .....

*(Title)*

Upon the petition, & c., this Court doth order that the voluntary winding-up of the said .....Limited, be continue, but subject to the supervision of this Court; and any of the proceedings under the said voluntary winding-up may be adopted as the Court shall think fit; and it is ordered that the Liquidator appointed in the voluntary winding up of the said company, or the other Liquidator for the time being, do on the ..... day of ..... 20 .....

next, and thenceforth every three months, file with the Registrar a report in writing as to the position of, and the progress made with, the winding-up of the said company, and with the realisation of the assets thereof and as to any other matters connected with the winding-up as the Court may from time to time direct. And it is ordered that no bills of costs, charges or expenses, or special remuneration of any solicitor, employed by the Liquidator of the said company, or any remuneration, charges or expenses of such Liquidator, or of any manager, accountant, auctioneer, broker or other person, be paid out of the assets of the said company, unless such costs, charges, expenses or remuneration, shall have been allowed by the Registrar. And it is ordered that all such costs, charges, expenses and remuneration, be ascertained accordingly. And it is ordered that the costs of the petitioner and of (here insert any directions as to allowance of costs of the petitioner and of person appearing), and the creditors, contributories and Liquidator of the said company, and all other persons interested, are to be at liberty to apply generally as there may be occasion.

**FORM 18**

[Rule 34.]

*Affidavit by special manager verifying account*

(Title)

I, .....of ..... make oath and say as follows-

- 1. The account hereunto annexed, marked with the letter A, produced and shown to me at the time of swearing this my affidavit, and purporting to be my account as special manager of the estate or business of the above-named company, contains a true account of all and every sums and sum of money received by me or by any other person or persons by my order or to my knowledge or belief for my use on account or in respect of the said estate or business.
- 2. The several sums of money mentioned in the said account hereby verified to have been paid or allowed have actually and truly so paid and allowed for the several purposes in the said account mentioned.
- 3. The said account is just and true in all and every item and particulars therein contained, according to the best of my knowledge and belief. Sworn, etc.

**FORM 19**

[Rule 35.]

*Statement of affairs*

(Title)

Statement of affairs on the ..... day of ....., 20 ....., the date of the winding-up order, directed by the Official Receiver.\*

I/We ..... of ..... make oath and say that the statement made overleaf and the several lists hereunto annexed marked .....are to the best of my/our knowledge and belief a full, true and complete statement as to the affairs of the above-named company, on the ..... day of ....., 20 .....

the date of the winding-up order, directed by the Official Receiver\* and that the said company carries on the following business-\*

Sworn at ..... ) this ..... day of .....

20 ..... ) Signature(s)

Before me ..... )

**A Commissioner of Oaths.**

The Commissioner is particularly requested, before swearing the affidavit, to ascertain that the full name, address and description of the deponent are stated, and to initial any crossings-out or other alterations in the printed form. A deficiency in the affidavit in any of the above respects will entail its refusal by the Court, and will necessitate it being re-sworn.

NOTE: - The several lists annexed are not exhibits to the affidavit.

**FORM 20**  
[Rule 41 (1).]

*Report of result of meeting of creditors or contributories*

In the matter, etc.

I, A.B., the Official Receiver of the Court (or as the case may be) the chairman of a meeting of the creditors (or contributories) of the above-named company, summoned by advertisement in the

..... newspaper of the ..... 20 ....., and in the *Gazette* of the ..... 20 ....., and by notice dated..... 20....., and held on the ..... day of .....20 ....., at ..... do hereby report to the Court the result of such meeting as follows-

The said meeting was attended, either personally or by proxy, by ..... creditors whose proofs of debt against the said company were admitted for voting purposes, amounting in the whole to the value of ₦ (or by contributories,

holding in the whole ..... shares in the said company, and entitled respectively by the regulations of the company to ..... votes).

The question submitted to the said meeting was, whether the creditors (or contributories) of the said company wished that an application should be made to the Court for appointing (1) a Liquidator in the place of the Official Receiver and (2) a Committee of Inspection (or the other proposal submitted to the meeting.)

The said meeting was unanimously of opinion that the said proposal should (or should not) be adopted; (or the result of the voting upon such question was as follows): (a)

*(a) Here set out the total number and value of the creditors of total number and value of the creditors of total number and voting power of the contributories voting for and against each resolution.*

Dated the ..... day of ..... 20 .....

(Signed) ..... Chairman

**FORM 21**  
[Rule 41 (5).]

*Order appointing Liquidator*

(Title)

the ..... day of ....., 20 .....

Upon the application of the Official Receiver and provisional Liquidator of the above-named company, by summons dated ..... and upon hearing the application in person and upon reading the order of winding-up of the said company dated ..... 20 .....,

and the reports of the Official Receiver of the results of the meetings of creditors and contributories

made to the Court and respectively dated the ..... and the affidavit

of ..... as to the fitness of the Liquidator hereinafter named filed on the

..... day of ..... 20 .....

It is ordered that .....of ..... be appointed Liquidator of the above-named company.

(a) And it is ordered that the following persons be appointed a Committee of Inspection to act with the said Liquidator, namely-

*[(a) To be struck out if no Committee of Inspection appointed.]*

And it is ordered that the said Liquidator do herein seven days from the date of this order give security to the satisfaction of the Registrar as provided by the Companies Winding-Up Rules.

And notice of this order is to be gazetted and advertised in the .....

**FORM 22**

[Rule 41 (7).]

*Advertisement of appointment of Liquidator*

In the matter ..... , Limited

By order of the ..... , dated the ..... day of

..... 20 ..... Mr. .... of .....

has been appointed Liquidator of the above-name company with (or without) a Committee of inspection.

Dated this ..... day of ..... 20 .....

**FORM 23**

[Rule 42 (3).]

*Certificate that Liquidator or special manager has given security*

*(Title)*

This is to certify that A.B., of ..... who was on the ..... day of ..... , 20 ..... , appointed Liquidator (or special manager) of the above-named company, has duly given security to the satisfaction of the Registrar.

DATED this ..... day of ..... 20 .....

*Registrar*

**FORM 24**

[Rule 45.]

*Order directing a public examination*

*(Title)*

Upon reading the reports of the Official Receiver in the above matter, dated respectively the ..... day of ..... 20 ..... and the ..... day of ..... 20 .....

It is ordered that the several persons whose names and addresses are set forth in the schedule hereto do attend before the Court on a day and at a place to be named for the purpose, and be publicly



examined as to the promotion or formation of the company, as to the conduct of the business of the company and as to their conduct and dealing as directors or officers of the company.

THE SCHEDULE REFERRED TO

Name	Address	Connection with the Company

**FORM 25**  
(Rule 47)

*Notice to attend public examination*

*(Title)*

Whereas by an order of this Court, made on the ..... day of....., 20 ....., it was ordered that you, the undermentioned should attend before the ..... Court on a day and at a place to be named for the purpose, and be publicly examined as to the promotion or formation of the company, and as to the conduct of the business of the company, and as to your conduct and dealing as (a) .

*(a) Insert director or officer (or as the case may be).]*

And whereas the.....day of ....., 20.....

At..... o'clock, in the .....noon before the sitting at ..... has been appointed as the time and place for holding the said examination.

Notice is hereby given that you are required to attend at the said time and place, and at any adjournments of the examination which may be ordered, and to bring with you and produce all books, papers, and writings and other documents in your custody or power in any way relating to the above-named company.

And take notice that if you fail, without reasonable excuse, to attend at such time and place, and at the adjournments of the said public examination which may be ordered, you will be liable to be committed to prison without further notice.

DATED the ..... day of . ....., 20..... .

To .....Official Receiver.

**FORM 26**  
(Rule 49.)

*Warrant against person who fails to attend examination*

*(Title)*

To Commissioner of Police of the State and all police officers within the jurisdiction of the Court,

and to the governor or keeper of the ..... (here insert the prison.)

Whereas by Order of the Court dated ....., 20 ....., (a) was ordered to attend before the Court on a day and at a place to be named for the purpose of being publicly examined.

*[(a) Name of person required to attend.]*

And whereas by evidence taken upon oath, it hath been made to appear to the satisfaction of the Court that the ..... day of ..... 20 ....., at ..... o'clock in the ..... noon before before (b) ..... sitting at (c) ..... was appointed as the time and place for holding the said examination, and that notice of the said order and of the said time and place so appointed was duly served upon the said (a).

*[(b) Name or title of officer before whom examination is directed to be held.  
(c) Place of examination]*

(And whereas the said (a) ..... did without good cause fail to attend on the said ..... day of ..... , 20 ....., for the purpose of being examined, according to the requirement of the said order of this Court made on the ..... day of, ..... , 20 ..... directing him so to attend). (or, and that the said (a) has absconded (or, and that there is reason to believe that the said (a)..... is about to abscond) with a view to avoiding examination under the Companies and Allied Matters Act).

These are therefore to require you the said Commissioner of Police and any of your officers authorised by you, to take the said (a) ..... and to deliver him to the governor or keeper of the above-named prison, and you the said governor or keeper to receive the said (a) ..... and him safely to keep in the said prison until such time as this Court may order.

DATED this ..... day of ..... , 20 .....

**FORM 27**  
[Rule 56.]

*Report to the court where person examined refuses to answer to satisfaction of Registrar or officer*

*(Title)*

At the (public) examination of (a) ..... held before me this ..... day of .... , 20..... , the following question was allowed by me to be put to the said .....(hereinafter called "the witness") .....

*[(a) e.g. A.B., a person ordered to attend for examination.]*

Q.  
(b) .....

*[(b) Here insert answers (if any).]*

The witness refused to answer the said question (or) The Witness answered the said question as follows -

A. (c) .....

*[(c) Here insert answers (if any).]*

I thereupon named the ..... day of ... , 20....., at ..... as the time and place for such (refusal to) answer to be reported to the Hon. Mr. Justice .....

DATED this ..... day of ..... , 20 .....

*Registrar*  
(or as the case may be)

**FORM 28**  
[Rules 58 and 59.]

*Disclaimer of lease*  
(Title)

Pursuant to an Order of the Court .....  
DATED the ..... day of ..... 20 ....., I, ..... the  
Liquidator of the above-named company, hereby disclaim all interest in the lease.  
DATED the ..... day of ..... 20 .....  
whereby the premises (a) were demised to .....  
[(a) Insert description of the property disclaimed.]  
at a rent of ..... per annum for a term of .....  
Notice of this disclaimer has been given to .....  
DATED this ..... day of ..... 20 .....

.....  
*Liquidator*

**FORM 29**  
[Rules 58 and 59.]  
*Notice of disclaimer of lease*

(Title)

Take Notice that, pursuant to an Order of the Court, DATED the ..... day of ..... 20 ....., I  
..... the Liquidator of the above-named company, by writing under  
my hand bearing the dated the ..... day of ..... 20 ..... disclaimed all interests in the  
lease DATED the ..... day of ..... 20 ..... whereby the premises  
[(a) Insert description of the property disclaimed.]

(a) ..... were demised to ..... at a rent  
of ~~£~~ ..... per annum for a term of .....  
The above-mentioned disclaimer has been filed at the office or the Registrar at (b) .....

[(b) State address.]

DATED this ..... day of ..... 20 .....

.....  
*Liquidator*

To .....

[Address.]

**FORM 30**  
[Rule 62.]

*Notice by Liquidator requiring payment of money  
or delivery of books, etc., to Liquidator*

(Title)

Take notice that I, the undersigned (a) ..... have been appointed

[(a) Name of Liquidator.]

Liquidator of the above-named company, and that you, the under-mentioned (b)

[(b) Name of person to whom notice is addressed.]

are required within ..... days after service hereof, to pay to me (or deliver, convey, surrender. or transfer to or into my hands) ..... as Liquidator of the said company at my office, situate at (c)..... etc., the

[(c) Address of Liquidator's office.]

sum of ₦....., being the amount of debt appearing to be due from you on your account with the said company (or any money, property, books or papers), (or specifically describe the property) now being in your hands, and to which the said company is entitled (or otherwise as the case may be).

DATED this..... day of ..... 20.....

Signed .....

Liquidator

To (b) .....

[Address.]

**FORM 31**

[Rules 63 and 65.]

*Provisional list of contributories to be made out by Liquidator*

(Title)

The following is a list of members of the company liable to be placed on the list of contributories of the said company, made out by me from the books and papers of the said company, together with their respective addresses and the number of shares (or extent of interest) to be attributed to each and the amount called up and the amount paid up in respect of such shares (or interest) so far as I have been able to make out or ascertain the same.

In the first pan of the list, the persons who are contributories in their own right are distinguished.

In the second part of the said list, the persons who are contributories as being representatives of or being liable for the debts of others, are distinguished.

*First Part-Contributories in their own right*

1.	2.	3.	4.	5.	6.
Serial Nu.	Name and description	Address	Number of shares (or extent of	Amount called up at date of	Amount paid up at date of

			<i>Interest)</i>	<i>commencement of winding up</i>	<i>commencement of winding up</i>
--	--	--	------------------	---	---------------------------------------

Supplemental list can be made, when new contributories are ascertained after the first list.

**FORM 32**  
[Rule 64.]

*Notice to contributories of appointment to settle list of contributories*  
(Title)

Take notice that I, ..... the Liquidator of the above-named company, have appointed the ..... day of ..... 20..... , at ..... o'clock in the ..... noon, at (a) ..... in the city of ....., to settle the list of the contributories of the above-named company, made out by me, pursuant to the Companies and Allied Matters Act, and the rules thereunder, and that you are included in such list. The character and the number of shares (or extent of interest) in and for which you are included and the amount called up and the amount paid up in respect of such shares (or interest) are stated below; if no sufficient cause is shown by you to the contrary at the time and place aforesaid, the list will be settled, including you therein.

DATED this .....day of ..... 20 .....

To Mr. A. B. (or to Mr. C. D., his solicitor). *Liquidator*

1.	2.	3.	4.	5.	6.
<i>Serial No.</i>	<i>Name and description</i>	<i>Address</i>	<i>Number of shares (or Extent of interest)</i>	<i>Amount called Up at date of commencement Of winding up</i>	<i>Amount paid up at date of commencement of winding up</i>

**NOTE:-**

Contributories are under no obligation to attend the appointment referred to in the above notice if they are satisfied that the particulars contained in the notice are correct.

A shareholder's name cannot be omitted from the list of contributories on account of his inability to pay calls; this question will be dealt with when application is made for payment of the calls.

A change of address may be notified by giving notice by post before the date fixed for the appointment.

**FORM 33**  
(Rule 65.)

*Certificate of Liquidator of final settlement of the list of contributories*  
(Title)

Pursuant to the Companies and Allied Matters Act, and to the rules made thereunder, I, the under-  
signed, being the Liquidator of the above-named company, hereby certify that the result of the  
settlement of the list of contributories of the above-named company so far as the said list has been  
settled, up to the date of this certificate, is as follows-

1. The several persons whose names are set forth in the second column of the First Schedule  
hereto have been included in the said list of contributories as contributories of the said company in respect of the  
(a) ..... set opposite the names of such contributories respectively in the  
said Schedule.

I have, in the first part of the said Schedule, distinguished such of the said several persons included  
in the said list as are contributories in their own right.

I have, in the second part of the said Schedule, distinguished such of the said persons included in  
the said list as are contributories as being representatives of or being liable for the debts of others.

2. The several persons, whose names are set forth in the second column of the Second Schedule  
hereto, were included in the provisional list of contributories, and have been excluded from  
the said list of contributories.

3. I have, in the fifth column of the First Schedule and in the sixth column of the second part of  
the First Schedule and in the same column of the Second Schedule, set forth opposite the  
name of each of the several persons respectively the date when such person was included in  
or excluded from the said list of contributories.

4. I have, in the sixth and seventh columns of the first part of the First Schedule hereto and in  
the seventh and eight columns of the second part of the said Schedule, set forth opposite the  
names of each of the said persons respectively the amount called up at the date of the commencement of the  
winding-up and the amount paid up at such date in respect of their shares  
(or interest).

5. Before settling the said list, I was satisfied by the affidavit of ..... ,  
clerk to ..... duly filed with the proceedings herein, that notice was  
duly sent by post to each of the persons mentioned in the said list, informing him that he was

included in such list in the character and for the (a) ..... stated therein, and of the amount  
called up and the amount paid up in respect of such shares (or interest) and of the day appointed for finally  
settling the said list.

DATED this ..... day of ..... 20 .....

**FORM 34**  
[Rule 66.]

*Notice to contributory of final settlement of List of contributories and that his name is included*  
(Title)

Take notice that I ..... the Liquidator of the above-named company,  
have, by certificate dated the ..... day of ..... 20 .....  
under my hand, finally settled the list of contributories of the said company, and that you are included in such list.  
The character and the number of shares (or extent of interest in and for which

you are included and the amount called up and the amount paid up in respect of such shares for interest) is stated below.

Any application by you to vary the said list of contributories, or that your name may be excluded therefrom, must be made by you to the Court, within 21 days from the service on you of this notice, or the same will not be entertained.

The said list may be inspected by you at the office of the Registrar at (a) .....

on any day between the hours of .....and .....  
 DATED .....day of ..... 20.....

(Signed) .....

*Liquidator*

To ..... [or to his solicitor.]

<i>Serial No.</i>	<i>Name and description</i>	<i>Address</i>	<i>Number of shares (or extent of interest)</i>	<i>Amount called up at date of commencement of winding up</i>	<i>Amount paid up at date of commencement of winding up</i>

**FORM 35**  
 [Rule 67.]

*Order on application to vary list of contributories*

*(Title)*

Upon the application of W.N., by summons Dated the.....day of .....  
 20....., for an order that the list of contributories of the company and the Liquidator's certificate finally settling the same be varied by excluding the name of the applicant therefrom (or, as the case may be), and upon hearing, & C., and upon reading & C ..... It is ordered, that the list of contributories of the company and the Liquidators' certificate finally settling the same be varied excluding the name of the said W.N. from the said list of contributories or by including the name of the said W.N. as a contributory in the said list for ..... shares, (or as the case may be) or the Court does not think fit to make any order on the said application, except that the said W.N. do pay to the Liquidator of the said company, his costs of this application.

**FORM 36**

[Rule 69 (2).]

*Notice to each member of Committee of Inspection for sanction to proposed call*

*(Title)*

Take notice that a meeting of the Committee of Inspection of the above-named company will be

held at ..... on the (a) ..... day of .....20.....,

at ..... o'clock in the .....noon, for the purpose of considering and obtaining the sanction of the Committee to a call of ₦ ..... per share proposed to be made by the Liquidator on the contributories.

Annexed hereto is a statement showing the necessity for the proposed call and the amount required.

DATED this ..... day of ..... 20 .....

*(Signed)* .....

*Liquidator*

**STATEMENT**

1. The amount due in respect of proofs admitted against the company, and the estimated amount of the costs, charges and expenses of the winding-up, form in the aggregate the sum of ₦ .....or thereabout.

2. The assets of the company are estimated to realise the sum of ₦ ..... There are no other assets, exact the amounts due from certain of the contributories to the company, and in my opinion it will not be possible to realise in respect of the said amount more than ₦ .....

3. The list of contributories has been duly settled and ..... persons have been settled on the list in respect of the total number of ..... shares.

4. For the purpose of satisfying the several debts and liabilities of the company, and of paying the costs, charges and expenses of the winding-up, I estimate that a sum of ₦ ..... will be required in addition to the amount of the company's assets hereinbefore mentioned.

5. In order to provide the said sum of ₦ ..... it is necessary to make a call on the contributories, and having regard to the probability that some of them will partly or wholly fail to pay the amount of the call, I estimate that for the purpose of realising the amount required it is necessary that a call of ₦ per share should be made.

*[Annex tabular statement showing amounts of debts, costs, etc., and of assets.]*

**FORM 37**

[Rule 69 (3).]

*Advertisement of meeting of Committee of Inspection to sanction proposed call*

*(Title)*

Notice is hereby given that the undersigned Liquidator of the above-named company proposes that

a call should be made on all the contributories of the said company, or, as the case may be, .....

of ₦ ..... per share, and that he has summoned a meeting of the Committee of Inspection of

the company, to be held at .....



on the ..... day of ..... 20 ..... at ..... o'clock in the  
..... noon ....., to obtain their sanction to the proposed call.

Each contributory may attend the meeting and be heard or make any communication in writing to the Liquidator or the members of the Committee of Inspection with reference to the intended call.

A statement showing the necessity of the proposed call and the purpose for which it is intended may be obtained on application to the Liquidator at his office at (a) .....

DATED this ..... day of ..... 20 .....

*Liquidator*

**FORM 38**  
[Rules 69 (6) and 72.]

*Resolution of Committee of Inspection sanctioning call*

Resolved, that a call of ₦ ..... per share be made by the Liquidator on all the contributories of the company (or, as the case may be).

*Signed*  
*Members of the Committee of Inspection*

DATED this ..... day of ..... 20 .....

**FORM 39**  
[Rule 20.]

*Summons for leave to make a call*

*(Title)*

Let the several persons whose names and addresses are set forth in the second column of the Schedule hereto, being contributories of the above-named company, as shown in the third column

of the said Schedule, attend at .....

on the ..... day of ..... 20 .....

at ..... o'clock in the ..... noon, on the hearing of an application

on the part of the (Official Receiver and) Liquidator of the company for an order that he may be at liberty to make a call to the amount of ₦ ..... per share on all the contributories (or, as the case may be) of the said company.

DATED this ..... day of ..... 20 .....

This summons was taken out by .....  
of ..... solicitors for the (Official Receiver and) Liquidator

To .....

*NOTE:-If you do not attend either in person or by your solicitor at the time and place above-mentioned, such order will be made and proceedings taken as the Court may think just and expedient.*

SCHEDULE

Number on List	Name and Address	In what character included

**FORM 40  
(Rule 70)**

*Affidavit of Liquidator in support of proposal for call*

(Title)

I, ..... of ..... the Liquidator of the above-named company, make oath and say as follows-

1. I have in the schedule now produced and shown to me, and marked with the letter A set forth a statement showing the amount due in respect of the debts proved and admitted against the said company, and the estimated amount of the costs, charges and expenses of and incidental to the winding-up the affairs thereof, which several amounts form in the aggregate the sum of ₦ ..... or thereabouts.
2. I have also in the said schedule set forth a statement of the assets in hand belonging to the said company, amounting to the sum of ₦ ..... and no more. There are no other assets belonging to the said company, except the amounts due from certain of the contributories of the said company, and, to the best of my information and belief, it will be impossible to realise in respect of the said amounts more than the sum of ₦ ..... or thereabouts.
3. ....persons have been settled by me on the lost of contributories of the said company in respect of the total number of..... shares.
4. For the purpose of satisfying the several debts and liabilities of the said company and of paying the costs, charges and expenses of and incidental to the winding-up the affairs thereof, I believe the sum of ₦ ..... will be required in addition to the amount of the assets of the said company mentioned in the said Schedule A, and the said sum of ₦ .....
5. In order to provide the said sum of ₦ ....., it is necessary to make a call upon the several persons who have been settled on the list of contributories as before mentioned, and having regard to the probability that some of such contributories will partly or wholly fail to pay the amount of such call, I believe that, for the purpose of realising the amount required as before mentioned, it is necessary that a call of ₦ ..... per share should be made.

**FORM 41  
[Rule 70.]**

*Advertisement of application for leave to make a call*

(Title)

In the matter of .....

Notice is hereby given that the (a) ..... Court has appointed

[(a) Name of Court.]

the ... day of .....20 .....

at .....o'clock in the.....noon, at (b).....

[(b) State place of appointment.]

to hear an application for leave to make a call on all the contributories of the said company (or as the case may be) and that the liquidator of the said company proposes that such call shall be for ₦ .....per share. All persons interested are entitled to attend at such day, hour and place, to offer objections to such call.

DATED this ..... day..... 20.....

.....  
*Liquidator*

**FORM 42**

[Rules 70 and 72.]

*Order giving leave to make a call*

*(Title)*

The ..... day of ..... 20 .....

Upon the application by summons dated ....., of the (Official Receiver and) Liquidator of the above-named company, and upon reading the order to wind up the above-named company, the list of contributories of the said company and the Liquidator's certificate of the final settlement of the same filed .....20 .....the affidavit of the said (Official Receiver and) Liquidator filed the ..... day of .....20 ..... and the exhibit marked "A" therein referred to, and an affidavit of .....

.....  
filed the ..... day of ....., 20.....

It is ordered that leave be given to the (Official Receiver and) Liquidator to make a call of ₦ ..... per share on all the contributories of the said company (a).

*[(a) or as the case may be.]*

And it is ordered that each such contributory do on or before the ..... day of ....., 20 ....., pay to the (Official Receiver and) Liquidator of the said company, the amount which will be due from him or her in respect of such call.

**FORM 43**

[Rule 71]

*Document making a call*

*(Title)*

I, .....the (Official Receiver and) Liquidator of the above-named company, in pursuance of

*[(a) An order of Court, Resolution of the Committee of Inspection.]*

(a) ..... made (or passed) this ..... day of ....., 20 ..... hereby make a call of per share on all the contributories of the company, which sum is to be paid at my office (b)

*[(b) Insert address.]*

On the ..... day of ..... 20 .....

DATED this ..... day of ..... 20 .....

**FORM 44**

[Rule 72.]

*Notice of call sanctioned by Committee of Inspection to be sent to contributory*

*(Title)*

Take notice that the Committee of Inspection in the winding-up of this company have sanctioned a call of .....per share on all the contributories of the company.

The amount due from you in respect of the call is the sum of ₦ ..... This sum should be paid by you direct to me at my office (a) .....

[(a) State address.]

on or before the ..... day of ..... 20 .....

DATED this ..... day of ..... 20 .....

To .....

Liquidator

NOTE:- If you do not pay the sum due from you by the date mentioned, interest will be claimed on such at the rate of four per cent per annum from the said date until payment.

**FORM 45**

[Rule 72.]

*Notice to be served with the order sanctioning a call*

(Title)

The amount due from you, A.B., in respect of the call made pursuant to leave given by the above (or within) order is the sum of ₦ ....., which sum is to be paid by you to me as the Liquidator of the said company at my office (a) .....

[(a) State address.]

In default of payment interest at the rate of four per cent per annum will be charged upon the

amount unpaid from the ..... day of ..... 20 ..... until payment.

DATED this..... day of .....20.....

To.....

Liquidator

**FORM 46**

[Rule 73.]

*Affidavit in support of application for order for payment of call*

(Title)

I,..... of .....the liquidator of the above-named company, make oath and say as follows-

1. The contributories of the said company, whose names are set forth in the Schedule hereto annexed, marked A, have not paid or caused to be paid the sums set opposite their respective names in the said schedule, which sums are the amounts now due from them respectively under the call of .....per share, duly made under the Companies and Allied Matters Act.

2. The respective amounts or sums set opposite the names of such contributories respectively in such Schedule are the true amounts due and owing by such contributories respectively in respect of the said call.

*The Schedule above referred to*

No. on List	Name and description	Address	In what character included	Amount due N : k

NOTE:-In addition to the above affidavit, an affidavit of the service of the application for the call will be required in cases in which the Committee of Inspection or the Court has authorised a call to be made.

**FORM 47**  
[Rule 73.]

*Order for payment of call due from a contributory*  
( Title)

The ..... day of .....20 .....

Upon the application or the Liquidator of the above-named company and upon reading an affidavit of .....

filed the ..... day of ..... 20 ..... and an affidavit of Liquidator, filed the ..... day of ..... 20 ....., it is ordered, that C.D., of, etc., (or E.F., of,

etc., the legal personal representative of L.M., late of, etc., deceased), one of the contributories of the said company (or, if against several contributories, the several persons named in the second column of the Schedule to this order, being respectively contributories of the

said company), do, on or before the .....day of ....., 20 .....

or subsequently within four days after service of this order, pay to A.B., the Liquidator of the said

company at his office, (a) ..... , the sum of N ..... (if against a legal personal representative all, out of the assets of the said L.M., deceased, in his hands as such legal personal representative as aforesaid, to be administered in due course of administration, if the said E.F., has in his hands so much to be administered) (or, if against several contributories, the several sums of money set opposite to the respective names in the sixth column of the said schedule hereto), such sum (or sums) being the amount (or amounts) due from the said C.D. (or L.M.) (or the said several persons respectively), in

respect of the call of ₦ ..... per share duly made.

DATED the ..... day of .....20.....

And it is ordered that the said several persons do within the like period and at the place aforesaid pay to the said A.B. as such Liquidator as aforesaid, interest at the rate of ten Naira per *centum per annum* on the amounts specified in the sixth column of the said Schedule from the ..... to the date of payment.

And it is ordered that the said several persons do within the like period and at the place aforesaid pay to the said A.B., as such Liquidator as aforesaid, the several sums set opposite their respective names in the seventh column of the said Schedule, such sum being proportion of the applicant's costs of the said application payable by such several persons respectively.

*(Add appropriate paragraphs as to amounts payable by married women and legal personal representatives (if any)*

*The Schedule referred to in the foregoing Order*

No. on list	Name and description	Address	In what character included	Amount due	Proportion of cost	Total amount payable exclusive of

						interest

NOTE :- The copy for service of the above order must be endorsed as follows-

"If you, the undermentioned A.B., neglect to obey this order by the time mentioned therein you will be liable to process of execution, for the purpose of compelling you to obey the same."

**FORM 48**

[Rule 77.]

*Proof of debt (general form)*

(Title)

I, (a) ..... of .....

[(a) Fill in full name, address, and occupation of deponent. If proof made by creditor, strike out clauses (b) and (c).]

make oath and say: .....

(b) That I am in the employ of the under-mentioned creditor, and that I am duly authorised by ..... hereinafter deposed to was incurred and for the consideration stated, and that such debt, to the best of my knowledge and belief still remains unpaid and unsatisfied.

[If made by clerk or agent of the company, strike out (b).]

(c) That I am duly authorised, under the seal of the company hereinafter named, to make the proof of debt on its behalf.

1. That the above-named company was, at the date of the (\*) order for winding up the same, viz.,

the .....day of .....20 ..... and still is justly and truly indebted to (d) ..... in the sum of

[(d) Insert "me and to CD. and E.F. my co-partners in trade (if any) or, if by clerk or agent insert name, address, and description of principal.]

.....Naira ..... kobo ..... for (e) ..... as shown by the account endorsed hereon, or

[(e) NOTE:-This State consideration (as goods sold and delivered by me (and my said partner) to the company between the dates of (or moneys advanced by me in respect of the under-mentioned bill of exchange) or, as the case may be.]

by the following account, viz .....

for which sum or any part thereof I say that [ have not nor hath (f) .....

[(f) "My said partners" or any "of them" or "the above-named creditor" (as the case may be).]

or any person by (f) ..... order to my knowledge or belief or (g) .....

[(g) "My" "our" or "their" or "his" (as the case may be).]

use had or received any manner of satisfaction or security whatsoever, save and except the following (h).....

[(h) Here state the particulars of all securities are on the property of the company. Asses the value of the same, and if any bills or other negotiable securities be held specify them in the Schedule.

*N.B.-Bills of Exchange or other negotiable securities must be produced before the proof can be admitted.]*

**N.B. You should attend carefully to these directions.**

Admitted to vote for N .....k ..... the  
..... day of .....20.....

.....  
*Official Receiver or Liquidator*

Admitted to rank for dividend for .....  
N .....k ..... the ..... day of .....20 .....

.....  
*Official Receiver or Liquidator*

<i>Date</i>	<i>Drawer</i>	<i>Acceptor</i>	<i>Amount</i>	<i>Due dale</i>
			N k	

Sworn at .....

DATED this ..... day of ..... 20 .....

*Deponent 's Signature*

Before me .....

NOTE:- The proof cannot be admitted for voting at the first meeting unless it is properly completed and lodged with the Official Receiver before the time named in the notice convening the meeting.

*[(\*) Where before the presentation of a petition for the winding-up of a company by the Court a resolution has been passed by the company for voluntary winding up, the date of the commencement of the winding-up must be substituted for the date of the winding-up order (see section 428 of the Companies and Allied Matters Act).]*

**FORM 49**

[Rule 86.]

*Proof of debt of workmen*

*(Title)*

I, (a) ..... of .....

(b) ..... make oath and say as follows: .

1. The above-named company was on the ..... day of .....20 .....  
and still is justly and truly indebted to the several persons whose names, addresses and descriptions appear in the schedule endorsed hereon in the sums severally set against their

names in the seventh column of such schedule for wages due to them respectively as workmen or others in the employ of the company in respect of services rendered by them respectively to the company during such periods as are set out against their respective names in the fifth column of such schedule and for accrued holiday remuneration so due to them in respect of such periods as are so set out in the sixth column of such schedule, for which said sums, or any part thereof, I say that they have not, nor hath any of them had or received any manner of satisfaction or security whatsoever.

Sworn at .....

DATED this ..... day of ..... 20 .....

*Deponent 's Signature*

Before me .....

*Schedule referred to on the other side*

No	Full name of workman	Address	Description	Period over which wages due	Period over which accrued holiday remuneration due	Amount due N : k
----	----------------------	---------	-------------	-----------------------------	--	------------------

**FORM 50**

[Rule 90.]

*Notice of rejection of proof of debt*

*(Title)*

Take notice that, as (Official Receiver and) Liquidator of the above-named company, I have this day rejected your claim against the company (a) to the extent of ₦ ..... on the following grounds .....

And further take notice that, subject to the power of the Court to extend the time, no application to reverse or vary my decision in rejecting your proof will be entertained after the expiration of ..... days from this time.

DATED this ..... day of ..... 20 .....

*Signature*

Address .....

To .....

*(Official Receiver and Liquidator)*

**FORM 51**

[Rule 97.]

*List of proofs to be filed under rule 97*

*(Title)*



I hereby certify that the following is a correct list of all proofs tendered to me in the above matter during the past month.

DATED this ..... day of ..... 20 .....

*Liquidator*

<i>Name of Creditor</i>	<i>Proofs tendered</i>		
	<i>Amount of proof</i>	<i>Whether admitted, rejected or standing</i>	<i>If admitted amount</i>
	N k	<i>Over for further consideration</i>	N k

**FORM 52**  
[Rule 102 (I).]

*Notice to creditors of intention to declare dividend*

*(Title)*

A (a) dividend is intended to be declared in the above matter. You are mentioned as a creditor in the statement of affairs, but you have not yet proved your debt.

*[(a) insert here "first" or "second" or "final" or as the case may be.]*

If you do not prove your debt by the ..... day of ..... 20 ..... you will be excluded from this dividend.

DATED this ..... day of ..... 20 .....

To X.Y. ....

*Liquidator*

*(Address)*

.....

**FORM 53**  
[Rule 102 (1).]

*Notice to persons claiming to be creditors of intention to declare final dividend*

*(Title)*

Take notice that a final dividend is intended to be declared in the above matter, and that if you do not establish your claim to the satisfaction of the Court on or before the ..... day of ..... 20 ..... or such later day as the Court may fix, your claim will be expunged, and I shall proceed to make a final dividend without regard to such claim.

DATED this ..... day of ..... 20 .....

To X.Y. ....

*Liquidator*

*(Address)*

.....

**FORM 54**  
[Rule 102 (4).]

*Notice of dividend*  
(Title)

Address .....

Date ..... 20 .....

NOTICE IS HEREBY GIVEN that a dividend of ..... k in the ₦ has been declared in this matter, and that the same may be received at my office, as above on the ..... day of ..... 20 ..... or any subsequent weekday, except ..... between the hours of ..... and .....

**NOTE:-**

- (i) This form must be presented, or returned, to the Liquidator when application for payment is made. Any bills of exchange, promissory notes or other negotiable instruments held by you must be produced.
- (ii) If you desire the dividend to be paid to some other person you should sign and lodge with the Liquidator an authority in the prescribed Form 54.
- (iii) If you do not desire to attend personally you must fill up, sign and return the form of authority below, when a dividend payable order will be delivered in accordance with the authority.
- (iv) Dividend payable orders lapse if not presented for payment within 3 months of the last day of the month of issue but will be re-issued after that period on application to the Ministry.

The fee payable on re-issue of a payable order is ₦5 where the order is for ₦25 or less, and ₦10 where the order exceeds ₦50.

(Signed) .....

*Liquidator Authority*

To .....

Sir,

please deliver to the \*me (us) by post/bearer Mr. .... at my (our) risk the dividend payable order for ₦ ..... being the amount payable to \*my/ us in respect of the dividend of ..... in the ₦ on my/our claim.

₦ .....

To the Liquidator .....

.....  
*Creditor's Signature*

Date ..... 20 .....

NOTE. - The authority should be signed by-

- (a) the creditor personally; or
- (b) in the case of a firm, by one of the partners; or
- (c) in the case of a limited company, by an officer of the company, so described; or
- (d) in the case of a holder of a general proxy authorised to receive the dividend, by the holder.

(For use when payable order handed to creditor or representative)

Received Payable Order for ₦ ..... .....

Signature

Date .....20 .....

**FORM 55**  
[Rule 102 (8).]

*Authority to Liquidator to pay dividends to another person*  
(Title)

To the (Official Receiver) Liquidator .....

Sir,

I hereby authorise and request you to pay to .....

we .....of .....

.....  
(a specimen of whose signature is given below), all dividends as they are declared in the above-named matter, and which may become due and payable to me/us in respect of the proof of debt for the sum of £ ..... against the above-named company, made by Mr ..... on my/our behalf.

And I/we further request that the cheque or cheques drawn in respect of such dividends may be made payable to the order of the said ..... whose receipt shall be sufficient authority to you for the issue of such cheque or cheques in his name.

It is understood that this authority is to remain in force until revoked by me/us in writing.

*Witness to the signature of:*

.....  
.....

*Signatures*

Date ..... 20 .....

Specimen of signature of person appointed as above.

*Witness to the signature of:*

.....

*(Witness to the specimen signature of person appointed as above)*

**FORM 56**  
[Rule 103 (2).]

*Notice of return to contributories*  
(Title)

Address .....

Date ..... 20.....

NOTICE IS HEREBY GIVEN that a ..... return of ..... k per  
share has been authorised by the Court in this matter, and that the same may be received at my office, as above,  
on the day of ..... 20..... or any subsequent weekday, except between the  
hours of ..... and .....

NOTE.-

- (i) This form together with the share certificate must be presented, or returned, to the Liquidator when application for payment is made;
- (ii) If you do not desire to attend personally you must fill up, sign and return the form of authority below, when a payable order will be delivered in accordance with the authority;
- (iii) Payable orders lapse if not presented for payment within three months of the last day of the month of issue but will be re-issued after that period on application to the Commission.

The fee payable on re-issue of a payable order is ~~₺~~5 where the order is for ~~₺~~25 or less, and ~~₺~~10 where the order exceeds ~~₺~~50.

.....  
 (Signed) Liquidator

To .....

AUTHORITY

Sir,

Please deliver to \*me (us) by post, the bearer, Mr. ....  
 at my (our) risk the Payable Order for ~~₺~~ ..... being the amount payable  
 to \*me (us) in this respect of the return of ..... per share held by \*me (us) in  
 this company.

~~₺~~ .....

To the Liquidator

.....  
 Contributory's signature

Date..... 20.....

NOTE.-The authority should be signed by-

- (a) the contributory personally, or
- (b) in the case of joint contributories, by each, or
- (c) in the case of a firm, by one of the partners, or
- (d) in the case of a limited company, by an officer of the company, so described, or
- (e) in the case of a holder of a general proxy authorised to receive the dividend, by the holder.

**FORM 57**  
 [Rule 107.]

*Notice to creditors of first meeting*

(Title)

(Under the order for winding up the above-named company dated .....  
 the ..... day of .....20 ..... )

Notice is hereby given that the first meeting of creditors in the above matter will be held at.....  
 .....on the ....., 20.....

To entitle you to vote thereat your proof must be lodged with me not later than .....  
 o'clock on the .....day of ....., 20.....

Forms of proof and of general and special proxies are enclosed herewith proxies to be used at the meeting must be lodged with me at ..... of ..... not later than ..... o'clock on the ..... day of ....., 20 .....

Official Receiver,  
(Address)

(The statement of the company's affairs (a))

[(a) Here insert "has not been lodged" or "has been lodged, and summary is enclosed".]

NOTE.-At the first meetings of the creditors and contributories they may amongst other things-

- 1. By resolution determine whether or not an application is to be made to the Court to appoint a Liquidator in place of the Official Receiver.
2. By resolution determine whether or not an application shall be made to the Court for the appointment of a Committee of Inspection to act with the Liquidator, and who are to be the members of the Committee if appointed.

NOTE.-If a Liquidator is not appointed by the Court the Official Receiver will be the Liquidator.

FORM 58
[Rule 107.]

Notice to contributories of first meeting

(Title)

Notice is hereby given that the first meeting of the contributories in the above matter will be held at ..... on the ..... day of ..... 20 ....., at o'clock in the ..... noon.

Forms of general and special proxies are enclosed herewith. Proxies to be lodged with me at ..... not later than ..... o'clock on the ..... day of ..... 20 .....

DATED this ..... day of ....., 20 .....

Official Receiver

(The company's statement of affairs (a) )

[(a) Here insert "has not been lodged" or "has been lodged, and summary is enclosed".]

NOTE.-At the first meetings of the creditors and contributories they may amongst other things-

- 1. By resolution determine whether or not an application is to be made to the Court to appoint a Liquidator in place of the Official Receiver.
2. By resolution determine whether or not an application shall be made to the Court for the appointment of a Committee of Inspection to act with the Liquidator, and who are to be the members of the Committee if appointed.

NOTE.-If a Liquidator is not appointed by the Court the Official Receiver will be the Liquidator.

FORM 59
[Rule 108.]

Notice to officers of company to attend first meeting of creditors or contributories

(Title)

Take notice that the first meeting of creditors (or contributories) will be held on the .....

..... day of ..... 20 ..... , at  
..... o'clock in the ..... noon at (a) and that you are  
required to attend thereat, and give such information as the meeting may require.

DATED this ..... day of ....., 20 .....

Official Receiver

Rule 108 (1): The Official Receiver shall also give to each of the officers of the company, who in his opinion is out to attend the first meetings of creditors and contributories, seven days' notice of the time and place appointed for each meeting.

(2) The notice may either be delivered personally or sent by letter, as may be convenient. It shall be the duty of every officer who receives notice of such meeting to attend if so required by the Official Receiver, and if any such officer fails to attend the Official Receiver shall report such failure to the Court.

**FORM 60**

[Rule 112.]

*Notice of meeting (general form)*

*(Title)*

Take notice that a meeting of creditors (or contributories) in the above matter would be held at  
..... on the ..... day of .....  
....., 20 ..... at ..... o'clock in the  
..... noon.

*Agenda (a)*

DATED this ..... day of ....., 20 .....

*(Signed) (b)*

Forms of general and special proxies are enclosed herewith. Proxies to be used at the meeting must  
be lodged with ..... at ..... not later than ..... o'clock in  
the ..... day of ....., 20 .....

**FORM 61**

[Rule 116.]

*Authority to depute to act as chairman of meeting and use proxies*

*(Title)*

I, ..... the Official Receiver of ..... do hereby nominate .....  
..... of ..... to be chairman of the meeting of creditors (or contributories)  
in the above matter appointed to be held at ..... on the ..... day of ....., 20 .....,  
and I depute him (a)

*[(a) Here insert "being a person in my employment or under my official control" or  
being an officer of the Ministry.]*

to attend such meeting and use, on my behalf, any proxy or proxies held by me in this matter.

DATED this ..... day of ....., 20 .....

Official Receiver

**FORM 62**

[Rule 120.]

*Memorandum of adjournment of meeting*

*(Title)*

Before .....at ..... on the..... day of.....  
 20 ....., at ..... o'clock.

Memorandum-The (a) ..... meeting of (b) .....

*[(a) Insert "First" or as the case may be. (b) Insert "creditors" or "contributories" as the case may be.]*

in the above matter was held at the time and place above mentioned; but it appearing that (c) ....

*[(c) Here state reason for adjournment.]*

the meeting was adjourned until the ..... day of....., 20 ..... at  
 .....o'clock in the ..... noon,then to be held at the same place.

.....  
 Chairman

**FORM 63**

[Rule 120]

*List of creditors to be used at every meeting*

*(Title)*

Meeting held at .....this ..... day of .....

Consecutive	Names of creditors (a) present or represented	Amount of proof(b)			
		In person		Proxies	
		N	k	N	k
1					
2					
3					
4					
5					
6					
7					
8	Total number of creditors (a) present or represented.				

**FORM 64**

[Rules 130 and 137.]

*General proxy*

*(Title)*

I/We,..... of ..... a creditor (or  
 contributory)hereby appoint (1) ..... to be my/our general proxy to vote at  
 the meeting of creditors (or contributories) to be held in the above matter on the

day of ..... 20 .....or at any adjournment thereof.

DATED this ..... day of ..... ,20

*(Signed) (2).....*

NOTES.-

(1) The person appointed general proxy may in a winding up by the Court be the Official Receiver, the Liquidator, or such other person as the creditor (or contributory) may approve, and in a voluntary winding up the Liquidator or if there is no Liquidator, the chairman of a meeting but not the Official Receiver. The proxy form should be altered accordingly.

(2) If a firm, sign the firm's trading title, and add "by A.B., a partner in the said firm". If the appointor is a corporation, then the form of proxy must be under its common seal or under the hand of some officer duly authorised in that behalf, and the fact that the officer is so authorised must be so stated.

(3) The proxy form when signed must be lodged by the time and at the address named for that purpose in the notice convening the meeting at which it is to be used.

**FORM 65**  
[Rules 130 and 137.]

*Special proxy*  
*(Title)*

I/We, ..... of ....., a creditor (or contributory),

hereby appoint (1)..... to be my/our proxy at the meeting of creditors (or contributory) to be held in the above matter on the..... day of ..... 20....., or at any adjournment thereof, to vote (a).

*[(a) Here insert the word "for" or the word "against" as the case may require, and specify the particular resolution.]*

..... the resolution Nod ..... in the notice convening.

DATED this ..... day of ....., 20 .....

*(Signed)(2)*.....

**NOTES.-**

(1) The person appointed general proxy may in a winding up by the Court be the Official Receiver, the Liquidator, or such other person as the creditor (or contributory) may approve, and in a voluntary winding up the Liquidator or if there is no Liquidator, the chairman of a meeting but not the Official Receiver. The proxy form should be altered accordingly. A creditor (or contributory) may give a special proxy to any person to vote at any specified meeting or adjournment thereof on all or any of the following matters -

- (a) For or against the appointment or continuance in office of any specified person as Liquidator or as member of the Committee of Inspection;
- (b) On all questions relating to any matter, other than those above referred to, arising at a specified meeting or adjournment thereof.

(2) If a firm, sign the firm's trading title, and add "by A.B., a partner in the said firm". If the appointer is a corporation, then the form of proxy must be under its common seal or under the hand of some officer duly authorised in that behalf, and the fact that the officer is so authorised must be so stated.

(3) The proxy form when signed must be lodged by the time and at the address named for that purpose in the notice convening the meeting at which it is to be used.

**FORM 66**  
[Rule 153.]



*Application to court to authorise a special bank account*

*(Title)*

We, the committee of Inspection, being of opinion that Mr. .... of  
..... the Liquidator in the above matter, should have a special bank  
account for the purpose of (a) ..... hereby apply to the Court  
..... to authorise him to make his payments into and out of  
the ..... bank.

All cheques should be countersigned by ..... a member  
of the Committee of Inspection, and by .....

DATED this ..... day of ..... , 20 .....

.....  
.....  
.....

*Committee of Inspection*

**FORM 67**

[Rule 153.]

*Order of court for special bank account*

*(Title)*

You are hereby authorised to make your payment in the above matter into, and out of, the  
..... bank.

*[Here insert any special terms.]*

All cheques must be countersigned by ..... , a member  
of the Committee of Inspection, and by .....

DATED this ..... day of ..... , 20 .....

*By Order of the Court,*

*To*

*Liquidator.*

**FORM 68**

[Rule 156.]

*Certificate and request by Committee of Inspection as to investment of funds*

*(Title)*

We, the Committee of Inspection in the above matter, hereby certify that in our opinion the cash  
balance standing to the credit of the above-named company is in excess of the amount which is  
required for the time being to answer demands in respect of such company's estate, and request  
that the Accountant-General of the Federation will invest the sum of \$ ..... in

Government securities, to be placed to the credit of the said account for the benefit of the said company.

DATED this ..... day of ....., 20 .....

.....  
..... *Committee of Inspection*  
.....

**FORM 69**

[Rule 156.]

*Request by Committee of inspection to Accountant-General of the Federation*

*(Title)*

We, the Committee of Inspection in the above matter, hereby certify that a sum of ₦ ..... , forming part of the assets of the above-named company, has been invested in Government securities, and that the sum of ₦ ..... is now required to answer demands in respect of the said company. And we request that so much of the said securities as may be necessary for the purpose of answering such demands may be realised by the Accountant-General of the Federation and that the amount realised may be placed to the credit of the said company.

DATED this ..... day of. .... ,20 .....

.....  
..... *Committee of Inspection*  
.....

**FORM 70**

[Rule 157.]

*Certificate by Committee of Inspection as to audit of liquidator's cash book*

*(Title)*

We, the undersigned members of the Committee of Inspection in the winding up of the above-named company hereby certify that we have examined the foregoing cash book with the vouchers, and that to the best of our knowledge and belief the said cash book contains a full, true, and complete account of the Liquidator's receipts and payments .

DATED this ..... day of ..... 20 .....

.....  
..... *Committee of Inspection*  
.....

**FORM 71**  
[Rule 158 (3) and 159.]

*Liquidator's trading account*  
under section 429

*G.H. the Liquidator of the above-named Company in account with the estate*

Receipts					Payments				
Dr.					Cr.				
Date					Date				

We have examined this account with the vouchers and find the same correct, and we are of opinion the expenditure has been proper.

DATED this ..... day of ..... , 20 .....

.....

*Committee of Inspection*  
*(or member of the Committee of Inspection)*

**FORM 72**

[Rules 165 and 173(2)]

No. of Company .....

*Liquidator's statement of account (Members' or creditors' voluntary winding up)*  
*[Pursuant to sections 468 and 478.]*

Statement showing how the winding up has been conducted and the property of the company has been disposed of.

Name of company ..... (in liquidation)

Presented by .....

LIQUIDATOR'S STATEMENT OF ACCOUNT  
(MEMBERS) \*(CREDITORS) VOLUNTARY WINDING UP

*\*Delete as necessary.*

From .....20 ....( Commencement of winding up) to .....20..(Close of winding up)

	State- ment of assets and liabilities	Receipts			Payments	
		₹	₹ k		₹	₹ k
Receipts-	₹	₹	k		₹	k
Cash at bank .....				Costs of solicitor to Liquidator .....		
Cash in hand .....				Other law costs .....		
Marketable securities .....				Liquidator's remuneration – % on ₹ realised .....		
Sundry debtors .....				Where applicable – % on ₹ distributed .....		
Stock in trade .....				By whom fixed .....		
Work in progress .....				Auctioneer's and valuer's charges .....		
Freehold property .....				Costs of possession and maintenance of estate .....		
Leasehold property .....				Costs of notice in <i>Gazette</i> and local papers.....		
Plant and machinery .....				Incidental outlay .....		
Furniture, fittings, utensils, etc .....				Total costs and charges .....		
Patents, trade marks, etc .....				(i) Debenture holders -		
Investments other than marketable securities .....				Payment of ₹		
Surplus from securities .....				Payment of ₹	₹	k
Unpaid calls at commencement .....				Per ₹ debenture.....		
Amount received from calls on contributories made in the winding up ...				Payment of ₹		
Receipts per trading account				Per ₹ debenture .....		
Other property, viz –				Payment of ₹	₹	k
.....				Per ₹ debenture .....		
.....	₹			Payment of ₹		
.....				Per ₹ debenture .....		k
Less –				(ii) Creditors-		
Payments to redeem securities .....				..... *Preferential .....		
Costs of execution .....				..... *Unsecured .....		
.....				Dividend(s) of .....k in ₹ on ₹ .....		
Payments per trading account .....				(The estimate of amount expected to rank for divided was ₹.....)		
.....				(iii) Returns to contributories –		
Net realisations						
..... ₹						

				..... k per ₦				
				.....				
				..... share –				
				..... k per ₦				
				.....				
				..... share –				
				..... k per ₦				
				.....				
				..... share –				
				Balance .....				
				₦				

(1) Assets, including shown in the statement of assets and liabilities and estimated to be of the value of ₦..... have proved to be unrealisable.

(2) State amount paid into Companies Liquidation Account in respect of –

(a) unclaimed dividends payable to creditors in the winding up ..... ₦

(b) other unclaimed distributions in the winding up ..... ₦

(c) moneys held by the company in trust in respect of dividends or other sums due before the commencement of the winding up to any person as a member of the company ..... ₦

(3) Add here any special remarks the Liquidator thinks desirable –

DATED this .....day of ..... 20 .....

(Signature of Liquidator (s)).....

(Address) .....

\*State number. Preferential creditors need not be separately shown if all creditors have been paid in full. State nominal value and class of share.

**FORM 73**  
[Rules 169, 170 and 173.]

Re .....

This is the Exhibit marked B referred to in the affidavit of

.....

sworn before me this ..... day

of ....., 20 .....

(No. of Company) .....

.....

A Commissioner for Oaths

*Statement of receipts and payments and  
general directions as to statements*

(Name of company)

(1) Every statement must contain a detailed account of all the Liquidators' realisations and disbursements in respect of the company. The statement of realisations should contain a record of all receipts derived from assets existing at the date of the winding-up resolution and subsequently realised, including balance in bank, book debts and calls collected, property sold, etc., and the account of disbursements should contain all payments for costs and charges, or to creditors or contributories. Where property has been realised, the gross proceeds of sale must be entered under realisations, and the necessary payments incidental to sales must be entered as disbursements. These accounts should not contain payments into the Companies Liquidation Account (except unclaimed dividends see paragraph 5) or payments into or out of bank, or temporary investments by the Liquidator, or the proceeds of such investments when realised, which should be shown separately-

*[Forms and contents of statement.]*

(a) by means of the bank pass book;

(b) by a separate detailed statement of moneys invested by the Liquidator and investment realised.

Interest allowed or charged by the bank, bank commission, & etc., and profit or loss upon the realisation of temporary investments, should, however, be inserted in the accounts of realisations or disbursements, as the case may be. Each receipt and payment must be entered in the account in such a manner as sufficiently to explain its nature. The receipts and payments must severally be added up at the foot of each sheet, and the totals carried forward from one account to another without any intermediate balance, so that the gross totals shall represent the total amounts received and paid by the Liquidator respectively.

(2) When the Liquidator carries on a business, a trading account must be forwarded as a distinct account, and the totals of receipts and payments on the trading account must alone be set out in the statement.

*[Trading Account.]*

(3) When dividends or instalments of compositions are paid to creditors or a return of surplus assets is made to contributories, the total amount of each dividend, or instalment of composition or return to contributories, actually paid must be entered in the statement of disbursements as one sum; and the Liquidator must forward separate accounts showing in the lists the amount of the claim of each creditor, and the amount of dividend or composition payable to each creditor, and of surplus assets payable to each contributory, distinguishing in each list the dividends or instalment of composition and shares of surplus assets actually paid and those remaining unclaimed.

(4) When unclaimed dividends, instalments of composition or return of surplus assets are paid into the Companies Liquidation Account, the total amount so paid in should be entered in the statement of disbursements as one sum.

(5) Credit should not be taken in the statement of disbursements for any amount in respect of the Liquidator's remuneration unless it has been duly allowed by resolution of the Committee of Inspection or of the creditors or of the company in general meeting, or by order of Court as the case may require.

LIQUIDATOR'S STATEMENT OF ACCOUNT

*Pursuant to section 516 of the Companies and Allied Matters Act*

Name of Company.

Nature of proceedings (whether a members' or creditors' voluntary winding up or a winding up under the supervision of the Court).

Date of commencement of winding up.

Date of which statement is brought down.

Name and address of Liquidator.

This statement is required in duplicate.

<i>Realisations</i>				<i>Disbursements</i>			
<i>Date</i>	<i>Of whom received</i>	<i>Nature of assets</i>	<i>Amount</i>	<i>Date</i>	<i>To whom paid</i>	<i>Nature of</i>	<i>Amount</i>

		<i>realised</i>				<i>disbursements</i>	
		N	k			N	k
		Brought forward				Brought forward	
		Carried forward				Carried forward	

*Liquidator's statement of account pursuant to section 516 of the Companies and Allied Matters Act*

NOTE.-No balance should be shown on this Account, but only the total realisations and disbursement which should be carried forward to the Account.

	₦	k
Total realisations .....	_____	
Total disbursements .....	_____	
Balance .....		
The Balance is made up as follows-		
1. Cash in hand of Liquidator .....		
2. Total payments into bank, including balance at date of commencement of winding up as per bank book,		
Total withdrawals from bank ... ..	_____	
Balance.....		
	₦	k
3. Amount in Companies Liquidation Account .....		
*4. Amount invested by Liquidator .....		
Less amounts realised from same .....		
Balance .....	_____	
Total balance as shown	_____	

(NOTE.-Full details of stock purchased for investment and realisation thereof should be given in a separate statement.)

\*The investment or deposit of money by the Liquidator does not withdraw it from the operation of section 399 of the Companies and Allied Matters Act, and any such investments representing money held for six months or upwards must be realised and paid into the Companies Liquidation Account, except in the case of investments in Government securities, the transfer of which to the control of the Ministry will be accepted as a sufficient compliance with the terms of the section.

NOTE.- The Liquidator should also state-

- |     |  |   |  |
|-----|--|---|--|
| (1) | The amount of the estimated assets and liabilities at the date of the commencement of winding up | (Assets after deducting amounts                 | to secured creditors and debenture holders)                                |
|     | Liabilities  | }   | Secured creditors<br>Debenture holders <del>₹</del><br>Unsecured creditors |
| (2) | The total amount of the capital paid up at the date of the commencement of the winding up.       | Paid up in cash .....                           | ₹  |
|     |  | Issued as paid up otherwise than for cash ..... | ₹  |
| (3) | The general description and estimated value of outstanding assets (if any).                      |   |  |
| (4) | The causes which delay the termination of the winding up.  |   |  |
| (5) | The period within which the winding up may probably be completed.                                |   |  |

**FORM 74**  
[Rules 169 and 170.]

No. of Company

*Affidavit verifying statement of Liquidator's account*  
under section 508

(No registration fee charged.)

(Name of company)

I, .....  
of .....the Liquidator  
of the above-named company make oath and say:- That \*the account hereunto annexed marked, B, contains a full and true account of my receipts and payments in the winding up of the above-named company, from the ..... day of ....., 20 ..... to the ..... day of ..... 20..... inclusive, and that I have not, nor has any other person by my order or for use during such period, received or paid any moneys on account of the said company, \*other than and except the items mentioned and specified in the said account.

I further say that the particulars given in the annexed Form 75, marked B, with respect to the proceedings in and position of the liquidation, are true to the best of my knowledge and belief.

Sworn at .....

\*NOTE.-If no receipt or payments, strike out the words in italics. The affidavit is not required in duplicate, but it must in every case be accompanied by a statement in Form 75 in duplicate.





<i>Surname</i>	<i>First name</i>	<i>Amount of proof</i>		<i>Amount of dividend (or composition)</i>			
				<i>Proof</i>		<i>Unclaimed</i>	
		₪	k	₪	k	₪	k
	Total ₪						

This list is required in duplicate.

**FORM 77**  
[Rule 169.]

No. of company

*List of amounts paid or payable to contributories*  
*(Name of company)*

I hereby certify that a return of surplus assets was declared payable to contributories on and after

the ..... day of ....., 20 ..... at the rate of ..... per share and that the contributories whose names are set forth below are entitled to the amounts set opposite their respective names, and have been paid such amounts except in the cases specified as unclaimed.

.....  
*Liquidator*

DATED ..... day of ....., 20 .....

To the Commission

<i>Surname</i>	<i>First name</i>	<i>No. of shares</i>	<i>Amount returned on</i>	
			<i>Paid</i>	<i>Unclaimed</i>

				N	k	N	k
	Total N						

This list is required in duplicate.

**FORM 78**

[Rule 172.]

*Affidavit verifying accounts of unclaimed and undistributed funds  
(Title)*

I, ..... of .....  
....., make oath and say that the particulars entered  
in the statement hereunto annexed, marked A, are correct, and truly set forth all money in my  
hands or under my control, representing unclaimed or undistributed assets of the above company,  
or held by the company in trust in respect of dividends or other sums due to any person as a member of the  
company, and that the amount due by me to the Companies Liquidation Account in respect of unclaimed  
dividends and undistributed funds is \$ .....

Sworn, E-C.

**FORM 79**

[Rule 177.]

*Notice to creditors and contributories of intention to apply for release  
(Title)*

Take notice that I, the undersigned Liquidator of the above-named company, intend to apply to the  
Commission for my release, and further take notice that any objection you may have to the granting of my release  
must be notified to the Commission within 21 days of the date hereof.

A summary of all receipts and payments in the winding up is hereto annexed.

DATED this ..... day of ....., 20 .....

To

.....  
*Liquidator*

NOTE.-Section 43 1 (3) of the Companies and Allied Matters Act, enacts that "An order of the  
Registrar-General by the direction of the Attorney-General of the Federation, releasing the Liqui-  
dator 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."

**FORM 80**  
[Rule 177.]

*Statement to accompany notice of application for release*

*(Title)*

Statement showing position of company at date of application for release

Dr. .... Cr.

	<i>Estimated to produce as per company's statement of affairs</i>		<i>Receipts</i>			<i>Payments</i>			
	₹	k	₹	k		₹	K		
To total receipt for date of winding up order, viz- (State particulars under the headings specified in the statement of affairs.) ..... Receipts per trading account ..... Other receipts .....  <b>TOTAL</b>  Less :- Payments to redeem securities ..... Costs of execution of payments per trading account .....  Net realisations ..... Amounts received from calls on contributories made in the winding up .					By Ministry and court fees (including stationery, printing, and postage in respect of creditors, contributories, and debtors, and fee for audit) .....  Law costs of petition ..... Law costs of solicitor to Liquidator ..... Other law costs .....  Liquidator's remuneration, viz- Per cent on ₹ ..... Assets realized per cent on ₹ ..... Assets distributed on divided .....  Special manager's charges .....  Person appointed to assist in preparation of statement of affairs..... Auctioneer's charges .....  Other costs ..... Costs of notices in <i>Gazette</i> and newspapers incidental outlay..... ..... Total costs and charges .....  Creditors, viz- (a) Preferential .....  (a) Unsecured dividend of ..... in the N on N ..... [(a) State number of creditor.] .....  The estimate of amount expected to rank for dividend was N.....	₹	K	₹	K

					Amount returned to contributories ..... Balance .....		
--	--	--	--	--	--	--	--

Assets not yet realised, including calls, estimated to produce ~~£~~(add here any special remarks the Liquidator thinks desirable).

Creditors can obtain any further information by inquiry at the office of the Liquidator.

DATED this .....day of ..... 20 .....

(Signature of Liquidator) .....

(Address) .....

**FORM 81**

No. of company .....

*The Companies and Allied Matters Act*

Stamp duty must be paid

*Winding up by the Court  
Notice of appointment of Liquidator  
[Pursuant to section 422.]*

Name of company ..... Limited

Presented by .....

.....

*Winding up by the Court*

*To the Registrar General.*

I, (or We) ..... of

..... hereby give you notice that, by an

order of the ..... Court dated the ..... day of

..... 20 ....., I (or we) have been appointed

Liquidator(s) of ..... Limited.

(Signature) .....

(a) .....

DATED the ..... day of ....., 20 .....

(a) To be signed by each Liquidator if more than one.

No. of company .....

**FORM 82....**

*The Companies and Allied Matters Act*

Stamp Duties must be paid

*Members voluntary winding up declaration of solvency, embodying a statement of assets and liabilities*

[Pursuant to section 462]

Name of Company.....Limited

Presented by.....

*Declaration of solvency*

We .....of .....and .....

Of.....being all the directors/the majority of the .....

..... of ..... do solemnly and sincerely declare that we have made a full enquiry into the affairs of this company, and, that having so done, we have formed the opinion that this company will be able to pay its debt in full within a period of,

..... \*months. from the commencement of the winding up, and we append a statement

of the company's assets and liabilities as at .....20 .....

being the latest practicable date before the making of this declaration. And we make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oath Act.

Declared at ..... the .....day .....of

.....two thousand and.....before me.

A Commissioner for Oaths or Notary Public.

**FORM 83**

*The Companies and Allied Matters Act*

*Form of statement of assets and liabilities*

To be submitted to a meeting of creditors pursuant to section 466 of the Companies and Allied Matters Act, by the Liquidator in a members' voluntary winding up if he is of the opinion that the company is unable to pay its debts in full within the period stated in the Declaration of Solvency viz .....\*months from the commencement of the winding up.

*[\*Insert period shown in [he Declaration of Solvency.]*

..... Limited (in Liquidation) Statement as

at ..... , 20 ..... showing assets at estimated realisable values and liabilities expected to rank.

(Date of commencement of winding up ....., 20 .....)

*Liquidator's remarks*

In particular the Liquidator would draw attention to any item where after taking his receipts and payments into account there is a substantial difference between his estimate and the directors' estimate in the statement annexed to the Declaration of Solvency.

**FORM 84**

No. of company .....

*The Companies and Allied Matters Act*

*Creditor's voluntary winding up: Return of the final winding up meetings  
of members and creditors*

[Pursuant to section 478.]

Name of company.....Limited

Presented by .....

.....

.....

*Creditors, Voluntary Winding-up*

To the Registrar General

I (or We) .....of..... being the

Liquidator(s) of .....

.....Limited have to inform you-

(1) that a general meeting of this company was duly (a) held on/summoned for the .....

..... day of ..... 20 ..

pursuant to section 478 of the Companies and Allied Matters Act, for the purpose of having the said account laid before it showing how the winding-up of the company has been conducted and the property of the company has been disposed of, and that the same was done accordingly.

(a) .....

no quorum was present at the meeting

(2) that a meeting of the creditors of this company was duly (a) held on/summoned for the

..... day of ..... 20 ..

pursuant to section 478 of the Companies and Allied Matters Act, for the purpose of having the said account laid before it showing how the winding-up of the company has been conducted and the property of the company has been disposed of, and that the same was done accordingly.

(a) .....

no quorum was present at the meeting

(Signature) (c) .....

DATED the..... day of ..... , 20 .....

(a) Strike out that which does not apply.

(b) The copy account accompanying this return must be authenticated by the written signature(s) of the Liquidator(s).

(c) To be signed by each Liquidator if more than one.

**FORM 85**

No. of Company .....

*The Companies and Allied Matters Act*

Stamp duty must be paid

*Members' voluntary winding up: Return of final winding-up meeting*  
[Pursuant to section 478.]

Name of company ..... Limited  
Presented by .....

*Members' voluntary winding up*

*To the Registrar-General*

I (or We) ..... of ..... being the  
Liquidator(s) of ..... Limited, have to  
inform you that a general meeting of the company was duly (a) held

on/summoned for the .. day of ..... 20 ..... pursuant to section 478  
of the Companies and Allied Matters Act, for the purpose of having an account (of which a copy is  
attached hereto) (b) laid before it showing how the winding up of the company has been conducted,  
and the property of the company has been disposed of, and that the same was done accordingly/(a)  
no quorum was present at the meeting.

(Signature) (c) .....

DATED the ..... day of ..... , 20 .....

(a) Strike out that which does not apply.

(b) The copy account accompany this return must be authenticated by the written signature(s) of  
the Liquidator(s).

(c) To be signed by each Liquidator if more than one



**COMPANIES INCOME TAX ACT**

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