

# **COMPANIES ACT 1963 (ACT 179)**

## Section 1-Commencement

Spent.

## Section 2-Interpretation

First Sch.

In this Code, unless the context otherwise requires, the expressions defined in the First Schedule hereto shall have the meanings assigned to them in that Schedule.

## Section 3-Application of Act

(1) Except where otherwise provided, the provisions of this Code shall apply to all companies formed in Ghana, whether before or after the commencement of this Code, under the provisions of the Companies Ordinance, (Cap. 193) or this Code.

(2) Nothing in this Code contained shall affect the validity of anything done before the date when the Code comes into operation.

Ninth Sch.

(3) The provisions of this Code which require or may require immediate action by existing companies when this Code comes into operation are referred to in the Ninth Schedule to this Code.

## Section 4-Application of Particular Chapters of the Code

(1) The provisions of Chapter III of this Code shall apply to private companies but not to public companies.

(2) The provisions of Chapter IV of this Code shall apply to public companies but not to private companies.

(3) The provisions of Chapter V of this Code shall not apply to companies formed in Ghana.

## Section 5-Prohibition of Partnerships Exceeding 20 Members

No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association or partnership, or by the individual

members thereof, unless it is registered as a company under this Code or is formed in pursuance of some other enactment for the time being in force.

#### Section 6-Companies formed for Special Purposes

Nothing in this Code shall abrogate or affect any special legislation relating to companies carrying on the business of banking, insurance or any other business from time to time subject to special regulation.

#### Section 7-Saving of Equity and Common Law

The rules of equity and of common law applicable to companies shall continue in force except so far as they are inconsistent with the provisions of this Code.

#### Section 8-Right to form a Company

Any one or more persons may form an incorporated company by complying with the provisions of this Code in respect of registration.

#### Section 9-Types of Company

(1) An incorporated company may be either,

(a) a company having the liability of its members limited to the amount, if any, unpaid on the shares respectively held by them, in this Code referred to as a company limited by shares; or

(b) a company having the liability of its members limited to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up, in this Code referred to as a company limited by guarantee; or

(c) a company not having any limit on the liability of its members, in this Code referred to as an unlimited company.

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

(3) A private company shall be a company which by its Regulations,

(a) restricts the right to transfer its shares, if any;

(b) limits the total number of its members and debentureholders to fifty, not including persons who are bona fide in the employment of the company and persons who, having been formerly bona fide in the employment of the company, were while in that

employment, and have continued after the determination of that employment to be, members or debentureholders of the company;

(c) prohibits the company from making any invitation to the public to acquire any shares or debentures of the company; and

(d) prohibits the company from making any invitation to the public to deposit money for fixed periods or payable at call, whether bearing or not bearing interest:

Provided that where two or more persons hold one or more shares or debentures jointly, they shall, for the purposes of this subsection, be treated as a single member or debentureholder.

(4) Any other company shall be a public company.

(5) A company limited by shares and an unlimited company shall be registered with shares.

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

#### Section 10-Companies Limited by Guarantee

(1) A company limited by guarantee may not lawfully be incorporated with the object of carrying on business for the purpose of making profits.

(2) If any company limited by guarantee shall carry on business for the purpose of making profits, all officers and members thereof who shall be 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 five pounds for every day during which it shall carry on such business.

(3) 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 one hundred pounds.

(4) Subject to compliance with subsection (3) of this section, the Regulations of a company limited by guarantee may provide that members can retire or be excluded from membership thereof.

(5) If in breach of subsection (3) of this section the total liability of the members of any company limited by guarantee shall at any time be less than one hundred pounds,

every director and member of the company who is cognisant of the breach shall be liable to a fine not exceeding one hundred pounds.

#### Section 11-Conversion of Company Limited by Shares to Company Limited by Guarantee

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

(a) there is no unpaid liability on any of its shares;

(b) all its members agree in writing to such conversion and to the voluntary surrender to the company for cancellation of all the shares held by them immediately prior to the conversion;

(c) new Regulations, appropriate to a company limited by guarantee, are adopted by the company pursuant to section 22 of this Code;

(d) a member or members agree in writing to contribute to the assets of the company, in the event of its being wound up, to an extent not less than that prescribed by subsection (3) of section 10 of this Code.

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

(a) a copy of the said new Regulations and of the special resolution adopting the same, and

(b) a statutory declaration by a director and the secretary of the company confirming that the conditions of the immediately preceding subsection have been complied with,

the Registrar shall issue a new certificate of incorporation altered to meet the circumstances of the case; and as from the date mentioned in such certificate the company shall be converted into a company limited by guarantee, the shares therein shall be validly surrendered and cancelled notwithstanding the provisions of section 56 of this Code, and any members of the company who have not agreed to contribute to the assets of the company in the event of its being wound up shall cease to be members thereof:

Provided that,

(a) except in accordance with subsection (3) of section 15 of this Code, the company may not change the name under which it was registered prior to the conversion; but the omission of the word "Limited" as the last word of the name of the company after

conversion shall not be regarded as a change of name;

(b) if the Registrar is of the opinion that the name under which the company is registered will be misleading or undesirable on its conversion to a company limited by guarantee he shall, in accordance with subsection (5) of section 15 of this Code, direct the company to change its name and shall not issue a new certificate of incorporation until the direction has been complied with or cancelled in accordance with the provisions of that subsection;

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

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

#### Section 12-Duties of Promoters

(1) Any person who is or has been engaged or interested in the formation of a company shall be deemed to be a promoter of that company:

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

(2) Until the formation of a company is complete and its working capital has been raised, the promoter shall,

(a) stand in a fiduciary relationship to the company;

(b) observe the utmost good faith towards the company in any transaction with it or on its behalf; and

(c) compensate the company for any loss suffered by it by reason of his failure so to do.

(3) A promoter who acquires 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.

(4) 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, the transaction shall have been entered into or ratified on behalf of the company,

(a) if all the company's directors are independent of the promoter, by the company's board of directors; 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 have voted on the resolution to enter into or ratify that transaction.

(5) No period of limitation shall apply to any proceedings brought by a 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 hereunder if in all the circumstances, including lapse of time, the Court thinks it equitable so to do.

#### Section 13-Pre-incorporation Contracts

(1) Any contract or other transaction purporting to be entered into by a company prior to its formation 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 had been in existence at the date of such contract or other transaction and had been a party thereto.

(2) Prior to ratification by a company the person or persons who purported to act in the name 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 shall be entitled to the benefit thereof.

#### Section 14-Formation of Companies

After the commencement of this Code a company shall be formed in manner following, that is to say,

(a) there shall be delivered to the Registrar for registration a copy of the proposed Regulations of the company complying with sections 16 to 18 of this Code;

(b) unless, in the opinion of the Registrar,

(i) the Regulations do not comply with this Code;

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

(iii) any of the subscribers to the Regulations is an infant or of unsound mind; or

(iv) any of the directors named in the Regulations is under section 182 of this Code, incompetent to be appointed a director,

the Registrar shall register the said Regulations;

(c) upon registration of the Regulations, the Registrar shall certify under his seal that the company is incorporated and, in the case of a limited company, that the liability of its members is limited;

(d) from the date of registration mentioned in the certificate of incorporation, the company shall be a body corporate by the name contained in the Regulations and, subject as provided in sections 27 and 28 of this Code, be capable forthwith of exercising all the functions of an incorporated company;

(e) the Registrar shall insert a notice in the Gazette stating the issue of such certificate and the terms thereof;

(f) the certificate of incorporation, or a copy thereof, certified as correct under the hand of the Registrar, or the Gazette containing the notice referred to in paragraph (e) of this section, shall be conclusive evidence that the company has been duly registered and incorporated under this Code and no proceedings shall be brought in any Court to cancel or annul such registration:

Provided that nothing in this paragraph contained shall prejudice the institution of proceedings to wind up the company in accordance with section 247 of this Code.

#### Section 15-Names of Companies

(1) The last word of the name of a company limited by shares shall be "Limited":

Provided that an existing company limited by shares which has been licensed under section 15 of the Companies Ordinance (Cap. 193), to dispense with the word "Limited" shall retain the right to such dispensation until the expiration of six months after the commencement of this Code.

(2) No company shall be registered by a name which, in the opinion of the Registrar, is misleading or undesirable.

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

(4) If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name is registered by a name which, in the opinion of the Registrar, is misleading or undesirable, the company may change its name with the

sanction of the Registrar, and if the Registrar shall so direct within six months of its being registered by that name, shall change it within a period of six weeks from the date of the direction or such longer period as the Registrar may think fit to allow.

(5) If the Registrar is of the opinion that by reason of any change in the objects of, or the nature of the business carried on by a company the name under which it is registered is misleading or undesirable, the Registrar may direct such company to change its name and the company shall change its name within six weeks of such direction, unless within that time it shall have lodged an appeal to the Court against such direction.

(6) The Court shall, thereupon, either cancel or confirm such direction and its decision shall be final and conclusive; and if the direction shall be confirmed, the company shall change its name within six weeks of such confirmation.

(7) If a company makes default in complying with a direction under either of the three immediately preceding subsections it and any director of the company who is cognisant of the default shall be liable to a fine not exceeding five pounds for every day during which the default continues.

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

(9) Any alteration so made shall be advertised by the Registrar in the Gazette and in one newspaper published in Ghana and circulating in the district in which the registered office of the company is situated.

(10) A certificate or an advertisement in the Gazette under this section shall be conclusive evidence of the alteration to which it relates.

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

(12) The Registrar 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.

(13) Any such reservation shall be for such period as the Registrar shall think fit not exceeding two months 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 Registrar is too like the reserved name.



## Part B—The Company's Regulations

### Section 16-Contents of Regulations

(1) This section shall apply to any company registered after the commencement of this Code and to an existing company which, pursuant to section 19 of this Code, adopts Regulations in lieu of its memorandum and articles of association.

(2) The Regulations of a company shall state,

(a) the name of the company, with "Limited" as the last word of the name in the case of a company limited by shares;

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

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

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

(e) that the powers of the directors are limited in accordance with section 202 of this Code.

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

(4) In the case of a company having shares the Regulations shall also state the number of shares with which the company is to be registered.

### Second Sch.

(5) In the case of a company limited by guarantee the Regulations shall also,

(a) contain a regulation in the terms of regulation 3 of Table B in the Second Schedule to this Code, with such modifications as the Registrar shall allow, stating that 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 therein permitted;

(b) state that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year after he ceases to

be a member, for payment of the 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

(c) state that if, upon the winding up of the company, 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, such other company or charity to be determined by the members prior to the dissolution of the company.

(6) The Regulations may contain any other lawful provisions relating to the constitution and administration of the company.

#### Section 17-Form of Regulations

##### Second Sch.

(1) In the case of a company registered after the commencement of this Code, or an existing company which, pursuant to section 19 of this Code, adopts Regulations in lieu of its memorandum and articles of association, the form of the Regulations of,

(a) a private company limited by shares,

(b) a public company limited by shares,

(c) a company limited by guarantee,

shall be respectively in accordance with the forms set out in Table A Part I, Table A Part II, or Table B, in the Second Schedule to this Code or as near thereto as circumstances may admit; and the form of the Regulations of an unlimited company shall be in accordance with the form set out in Table A Part I, if a private company, or Table A Part II, if a public company, or as near thereto as circumstances may admit, but with such modifications as are necessary having regard to the fact that the liability of the members is unlimited.

(2) The Regulations may adopt such of the provisions of the appropriate Table as are not required, by section 16 of this Code, to be stated in the Regulations, and, in so far as the Regulations do not exclude or modify those provisions, they shall, so far as applicable, be part of the Regulations of the company.

(3) The Regulations shall be printed, typewritten, or in some other legible form acceptable to the Registrar.

#### Section 18-Subscribing to Regulations

(1) The Regulations of any company registered after the commencement of this Code shall be signed by one, or more subscribers in the presence of, and shall be attested by, one witness at the least.

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

(3) The Regulations shall not be chargeable to any stamp duty.

#### Section 19-Regulations of Existing Companies

##### Second Sch.

(1) An existing company may, by special resolution, adopt Regulations in the form required by this Code in lieu of its memorandum and articles of association and may adopt such of the provisions of the appropriate Table in the Second Schedule hereto as are not required, by section 16 of this Code, to be stated in the Regulations.

(2) Any reference in this Code to the Regulations of a company shall, in the case of an existing company which has not adopted Regulations in lieu of its memorandum and articles, be deemed to be a reference to its memorandum and articles of association.

(3) Nothing in subsection (1) of this section shall be deemed to authorise any company to alter the substance, as opposed to the form, of its Regulations except as mentioned in section 22 of this Code.

#### Section 20-Prints of Tables A and B

##### Second Sch.

Where the Regulations of a company include without express repetition all or any of the provisions of Table A or B, a printed copy of the appropriate Table or, in the case of Table A, of the appropriate Part thereof shall be attached to every copy of such Regulations.

#### Section 21-Effects of Regulations

(1) Subject to the provisions of this Code, the Regulations, 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 Regulations, as altered from time to time, in so far as they relate to the company, members, or officers as such.

(2) Where the Regulations 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.

(3) In any action by any member or officer to enforce any obligation owed under the Regulations to him and any other member or officer, such member or officer shall, if any other member or officer is affected by the alleged breach of such obligation, 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 section 324 of this Code shall apply.

#### Section 22-Alteration of Regulations

A company may, by special resolution, alter or add to its Regulations or adopt new Regulations:

Provided that,

(a) the name of the company shall not be altered except with the consent of the Registrar in accordance with section 15 of this Code;

(b) the number of the company's shares may be altered in accordance with the provisions of sections 11, 57 to 63, 75 to 79, 218, or 231 of this Code but not otherwise;

(c) the businesses which the company is authorised to carry on or, if the company is not formed for the purpose of carrying on a business, the objects for which it is established may be altered or added to in accordance with the provisions of section 26 or 231 of this Code but not otherwise;

(d) no alteration or addition shall be made which shall conflict with any order of the Court made under section 218 of this Code;

(e) if at any time the shares of the company are divided into different classes the rights attached to any class may be altered in accordance with section 47 or 231 of this Code but not otherwise;

(f) the Regulations may restrict or exclude the company's power to alter all or any of its Regulations or to add thereto or may impose conditions for the alteration or addition thereto, in which event the Regulations may not be altered or added to except in accordance with the provisions thereof or of section 231 of this Code;

(g) the Regulations as altered or added to shall be in accordance with the provisions of this Code and shall contain the statements and regulations required by section 16 of this Code;

(h) except in accordance with section 231 of this Code no member of the company shall be bound by an alteration made in the Regulations after the date on which he became a member, if and in so far as the alteration requires him to take more shares than the number held by him on the date on which the alteration is made or in any way increase his liability as at that date to pay money to the company, or which increases or imposes restrictions on the right to transfer the shares held by him at the date of the alteration, unless he agrees in writing, either before or after the alteration is made, to be bound thereby;

(i) no alteration shall be made which would have the effect of converting an unlimited company into a limited company or a company limited by guarantee into a company limited by shares;

(j) an alteration may be restrained or cancelled by the Court in accordance with section 217 or 218 of this Code.

#### Section 23-Copies of Regulations

(1) A company shall, on being so required by any member, send to him a copy of its Regulations on payment of the sum of two shillings and sixpence or such less sum as the company may prescribe.

(2) Where an alteration is made to the Regulations every copy thereof issued after the date of the alteration and whether to a member or otherwise shall be in accordance with the alteration.

(3) 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 ten pounds.

#### Section 24-Powers of Companies

Except to the extent that a company's Regulations otherwise provide, every company registered after the commencement of this Code and every existing company which, pursuant to section 19 of this Code, adopts Regulations in lieu of its memorandum and articles of association shall have, for the furtherance of its objects and of any business carried on by it and authorised in its Regulations, all the powers of a natural person of full capacity.

#### Section 25-Ultra Vires

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

(2) A breach of subsection (1) of this section may be asserted in any proceedings

under section 210, 218 or 247 of this Code or under subsection (4) of this section.

(3) Notwithstanding 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 businesses 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 for 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 proceedings under the immediately preceding subsection 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 not compensation for loss of anticipated profits to be derived from the performance of such contract.

#### Section 26-Alteration of Authorised Businesses

(1) A company may, by special resolution, alter its Regulations with respect to the businesses which it is authorised to carry on or, in the case of a company not formed for the purpose of carrying on a business, with respect to the objects for which it is established:

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

(2) Within twenty-eight days of the passing of any such resolution notice thereof shall be given in the prescribed form to the holders of all debentures secured by a floating charge over any of the company's property and to the trustees, if any, for such debenture holders.

(3) An application to the Court under this section shall be made within sixty days after

the passing of the resolution.

(4) An application for the Court under this section may be made,

(a) by the Registrar; or

(b) in the case of a private company, by any member or by any one to whom notice has to be given under subsection (2) of this section; or

(c) in the case of a public company,

(i) by the holders of not less than fifteen per centum in the aggregate of the company's issued shares or any class thereof or, if the company has no shares, by not less than fifteen per centum of the company's members;

(ii) by the trustees for the holders of any debentures secured by a floating charge over any of the company's property; or

(iii) by the holders of not less than fifteen per centum of the company's debentures secured by a floating charge over any of the company's property.

(5) If an application to the Court is made under this section the company shall forthwith deliver to the Registrar for registration notice in the prescribed form of that fact.

(6) On an application under this section being made the Court may,

(a) make an order confirming the alteration in whole or in part and on such terms and conditions as it thinks fit;

(b) adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentients; and may give such directions and make such orders as it may think expedient for facilitating and carrying into effect any such arrangement;

and if the Court shall refuse to confirm the alteration it shall make an order annulling the alteration.

(7) The company shall within twenty-eight days of the making by the Court of any order under this section deliver an office copy thereof to the Registrar for registration.

(8) If a company makes default in giving or publishing any notice or delivering any document as required by this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding ten pounds.

## Section 27-Filling of Particulars

(1) A company registered after the commencement of this Code shall not transact any business, exercise any borrowing powers, or incur any indebtedness, except such as shall be incidental to its incorporation or to obtaining subscriptions to or payment for its shares, until it has delivered to the Registrar a return in duplicate in the prescribed form giving particulars, as at the date of the return, of,

(a) its name;

(b) its authorised business, or, if the company is not formed for the purpose of carrying on a business, the nature of its objects;

(c) the names and any former names, addresses and business occupations of its directors and secretary, and particulars of any other directorships held by them, as provided by section 196 of this Code;

(d) the name and address of its auditor;

(e) the addresses of its registered office and principal place of business in Ghana and the number of the post office Box of its registered office;

(f) if its register of members is kept and maintained elsewhere than at the registered office of the company, the address at which it is kept;

(g) if the company has shares,

(i) the amount of its stated capital, as defined in section 66 of this Code;

(ii) the number of its authorised shares of each class;

(iii) the number of its issued shares of each class and the amount paid thereon distinguishing between the amount paid in cash and the amount paid otherwise than in cash and, in the case of a company limited by shares, the amount, if any, remaining payable thereon distinguishing between the amount presently due for payment and the amount not yet due for payment.

(2) If the company is limited by shares the return shall further state that the declaration referred to in subsection (1) of section 28 of this Code has been delivered to the Registrar for registration.

(3) The return shall be signed by two directors and by the secretary of the company.



(4) The Registrar shall register the said return and cause a copy thereof to be published in the Gazette.

#### Section 28-Minimum Capital

(1) A company limited by shares shall not transact any business, exercise any borrowing powers or incur any debt except such as shall be incidental to its incorporation or to obtaining subscriptions to or payment for its shares until—

(a) there has been paid to it for the issue of its shares consideration to the value of at least—

(i) twenty million cedis of which at least five million cedis shall be paid in cash within section 45 of this Code in respect of a public company; or

(ii) five million cedis of which at least one million cedis shall be paid in cash within the meaning of section 45 of this Code in respect of a private company”. [As substituted by the Companies Code (Amendment) Act, 1997 (Act 531) s.1].

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

(2) An existing company limited by shares shall not continue after the expiration of six months from the commencement of this Code to transact any business, exercise any borrowing powers, or incur any indebtedness unless,

(a) prior to the expiration of the six months and whether before or after the commencement of this Code, there shall have been paid to it for the issue of its shares consideration to the value of at least five hundred pounds of which at least one hundred pounds shall have been paid in cash within the meaning of section 45 of this Code; and

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

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

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

#### Section 29-Penalties for Breach of Section 27 or 28

(1) In the event of default in complying with either of the two immediately preceding sections,

(a) the company and every officer of the company who is in default shall be liable to a fine not exceeding five pounds for each day during which the default continues; and

(b) the rights of the company concerned under or arising out of any contract made during such time as the default continues, except such contracts as shall be incidental to obtaining subscriptions to or payments for its shares, shall not be enforceable by action or other legal proceedings:

Provided that,

(a) the company may apply to the Court for relief against the disability imposed by this paragraph of this subsection and the Court, on being satisfied that it is just and equitable to grant relief, may grant such relief either generally or as respects any particular contract and on such conditions as the Court may impose;

(b) nothing herein contained shall prejudice the rights of any other parties as against the company, or any other person, in respect of such contract;

(c) if any action or proceeding shall be commenced by any other party against the company to enforce the rights of such party in respect of such contract, nothing herein shall preclude the company from enforcing in that action or proceeding by way of counterclaim, set off, or otherwise, such rights as it may have against that party in respect of that contract.

(2) In the event of any default in complying with subsection (1) of section 28 of this Code then, without prejudice to the provisions of subsection (1) of this section, the subscribers to the company's Regulations, the first directors named in such Regulations and any person who was a director at any time thereafter until paragraphs (a) and (b) of the said subsection have been complied with, shall be jointly and severally liable for the whole of the debts and liabilities of the company incurred while the company was in default, unless he proves,

(a) in the case of a person named as one of the first directors, that he was named without his consent; or

(b) that he took all reasonable and practicable steps to prevent the default; or

(c) that he honestly believed on reasonable grounds that the provisions in paragraphs (a) and (b) of the said subsection had been complied with prior to the incurring of the debt or liability.

(3) If there shall be any error or omission in any return or declaration delivered to the Registrar under either of the immediately preceding sections, then, without prejudice to the provisions of section 321 of this Code, the company and every signatory of the return or declaration shall be liable to a fine not exceeding fifty pounds.

#### Section 30-Constitution of Membership

(1) The subscribers to the Regulations shall be deemed to be members of the company and on its registration shall be entered as members in the register of members referred to in section 32 of this Code.

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

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

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

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

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

#### Section 31-Right of Member to Attend and Vote

Subject to section 49 of this Code, every member shall, notwithstanding any provision in the Regulations, 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 company's Regulations may provide that a member shall not be entitled to attend and vote unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

#### Section 32-Register of Members

(1) Every company shall keep in Ghana a register of its members and enter therein the following particulars, that is to say,

(a) the names and addresses of the members and, in the case of a company having shares a statement of the shares held by each member distinguishing each share by a 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 and of the amount, if any, remaining payable on such shares;

(b) the date at which each person was entered in the register as a member;

(c) the date at which any person ceased to be a member.

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

(3) The entry required under paragraph (c) of subsection (1) of this section shall be made within twenty-eight days of the date when 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 twenty-eight 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, and all entries relating to such person may be deleted from the register after the expiration of six years from the date when such person ceased to be a member.

(4) Where a company has more than fifty members the register shall contain an index of the names of the members in such a form as to enable the account of each member to be readily found.

(5) Every existing company shall, within twenty-eight days of the coming into operation of this Code send to the Registrar for registration, notice in the prescribed form, of the place where its register of members is kept and every company shall within twenty-eight days of any change in the place at which its register of members is kept send notice thereof to the Registrar:

Provided that 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 Code, at all times since then, been kept at the registered office of the company.

(6) Where a company makes default in complying with this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding five pounds for every day during which such default continues.

(7) The company may arrange with some other person, in this Code referred to as the

registration officer, for the making up of the register to be undertaken on behalf of the company by the registration officer at his office; and if by reason of any default of the registration officer the company makes default in complying with this section or with section 33 of this Code, the registration officer shall be liable to the same penalties as if he were an officer of the company and the power of the Court under subsection (4) of section 33 of this Code shall extend to the making of orders against the registration officer and his officers and employees.

#### Section 33-Inspection of Register

(1) Except when the register of members is closed in accordance with the provisions of section 34 of this Code, the register and index of the names of the members of the company shall, during business hours, subject to such reasonable restrictions as the company may impose but so that not less than two hours in each day, other than Saturdays, Sundays and public holidays, shall be allowed for inspection, be open to the inspection of any member without charge and of any other person on payment of one shilling, or such less sum as the company may prescribe, for each inspection.

(2) Any member or other person may require a copy of the register or any part thereof, on payment of two shillings and sixpence, or such less sum as the company may prescribe, for every hundred words or 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 ten days commencing on the day next after the day on which the requirement is received by the company.

(3) If any inspection required under this section is refused, or if any copy required under this section is not sent within the proper period, the company and every officer of the company who is in default shall be liable in respect of each offence to a fine not exceeding five pounds for every day during which the default continues.

(4) In the case of any such refusal or default the Court may by order compel an immediate production of the register for inspection or direct that the copies required be sent to the person requiring them.

#### Section 34-Power to Close Register

A company may, on giving notice by advertisement in some daily newspaper circulating in the district in which the registered office of the company is situated, close the register of members or that part thereof relating to any class of members for any time or times not exceeding in the whole thirty days in each year.

#### Section 35-Rectification of 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 in entering on the register any of the particulars which, under section 32 of this Code, are required to be entered thereon,

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

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

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

(4) A company may, without application to the Court, at any time rectify any error or omission in the register of members but such a rectification shall not adversely affect any person unless he agrees to the rectification made.

#### Section 36-Register to be Evidence

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

#### Section 37-Liability of Members

(1) Prior to the winding up of the company, a member of a 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 the company's Regulations.

(2) Where any contribution has become due and payable in accordance with subsection (1) of this section 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 company's Regulations, 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 as aforesaid 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, that is to say,

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

(b) a past member shall not be liable to contribute 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;

(e) any sum due from the company to a member or past member, in his character of 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 former 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 aforesaid a member or past member of a company shall not be liable as a member or past member for any of the debts and liabilities of the company.

### Section 38-Companies Ceasing to have Members

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

### Section 39-Nature of Shares

(1) The shares of any member in a company shall be personal estate and shall not be in the nature of real estate or immovable property.

(2) The number of shares in a company and the rights and liabilities attaching thereto shall be dependent on the terms of issue, and of the company's Regulations as amended from time to time, so far as they are consistent with this Code.

### Section 40-No par shares

(1) All shares created or issued after the commencement of this Code shall be shares of no par value.

(2) All shares issued prior to the commencement of this Code shall be deemed to be converted into shares of no par value but such conversion shall not affect the rights and liabilities attached to such shares and in particular, but without prejudice to the generality of this provision, such conversion shall not affect,

(a) any unpaid liability on such shares;

(b) the rights of the holders thereof in respect of dividends, voting or repayment on winding up or a reduction of capital.

### Section 41-Issue of Shares

Shares up to the total number authorised by the company's Regulations may be issued at such times and for such consideration as the company shall determine and shall be paid for at such times as are agreed between the member and the company or as may be specified in the Regulations:

Provided that on the winding up of the company every past and present shareholder of the company shall be liable to contribute to the assets of the company to the extent referred to in section 37 of this Code.

### Section 42-Payment of Shares

(1) Except on a capitalisation issue pursuant to subsection (1) of section 74 of this Code, shares shall not be issued otherwise than for valuable consideration paid or payable to the company and unless otherwise agreed shares shall be paid for in cash.

(2) If a company shall have agreed to accept payment for any shares otherwise than wholly in cash the company shall, within twenty-eight days after the allotment of such shares, deliver to the Registrar for registration a contract in writing duly stamped evidencing the terms of such agreement and the true value of the consideration or, if



such agreement shall not have been reduced to writing, particulars in the prescribed form of such agreement duly stamped, as if it were a written agreement:

Provided that such particulars shall not be required on a capitalisation issue of shares pursuant to subsection (1) of section 74 of this Code.

(3) The statement in the agreement of the value of the non-cash consideration shall be prima facie evidence of the true value thereof, but when a company limited by shares is in course of being wound up under the Bodies Corporate (Official Liquidation) Act, 1963 (Act 180) the liquidator or any creditor may apply to the Court and if the Court is satisfied that the true value of such consideration was less than stated it may, in its discretion, direct that the shares shall be treated as unpaid to such an amount as its shall direct.

#### Section 43-Return of Issues

Whenever any company makes any issue of shares, other than a re-issue of treasury shares as defined in subsection (3) of section 59 of this Code, the company shall within twenty-eight days thereafter deliver to the Registrar for registration a return in the prescribed form showing, as at the date of the return,

(a) the amount of its stated capital, attributable to each of the items specified in subsection (1) of section 66 of this Code;

(b) the number of its authorised shares of each class;

(c) the total number of its issued shares of each class and the amount paid thereon distinguishing between the amount paid in cash and the amount paid otherwise than in cash and, in the case of a company limited by shares, the amount, if any, remaining payable thereon distinguishing between the amount presently due for payment and the amount not yet due for payment;

(d) the total number of its treasury shares of each class:

Provided that a company registered after the commencement of this Code shall not be required to deliver a return under this section in respect of any issue of shares made prior to the delivery to the Registrar of the return required by section 27 of this Code.

#### Section 44-Penalties for Non-compliance with Section 42 and 43

If default is made in delivering any document required under either of the two immediately preceding sections, the company and every officer of the company who is in default shall be liable to a fine not exceeding five pounds for every day during which the default continues.

#### Section 45-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 therefor at the time of, or subsequently to, the agreement to issue the shares; and where shares are issued to a person who has sold or agreed to sell property or rendered or agreed to render services to the company or to persons nominated by him the amount of any payment made for the property or services shall be deducted from the amount of any cash payment made for the shares and only the balance, if any, shall be treated as having been paid in cash for such shares notwithstanding any exchange of cheques or other securities for money.

#### Section 46-Classification of Shares

(1) The Regulations of a company may provide for different classes of shares by attaching to certain of the shares preferred, deferred or other special rights or restrictions, whether in regard to dividend, voting, repayment or otherwise.

(2) Shares shall not be deemed to be of the same class unless they rank *pari passu* for all purposes.

#### Section 47-Variation of Class Rights

(1) If at any time the shares of a company are divided into different classes, the rights attached to any class shall not be varied except to the extent and in the manner provided in the Regulations.

(2) If the Regulations shall expressly forbid any variation of the rights of a class, or shall contain provisions regarding such variation and shall expressly forbid any alteration of such provisions the rights or the provisions for variation shall not be altered except with the sanction of the Court under a scheme of arrangement in accordance with section 231 of this Code.

(3) Except as provided in subsection (2) of this section a company may, by special resolution, alter its Regulations by inserting therein provisions regarding the variation of the rights of any class or by modifying the terms of any such provisions.

(4) Any such alteration shall require the prior written consent of the holders of at least three-fourths of the issued shares of each class or the sanction of a special resolution of the holders of the shares of each class and shall be deemed, for the purposes of subsections (7) to (11) of this section to be a variation of the rights of each class.

(5) Notwithstanding any provision in the Regulations the rights attached to any class of shares first issued after the commencement of this Code shall not be varied except with the written consent of the holders of at least three-fourths of the issued shares of that class or the sanction of a special resolution of the holders of the shares of that

class.

(6) Any resolution of a company the implementation of which would have the effect of diminishing the proportion of the total votes exercisable at a general meeting of the company by the holders of the existing shares of a class or of reducing the proportion of the dividends or distributions payable at any time to the holders of the existing shares of a class, shall be deemed to be a variation of the rights of that class.

(7) If the rights of any class of shares are varied the holders of not less in the aggregate than fifteen per centum of the issued shares of that class may apply to the Court to have the variation cancelled, and where such application is made the variation shall not have effect unless and until it is confirmed by the Court.

(8) An application to the Court under subsection (7) of this section shall be made within sixty days of the date on which the variation was effected and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing.

(9) If such an application is made the company shall forthwith deliver to the Registrar for registration notice in the prescribed form of that fact.

(10) The Court after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested in the application shall, if it is satisfied that the variation would unfairly prejudice the shareholders of any class, cancel the variation and shall, if not so satisfied, confirm the variation.

(11) The company shall, within twenty-eight days after the making of an order by the Court on such application, deliver a copy thereof to the Registrar for registration.

(12) If a company makes default in delivering to the Registrar the notice or order referred to in subsection (9) or (11) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding ten pounds.

#### Section 48-Preference and Equity Shares

In this Code the expression "preference share" means a share, by whatever name designated in the Regulations, which does not entitle the holder thereof 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; and any other share shall be referred to as an "equity share".

#### Section 49-Suspension of Voting Rights of Preference Shares

(1) Notwithstanding section 31 of this Code, the Regulations may provide that the right of holders of preference shares to attend and vote at a general meeting of the

company may be suspended upon such conditions as may be specified.

(2) Notwithstanding any provision in the Regulations, any preference shares issued after the commencement of this Code shall carry the right to attend general meetings and on a poll thereat to at least 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 thereof remains in arrear and unpaid, such period starting from a date not more than twelve months, or such lesser period as the Regulations 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.

(3) Subject to the provisions of section 31 of this Code and to the preceding subsections of this section, any preference shares issued after the commencement of this Code shall carry the right on a poll at a general meeting of the company to one vote, and to one vote only, in respect of each share:

Provided that 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.

(4) For the purposes of subsection (2) of this section a dividend shall be deemed to be due on the date appointed in the Regulations 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.

#### Section 50-Votes of Equity Shares

(1) Notwithstanding any provision in the Regulations, any equity shares issued after the date of the commencement of this Code shall, subject to the provisions of section 31 of this Code, carry the right on a poll at any general meeting of the company to one vote, and to one vote only, in respect of each share.

(2) For the purposes of this section any alteration of the rights of issued preference shares so that they become equity shares shall be deemed to be an issue of equity shares.

#### Section 51-Canons of Construction of Class Rights

In construing the provisions of the company's Regulations in respect of the rights attached to shares, the following canons of construction shall be observed, that is to say,

(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 shall be cumulative, that is to say, no dividend shall be payable on any shares ranking subsequent thereto 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 or not earned or declared shall be payable up to the date of actual payment in the winding up;

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

(e) if any class of share is expressed to have preferential right to payment out of the assets of the company in the event of winding up then, unless the contrary intention appears, such class shall have 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 as aforesaid, all shares rank equally in all respects unless the contrary intention appears.

#### Section 52-Numbering of Shares

Each issued share in a company shall be distinguished by a definitive number:

Provided that if and so long as all the issued shares of the company or all the issued

shares therein of a particular class are fully paid, none of these shares need thereafter have a distinguishing number so long as it remains fully paid.

#### Section 53-Issue of Share Certificates

(1) Every company shall, within two months after the issue of any of its shares or after the registration of the transfer of any share, deliver to the registered holder thereof a certificate under the common seal of the company stating,

(a) the number and class of shares held by him, and the definitive numbers thereof, if any;

(b) the amount paid on such shares and the amount, if any, remaining unpaid;

(c) the name and address of the registered holder.

(2) If a share certificate is defaced, lost or destroyed the company, at the request of the registered holder of the shares, shall renew the same on payment of a fee not exceeding two shillings and sixpence 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 fifty pounds, and, on application being made by any person entitled to have the certificate delivered to him, the Court may order the company to deliver the certificate and may require the company and any such officer to bear all the costs of, and incidental to, the application.

#### Section 54-Effect of Share Certificates

(1) Statements made in a share certificate under the common seal of the company shall be prima facie evidence of the title to the shares of the person named therein as the registered holder and of the amounts paid and payable thereon.

(2) If any person shall change his position to his detriment in reliance in good faith on the continued accuracy of the statements made in such 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 herein contained shall derogate from any right the company may have to be indemnified by any other person.

## Section 55-Reserve Liability

A company limited by shares may, by special resolution, determine that any portion of the unpaid liability on its shares which has not already been called up shall not be capable of being called up except in the event, and for the purpose, of the company being wound up; and thereupon that portion shall not be capable of being called up except in the event and for the purpose aforesaid.

## Section 56-Prohibited Transactions in Shares

- (1) Except as hereinafter mentioned a company shall not,
  - (a) alter the number of its shares or the amount remaining payable thereon;
  - (b) release any shareholder or former shareholder from any liability on the shares;
  - (c) provide any financial assistance, directly or indirectly, for the subscription or purchase of its shares or the shares of its holding company;
  - (d) acquire, by way of purchase or otherwise, any of its issued shares or any shares of its holding company.
- (2) For the purposes of paragraph (d) of subsection (1) of this section shares shall be deemed to have been acquired by the company if they purport to be held on trust for the company notwithstanding that they are registered in the names of nominees.
- (3) Nothing in subsection (1) of this section shall prohibit a company from voluntarily acquiring its own shares on its conversion to a company limited by guarantee in accordance with section 11 of this Code.
- (4) In the event of any breach of this section,
  - (a) if such breach is of paragraph (a) or (b) of subsection (1) of this section, the purported alteration or release shall be void and every officer of the company who is in default shall be liable to a fine not exceeding one hundred pounds;
  - (b) if such breach is of paragraph (c) or (d) of subsection (1) of this section then,
    - (i) the transaction concerned shall, except in favour of a bona fide purchaser or seller of shares without knowledge of the breach, be voidable by the company and any payment made by the company in respect thereof shall be immediately repayable with interest at the rate of five per centum per annum, or such higher rate as the Court may think fit to order,
    - (ii) whether or not such transaction is avoided, every officer of the company who is in

default shall be liable to a fine not exceeding one hundred pounds or twice the amount of any provision or payment made by the company in respect of such transaction, whichever is the greater.

#### Section 57-Alteration of Number of Shares

(1) A company may, by alteration of its Regulations,

(a) increase the number of its shares by creating new shares;

(b) reduce the number of its shares by cancelling shares which have not been taken or agreed to be taken by any person or by consolidating its existing shares, whether issued or not, into a smaller number of shares.

(2) On any consolidation of shares the amounts paid, and any unpaid liability thereon, and any fixed sum by way of dividend or repayment to which such shares were entitled shall be consolidated likewise.

#### Section 58-Financial Assistants for Acquisition of Shares

Nothing in section 56 of this Code shall be deemed to prohibit any of the following transactions, namely,

(a) the payment of commission or brokerage to any person in consideration of his subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares in the company provided that the payment of commission or brokerage is authorised by the Regulations and does not exceed ten per centum of the price at which the shares are issued or such lesser rate as may be specified in the Regulations;

(b) where the lending of money is part of the ordinary business of the company, the lending of money in the ordinary course of business notwithstanding that such money may be used for the subscription or purchase of shares in the company or its holding company;

(c) the provision by a company in accordance with any scheme for the time being in force of money for the purchase or subscription of shares to be held for the benefit of persons bona fide in the employment of the company or any associated company including any director holding a salaried employment in the company or any associated company;

(d) the making by a company of loans to persons, other than directors, bona fide in the employment of the company or any associated company with a view to enabling those persons to purchase or subscribe for shares to be held by themselves beneficially and not as nominees for the company or any other person;



(e) the payment by a company of a lawful dividend on its shares notwithstanding that the dividend received by a shareholder is used to discharge any liability on his shares or to repay money borrowed for the purpose of subscribing or purchasing shares.

(f) in the case of a public company some or all of whose equity shares are dealt in on an approved stock exchange or in respect of which an application has been made to an approved stock exchange for permission to deal in such shares, the payment of any commissions, fees, costs and expenses and the giving of any indemnities and warranties in each case to a person arranging or otherwise involved in an underwriting, placing or sale of securities in the company or any similar transaction thereto, provided that (i) an application for permission to deal in such securities has been or is to be made to an approved stock exchange and (ii) any such financial assistance is given in good faith in the interests of the company. [As inserted by the Companies Code (Amendment) Act, 1994 (Act 474) s. 1].

#### Section 59-Acquisition by Company of its Own Shares

(1) Notwithstanding section 56 of this Code, a company may, if authorised by its Regulations and subject to compliance with sections 60 to 63 of this Code,

(a) create and issue preference shares which are, or at the option of the company are liable, to be redeemed on such terms and in such manner as may be provided in the Regulations and may convert existing shares, whether issued or not, into such redeemable preference shares;

(b) purchase its own shares;

(c) acquire its own shares by a voluntary transfer to it or to nominees for it:

Provided that no shares shall be redeemed, purchased or acquired by the company so long as there is an unpaid liability thereon.

(2) Where authorised by its Regulations a company may forfeit any shares issued with an unpaid liability for non-payment of any sums due and payable thereon.

(3) On redemption, purchase, acquisition or forfeiture shares shall be available for re-issue by the company unless the company by alteration of its Regulations cancels such shares; and in this Code, such shares, until re-issued or cancelled, shall be referred to as treasury shares.

(4) Except as provided in section 67 of this Code, no redemption, purchase, acquisition or forfeiture by the company of its shares nor the cancellation of shares so redeemed, purchased, acquired or forfeited shall reduce the stated capital of the company.

(5) No voting rights shall be exercised and no dividends shall be payable on any treasury shares, and, except where otherwise stated, treasury shares shall not be treated as issued shares within the meaning of the provisions of this Code.

#### Section 60-Redemption of Redeemable Preference Shares

(1) Notwithstanding any provision in the Regulations, a company shall not redeem any of its redeemable preference shares except,

(a) out of a credit balance on the share deals account referred to in section 63 of this Code or out of transfers to that account in the manner referred to in that section from income surplus as defined in section 70 of this Code; or

(b) out of the proceeds of a fresh issue of shares made for the purposes of the redemption not more than twelve months before the date of redemption.

(2) If any redeemable preference shares have become redeemable in accordance with the provisions of the Regulations and the funds of the company are sufficient to entitle it, under subsection (1) of this section, to redeem the whole of the shares due for redemption, the holder of any such shares may serve notice on the company requiring it to effect the redemption in accordance with the Regulations.

(3) If the company shall fail to redeem such shares within twenty-eight days of the service of the notice, the shareholder who has served the notice may apply to the Court on behalf of himself and all other shareholders whose shares are due for redemption; and the Court, if satisfied that the conditions of this subsection are fulfilled, may order the company to redeem the shares and may require the company and any officer of the company who is in default to bear all the costs of, and incidental to, the application.

(4) The provisions of section 324 of this Code shall apply to any application to the Court under subsection (3) of this section.

#### Section 61-Purchase by a Company of its Own Shares

Notwithstanding any provision in the Regulations, a company shall not purchase any of its own shares except on compliance with the following conditions, that is to say,

(a) shares shall only be purchased out of a credit balance on the share deals account referred to in section 63 of this Code or out of transfers to that account in the manner referred to in that section from income surplus as defined in section 70 of this Code;

(b) redeemable preference shares shall not be purchased at a price greater than the

lowest price at which they are then redeemable or will 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 62 of this Code.

#### Section 62-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 any one class, held by persons other than the company or its nominees becomes less than eighty-five per centum of the total number of shares, or of shares of that class, which have been issued:

Provided that,

(a) redeemable preference shares shall be disregarded for the purposes of this section;

(b) where, after shares of any class have been issued, the number thereof has been reduced, this section shall apply as if the number originally issued, including shares of that class cancelled before the reduction took effect, had been the number as so reduced.

#### Section 63-Share deals Account

(1) When a company first redeems or purchases any of its shares, otherwise than on a redemption of redeemable preference shares out of the proceeds of a fresh issue of shares in accordance with paragraph (b) of subsection (1) of section 60 of this Code, it shall open an account, to be known as the share deals account and shall credit thereto a sum not less than the amount to be expended on such redemption or purchase by transferring such sum from income surplus, as defined in section 70 of this Code.

(2) There shall be debited to the share deals account all sums which the company shall from time to time expend on the redemption or purchase of any of its shares, otherwise than on a redemption of redeemable preference shares out of the proceeds of a fresh issue of shares in accordance with the said paragraph (b) of subsection (1) of section 60 of this Code, and to such account shall be credited the net price or the value of the consideration received by the company on the re-issue of any of its treasury shares.

(3) If at any time the total amount to be debited to the share deals account under subsection (2) of this section exceeds the amount credited thereto in accordance with subsections (1) and (2) of this section, an amount equal to such excess shall be transferred to the credit of such account from income surplus, as defined in section 70 of this Code, and no purchase or redemption, otherwise than a redemption of redeemable preference shares out of the proceeds of a fresh issue of shares in accordance with the said paragraph (b) of subsection (1) of section 60 of this Code,

shall be made by the company unless its income surplus is sufficient to enable such transfer to be made.

(4) No amount shall be debited or credited to the share deals account, otherwise than in accordance with the foregoing subsections of this section, except on a transfer to stated capital in accordance with section 66 of this Code or under an order of the Court under section 77 or 231 of this Code.

(5) A true copy of the share deals account, showing the class and number of shares involved in each transaction and the price paid or received therefor, shall be kept in a separate book at the registered office of the company and shall during business hours, subject to such reasonable restrictions as the company's Regulations may impose but so that not less than two hours in each day, other than a Saturday, Sunday or public holiday, be allowed for inspection, be open to the inspection of any member without charge and of any other person on payment of two shillings and sixpence, or such less sum as the company may prescribe, for each inspection.

(6) Any member or other person shall be entitled to be furnished, within ten days after he has made a request in that behalf to the company, with a copy of the share deals account or any part thereof at a charge not exceeding one shilling for every hundred words or part thereof.

(7) If any inspection required under subsection (5) of this section is refused or if any copy required to be sent under subsection (6) of this section is not sent within the proper time, the company and every officer of the company who is in default shall be liable to a fine not exceeding five pounds for every day during which the default continues, and the Court may by order compel an immediate inspection or furnishing of a copy, as the case may be.

#### Section 64-Modification of Section 59 to 63 in Relation to Authorised Mutual Funds

In relation to any company which is for the time being an authorised mutual fund within the meaning of section 319 of this Code, any of the provisions of sections 59 to 63 of this Code may be waived or modified by order of the Registrar in accordance with the provisions of the said section 319.

#### Section 65-Acquisition of Shares of Holding Company

(1) Notwithstanding section 56 of this Code, 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 thereof 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 Code, 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 the last foregoing subsection, shall have no right to vote at meetings of the holding company or any class of shareholders thereof and shall not acquire any future shares therein except on a capitalisation issue in accordance with subsection (1) of section 74 of this Code.

#### Section 66-Meaning of (Stated Capital)

(1) The stated capital of a company with shares shall consist of the sum of the following items, that is to say,

(a) the total proceeds of every issue of shares for cash, including any amounts paid on calls made on shares issued with an unpaid liability, without any deductions for expenses or commissions;

(b) the total value of the consideration, as stated in the agreement, received for every issue of shares otherwise than for cash;

(c) the total amount which the company by special resolution shall have resolved to transfer to stated capital from surplus, as defined in section 69 of this Code, including the credit balance on the share deals account referred to in section 63 of this Code:

Provided that,

(a) paragraph (a) or (b) of this subsection shall not require the proceeds or value of the consideration received on the re-issue of treasury shares to be added to stated capital; and for this purpose, when a company having treasury shares makes an issue of shares, such issue shall, until the number of treasury shares of that class is exhausted, be deemed to be an issue of those treasury shares and not a first issue of further shares, unless the company shall otherwise determine;

(b) the amount of the stated capital may be reduced to the extent and in the manner provided by section 67 of this Code.

(2) Within twenty-eight days after the raising of any stated capital, the company shall deliver to the Registrar for registration particulars in the prescribed form showing the amount so raised and the total stated capital, distinguishing between the amounts thereof attributable to each of the items specified in subsection (1) of this section.

(3) If there shall be any default in delivering to the Registrar the particulars required under the immediately preceding subsection, the company and every officer of the company who is in default shall be liable to a fine not exceeding five pounds for every day during which the default continues.

## Section 67-Reduction of Stated Capital

(1) Notwithstanding subsection (4) of section 59 of this Code, the stated capital of a company shall be deemed to be reduced by the amount by which a redemption of redeemable preference shares is made out of the proceeds of a fresh issue of shares made for the purposes of the redemption not more than twelve months before the date of redemption.

(2) An unlimited company may, if authorised by its Regulations, reduce its stated capital by ordinary resolution.

(3) Subject as aforesaid and to section 68 of this Code a company may not reduce its stated capital except in accordance with sections 75 to 79 of this Code.

## Section 68-Modification of Sections 66 and 67 in relation to Authorised Mutual Funds

In relation to any company which is for the time being an authorised mutual fund within the meaning of section 319 of this Code, the two immediately preceding sections of this Code shall have effect subject to the terms of any directions made by order of the Registrar pursuant to the said section 319.

## Section 69-Meaning of "Surplus"

The surplus of a company with shares shall be the amount by which its assets, other than unpaid calls and other sums payable in respect of its shares and not including treasury shares, less its liabilities, as shown in its accounts prepared and audited in accordance with sections 123 to 136 of this Code, exceed its stated capital.

## Section 70-Meaning of "Income Surplus"

The income surplus of a company with shares shall be the surplus, as defined in section 69 of this Code, less the amounts attributable to,

(a) any unrealised appreciation in the value of any asset of the company, other than such an appreciation in the value of any asset as would, under normal accounting principles, be credited to profit and loss account, unless the amount of such appreciation shall have been transferred to stated capital; and

(b) any balance standing to the credit of the share deals account immediately before the ascertainment of the income surplus.

## Section 71-Legality of Dividend Payments

(1) Except in a winding up, a company shall not pay a dividend to its shareholders or, except in accordance with sections 75 to 79 of this Code, make any return or

distribution of any of its assets to its shareholders unless,

(a) the company is able, after such payment, return or distribution, to pay its debt as they fall due;

(b) the amount or value of such payment, return or distribution does not exceed its income surplus immediately prior to the making of such payment, return or distribution.

(2) If any payment, return or distribution shall be made in contravention of this section,

(a) every director of the company who is in default shall be jointly and severally liable to restore to the company the total amount by which the payment, return or distribution contravenes this section, with interest on such amount at the rate of five per centum per annum;

(b) unless, within twelve months after the date of the payment, return or distribution, the total amount with interest thereon shall be restored to the company by the directors in accordance with paragraph (a) of this subsection, every shareholder shall be liable to restore to the company the amount received by him in contravention of this section;

(c) if the directors of the company shall make restoration to the company in accordance with paragraph (a) of this subsection they shall have a right to be indemnified by any shareholder who has received any amount knowing that it contravenes this section to the extent of the amount received by him with interest thereon at the rate of five per centum per annum.

(3) Any shareholder, officer or creditor of the company or the Registrar may apply to the Court for an injunction restraining a company from paying a dividend or from making a return or distribution in contravention of this section or for an order for restoration in accordance with subsection (2) of this section.

(4) Any application by a shareholder or creditor shall be made in a representative capacity on behalf of himself and all other shareholders or creditors, as the case may be, of the company and the provisions of section 324 of this Code shall apply.

(5) In relation to public companies, paragraph (b) of subsection (2) of this section shall be modified as stated in section 292 of this Code.

#### Section 72-Prohibition of Payment of Dividends by Companies Limited by Guarantee

(1) A company limited by guarantee shall not at any time pay any dividend or make any distribution or return of its assets to its members.

(2) If any payment, distribution or return shall be made in contravention of this section any member to whom it is made shall restore the same to the company with interest thereon at the rate of five per centum per annum and every officer of the company who is in default shall be liable to a fine not exceeding one hundred pounds.

#### Section 73-Declaration of Dividends

(1) Subject to the foregoing sections a company may by ordinary resolution declare dividends in respect of any year or other specified period, but no dividend shall exceed the amount recommended by the directors.

(2) In relation to public companies this section shall be supplemented by section 293 of this Code.

#### Section 74-Capitalisation Issues and Non-cash Dividends

(1) When a company has resolved to transfer any sum from surplus to stated capital pursuant to paragraph (c) of subsection (1) of section 66 of this Code, the company upon the recommendation of the directors may, by the same or any subsequent special resolution, resolve that unissued shares in the company be issued credited as fully paid to the members who would have been entitled to receive the sum had it been lawfully distributed by way of dividend and in the same proportions and so that the sum so transferred to stated capital shall be deemed to be paid, otherwise than in cash, on such shares.

(2) Such an issue shall, in this Code, be referred to as a capitalisation issue.

(3) A company, upon the recommendation of the directors, may resolve that any sum standing to the credit of the company's income surplus and which could have lawfully been distributed by way of dividend shall be applied, on behalf of the members who would have been entitled to receive the same if it had been distributed by way of dividend, in paying up amounts for the time being unpaid on any shares held by them, and such sum shall thereupon be deemed to have been paid upon a call made on such shares and shall be transferred to stated capital pursuant to paragraph (a) of subsection (1) of section 66 of this Code.

(4) Any resolution of a company lawfully declaring a dividend may, upon the recommendation of the directors, direct payment wholly or partly by distribution of securities for money, or of fully paid, but not partly paid, shares or debentures of any other body corporate, or of fully paid debentures of the company of a nominal amount equal to the amount so directed to be paid.

(5) The directors shall give effect to any such resolution and may make such provision as they shall think fit for the case of any shares, debentures, or securities for money



becoming distributable in fractions and may issue fractional certificates or, in the case of a distribution in accordance with subsection (4) of this section, but not in the case of a capitalisation issue in accordance with subsection (1) of this section, may sell the shares, debentures or securities for money represented by such fractions and distribute the net proceeds of the sale among the members otherwise entitled to such fractions in due proportions.

(6) Any allotment of shares or debentures or any payment-up of shares pursuant to such resolution may be made without obtaining the individual consents thereto of the members concerned and any transfers of shares or debentures in any other body corporate may be signed on behalf of the members to whom they are transferred by any person nominated in writing by the directors and such signature shall be effective and binding on all such members.

#### Section 75-Resolution Requiring Confirmation of Court

(1) Subject to confirmation by the Court, a company limited by shares may, by special resolution,

- (a) reduce its stated capital in any way;
- (b) extinguish or reduce the unpaid liability on any of its shares;
- (c) resolve to pay or return to its shareholders any of its assets which are in excess of the wants of the company;
- (d) alter its Regulations by cancelling any of its shares.

(2) A resolution under this section shall, in this Code, be referred to as a resolution requiring confirmation.

(3) If the resolution requiring confirmation shall vary the rights attached to any class of shares, the resolution shall not be effective unless the provisions of section 47 of this Code have been complied with.

(4) This section shall not be deemed to require confirmation by the Court of any transaction validly effected under any of the foregoing sections of this Code.

#### Section 76-Application for Confirming Order

(1) Where a company has passed a resolution requiring confirmation it may apply to the Court for an order confirming the same.

(2) Where the resolution requiring confirmation involves either diminution of liability in respect of shares with an unpaid liability or a payment or return to any shareholders,

and in any other case if the Court so directs, the following provisions shall have effect unless, having regard to the special circumstances of the case, the Court shall otherwise direct, that is to say,

(a) 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 oppose the confirmation;

(b) the Court shall settle a list of creditors so entitled to oppose, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of opposing the confirmation;

(c) where a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the confirmation, 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, that is to say,

(i) if the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;

(ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up under the provisions of the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180).

(3) The Court may refer the application to the Registrar who shall appoint one or more competent reporters to investigate the fairness of the resolution for reduction and to report thereon to the Court.

(4) The remuneration of the reporters shall be fixed by the Registrar and it and the expenses of the investigation shall be borne by the company.

#### Section 77-Order Confirming the Resolution

The Court, if satisfied,

(a) with respect to every creditor of the company who under the last foregoing section is entitled to oppose that either his consent has been obtained or his debt or claim has been discharged or secured; and

(b) that the provisions of sections 75 and 76 of this Code have been duly complied with; and

(c) that the resolution requiring confirmation is fair and equitable,

may make an order confirming the resolution on such terms and conditions as it thinks fit.

#### Section 78-Order and Minute to be Registered

(1) The Registrar, upon production to him of an order of the Court confirming the resolution requiring confirmation and the delivery to him of a copy of the order and of a minute, approved by the Court, showing,

(a) the new stated capital of the company,

(b) the number of authorised and issued shares and the classes, if any, into which they are divided,

(c) the amount deemed to be paid and the unpaid liability if any, on such issued shares, distinguishing the amount paid in cash and the amount paid otherwise than in cash,

shall register the order and minute and cause the particulars stated in the minute to be published in the Gazette.

(2) On registration of the order and minute, and not before, the resolution for reduction shall take effect.

(3) The Registrar shall certify under his hand the registration of the order and minute and such certificate shall be conclusive evidence that all the requirements of this Code with respect to the resolution requiring confirmation have been complied with and that the stated capital and shares of the company are such as is stated in the minute.

#### Section 79-Protection of Creditors

(1) If any creditor, entitled in respect of any debt or claim to oppose the confirmation, is by reason of his ignorance of the proceedings for confirmation, or of their nature and effect with respect to his claim, not entered on the list of creditors and, after the confirmation, the company fails to pay the amount of his debt or claim, then,

(a) every person who was a member of the company at the date of the registration of the order and minute, shall be liable to contribute for the payment of that debt or claim, an amount not exceeding the amount which he would have been liable to contribute on the winding up of the company had that commenced immediately before

the date of such registration; and

(b) if the company is wound up, the Court, on the application of any such creditor and proof of his ignorance as aforesaid, may settle a list of persons so liable to contribute and make and enforce calls and orders on such persons as if they were members liable to contribute in accordance with section 37 of this Code.

(2) Nothing in subsection (1) of this section shall affect the rights of the members among themselves and, except as provided in subsection (1) of this section, a member or past member after the date of the registration of the order and minute shall not be liable in respect of any share to any call or contribution exceeding in amount the unpaid liability on such share as set out in the minute.

(3) If any officer of the company,

(a) wilfully conceals the name of any creditor entitled to oppose the confirmation; 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 aforesaid, he shall be personally liable to pay to the creditor the amount of his debt or claim to the extent to which it is not paid by the company and shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding two years, or to a fine not exceeding two hundred pounds, or to both such imprisonment and fine.

#### Section 80-Issue of Debentures or Debenture stock

(1) A company may raise loan capital by the issue of a debenture or of a series of debentures or of debenture stock.

(2) A debenture is a written acknowledgment of indebtedness by the company setting out the terms and conditions of the loan.

(3) All debentures of the same series shall rank *pari passu* in all respects notwithstanding that they may be issued on different dates.

(4) Instead of issuing debentures acknowledging separate loans to the company, the loans may be funded by the creation of debenture stock of a prescribed amount parts of which, represented by debenture stock certificates, may be issued to separate holders.

(5) Debenture stock shall be created by deed under the common seal of the company either in the form of a deed poll or an indenture in favour of trustees for debenture stockholders.

(6) In this Code, unless the context otherwise requires, the expression "debenture" includes "debenture stock" and the expression "debenture holder" includes "debenture stockholder".

(7) A debenture holder shall not be a member of the company and, notwithstanding any provision in the debenture or the company's Regulations, shall not be entitled to attend and vote at any general meeting of the company.

#### Section 81-Specific Performance of Contracts to Subscribe for Debentures

A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

#### Section 82-Documents of Title to Debentures

(1) Every company shall, within two months 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 debentures 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 two shillings and sixpence 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 one hundred pounds 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 stock certificate and may require the company and any such officer to bear all the costs of, and incidental to, the application.

#### Section 83-Effect of Statements on Debentures

(1) Statements made in debentures 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 contained shall derogate from any right the company may have to be indemnified by any other person.

#### Section 84-Perpetual Debentures

A condition contained in any debenture or in any trust deed for securing any debentures, whether issued or executed before or after the commencement of this Code, shall not be invalid by reason of the fact that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period however long.

#### Section 85-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 are stated in the debentures.

#### Section 86-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 debentureholder to enforce the security of a series of debentures of which he holds part, the debentureholder shall sue in a representative capacity on behalf of himself and all other debentureholders of that series, and section 324 of this Code shall apply.

(5) Where debentures are secured by a charge the provisions of Part L of this Chapter relating to registration of particulars of charges, shall apply.

#### Section 87-Meaning of "Floating Charge"

(1) A floating charge is an equitable charge over the whole or a specified part of the company's undertaking and assets both present and future, so however 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 such events the charge shall be deemed to crystallize and to become a fixed equitable charge on such of the company's assets as are subject to the charge.

(3) 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 become a floating charge.

(4) 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.

#### Section 88-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.

(3) 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 debentureholder that the company should retain power to dispose of its assets.

(4) A receiver or manager shall not be appointed as a means of enforcing debentures not secured by any charge.

(5) In this Code unless the context otherwise requires the expression "receiver" includes "manager".

## Section 89-Payment of Preferential Creditors Out of Assets Subject to a Floating Charge

(1) Where a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge or possession is taken by or on behalf of those debentureholders of any property subject to the charge, the debts which in every winding up are, under the provisions of section 41 of the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180), 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) If the receiver or such other person taking possession as aforesaid shall make any repayment in respect of the debenture before discharging all debts having priority in accordance with subsection (1) of this section, he shall be personally liable to discharge such debts to the extent of the repayment made by him.

(3) The periods of time mentioned in the provisions referred to in section 41 of the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180), shall be reckoned from the date of the appointment of the receiver or possession being taken, as the case may be.

(4) 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.

## Section 90-Limitation of Efficacy of Floating Charges in Liquidations

If the winding up of the company commences within twelve months of the creation of a floating charge on the undertaking or property of the company such charge shall, unless it is proved that the company was solvent immediately after the creation of the charge, be invalid except to the amount of any cash paid to the company at the time of, or subsequently to, the creation of the charge and in consideration for the charge, together with interest on that amount at the rate of five per centum per annum.

## Section 91-Application of Section 236 to 245

The provisions of Part T of this Chapter shall apply to, and on the appointment of any receiver by or on behalf of the debentureholders.

## Section 92-Trustees for Debentureholders

(1) Whether or not debentures are secured by a charge over the company's property they may be secured by a trust deed appointing trustees for the debentureholders.

(2) It shall be the duty of such trustees to safeguard the rights of the debentureholders



and, on behalf of and for the benefit of the debentureholders, to exercise the rights, powers, and discretion conferred upon them by the trust deed.

(3) Charges securing the debentures may be created in favour of the debentureholders 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 discretion 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-fourths in value of the debentureholders present in person, or where proxies are permitted, by proxy at a meeting summoned for the purpose.

(5) Notwithstanding any provisions in the debentures or trust deed the Court may, on the application of any debentureholder or of the Registrar, 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 debentureholders 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 debentureholder 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.

(6) When a trustee dies or retires, the Registrar, at any time prior to the appointment of another trustee in his place in accordance with any provision to that effect in the trust deed, may appoint another trustee in his place.

#### Section 93-Meetings of Debentureholders

(1) The terms of any debentures or trust deed may provide for the convening of general meetings of the debentureholders and for the passing, at such meetings, of resolutions 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 Registrar may at any time direct a meeting of the debentureholders of any class to be held and conducted in such manner as the Registrar thinks fit, to consider any matters which he or the trustees, if any, shall bring before the meeting, and may give such ancillary or consequential direction as he shall think fit.

#### Section 94-Re-issue of Redeemed Debentures

(1) Where, either before or after the commencement of this Code, a company has redeemed any debenture previously issued, the company may, subject to subsection (5) of this section, re-issue the same.

(2) Such re-issue may be made either by re-issuing the same debenture or by issuing another in its place.

(3) On re-issue the person entitled to the debenture shall have the same priority as if the debenture had never been redeemed.

(4) The re-issue of a redeemed debenture shall be treated as the issue of a new debenture for the purposes of stamp duty but not for any other purpose including any provision limiting the amount or number of debentures to be issued:

Provided that any person lending money on the security of any re-issued debenture which appears to be duly stamped may give the debenture in evidence in any proceedings without payment of the stamp duty or any penalty 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 herein contained shall entitle a company to re-issue a redeemed debenture if it has manifested its intention that the debenture shall be cancelled or if re-issue is forbidden by any provision in the company's Regulations or in the debenture, trust deed or other contract entered into by the company.

(6) Where a company has deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason of the account of the company having ceased to be in debit while the debentures remained so deposited.

#### Section 95-Restrictions on Transferability of Shares

(1) Except as expressly provided in the company's Regulations shares shall be transferable without restriction by a written transfer in common form.

(2) Subject to section 294 of this Code, the company's Regulations may impose restrictions of any nature whatsoever on the transferability of shares, including power for the directors to refuse to register any transfer and provisions for compulsory acquisition or rights of first refusal in favour of other members or officers of the company:

Provided that no restriction shall be imposed on the transferability of any shares after

the same have been issued unless the holders thereof shall consent in writing.

(3) Notwithstanding subsection (1) of this section a company may refuse to register a transfer of shares to any person who is an infant or to any one found by a competent court in Ghana to be or a person of unsound mind.

#### Section 96-Register of Debentures

(1) A company which issues or has issued debentures shall maintain a register of the holders thereof.

(2) Subject to the provisions of Part K of this chapter, the register of debentureholders shall be kept and maintained at the same address as that at which the register of members is kept and to such register of debentureholders all the provisions of sections 32 to 36 of this Code shall, *mutatis mutandis*, apply, including subsection (5) of section 32 regarding the giving of notice to the Registrar of the place where the register is kept.

#### Section 97-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) Subject to section 294 of this Code, 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 debentureholders, 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.

#### Section 98-Registration of Transfers

(1) Subject to sections 99 and 100 of this Code, no notice of any trust, express, implied or constructive or of any equitable, contingent, future, or partial interest in any share or debenture or any fractional part of a share or debenture shall be entered in the register of members or debentureholders or receivable by the company, and the company shall not be bound by, or be compelled in any way to recognise, any other

rights in respect of a share or debenture except an absolute right to the entirety thereof in the registered holder; and accordingly until the name of the transferee is entered in the register in respect thereof the transferor shall, so far as concerns the company, be deemed to remain the holder thereof.

(2) Notwithstanding anything contained in the Regulations of a company or in any contract, it shall not be lawful for the company to register a transfer of shares or debentures unless a proper instrument of transfer duly stamped, if chargeable to stamp duty, has been delivered to the company:

Provided that nothing herein contained shall prejudice any power of the company to register any person to whom the right to any shares or debentures has been transmitted by operation of law.

(3) Unless otherwise provided in the company's Regulations or the terms of the debenture, the company may refuse to register any transfer unless it is accompanied by the appropriate share certificate, debenture, or debenture stock certificate, or the company is bound to issue a renewal or copy thereof in accordance with subsection (2) of section 53 or 82 of this Code.

(4) Transfers may be lodged for registration either by the transferor or transferee.

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

(6) If default is made in complying with subsection (2) or (5) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one hundred pounds.

#### Section 99-Transmission of Shares or Debentures by Operation of Law

(1) In the case of the death of a shareholder or debentureholder the survivor or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where he was a sole holder or last survivor of joint holders, shall be the only persons recognised by the company as shareholders or debentureholders.

(2) A person upon whom the ownership of a share or debenture devolves by reason of his being the legal personal representative, receiver, or trustee in bankruptcy of the holder, or by operation of law may, upon such evidence being produced as the company may properly require, be registered himself as the holder of the share or debenture or transfer the same to some other person and such transfer shall be as valid as if he had been registered as a holder at the time of execution of the transfer:

Provided that the company shall have the same right, if any, to decline registration of a transfer by such person as it would have had in the case of a transfer by the registered holder but shall have no right to refuse registration of the person himself.

(3) A person upon whom the ownership of a share or debenture devolves by reason of his being the legal personal representative, receiver, or trustee in bankruptcy of the holder, or by operation of law shall, prior to registration of himself or a transferee, be entitled to the same dividends, interest and other advantages as if he were the registered holder and, in the case of a share, to the same rights and remedies as if he were a member of the company, except that he shall not, before being registered as a member in respect of the share, be entitled to attend and vote at any meeting of the company:

Provided that the company may at any time give notice requiring any such person to elect either to be registered himself or to transfer the share or debenture and if the notice is not complied with within ninety days, the company may thereafter suspend payment of all dividends, interest or other moneys payable in respect of the share or debenture until the requirements of the notice have been complied with.

#### Section 100-Protection of Beneficiaries

(1) Any person claiming to be interested in any shares or debentures or the dividends or interest thereon may protect his interest by serving on the company concerned copies of a notice and affidavit in accordance with the provisions of Order 46 rules 4 to 12 of the Rules of the High Court.

(2) Notwithstanding the provisions of subsection (1) of section 98 of this Code, the company shall enter on the register of members or debentureholders, as the case may be, 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 or debentures contrary to the terms of the notice until the expiration of due notice to the claimant in accordance with the provisions of that Order.

(3) In the event of any default by the company in complying with this section the company shall compensate any person injured thereby.

#### Section 101-Certification of Transfers

(1) When the holder of any shares or of debenture stock wishes to transfer to any person part only of the shares or stock represented by one or more certificates, the instrument of transfer together with the relative certificates may be delivered to the company or to the registration officer of the company with a request to certificate the instrument of transfer.

(2) If a company or its registration officer endorses on an instrument of transfer the words "certificate lodged", or words to the like effect, this shall be taken as a representation to any one acting on the faith of the certification that there has been produced to, and retained by, the company or the registration officer such certificates as show a prima facie title to the shares or stock in the transferor named in the instrument of transfer but not as a representation that the certificates are genuine or that the transferor has any title to the shares or stock.

(3) Where any person acts on the faith of a false certification made by the company, the company shall be liable to compensate such person for any loss suffered as a result of so acting.

(4) Where any person acts on the faith of a false certification made by the registration officer, the company and the registration officer shall be jointly and severally liable to compensate such person for any loss suffered as a result of so acting but the company shall be entitled to be indemnified by the registration officer.

(5) The certification shall be deemed to be made by the company if,

(a) it bears the signature or initials, whether handwritten or not, of any of its officers for whose act of signing it the company is liable under the provisions of sections 139 to 143 of this Code; or

(b) it purports to bear the signature or initials, whether handwritten or not, of any officer of the company and is issued by any officer of the company for whose act of issuing it the company is liable under the provisions of sections 139 to 143 of this Code.

(6) The certification shall be deemed to be made by the registration officer if,

(a) it bears the signature or initials, whether handwritten or not, of the registration officer or of any officer, agent or servant of his having his authority to certificate transfers of the company's shares or debenture stock; or

(b) it purports to bear the signature or initials, whether handwritten or not, of the registration officer or any officer, agent or servant of his and when issued by the registration officer or any officer, agent or servant of his, him having his authority to issue certifications of transfers of the company's shares or debenture stocks.

(7) For the purposes of subsections (5) and (6) of this section, the certification shall be deemed to be issued by any person if the instrument of transfer bearing the certification is delivered or sent by him to the transferor, transferee or any other

person named in the request for certification or is despatched to any such person with a covering letter bearing his signature or initials, whether handwritten or not.

#### Section 102-Company's Lien on Shares

(1) A company may, by its Regulations, provide that it shall have a lien on any of its issued shares on which there is any unpaid liability for all moneys, whether presently payable or not, called or payable at a fixed time in respect of those shares, and such lien shall be an effective charge on such shares and any dividends payable thereon enforceable in manner provided by the Regulations.

(2) Notwithstanding any provision in the Regulations the company's lien shall not extend to shares on which there is no unpaid liability or to any sums due from the shareholder except in respect of the unpaid liability on the shares.

#### Section 103-Power for Company to Keep Branch Register

(1) A company having shares may, if so authorised by its Regulations, cause to be kept in any country outside Ghana branch registers of shareholders or debentureholders residing in that country or in any other country outside Ghana, in this Code referred to as a branch register.

(2) The company shall give to the Registrar notice of the situation of the office where any branch register is kept, and of any change in its situation, and if it is discontinued, of its discontinuance, and any such notice shall be given within twenty-eight days of the opening of the office or of the change or discontinuance, as the case may be.

(3) If default is made in complying with subsection (2) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding five pounds for every day during which the default continues.

#### Section 104-Regulations as to Branch Registers

(1) A branch register shall be deemed to be a part of the company's register of members or debentureholders, as the case may be, in this section referred to as the principal register.

(2) It shall be kept in, and shall be opened for inspection in, the same manner in which the principal register is, by sections 32 to 36 and 96 to 98 of this Code, required to be kept, except that the advertisement before closing the register shall be inserted in some newspaper circulating in the district where the branch register is kept.

(3) The company shall,

(a) transmit to its registered office a copy of every entry in its branch register as soon

as may be after the entry is made; and

(b) cause to be kept at the place where the company's principal register is kept a duplicate of its branch register duly entered up from time to time and every such duplicate shall, for the purposes of this Code, be deemed to be a part of the principal register.

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

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

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

(7) 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 not exceeding five pounds for each day during which the default continues; and where the principal register 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 paragraph (b) of subsection (3) of this section, he shall be liable to the same penalty as if he was an officer of the company who was in default.

#### Section 105-Stamp Duties in Case of Securities Registered in Branch Registers

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

#### Section 106-Provisions as to Branch Registers kept in Ghana

(1) If, by virtue of the law in force in any country, companies incorporated under that law have power to keep in Ghana branch registers of their shareholders or debentureholders, the Minister may, by legislative instrument, direct that sections 33 and 35 of this Code shall, subject to any modifications and adaptations specified in the instrument, apply to and in relation to any such branch registers kept in Ghana as they apply to and in relation to registers of companies within the meaning of this Code.

(2) The Minister may, by legislative instrument, cancel or modify any instrument made under subsection (1) of this section.



## Section 107-Registration of Particulars of Charges Created by Companies

(1) Every charge, other than those specified in subsection (3) of this section, created by a company after the commencement of this Code shall be void so far as any security on the company's property, which expression includes its undertaking and the unpaid liability on its shares, is thereby conferred, unless the particulars hereinafter prescribed, together with the original or a certified copy of the instrument, if any, by which the charge is created or evidenced, are delivered in the prescribed form to the Registrar for registration within twenty-eight days after the date of its creation.

(2) This section shall not prejudice any contract or obligation for repayment of the money thereby secured and when a charge becomes void under this section the money secured thereby shall immediately become payable notwithstanding any provision to the contrary in any contract.

(3) This section shall not apply to any pledge of, or possessory lien on, goods, or to any charge, by way of pledge, deposit, letter of hypothecation or trust receipt, of bills of lading, dock warrants or other documents of title to goods, or of bills of exchange, promissory notes or other negotiable securities for money.

(4) Subject to subsections (5) and (6) of this section the particulars requiring delivery for registration under this section shall be,

(a) the date of creation of the charge;

(b) the nature of the charge;

(c) the amount secured by the charge, or the maximum sum deemed to be secured thereby in accordance with the provisions of section 108 of this Code;

(d) short particulars of the property charged;

(e) the persons entitled to the charge; and

(f) in the case of a floating charge, the nature of any restriction on the power of the company to grant further charges ranking in priority to, or *pari passu* with, the charge thereby created.

(5) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders are entitled *pari passu*, is created by the company, it shall, for the purposes of this section, be sufficient if they are delivered to the Registrar within twenty-eight days after the execution of the document containing the charge or, if there is no such document, after the execution of any debentures of the series, the following particulars, namely,

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

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

(c) the names of the trustees, if any; and

(d) the particulars specified in paragraphs (b), (d), and (f) of subsection (4) of this section,

together with the original or a certified copy of the deed creating the charge or, if there is no such deed, of the debentures of the series.

(6) For the purposes of subsections (1) and (5) of this section a certified copy shall be a copy which has endorsed thereon a certificate to the effect that it is a true and complete copy of the original, under the seal of the company or under the hand of some person interested therein otherwise than on behalf of the company.

(7) Where the original is in any other language the copy shall also contain a translation acceptable to the Registrar similarly certified to the effect that it is an accurate translation of the original.

(8) Nothing in this section contained shall affect the provisions of any other enactment relating to the registration of charges.

#### Section 108-Charges to Secure Fluctuating Amounts

Where a charge, particulars of which require registration under section 107 of this Code is expressed to secure all sums due or to become due or some other uncertain or fluctuating amount, the particulars required under paragraph (c) of subsection (4) of the said section 107 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 Registrar 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.

#### Section 109-Charges on Property Acquired

(1) When a company acquires any property which is subject to a charge of such kind that particulars of it would, if it had been created by the company after the acquisition of the property, have been required to be registered under section 107 of this Code, the company shall cause particulars of the charge together with the document, if any, by which the charge was created or evidenced or a copy thereof, certified as provided in subsections (6) and (7) of section 107 of this Code, to be delivered to the Registrar for registration within twenty-eight days after the date on which the acquisition is completed.

(2) The particulars requiring registration under this section shall be those specified in subsection (4) of section 107 of this Code with the addition of the date of the acquisition of the property by the company.

(3) Failure to comply with this section shall not affect the validity of the charge.

#### Section 110-Existing Charges

(1) Where, at the date of commencement of this Code, 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 107 of this Code to be delivered to the Registrar 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 Code, deliver to the Registrar 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 Registrar 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 liable to a fine not exceeding five pounds for every day during which the default continues.

(4) Failure to comply with this section shall not affect the validity of the charge.

#### Section 111-Duty of Company to Deliver Particulars for Registration

(1) It shall be the duty of the company to send to the Registrar for registration the particulars required to be sent under sections 107 to 110 of this Code, but registration of the particulars 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 payable to the Registrar on the registration.

(3) If any company makes default in sending to the Registrar any particulars requiring registration as aforesaid, then, unless the particulars have been duly delivered for registration by some other person, the company and every officer of the company who is in default shall be liable to a fine not exceeding one hundred pounds.

#### Section 112-Register of Particulars of Charges

(1) The Registrar shall keep, with respect to each company, a register of the particulars duly delivered to him pursuant to sections 107 to 110 of this Code and shall enter the particulars thereon.

(2) The Registrar shall give a certificate under his hand of the registration of particulars of any charge registered in pursuance of such sections and the certificate shall be conclusive evidence, except in favour of the company or of any other person who shall have delivered false or incomplete particulars or an incorrect copy of any document, that the requirements of sections 107 to 110 of this Code have been complied with.

(3) In the case of a charge of the type referred to in section 108 of this Code the certificate shall state the maximum sum deemed to be secured by such charge.

(4) The original or certified copy instrument of the charge delivered with the particulars shall not be registered or retained by the Registrar.

#### Section 113-Endorsement of registration on Debentures of a Series

(1) A company shall cause to be endorsed on every debenture, forming one of a series of debentures, or certificate of debenture stock which is issued by the company and the payment of which is secured by a charge, particulars of which are registered under sections 107 to 110 of this Code,

(a) a copy of the certificate of registration, or

(b) a statement that registration has been effected and the date of registration:

Provided that nothing in this subsection contained shall be construed as requiring to be so endorsed any debenture or certificate or debenture stock issued by the company before the charge was created or before the commencement of this Code.

(2) Every person who knowingly authorises or permits the delivery of any debenture or certificate of debenture stock which is required to be endorsed under the provisions of this section and which is not so endorsed shall be liable to a fine not exceeding ten pounds.

(3) If any person shall cause to be endorsed on any debenture or certificate of debenture stock any purported copy of a certificate of registration or statement that registration has been effected which he knows to be false in any material particular or shall authorise or permit the delivery of any debenture or certificate of debenture stock bearing an endorsement purporting to be a copy of a certificate of registration or statement that registration has been effected which he knows to be false in any material particular, he shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding one thousand pounds or to both such imprisonment and fine.

#### Section 114-Entry of Satisfaction on Discharge

The Registrar, on application in the prescribed form and on evidence being given to his satisfaction with respect to any charge of which particulars have been registered,

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

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

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

#### Section 115-Rectification of Register of Particulars of Charges

(1) The Court, on being satisfied that the omission to register particulars of a charge within the time required by this Code or that the omission or mis-statement of any particulars with respect to any 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 members 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 as seem to the Court just and expedient, order that the time for registration shall be extended, or as the case may be, that the omission or mis-statement shall be corrected.

(2) When the Court grants an extension of time for registration the charge shall not, unless the Court shall otherwise order, adversely affect any person who, prior to the date of actual registration of particulars of the charge, shall have acquired any proprietary rights in, or a fixed or floating charge on, the property subject to the charge, and shall be ineffective against the liquidator and any creditors of the company if the winding up of the company commences before the date of actual registration.

#### Section 116-Registration of Enforcement of Security

(1) If any person obtains an order for the appointment of a receiver of any of the property of a company, or appoints such a receiver or enters into possession of such property under any powers contained in any charge, notice of the fact in the prescribed form shall, within ten days from the date of the order, appointment or entry into possession, be given to the Registrar who shall enter the fact in the register of the particulars of charges relating to such company.

(2) If default is made in giving the notice required under subsection (1) of this section the receiver, the person entering into possession, the company, and any officer of the company who is in default shall each be liable to a fine not exceeding five pounds for everyday during which the default continues.

(3) Where any person appointed receiver of the property of the company ceases to act as such receiver or where any person having entered into possession goes out of possession he shall, within ten days of so ceasing to act or to remain in possession, give notice to that effect in the prescribed form to the Registrar who shall enter the notice in the register of particulars of charges.

(4) If any person makes default in complying with the requirements of subsection (3) of this section he shall be liable to a fine not exceeding five pounds for everyday during which the default continues.

(5) The Registrar shall cause a copy of any notice given under this section to be published in the Gazette.

#### Section 117-Copies of Charges to be Kept by Company

(1) Every company shall cause a copy of every instrument creating any charge of which particulars require to be registered under sections 107 to 110 of this Code to be kept at the registered office of the company and at any other office in Ghana at which its register of debenture holders is kept:

Provided that in the case of a series of uniform debentures, a copy of one debenture of the series shall be sufficient.

(2) Such copies shall be open to inspection during usual business hours, subject to such reasonable restrictions as the company in general meeting may impose but so that not less than two hours in each day, other than Saturdays, Sundays and public holidays shall be allowed for inspection, by any member or creditor of the company without fee and by any other person on payment of such fee, not exceeding one shilling for each inspection, as the company may prescribe.

(3) If the company shall make default in complying with subsection (1) of this section or if inspection of the said copies is refused, the company and every officer of the company who is in default shall be liable to a fine not exceeding one hundred pounds, and in the event of any such refusal the Court may by order compel an immediate inspection of the copies.

#### Section 118-Registration Constituting Notice

The registration of any particulars under the foregoing sections in this Part of this Code shall constitute actual notice of such particulars, but not of the contents of any document referred to therein or delivered therewith, to all persons and for all purposes as from the date of registration.

#### Part M—Registered Office, Publication of Name and Annual Returns

##### Section 119-Registered Office

(1) A company shall, as from the date when it commences to carry on business or as from the twenty-eighth day after the date of its incorporation, whichever is the earlier, have a registered office in Ghana with a post office box to which all communications and notices to the company may be addressed.

(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 not exceeding five pounds for everyday during which the default continues.

##### Section 120-Notice of Situation of Registered Office

(1) Notice of the situation of the original registered office of the company and of the number of its post office box shall be given to the Registrar for registration in

accordance with the provisions of section 27 of this Code.

(2) If the return referred to in section 27 of this Code shall not have been delivered to the Registrar for registration within twenty-eight days after the date of the company's incorporation, notice of the situation of the registered office and of the number of its post office box shall be given in the prescribed form to the Registrar for registration.

(3) Notice of any change in the situation of the registered office or of the number of its post office box shall be given in the prescribed form to the Registrar for registration within twenty-eight days of the change.

(4) If the notice given to the Registrar by an existing company prior to the commencement of this Code pursuant to section 52 of the Companies Ordinance (Cap. 193) shall not have given both the situation of the company's registered office and the number of its post office box, an amended notice in the prescribed form shall be given to the Registrar for registration within twenty-eight days of the commencement of this Code.

(5) The inclusion in the annual return referred to in section 122 of this Code of a statement as to the situation of the company's registered office and the number of its post office box shall not be taken to satisfy the obligation imposed by this section.

(6) If default is made in complying with subsection (2), (3) or (4) of this section the company and every officer of the company who is in default shall be liable to a fine not exceeding five pounds for every day during which the default continues.

#### Section 121-Publication of Name of Company

(1) Every company shall,

(a) paint or affix, and keep painted or affixed, its name on the outside of its registered office and 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 seal;

(c) have its name accurately mentioned in legible characters at the head of all business letters, invoices, receipts, notices, or other publications of the company, and in all negotiable instruments or orders for money, goods or services purporting to be signed or endorsed by or on behalf of the company.

(2) If any company makes default in complying with subsection (1) of this section the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds.



(3) If an officer of the company or any person purporting to act on its behalf uses or authorises the use of a seal purporting to be a seal of the company whereon its name is not engraved as required by subsection (1) of this section he shall be liable to a fine not exceeding fifty pounds.

(4) If any officer of the company or other person shall sign or endorse or authorise the signing or endorsement on behalf of the company of any negotiable instrument or order for money, goods or services wherein the name of the company is not accurately mentioned in accordance with paragraph (c) of subsection (1) of this section, such person shall be personally liable to discharge the obligation thereby incurred unless it is duly discharged by the company or otherwise, but without prejudice to any right of indemnity which such person may have against the company or any other person.

(5) The use of the abbreviation "Ltd." instead of "Limited" shall not be deemed to be a breach of the provisions of this section.

#### Section 122-Annual Return

##### Third Sch.

(1) Every company shall, once at least in every year, deliver to the Registrar for registration an annual return including particulars of every member of the company, and in the form and relating to the matters prescribed in the Third Schedule to this Code:

Provided that a company need not make a return under this section,

(a) in the year of its incorporation; or

(b) in any year ending less than eighteen months after the date of its incorporation, so long as it makes a return within forty-two days after the first despatch to its members and debentureholders of the statements, accounts, and reports referred to in section 124 of this Code.

(2) The annual return shall be completed and made within forty-two days of the date on which the statements, accounts, and reports of the company are sent to the members and debentureholders pursuant to section 124 of this Code, and shall be signed by a director and the secretary of the company.

(3) The return shall state the position as at the date of the annual general meeting of the company or, if the holding of an annual general meeting is waived in accordance with subsection (3) of section 149 of this Code, as at the twenty-first day after the despatch of the documents referred to in subsection (2) of this section.

(4) The Registrar, after registering the annual return, shall cause to be published in the

Gazette a notice that the annual return in respect of the company has been registered.

(5) In the case of a private company the annual return shall be accompanied by the documents specified in section 269 of this Code and in the case of a public company by the documents specified in section 295 of this Code.

(6) 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 to a fine not exceeding five pounds for every day during which the default continues.

#### Part N—Accounts and Audit

##### Section 123-Keeping of Books of Accounts

(1) Every company shall cause to be kept proper books of accounts with respect to its financial position and changes therein, and with respect to the control of and accounting for all property acquired whether for resale or for use in the company's business, and, in particular with respect to,

(a) all sums of money received and expended by, or on behalf of, the company and the matters in respect of which the receipt and expenditure takes place;

(b) all sales and purchases by the company of property, goods and services;

(c) the assets and liabilities of the company and the interests of the members therein.

(2) Proper books of account shall not be deemed to be kept if there are not kept such books as are necessary to give a true and fair view of the state of the company's affairs and to prepare proper profit and loss accounts and balance sheets in accordance with sections 125 to 131 of this Code.

(3) The books of account may be kept either by making entries in bound volumes, or, subject to compliance with subsections (2) and (3) of section 264 of this Code, by a system of mechanical recording, or otherwise.

(4) The books of account shall be kept at the registered office of the company or at such other place as the directors shall think fit, and shall at all times be open to inspection by the directors, secretary and auditors of the company.

##### Section 124-Circulation of Profit and Loss Account, Balance Sheet and R

(1) The directors of every company shall, at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year at intervals of not more than fifteen months, cause to be prepared and sent to every member of the company and to every holder of debentures of the

company a copy of each of the following documents, namely,

(a) a profit and loss account and balance sheet prepared and signed in accordance with sections 125 to 131 of this Code;

(b) a report by the directors thereon in accordance with section 132 of this Code;

(c) a report by the auditors in accordance with section 133 of this Code:

Provided that this subsection shall not require a copy of such documents to be sent to a member or debentureholder of whose address the company is unaware, but such person shall be entitled to be furnished on demand without charge with a copy of the last of such profit and loss accounts and balance sheets and directors' and auditors' reports.

(2) Unless the holding of an annual general meeting is duly waived by the members in accordance with subsection (3) of section 149 of this Code, the documents referred to in subsection (1) of this section shall be laid before the company in general meeting.

(3) The Registrar, if for any reason he thinks fit so to do, may extend the periods of eighteen months and fifteen months referred to in subsection (1) of this section, and, in the circumstances referred to in subsection (11) of section 127 of this Code, may waive the requirements of this section in respect of any calendar year.

#### Section 125-Profit and Loss Account

(1) The profit and loss account referred to in paragraph (a) of subsection (1) of section 124 of this Code shall, in the case of the first account since the incorporation of the company, cover the period since the incorporation of the company and, in any other case, cover the period since the preceding account and shall be made up to a date not earlier by more than nine months from the date on which it is to be sent to members and debentureholders pursuant to section 124 of this Code:

Provided that,

(a) in the case of an existing company which has not previously prepared a profit and loss account and which was not required under its Regulations to prepare one, the first account need not cover a period commencing earlier than the date of commencement of this Code;

(b) the Registrar, if for any reason he thinks fit so to do, may extend the aforesaid period of nine months.

(2) The date to which the profit and loss account is to be made up in accordance with subsection (1) of this section is hereafter in this Code referred to as the end of the company's financial year.

#### Fourth Sch. Part I.

(3) The profit and loss account shall, subject to subsection (5) of section 127 of this Code, relating to consolidated profit and loss accounts,

(a) give a true and fair view of the profit or loss of the company for the period to which it relates; and

(b) comply with the requirements of sections 127 to 131 and Part I of the Fourth Schedule to this Code.

(4) The Registrar may, on the application or with the consent of the company's directors, modify in relation to that company any of the requirements in Part I of the Fourth Schedule to this Code for the purpose of adapting them to the circumstances of the company, but no such modification shall derogate from the obligation imposed by paragraph (a) of subsection (3) of this section to give a true and fair view of the profit or loss of the company.

#### Section 126-Balance Sheet

(1) The balance sheet referred to in paragraph (a) of subsection (1) of section 124 of this Code shall give a true and fair view of the state of affairs of the company as at the end of the company's financial year and shall comply with the requirements of sections 127 to 131 and Part II of the Fourth Schedule to this Code.

(2) The Registrar may, on the application or with the consent of the company's directors, modify any of the requirements in Part II of the Fourth Schedule to this Code for the purpose of adapting them to the circumstances of the company, but no such modification shall derogate from the obligation imposed by section (1) of this section to give a true and fair view of the state of affairs of the company.

#### Section 127-Group Accounts

(1) The provisions of this section shall apply where, at the end of the company's financial year, a company has subsidiaries.

(2) Accounts and statements dealing, as hereinafter mentioned, with the profit or loss and the state of affairs of the company and the subsidiaries, in this Code called group accounts, shall, subject to subsection (3) of this section, be sent to the members and debentureholders of the company with the company's own profit and loss account and balance sheet pursuant to section 124 of this Code.

(3) Notwithstanding anything contained in the foregoing subsection,

(a) group accounts shall not be required where the company at the end of the company's financial year is the wholly owned subsidiary of another company;

(b) subject to the approval of the Registrar, group accounts need not deal with a subsidiary of the company if the company's directors are of opinion that,

(i) it is impracticable or would be of no real value to the members and debentureholders of the company in view of the insignificance of the amount involved; or

(ii) it would involve expense or delay out of proportion to the value to members and debentureholders of the company; or

(iii) the result would be misleading or harmful to the business of the company or any of its subsidiaries; or

(iv) the business of the holding company and that of the subsidiaries are so different that they cannot reasonably be treated as a single undertaking.

(4) Subject to subsection (5) of this section, the group accounts shall be consolidated accounts comprising;

(a) a consolidated profit and loss account dealing with the profit or loss of the company and all subsidiaries to be dealt with in the group accounts;

(b) a consolidated balance sheet dealing with the state of affairs of the company and those subsidiaries.

(5) If the company's directors are of the opinion that it is better for the purpose of presenting the same or equivalent information in a form which may be more readily appreciated by the members and debentureholders, the group accounts may be prepared in a form other than that required by subsection (4) of this section and, in particular, may consist of more than one set of consolidated accounts dealing respectively with the company and various groups of subsidiaries or of separate accounts, dealing with each of the subsidiaries, attached to the company's accounts or of statements expanding the information about the subsidiaries in the company's own accounts, or any combination of those forms.

(6) The group profit and loss account may be wholly or partly incorporated in the company's own profit and loss account and a consolidated profit and loss account dealing with the company and all or any of its subsidiaries shall be deemed to be a profit and loss account of the company complying with subsection (3) of section 125 of this Code, so long as it complies with the requirements of this section and shows how much of the consolidated profit or loss for the financial year is dealt with in the

accounts of the company.

(7) The group accounts shall give a true and fair view of the profit or loss and of the state of affairs of the company and the subsidiaries dealt with thereby as a whole, so far as concerns the interests of the company.

Fourth Sch. Part III.

(8) The accounts of the company and the group accounts, if any, shall comply with the requirements of Part III of the Fourth Schedule to this Code.

(9) The Registrar may, on the application or with the consent of the company's directors, modify in relation to that company any of the requirements in Part III of the Fourth Schedule for the purpose of adapting them to the circumstances of the company but no such modification shall derogate from the obligation imposed by subsection (7) of this section to give a true and fair view of the profit or loss and the state of affairs of the company and the subsidiaries as a whole, so far as concerns the interests of the company.

(10) A holding company's directors shall secure that, except where in their opinion there are good reasons against it, in which case their reasons shall be stated in a note on the company's accounts, the financial year of each of its subsidiaries shall coincide with the company's own financial year, and the group accounts shall deal with the affairs of the holding company and the subsidiaries for the same financial year.

(11) Where it appears to the Registrar desirable for a holding company or subsidiary company to extend its financial year so that the subsidiary's financial year may end with that of the holding company, and for that purpose to postpone the despatch of the accounts and reports referred to in section 124 of this Code from one calendar year to another, the Registrar may direct that the despatch thereof by one or other of these companies shall not be required in the earlier of the said calendar years.

(12) If the financial year of a subsidiary does not coincide with that of the holding company the group accounts shall, unless the Registrar shall otherwise direct, deal with the subsidiary's profit or loss for, and the state of affairs as at the end of, its financial year ending last before that of the holding company.

#### Section 128-Particulars of Directors' Emoluments and Pensions

(1) In a note to the accounts of a company there shall be shown, in accordance with the provisions of this section, the following information in so far as it is contained in the company's books or papers or the company has obtained the information from the persons concerned or has the right to obtain it under section 130 of this Code, namely;

(a) the aggregate amount of the directors' emoluments;

(b) the aggregate amount of directors' or past directors' pensions; and

(c) the aggregate amount of any compensation to directors or past directors in respect of loss of office.

(2) The amount to be shown under paragraph (a) of subsection (1) of this section, shall include fees, salaries and percentages, expense allowances, contributions paid under any pension scheme, and the estimated value of benefits in kind, except benefits of such character and value as are customarily afforded to employees other than directors, paid to, or receivable by, any director in respect of his services as an officer of the company or any associated company.

(3) The amount to be shown under paragraph (b) of subsection (1) of this section, shall include any pension paid or receivable in respect of services as a director or past director of the company, or in respect of services, while a director of the company, in connection with the management, or as an officer of the company or any associated company, whether that pension is paid to, or receivable by, the director or past director or any other person:

Provided that it shall not be necessary to include a pension paid or receivable under a pension scheme which is such that the contributions thereunder are substantially adequate for the maintenance of the scheme.

(4) The amount to be shown under paragraph (c) of subsection (1) of this section, shall include 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 a director of the company, or in connection with his ceasing to be a director of the company, of any other office in the company or of any office in any associated company; and any sum and the value of any other valuable consideration paid or receivable in connection with retirement from office or as damages for breach of a contract of service, shall be deemed to be paid or receivable by way of compensation for loss of office.

(5) The amounts to be shown under each paragraph of subsection (1) of this section, shall include all relevant sums paid by, or receivable from, the company or any other person.

(6) The amounts to be shown under this section for any financial year shall be the sums receivable in respect of that year whenever paid or, in the case of sums not receivable in respect of a period, the sums paid during that year:

Provided that any sums paid in advance of the financial year to which they are expressed to relate shall be shown in the accounts for the financial year in which they

are paid.

(7) Where it is necessary to do so for the purpose of making any distinction required by this section, the directors may apportion, in such manner as they think appropriate, any payments between the matters in respect of which they have been paid or are receivable.

#### Section 129-Particulars of Amounts due from Officers

(1) In a note to the accounts of a company there shall, subject to the provisions of this section, be separately shown,

(a) the aggregate amount of all sums due to the company or any associated company at the end of the company's financial year from any officers of the company or any associated company;

(b) the maximum amount of all sums due to the company and any associated companies at any time during the company's financial year from any officers of the company or any associated company.

(2) If the company or any associated company shall have given a guarantee or security to any person in respect of any indebtedness of an officer of the company or any associated company, the amount guaranteed or in respect of which the security was given shall be included in the amounts to be shown under subsection (1) of this section.

(3) Notwithstanding subsections (1) and (2) of this section, the following shall not require to be separately shown, namely,

(a) any indebtedness incurred as a result of a transaction in the ordinary course of business by the company or any associated company unless the indebtedness shall not have been discharged within three months from the date of such transaction;

(b) any loan made in the ordinary course of business by a company, the ordinary business of which includes the lending of money;

(c) a loan made by the company or any associated company to any officer of the company or associated company if the loan does not exceed two thousand pounds or two per centum of the stated capital of the company concerned, whichever is the less, and is certified by the directors of the company concerned to have been made in accordance with any practice adopted, or about to be adopted, by that company with respect to loans to such employees:

Provided that paragraphs (b) and (c) of this subsection shall not include in either case a loan made by a company under a guarantee from or on security provided by any



associated company.

(4) References in this section to an associated company shall be taken as referring to any company which is an associated company at the end of the company's financial year, whether or not an associated company at the date of the transaction concerned.

(5) Nothing in this section shall derogate from section 301 of this Code prohibiting loans by public companies to their directors or directors of their associated companies.

#### Section 130-Provisions Supplemental to Sections 123 to 129

(1) Any reference in this Code to a profit and loss account or balance sheet or to the accounts of a company, shall include any notes thereon and any document annexed thereto giving information which is required by this Code.

(2) Any reference in this Code to a profit and loss account shall be taken, in the case of a company limited by guarantee or other company not trading for profit, as referring to its income and expenditure account, and references to profit and loss and to a consolidated profit and loss account shall be construed accordingly.

(3) If any person, being a director of a company, fails to take all reasonable steps to secure compliance with the provisions of sections 123 to 129 of this Code he shall, in respect of each offence, be liable to imprisonment for a term not exceeding two years or to a fine not exceeding two hundred pounds or to both such imprisonment and fine:

Provided that,

(a) in any proceedings against a person for any such offence it shall be a defence to prove that he had reasonable cause to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that the said provisions were complied with and was in a position to discharge that duty; and

(b) a person shall not be sentenced to imprisonment for any such offence unless, in the opinion of the Court, the offence was committed wilfully.

(4) It shall be the duty of every director and former director of the company to give notice in writing to the company of such matters relating to himself as may be necessary to enable the company to comply with sections 128 and 129 of this Code; and if notice is given by a director it shall be his duty to secure that it is brought up and read at the next meeting of the directors after it is given:

Provided that it shall not be necessary for any person to give written notice of loans, guarantees or securities made or given by the company itself.

(5) Any person who makes default in complying with subsection (4) of this section shall be liable to a fine not exceeding one hundred pounds.

(6) It shall be the duty of every company to give such written notice to any associated company relating to any transaction entered into by the first named company as may be necessary to enable the associated company to comply with sections 128 and 129 of this Code.

(7) If any company shall make default in complying with subsection (6) of this section the company, and every officer of the company, who is in default shall be liable to a fine not exceeding one hundred pounds.

#### Section 131-Signing and Publication of Accounts

(1) A company shall not issue, publish or circulate a copy of any profit and loss account or balance sheet unless,

(a) it shall have attached thereto a copy of each of the other documents referred to in paragraphs (a), (b) and (c) of subsection (1) of section 124 of this Code and of any group accounts required under section 127 of this Code; and

(b) the said accounts and balance sheet shall have been approved by the board of directors and, after such approval, signed on their behalf by two directors.

(2) The foregoing subsection shall not prohibit the publication of,

(a) a fair and accurate summary of any profit and loss account and balance sheet and the auditors' report thereon after such profit and loss account and balance sheet shall have been approved by, and signed on behalf of, the board of directors;

(b) a fair and accurate summary of the profit or loss figures for part of the company's financial year.

(3) In the event of any breach of subsection (1) of this section the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds.

#### Section 132-Directors' Report

(1) The report of the directors referred to in paragraph (b) of subsection (1) of section 124 of this Code shall consist of a report by the directors on the state of the company's affairs and, if the company is a holding company, on the state of affairs of the company and its subsidiaries as a group, and the amount, if any, which they recommended shall be paid by way of dividend.

(2) The report shall be approved by the board of directors and signed on behalf of the board by two directors.

(3) The report shall deal, so far as is material for the appreciation of the state of the company's affairs, with any change during the financial year in the nature of the business of the company or of the company's associated companies, or in the classes of business in which the company has an interest, whether as member of another company or otherwise.

(4) The report shall contain a list of bodies corporate in relation to which either of the following conditions is fulfilled at the end of the company's financial year, that is to say,

(a) the body corporate is a subsidiary of the company,

(b) although the body corporate is not a subsidiary of the company, the company is beneficially entitled to equity shares of the body corporate conferring the right to exercise more than twenty-five per centum of the votes exercisable at a general meeting of the body corporate.

(5) The list referred to in the immediately preceding subsection shall distinguish between bodies corporate falling within paragraph (a) and paragraph (b) thereof and shall state as regards each such company,

(a) its name;

(b) its country of incorporation;

(c) the nature of the business carried on by it.

(6) If the company is, at the end of its financial year, the subsidiary of another, the report shall also state the name and country of incorporation of its holding company.

(7) If, on application being made by the directors, the Registrar is satisfied that mention of any of the matters referred to in subsections (3), (4), (5) and (6) of this section would be harmful to the business of the company or any of its associated companies, he may direct that such matter need not be mentioned in the report of a financial year.

(8) If any director fails to take all reasonable steps to comply with the provisions of this section he shall be liable to a fine not exceeding one hundred pounds.

Section 133-Auditors' Report

## Fifth Sch.

(1) The report by the auditors referred to in paragraph (c) of subsection (1) of section 124 of this Code, shall consist of a report, addressed to the members of the company, by an auditor or auditors duly qualified and appointed as auditors of the company in accordance with section 134 of this Code, on the books of account of the company, and on every balance sheet, profit and loss account, and all group accounts to be sent to the members and debentureholders of the company in accordance with sections 124 and 127 of this Code, and shall contain statements as to the matters mentioned in the Fifth Schedule to this Code.

(2) If, in the case of any accounts, any of the particulars required to be shown under sections 128 and 129 of this Code are not shown, the report, in addition to stating that the accounts do not give all the information required by this Code, shall contain a statement giving the required particulars so far as the auditors are reasonably able to do so.

(3) The report shall, at all times, be open to inspection by any member or debentureholder of the company at the registered office of the company during usual business hours and shall be read at any annual general meeting of the company held within three months after it is sent to members and debentureholders in accordance with section 124 of this Code.

## Section 134-Appointment and Remuneration of Auditors

(1) No person shall be appointed as auditor of a company unless,

(a) he shall prior to such appointment have consented in writing to be appointed; and

(b) he is duly qualified in accordance with the provisions of section 270 of this Code, if appointed as auditor of a private company, or section 296 of this Code if appointed as auditor of a public company.

(2) A partnership firm may be appointed, in the name of the firm, as auditors of a company, but, whether or not such firm is a body corporate, such appointment shall be deemed to be an appointment of such of the partners of the firm as, at the time of the appointment, are duly qualified.

(3) The first auditors of a company incorporated after the commencement of this Code shall be appointed within three months of the incorporation of the company or prior to the delivery to the Registrar of the particulars required under section 27 of this Code, and every existing company shall, unless it already has duly qualified auditors, appoint auditors within three months after the commencement of this Code.

(4) Notwithstanding any contrary provision in the company's Regulations, auditors

shall be appointed by ordinary resolution of the company and not otherwise:

Provided that,

(a) the directors may appoint the first auditors of a company and may fill any casual vacancy in the office of auditor;

(b) if a company shall have no auditor for a continuous period of three months the Registrar may appoint auditors.

(5) Every existing auditor shall continue in office until,

(a) he ceases to be qualified for appointment; or

(b) he resigns his office by notice in writing to the company; or

(c) an ordinary resolution is duly passed at an annual general meeting in accordance with section 135 of this Code removing him from office or appointing some other person in his place as from the conclusion of the annual general meeting;

and when any casual vacancy occurs in the office of auditor the surviving or continuing auditor or auditors, if any, may act.

(6) Notice of the names and addresses of the first auditors of a company incorporated after the commencement of this Code shall be given to the Registrar in accordance with section 27 of this Code.

(7) Within three months after the commencement of this Code, every existing company shall give notice in the prescribed form to the Registrar for registration of the names and addresses of its auditors.

(8) Within twenty-eight days after the occurrence of any change in the auditors of any company, the company shall give notice thereof in the prescribed form to the Registrar for registration.

(9) Every company shall give notice to the Registrar if at any time after the commencement of this Code a continuous period of three months shall have elapsed without the company having a duly qualified auditor.

(10) The remuneration of the auditors,

(a) in the case of an auditor appointed by the directors or by the Registrar, may be fixed by the directors or the Registrar, as the case may be, for the period expiring at the conclusion of the next annual general meeting of the company;

(b) subject as aforesaid, shall be fixed by an ordinary resolution of the company or in such manner as the company by ordinary resolution may determine.

(11) For the purposes of the immediately preceding subsection, any sums paid or payable by the company in respect of the auditors' expenses shall be deemed to be included in the expression "remuneration".

(12) If any company shall commit a breach of any of the provisions of this section or describe as auditor of the company any person who has not been duly appointed, the company and any officer of the company who is in default shall be liable to a fine not exceeding one hundred pounds.

(13) For the purposes of subsections (6), (7) and (8) of this section, where a partnership firm is appointed auditors in the name of the firm, the firm name and business address shall be given to the Registrar and, for the purposes of such subsections a change in the constitution of the firm or of the partners therein who are auditors of the company shall not be deemed to be a change in the auditors.

#### Section 135-Removal of Auditors

(1) A resolution to remove any auditor or to appoint any other person in his place shall not be effective unless,

(a) it is passed at an annual general meeting of the company;

(b) written notice shall have been given to the company of the intention to move it not less than thirty-five days before the annual general meeting at which it is to be moved and on its receipt the company shall have forthwith sent a copy thereof to the auditor concerned; and

(c) the company shall have given its members notice of 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 have given them notice thereof in the same manner as notices of meetings are required to be given not less than twenty-one days before the meeting:

Provided that,

(a) if, after notice of the intention to move the resolution is given to the company, an annual general meeting is called for a date thirty-five days or less after the notice has been given to the company, the notice shall be deemed to have been properly given for the purposes of this subsection;

(b) in the case of a resolution to remove any auditor appointed by the directors in accordance with subsection (4) of section 134 of this Code, or to appoint any other

person in place of an auditor so appointed, this subsection shall have effect with the substitution of fourteen days for thirty-five days in paragraph (b) and seven days for twenty-one days in paragraph (c).

(2) The auditor concerned shall be entitled,

(a) to be heard on the resolution at the meeting; and

(b) to send to the company a written statement, copies of which the company shall send with every notice of the annual general meeting or, if the statement is received too late, shall forthwith circulate to every person entitled under section 154 of this Code to notice of the meeting in the same manner as notices of meetings are required to be given:

Provided that the company need not send or circulate such statement,

(a) if it is received by the company less than seven days before the meeting; or

(b) if the Court, on application being made by the company or any other person who claims to be aggrieved, so orders upon being satisfied that the statement is unreasonably long or that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the Court may order the costs of the applicant to be paid in whole or in part by the auditor notwithstanding that he is not a party to the application.

(3) Without prejudice to the auditor's right to be heard orally on such resolution he may, unless the Court shall have made an order under the immediately preceding subsection, also require that the written statement by him be read to the meeting.

(4) If the resolution is passed it shall not take effect until the conclusion of the annual general meeting.

#### Section 136-Duties and Powers of Auditors

(1) The auditors of a company while acting in performance of their duties under this Code shall not be deemed to be officers or agents of the company, but shall stand in a fiduciary relationship to the members of the company as a whole and shall act in such manner as faithful, diligent, careful, and ordinarily skilful auditors would act in the circumstances.

(2) No provision, whether contained in the Regulations of a company, or in any contract, or in any resolution of a company, shall relieve an auditor from the duty to act in accordance with subsection (1) of this section or relieve him from any liability incurred as a result of any breach thereof.

(3) Every auditor shall have a right of access at all times to the books and accounts and vouchers of the company and shall be entitled to require from the officers of the company such information and explanation as he thinks necessary for the performance of his duties.

(4) The auditors of a company shall be entitled to attend any general meeting of the company and to receive all notices of, and other communications relating to, any general meeting and to be heard at any general meeting on any part of the business of the meeting which concerns them as auditors.

(5) The auditors of a company may apply to the Court for directions in relation to any matter arising in connection with the performance of their functions under this Code; and on any such application the Court may give such directions as the Court thinks just; and unless the Court shall otherwise direct, the costs of any such application shall be paid by the company.

(6) Before accepting appointment as auditor of a company the auditor shall communicate with the retiring auditor, if any, and invite him to make any representations and supply any information about the company which he may care to make and supply.

(7) The auditors, in addition to their statutory duties to the members under subsection (1) of this section, may, under the terms of their contract with the company, expressly or impliedly undertake obligations to the company in relation to the detection of defalcations, and advice on accounting, costing, taxation, raising of finance and other matters.

#### Section 137-Division of Power 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 Code, the respective powers of the members in general meeting and the board of directors shall be determined by the company's Regulations.

(3) Except as otherwise provided in the company's Regulations, 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 Code or the Regulations required to be exercised by the members in general meeting.

(4) Unless the Regulations shall otherwise provide, the board of directors when acting within the powers conferred upon them by this Code or the Regulations shall not be bound to obey the directions or instructions of the members in general meeting.



(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 by reason 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 Regulations shall invalidate any prior act of the board of directors which would have been valid if that alteration had not been made.

#### Section 138-Delegation to Committees and Managing Directors

Unless otherwise provided in the Regulations, the board of directors,

(a) may exercise their powers through committees consisting of such member or members of their body as they think fit, and

(b) may 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.

#### Section 139-Acts of the Company

Any act of the members in general meeting, the board of directors, or 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 accordingly the company shall be criminally and civilly liable therefor 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 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 therewith merely because the business in question was not among the businesses authorised by the company's Regulations.

#### Section 140-Acts of Officers or Agents

(1) Except as provided in section 139 of this Code, 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 aforesaid, 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 action by him or by subsequent ratification; and knowledge of action by such officer or agent and acquiescence therein by all the members for the time being entitled to attend general meetings 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 a company for the acts of its employees while acting within the scope of their employment.

#### Section 141-No Constructive Notice of Registered Documents

Except as mentioned in section 118 of this Code, regarding particulars in the register of particulars of charges, a person shall not be deemed to have knowledge of any particulars, documents, or the contents of documents by reason only that such particulars or documents are registered by the Registrar or referred to in any particulars or documents so registered.

#### Section 142-Presumption 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, that is to say,

(a) that the company's Regulations have been duly complied with;

(b) that every person described in the particulars filed with the Registrar pursuant to sections 27 and 197 of this Code 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) that the secretary of the company, and every other 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) that 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;

and the company and those deriving title under it shall be estopped from denying the truth of any such assumption:

Provided that,

(a) 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;

(b) a person shall not be entitled to assume that any one 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 by reason only that the Company's Regulations provide that authority to act in the matter may be delegated to a committee or to an officer or agent.

#### Section 143-Liability of Company not Affected by Officer's Fraud or Forgery

Where, in accordance with sections 139 to 142 of this Code, a company would be liable for the acts of any officer or agent, the company shall 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.

#### Section 144-Form of Contracts

Contracts on behalf of a company may be made, varied or discharged as follows, that is to say,

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

(c) any contract which, if made between individuals would be valid although made by parol only and not reduced to 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.

#### Section 145-Bills of Exchange and Promissory Notes

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

(2) The company and its successors shall be bound thereby if the company is, in accordance with sections 139 to 143 of this Code, liable for the acts of those who made, accepted or endorsed 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 23 of the Bills of Exchange Act, 1961 (Act 55).

#### Section 146-Authentication of Documents

A document or proceeding requiring authentication by a company may be signed on its behalf by an officer of the company and need not be under its common seal.

#### Section 147-Execution of Deeds Abroad

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

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

#### Section 148-Official Seal for Use Abroad

(1) A company whose objects require or comprise the transaction of business in countries other than Ghana may, if authorised by its Regulations, have for use in any territory, district or place not situate in Ghana, an official seal which shall be a facsimile of the common seal of the company with the addition on its face of the name of the territory, district or place where it is to be used.

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

(3) The company may, by writing under its common seal, authorise any agent appointed for that purpose to affix the official seal to any document to which the company is a party in the territory, district or place.

(4) Any person dealing with such an agent in reliance on the writing conferring the authority shall be entitled to assume that the authority of the agent continues during the period, if any, mentioned in the writing or, if no period is there mentioned, then until that person has actual notice of the revocation or determination of the authority.

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

#### Section 149-Annual General Meetings

(1) Except as provided in subsection (3) of this section, 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 the annual general meeting in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting and the next:

Provided that, so long as a company holds its first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

(2) The annual general meeting shall be held not earlier than twenty-one days after the company's profit and loss account and balance sheet, any group accounts, and the reports of the directors and auditors, thereon shall have been despatched to members and debentureholders of the company in accordance with section 124 of this Code; and the said statements, accounts, and reports shall be laid before the annual general meeting for consideration.

(3) If the auditors of the company and all the members of the company entitled to attend and vote at any annual general meeting shall agree in writing that an annual general meeting shall be dispensed with in any year, it shall not be necessary for that company to hold an annual general meeting that year.

(4) If default is made in holding the annual general meeting in accordance with subsection (1) of this section, the Registrar may, of his own motion or on the application of any officer or member of the company, call, or direct the calling of, an annual general meeting of the company, and may give such ancillary or consequential directions as he thinks fit, including directions modifying or supplementing, in relation to the calling, holding and conducting of that meeting, the operation of the company's Regulations and sections 151 to 155, 161, 163, 166, 167, and 169 to 173 of this Code.

(5) Where a meeting held in pursuance of subsection (4) of this section is not held in the year in which occurred the default in holding the company's annual general meeting, the meeting so held shall be treated as the annual general meeting for that year, but shall not be treated as the annual general meeting for the year in which it is held unless, at that meeting, the company resolves that it shall be so treated.

(6) Where a company so resolves, a copy of the resolution shall, within twenty-eight days of the passing thereof, be forwarded to the Registrar for registration.

(7) If default is made in holding an annual general meeting of the company in accordance with subsection (1) of this section, or in complying with any directions of the Registrar under subsection (4) of this section, or in complying with subsection (2), (5) or 6 of this section, the company, and every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds.

#### Section 150-Extraordinary General Meetings

(1) Extraordinary general meetings may be convened by the directors whenever they think fit.

(2) If at any time there are not within Ghana sufficient directors capable of acting to form a quorum, any director may convene a meeting.

(3) An extraordinary general meeting of a private company may be requisitioned in accordance with section 271 of this Code and an extraordinary general meeting of a public company may be requisitioned in accordance with section 297 of this Code.

#### Section 151-Place of Meetings

Unless the company's Regulations otherwise provide, all general meetings shall be held in Ghana.

#### Section 152-Length of Notice of Meetings

(1) Meetings, other than adjourned meetings, shall be convened by notice in writing to the persons who are, under section 154 of this Code, entitled to receive notice of general meetings.

(2) Subject to subsections (3) and (4) of this section, twenty-one days notice at the least or in the case of a special resolution under section 2 of the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180), seven days notice exclusive of the day on which the notice is served, but inclusive of the day for which notice is given, shall be given.

(3) The company's Regulations may provide for a period of notice longer, but not shorter, than that specified in subsection (2) of this section.

(4) A meeting of a company shall, notwithstanding that it is called by shorter notice than that specified in subsection (2) of this section, or in the company's Regulations, be deemed to have been duly called if it is so agreed,

(a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and

(b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority holding not less than ninety-five per centum of the shares giving a right to attend and vote at the meeting or, in the case of a company limited by guarantee, by a ninety-five per centum majority in number of the members:

Provided that where any members are entitled to vote only on some resolutions to be moved at the meeting and not on others, those members shall be taken into account for the purposes of this subsection in respect of the former resolutions and not in respect of the latter.

#### Section 153-Contents of Notice

(1) The notice of a meeting shall specify the place, date and hour 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,

- (a) to declare a dividend;
  - (b) consideration of the accounts and reports of the directors and auditors;
  - (c) the election of directors in the place of those retiring;
  - (d) the fixing of the remuneration of the auditors; and
  - (e) if the requirements of sections 135 and 185 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 163 of this Code, 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 liable to a fine not exceeding fifty pounds.

#### Section 154-Persons Entitled to Notice

The following persons shall be entitled to receive notice of general meetings, namely,

- (a) every member;
- (b) every person upon whom the ownership of a share devolves by reason of his being a legal personal 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.

#### Section 155-Service of Notice

- (1) Notice may be given by the company to any member or director either personally or by sending it through the post addressed to him at his registered address, or by leaving it for him with some person apparently over the age of sixteen years at such address.
- (2) Notice may be given to the joint holders of a share by giving the notice to the joint



holder named first in the register of members in respect of the share.

(3) Notice may be given to a person upon whom ownership of a share has devolved by reason of his being a legal personal representative, receiver or trustee in bankruptcy of a member either personally or by sending it through the post addressed to him by name, or by the title of representatives of the deceased or receiver or trustee of the bankrupt, or by any like description, at the address, if any, supplied for the purpose by such person, or by leaving it for him with some person apparently over the age of sixteen years at such address, or, until such address has been supplied, by giving the notice in any manner in which the same might have been given if the death, receivership or bankruptcy had not occurred.

(4) Where a notice is sent by post, service shall be deemed to be effected by properly addressing, pre-paying, and posting a letter containing the notice and to have been effected at the expiration of forty-eight hours after the letter containing the same is posted.

(5) The letter need not be registered but where it is sent to an address outside Ghana it shall be despatched by air mail.

#### Section 156-Accidental Failure to Give Notice

The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

#### Section 157-Circulation of Members' Resolutions and Supporting Circulars

(1) A company shall at its own expense, on the request in writing of any member entitled to attend and vote at a general meeting, include in the notice of that general meeting notice of any resolution which may properly be moved and is intended to be moved at that meeting and, at the like request, include with such notice a statement of not more than five hundred words with respect to the matter referred to in the proposed resolution or any other business to be dealt with at that meeting:

Provided that if the proposed resolution is not passed at that meeting the same resolution or one substantially to the same effect shall not be moved at any general meeting within three years thereafter, unless the directors shall otherwise agree or unless the request within three years is supported in writing by members of the company representing between them not less than one-twentieth of the total voting rights of all the members having at the date of the request a right to vote on the resolution to which the request relates.

(2) A company shall not be bound to give notice of any such resolution or to circulate such statement unless the written request or requests, signed by the member or

members concerned, together with the resolution and statement, are deposited at the registered office of the company not less than six weeks before the meeting:

Provided that if, after such documents have been deposited, a general meeting is called for a date six weeks or less thereafter, the documents shall be deemed to have been properly deposited.

#### Section 158-Circulation of Members Circulars

(1) A company shall, at the request in writing of any member entitled to attend and vote at the general meeting but, unless the company otherwise resolves, at the expense of that member, circulate to members of the company a statement of not more than one thousand words with respect to any business to be dealt with at that meeting.

(2) The statement shall be circulated to members of the company in any manner permitted for service of notice of the meeting and, so far as practicable, at the same time as notice of the meeting, or, if that is impracticable, as soon as possible thereafter.

(3) A company shall not be bound to circulate such statement unless,

(a) the written request, signed by the member concerned, together with the statement, is deposited at the registered office of the company not less than ten days before the meeting;

(b) there is also deposited with the request a sum reasonably sufficient to meet the company's expenses in giving effect thereto.

#### Section 159-General Provisions Affecting Sections 157 and 158

(1) A company shall not be bound under either section 157 or 158 of this Code to circulate any resolution or 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 those sections 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 member making the request, notwithstanding that he is not a party to the application.

(2) In the event of any default in complying with section 157 or 158 of this Code, every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds.

#### Section 160-Attendance at Meetings

Notwithstanding any contrary provision in the company's Regulations the following persons shall be entitled to attend any general meeting of the company, namely,

- (a) every member of the company;
- (b) every director of the company;
- (c) the secretary of the company; and
- (d) every auditor for the time being of the company;

Provided that,

- (a) if the company's Regulations so provide a member shall not be entitled to attend unless all calls or other sums presently payable by him in respect of shares in the company have been paid;
- (b) any member who is holder of preference shares only shall not be entitled to attend if his right to do so is validly suspended in accordance with section 49 of this Code;
- (c) nothing herein contained shall be deemed to preclude other persons from attending any general meeting with the permission of the chairman thereof.

#### Section 161-Quorums

(1) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to discuss that business; but provided that a quorum is then present the meeting may validly proceed with that business notwithstanding that a quorum is not present throughout:

Provided that where any members present are entitled to vote only on some resolutions and not on others such members shall be counted towards a quorum in respect of the former resolutions but not in respect of the latter.

(2) Unless otherwise provided in the company's Regulations, the following shall constitute a quorum, that is to say,

- (a) if the company has only one member, that member present in person or, where proxies are allowed, by proxy;
- (b) in any other case two members present in person or, where proxies are allowed, by proxy, or one member so present holding shares representing more than fifty per centum of the total voting rights of all the members having a right to vote at the meeting.

(3) Unless otherwise provided in the company's Regulations, if a quorum is not present within half an hour after the time appointed for the meeting, the meeting if

convened upon the requisition of members in accordance with section 271 or 297 of this Code, shall be dissolved, and in any other case shall stand adjourned to the same day, in the next week at the same time and place or to such other day, place and time as the directors may determine, and if at the adjourned meeting a quorum is not present within half an hour after the time appointed the member or members present shall constitute a quorum.

(4) Where the meeting is adjourned to the same day, place and time in the following week no notice need be given; otherwise notice of the adjourned meeting shall be published in at least one daily newspaper circulating in the district in which is situated the registered office of the company.

(5) Provided that a quorum is present the meeting shall be deemed to be duly conducted notwithstanding that only one member or one proxy is present.

#### Section 162-Power of Court to Order Meeting

(1) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in the manner prescribed by the Regulations of this Code, the Court may, on the application of any director or member of the company, or of the Registrar, order a meeting of the company 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) Any meeting called, held and conducted in accordance with an order under the foregoing subsection shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.

#### Section 163-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 of the company or not, as his proxy to attend and vote instead of him and such proxy shall have the same rights as the member to speak at the meeting:

Provided that unless the company's Regulations shall otherwise provide, this subsection shall not apply in the case of a company limited by guarantee.

(2) The instrument appointing the proxy shall be in writing under the hand of the appointor or his agent duly authorised in writing or, if the appointor is a body corporate, either under seal or under the hand of an officer or agent duly authorised.

Second Sch.

(3) An instrument appointing a proxy shall be in the form prescribed by Table A in the Second Schedule hereto or in such form as the company's Regulations may provide; but, notwithstanding any provision in the company's Regulations, an instrument in the form prescribed by Table A shall be sufficient.

(4) Unless the company's Regulations shall otherwise provide, the instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company or at such other place within Ghana as specified in the notice convening the meeting not less than forty-eight hours before the time for holding the meeting or adjourned meeting or, in the case of a poll, not less than twenty-four hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid:

Provided that any provision contained in a company's Regulations shall be void in so far as it would have the effect of requiring the documents herein referred to, to be deposited more than forty-eight hours before the time for holding the meeting or adjourned meeting or, in the case of a poll, more than twenty-four hours before the time appointed for taking the poll.

(5) Where instruments of proxy have been deposited in accordance with the immediately preceding subsection, any person entitled, in his own right or as proxy for another member or members or partly in one way and partly in another, to more than ten per centum of the total voting rights of all members entitled to vote at the meeting shall be entitled, at any time during business hours prior to the conclusion of the meeting or the taking of the poll, but subject to such reasonable restrictions as the company may impose, to inspect such deposited instruments of proxy and the original or copy powers of attorney or other authority under which they are signed.

(6) The appointment of a proxy shall be terminated by the death or insanity of the appointor or by his revocation of the proxy or the authority under which it was executed; and the personal attendance of a member at the meeting or the later appointment of another proxy in respect of the same share shall be deemed to be revocation:

Provided that a vote given in accordance with the terms of an instrument of proxy may be treated by the company as valid notwithstanding the termination or revocation of the appointment so long as no intimation in writing of the termination or revocation or of the events causing the same shall have been received by the company, at its registered office or other place appointed for the deposit of instruments of proxy, before the commencement of the meeting or adjourned meeting or more than twenty-four hours before a poll.

(7) 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, then,

(a) such invitations shall be sent to all members entitled to attend and vote at the meeting;

(b) such invitations shall be accompanied by forms for the appointment of a proxy which shall entitle the members to direct the proxy to vote either for or against each resolution;

(c) where instruments of proxy are duly completed and returned in accordance with the instructions in the invitation and are not revoked then,

(i) it shall be the duty of the chairman of the meeting to demand a poll after any vote by show of hands unless the result on the show of hands is in accord with the directions, if any, given in all such instruments of proxy; and

(ii) on any poll the votes of the members concerned shall be deemed to be cast in accordance with the directions, if any, in such instruments of proxy notwithstanding the absence, abstention, or purported vote to the contrary of the proxy.

(8) Where a member, not having been invited so to do, requests the company to issue him with a form of appointment of proxy or a list of persons willing to act as proxy, the company may issue such form or list to him without doing so to all the other members entitled to attend and vote; but such form or list shall be available on request in writing to every such member and any forms of appointment so issued shall comply with paragraph (b) of subsection (7) of this section and shall be deemed to be an instrument of proxy to which paragraph (c) thereof applies.

(9) Every officer of the company who knowingly authorises or permits any breach or non-observance of subsection (5), (6), (7) or (8) of this section shall be liable to a fine not exceeding one hundred pounds and in the event of a refusal to permit inspection in accordance with subsection (5) of this section the Court may by order compel an immediate inspection.

#### Section 164-Obtaining Proxies by Misrepresentation

(1) The vote of a proxy shall not be rejected at a meeting on the ground that the appointment of a proxy was obtained by mis-representation.

(2) The Court may, on the application of the company or any member entitled to vote at the meeting or the Registrar, annul the appointment of a proxy if satisfied that the appointment was obtained by any material misrepresentation of fact whether made fraudulently or not.

(3) Where any such order is made the Court may further order that the holding of the meeting shall be postponed until such date as the Court may order and may give such ancillary or consequential directions as it thinks fit.

#### Section 165-Representation of Corporations At Meetings

(1) A body corporate, whether a company within the meaning of this Code or not, may, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative,

(a) if it is a member of a company, at any meeting of the company;

(b) if it is a creditor, including a debentureholder, of a company, at any meeting of any creditors of the company held in pursuance of this Code or of the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180), 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 aforesaid, upon production of a copy of the resolution by which he was authorised, shall be entitled to exercise the same powers on behalf of the body corporate which he represents as that body corporate could exercise if it were an individual shareholder, creditor, or holder of debentures of that other company.

(3) This section shall not be deemed to preclude any body corporate from appointing a proxy to attend and vote on its behalf.

#### Section 166-Chairman of meetings

(1) Unless otherwise provided in the company's Regulations, 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 shall not be present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act, the directors present shall elect one of their number to be chairman of the meeting, or, if no director is present or willing to act, the members present shall choose one of their number to be chairman of the meeting.

#### Section 167-Adjournments

(1) The chairman may, with the consent of any meeting at which a quorum is present, and shall if so directed by an ordinary resolution passed at 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 and any additional business of which due notice shall be given as in the case of an original meeting.

(2) When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

(3) Save as aforesaid and unless the company's Regulations otherwise provide, it shall not be necessary to give notice of the adjournment of any meeting at which a quorum was present, or of the business to be transacted at the adjournment.

#### Section 168-Types of Resolution

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

(3) A reference in this Code or in any Regulations, debentures or debenture trust deed to an ordinary or special resolution of a meeting of any class of shareholders, creditors, or debentureholders shall bear a like meaning to that specified in subsection (1) or (2) of this section, as the case may be, with the substitution of the members of the class for the members of the company.

#### Section 170-Procedure on Voting

(1) Unless the company's Regulations shall otherwise provide, a resolution put to the vote of a meeting shall be decided on a show of hands unless a poll is, before or on the declaration of the result of the show of hands, demanded by,

(a) the chairman,

(b) at least three members present in person or by proxy, or

(c) any member or members present in person or by proxy and representing not less than one-twentieth of the total voting rights of all the members having the right to attend and vote on the resolution:

Provided that any provision contained in the company's Regulations shall be void in so far as it would have the effect,

(a) of excluding the right to demand a poll on any question other than the election of the chairman or the adjournment of the meeting; or



(b) of making ineffective a demand for a poll on any such question which is made by the persons specified in any of paragraphs (a), (b) or (c) of this subsection.

(2) The demand for a poll may be withdrawn.

(3) On a show of hands each member who is personally present and entitled to vote and each proxy for any member entitled to vote shall have one vote.

(4) Unless a poll is effectively 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 meeting shall be conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against such resolution.

(5) If a poll is effectively demanded it shall be taken at such time and in such manner as the chairman shall direct.

(6) In lieu of directing that a poll shall be taken of those members present in person or by proxy at the poll, the chairman may direct that voting shall be by postal ballot of all the members entitled to attend and vote on the resolution; and in that event, ballot papers shall be served on members entitled to attend and vote on the resolution in the same manner as notice of the meeting is required to be given to them and such members may cast their votes either by personally completing the ballot papers or by having the same completed by any proxy of theirs whose instrument of appointment has been deposited, in accordance with subsection (4) of section 163 of this Code, not less than twenty-four hours before the time appointed for the closing of the ballot.

(7) Notwithstanding subsection (5) of this section, a postal ballot in accordance with the immediately preceding subsection shall be directed by the chairman if,

(a) the company's Regulations so provide; or

(b) on or after the chairman has directed a poll, an ordinary resolution in favour of a postal ballot under this subsection is moved at the meeting and passed on a show of hands.

(8) For all the purposes of this Code a postal ballot in accordance with subsection (6) of this section shall be deemed to be a poll.

(9) Except as otherwise lawfully provided in the company's Regulations, on a poll each shareholder entitled to vote shall have one vote for each share held by him and each member of a company limited by guarantee shall have one vote.

(10) On a poll a member entitled to more than one vote, or a proxy representing more than one member or 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.

(11) Unless the company's Regulations otherwise provide, in the case of an equality of votes, whether on a show of hands or 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.

#### Section 171-Voting by Joint Holders

In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted, to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

#### Section 172-Votes by Persons of Unsound Mind

A member of unsound mind may vote, whether on a show of hands or a poll, by such person as may be appointed for the purpose by the Court and the person so appointed may vote by proxy.

#### Section 173-Date of Passing of Resolution

(1) Where a resolution is passed at an adjourned meeting, the resolution shall, for all purposes, be deemed to have been passed on the date on which it was in fact passed at the adjourned meeting.

(2) Where a resolution is passed on a poll it shall for all purposes be deemed to have been passed on the day on which the result of the poll is declared, and not on any earlier day.

#### Section 174-Written Resolutions

(1) Except as provided in subsection (3) of this section, a resolution in writing signed by all the members for the time being entitled to attend and vote on such resolution at a general meeting, or being bodies corporate by their duly authorised representatives, and, if the company has only one such member by that member, shall be as valid and effective for all purposes as if the same had been passed at a general meeting of the company duly convened and held; and if described as a special resolution shall be deemed to be a special resolution within the meaning of this Code.

(2) The resolution shall be deemed to have been passed on the date on which the same was signed by the last member to sign, and where the resolution states a date as being the date of his signature thereof by any member such statement shall be prima facie

evidence that it was signed by that member on that date.

(3) Subsections (1) and (2) of this section shall not apply to a resolution to remove an auditor, which can be passed only at an annual general meeting in accordance with section 135 of this Code, or to remove a director, which can be passed only at a general meeting in accordance with section 185 of this Code.

#### Section 175-Application of Sections 152 to 174 to Class Meetings

(1) Sections 152 to 174 of this Code shall apply to meetings of any class of members in like manner as they apply to general meetings of companies, but so that the necessary quorum shall be as set out in subsection (2) of this section and that any member of the class present in person or by proxy may demand a poll.

(2) At any meeting of any class of members the necessary quorum shall be,

(a) if there are not more than two members of that class, one member present in person or by proxy;

(b) in any other case, two members, present in person or by proxy, holding not less than one-third of the total voting rights of that class:

Provided that the company's Regulations may provide for a larger, but not for a smaller quorum.

#### Section 176-Registration of Copies of Certain Resolutions

(1) A certified true copy of every special resolution of a general meeting or of a class of members and of every resolution to which a specified proportion of a class of members have consented in writing and which would not have been effective for its purpose, unless such written consent had been given, without the passing of a special resolution, shall be forwarded to the Registrar for registration within twenty-eight days after the passing or making thereof.

(2) Such copy shall be printed, typewritten, or in some other legible form acceptable to the Registrar.

(3) A copy of every special resolution of a general meeting of the company for the time being in force shall be embodied in or annexed to every copy of the Regulations issued after the passing of the resolution:

Provided that, where the sole effect of the special resolution is to amend the Regulations, this subsection shall be sufficiently complied with if every copy of the Regulations issued thereafter embodies the effect of the amendment and refers to the date of the passing of the special resolution.

(4) If a company fails to comply with this section the company and every officer of the company who is in default shall be liable to a fine not exceeding five pounds for each default.

#### Section 177-Minutes of General Meetings

(1) Every company shall cause minutes of all proceedings of general meetings and meetings of any class of members to be entered in a book or books kept for the purpose.

(2) Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings took place or 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 then, until the contrary is proved, the meeting shall be deemed to be duly held, convened and conducted.

(4) 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 liable to a fine not exceeding one hundred pounds.

#### Section 178-Inspection of Minute Books

(1) The books containing the minutes of proceedings of every general meeting or class meeting of a company held after the commencement of this Code, shall be kept at the registered office of the company and shall, during business hours, subject to such reasonable restrictions as the company's Regulations may impose, but so that not less than two hours in each day, other than a Saturday, Sunday or public holiday, be allowed for inspection, be open to the inspection of any member without charge.

(2) Any member shall be entitled to be furnished, within ten days after he has made a request in that behalf to the company, with a copy of any such minutes at a charge not exceeding one shilling 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 liable in respect of each offence to a fine not exceeding five pounds for every day during which the default continues and the Court may, by order, compel an immediate inspection or furnishing of a copy, as the case may be.

#### Section 179-Meaning of "Directors"

(1) For the purposes of this Code the expression "directors" means those persons, by whatever name called, who are appointed to direct and administer the business of the company.

(2) Any person, not being a duly appointed director of a company,

(a) who shall hold himself out or knowingly allow himself to be held out as a director of that company, or

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

shall be subject to the same duties and liabilities as if he were a duly appointed director of the company:

Provided that nothing in this subsection contained shall be deemed to derogate from the duties or liabilities of the duly appointed directors, including the duty not to act on the directions or instructions of any other person.

(3) If any person, not being a duly appointed director of a company, shall hold himself out, or knowingly allow himself to be held out, as a director of the company, or if the company shall hold out such person, or knowingly allow such person to hold himself out, as a director of the company, such person or the company as the case may be, shall be liable to a fine not exceeding one hundred pounds.

(4) For the purposes of subsections (2) and (3) of this section a person who is described as director of a company, whether such description is qualified by the word "local", "special", "executive", or in any other way, shall be deemed to be held out as a director of that company.

#### Section 180-Number of Directors

(1) Every company incorporated after the commencement of this Code shall have at least two directors.

(2) Every company incorporated prior to the commencement of this Code shall, after the expiration of six months from the commencement of this Code, have at least two directors.

(3) If at any time the number of directors is less than two in breach of either of the foregoing subsections of this section and the company continues to carry on business for more than four weeks thereafter, the company and every director and member of the company who is in default shall be liable to a fine not exceeding five pounds for every day during which it so carries on business after the expiration of such four weeks without having at least two directors; and every director and member of the

company who is cognisant of the fact that it is carrying on business with fewer than two directors shall be jointly and severally liable for all the debts and liabilities of the company incurred during that time.

(4) Subject as aforesaid the number of directors shall be fixed by, or in accordance with, the company's Regulations.

#### Section 181-Appointment of Directors

(1) No person shall be appointed a director of a company unless he shall prior to such appointment, have consented in writing to be appointed.

(2) The first directors of a company shall be named in the company's Regulations.

(3) Subject to the following subsections of this section and to sections 182 and 183 of this Code, the appointment of directors shall be regulated by the company's Regulations and except as otherwise provided in the Regulations, section 272 of this Code shall regulate the appointment of directors of a private company and sections 298 and 299 of this Code the appointment of directors of a public company.

(4) The Regulations of a company may provide for the appointment of a director or directors by any class of shareholders, debentureholders, creditors, employees or any other person.

(5) Notwithstanding any provision in the company's Regulations, any casual vacancy in the number of directors may be filled by,

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

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

Provided that,

(a) in exercising their power to fill such vacancy the directors shall observe the rules laid down in sections 203 and 204 of this Code and shall not appoint any person to be a director unless they have taken reasonable steps to satisfy themselves that he is a person of integrity and suitable to be a director of the company;

(b) if the casual vacancy so filled is one which, under the terms of the company's Regulations, should be filled by an appointment by any class of shareholders, debentureholders, creditors, employees, or other person, the director appointed by the continuing directors or by an ordinary resolution of the company in general meeting, as the case may be, shall cease to hold office so soon as any other director is duly appointed in accordance with the Regulations.

## Section 182-Competence of Directors

(1) The following persons shall not be competent to be appointed or to act as directors of a company, namely,

(a) an infant;

(b) any one found by a competent court to be a person of unsound mind;

(c) a body corporate;

(d) any one in respect of whom an order shall have been made under section 186 of this Code so long as such order remains in force unless leave to act as director has been given by the Court in accordance with that section;

(e) an undischarged bankrupt, unless he shall have been granted leave to act as director by the Court by which he was adjudged bankrupt.

(2) If any of the persons specified in subsection (1) of this section, other than a body corporate, or person of unsound mind, shall act as a director of any company or knowingly allow himself to be appointed a director, he shall be liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding five hundred pounds or to both such imprisonment and fine; and if any body corporate shall act as a director or allow itself to be appointed a director, the body corporate and every officer thereof who knowingly permitted it so to act or to be appointed shall be liable to a fine not exceeding five hundred pounds.

(3) If any company shall appoint any person as director in contravention of this section the company and every director of the company who is in default shall be liable to a fine not exceeding five hundred pounds.

(4) The company's Regulations may lawfully provide that classes of persons additional to those provided in subsection (1) of this section shall be incompetent to be directors of the company.

## Section 183-Directors' Share Qualification

(1) Unless the company's Regulations otherwise provide, a director need not be a member of the company or hold any shares therein.

(2) Where the Regulations require a director to hold a specified share qualification, every director shall obtain his qualification within two months after his appointment or such shorter period as may be fixed by the Regulations; and his office shall be vacated if he shall fail to do so, or if at any time after the expiration of that period he ceases to hold his qualification:

Provided that if the company amends its Regulations so as to introduce or increase the requirement of a share qualification every director holding office at the date of such alteration shall have two months thereafter to obtain his qualification and shall not vacate office under this section unless he fails to do so.

(3) A person vacating office under this section shall be incapable of being re-appointed a director of the company until he has obtained his qualification.

#### Section 184-Vacation of Officers of Directors

(1) The office of director shall be vacated if the director becomes incompetent to act as a director by virtue of the provisions of section 182 of this Code, or if he ceases to hold office by virtue of section 183 of this Code, or if he resigns his office by notice in writing to the company.

(2) The company's Regulations may lawfully provide for the termination or vacation of office in circumstances additional to those specified in the foregoing subsection.

#### Section 185-Removal of Directors

(1) Subject to the provisions of section 300 of this Code and to the following subsections, a company may by ordinary resolution at any general meeting remove from office all or any of the directors notwithstanding anything in its Regulations or in any agreement with any director.

(2) A resolution to remove any director shall not be moved at any general meeting unless notice of the intention to move it has been given to the company not less than thirty-five days before the meeting at which it is to be moved:

Provided that if after notice of the intention to move the resolution is given to the company, a meeting is called for a date thirty-five days or less after the notice has been given, the notice shall be deemed to have been properly given for the purposes of this subsection.

(3) The company shall give its members notice of 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 in the same manner as notices of meetings are required to be given not less than twenty-one days before the meeting.

(4) On receipt of notice of an intended resolution to remove a director under this section the company shall forthwith send a copy thereof to the director concerned and such director, whether or not he is a member of the company, shall be entitled,

(a) to be heard on the resolution at the meeting; and



(b) to send to the company a written statement, copies of which the company shall send with every notice of the general meeting or, if the statement is received too late, shall forthwith circulate to every person entitled under section 154 of this Code to notice of the meeting in the same manner as notices of meetings are required to be given:

Provided that the company need not send or circulate such statement,

(a) if it is received by the company less than seven days before the meeting, or

(b) if the Court, on application by the company or any other person who claims to be aggrieved, so orders upon being satisfied that the statement is unreasonably long or that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the Court may order the costs of the applicant to be paid in whole or in part by the director notwithstanding that he is not a party to the application.

(5) Without prejudice to the director's right to be heard orally on such resolution, he may, unless the Court shall have made an order under the immediately preceding subsection, also require that the written statement by him be read to the meeting.

(6) A vacancy created by the removal of any director under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy in accordance with section 181 of this Code.

(7) Nothing in this section shall be taken as depriving any director who has a service agreement with the company of any right to compensation to which he may lawfully be entitled under such agreement on the termination of his directorship or of any right to damages if his removal from his directorship constitutes a breach of such service agreement.

#### Section 186-Restraining Fraudulent Persons from Managing Companies

(1) Where,

(a) a person is convicted on indictment, whether in Ghana or elsewhere, of any offence involving fraud or dishonesty or any offence in connection with the promotion, formation or management of a body corporate, or

(b) a person is adjudicated bankrupt whether in Ghana or elsewhere, or

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

the Court, on its own motion or on the application of any of the persons referred to in subsection (3) of this section, may order that that person shall not, without the leave of the Court, be a director of or in any way, whether directly or indirectly, be concerned or take part in the management of any company or act as auditor, receiver or liquidator of any company for such period as may be specified in the order.

(2) An order under paragraph (a) of subsection (1) of this section may be made by any court in Ghana before which the person is convicted as well as by the High Court.

(3) An application for an order under this section may be made by the Registrar or by the Official Trustee, or by the trustee in bankruptcy of the person concerned or by the liquidator of any body corporate.

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

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

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

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

(8) The Registrar shall maintain a register of orders made under this section and shall enter therein particulars of each order and of any leave granted and such register shall be open to the inspection of any person on payment of one shilling for each inspection.

(9) If any person acts in contravention of an order made under this section he shall, in respect of each offence, be liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding five hundred pounds, or to both such imprisonment and fine.

## Section 187-Substitute Directors

(1) Unless the company's Regulations otherwise provide, a company may appoint substitute directors in accordance with the provisions of this section.

(2) A substitute director is one who is appointed to act as a deputy for another named director and as his substitute in his absence.

(3) A substitute director shall not be counted as a director for the purposes of any provision in this Code or the company's Regulations prescribing a minimum or maximum number of directors, other than a provision relating to a quorum, and shall not be entitled to vote at any meeting of directors or any committee of directors at which the director for whom he is substitute is present.

(4) Except as provided by subsection (3) of this section, a substitute director shall be deemed to be a full director of the company for all purposes and shall be appointed and may be removed in the same way as directors are required to be appointed and removed, and shall not cease to be a director by reason of the fact that the director for whom he is a substitute ceases to be a director.

## Section 188-Alternate Directors

(1) Unless prohibited by the Regulations a director may, in respect of any period not exceeding six months in which he is absent from Ghana or unable for any reason to act as a director, appoint another director or any other person approved by a resolution of the board of directors, as an alternate director.

(2) The appointment shall be in writing signed by the appointor and appointee and lodged with the company.

(3) Every alternate director so appointed shall, for the period of such appointment, be deemed for all purposes to be a director and officer of the company and not the agent of his appointor; but he shall not be required to hold any share qualification notwithstanding that, under the Regulations, directors may be so required, nor shall he be entitled to appoint an alternate director, nor shall he be counted as a director for the purposes of any provision of this Code or the Regulations relating to the minimum or maximum number of directors, other than a provision relating to a quorum.

(4) The company shall not be liable to pay additional remuneration by reason of the appointment of an alternate director.

(5) The Regulations of the company may provide that the alternate director shall be entitled to receive from the company during the period of his appointment the remuneration to which his appointor, but for such appointment, would have been entitled and that his appointor shall not be entitled to remuneration for that period, but,

in absence of such provision in the Regulations, the alternate director shall not be entitled to be remunerated otherwise than by the director appointing him.

(6) An alternate director who is himself a director shall have an additional vote for each director for whom he acts as alternate at every meeting of the directors.

(7) The appointment of an alternate director shall cease at the expiration of the period for which he was appointed, or if his appointor gives written notice to that effect to the company, or if his appointor ceases for any reason to be a director or if the alternate director resigns by notice in writing to the company.

(8) Until the cessation of the appointment of an alternate director both the appointor and appointee shall be and may act as directors of the company, but no alternate, unless a director in his own right, shall attend or vote at any meeting of the directors or any committee of directors at which his appointor is present.

#### Section 189-Presence of Directors in Ghana

(1) At least one director of every company shall at all times be present in Ghana.

(2) In the event of any wilful breach of this section the company and every director of the company who is in default shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(3) The rights of the company concerned under or arising out of any contract made during such time as there shall be no director of the company present in Ghana shall not be enforceable by action or other legal proceedings:

Provided that,

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

(b) nothing herein contained shall prejudice the rights of any other parties as against the company, or any other person in respect of such contract;

(c) if any action or proceeding shall be commenced by any other party against the company to enforce the rights of such party in respect of such contract, nothing herein contained shall preclude the company from enforcing in that action or proceeding by way of counterclaim, set off or otherwise, such rights as it may have against that party in respect of that contract.

#### Section 190-Secretary

(1) Every company shall have a secretary and if any company shall carry on business for more than six months without a secretary the company and every officer of the company who is in default shall be liable to a fine not exceeding five pounds for each day that the company continues to carry on business without a secretary after the expiration of such six months.

(2) Anything required or authorised to be done by or to the secretary may, if the office is vacant or there is for any other reason no secretary capable of acting, be done by or to any assistant or deputy secretary or any officer of the company appointed by the directors to be acting secretary.

(3) Unless the Regulations shall otherwise provide, the secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit, and may be removed by them, subject however to his right to claim damages from the company if removed in breach of contract.

(4) The secretary may be a body corporate.

#### Section 191-Avoidance of Acts in Dual Capacity as Directors and Secretary

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

#### Section 192-Executive Directors

Unless the company's Regulations shall otherwise provide,

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

(b) the directors may from time to time appoint one or more of their body to such other office for such period and on such terms as they may determine and, subject to the terms of any agreement entered into in any particular case, may revoke such appointment;

(c) subject to compliance with section 194 of this Code and subject to the provisions of section 195 of this Code, such office may be remunerated by way of salary, commission, share of profits, participation in pension and retirement schemes, or partly in one way and partly in another, as the directors may determine;

(d) in exercising their powers hereunder the directors shall observe the rules laid down in sections 203 and 204 of this Code and, in particular, in determining the amount of remuneration shall satisfy themselves that the amount of the remuneration is reasonably related to the value of the services of the holder of the office.

## Section 193-Managing Directors

Unless the Company's Regulations shall otherwise provide,

(a) the directors may from time to time appoint one or more of their body to the office of managing director and to any such appointment the provisions of section 192 of this Code shall apply;

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

(c) the directors may entrust to and confer upon a managing director any of the powers exercisable by them upon such terms and with such restrictions as they think fit, and either collaterally with, or to the exclusion of their own powers and, subject to the terms of any agreement entered into in any particular case, may from time to time revoke or vary all or any of such powers.

## Section 194-Remuneration of Directors

(1) Subject as hereinafter provided in this section, the fees and other remuneration payable to the directors in whatsoever capacity, shall be determined from time to time by ordinary resolution of the company, and not by any provision in the Regulations or in any agreement, which provision shall be null and void.

(2) The fees payable to the directors as such shall be determined from time to time by ordinary resolution of the company and not in any other way:

Provided that where the Regulations of an existing company contain any provision fixing the fees payable to the directors such provision shall continue in operation and have effect until the date of the first annual general meeting of the company held next after the commencement of this Code.

(3) Unless otherwise resolved, the fees payable to directors shall be deemed to accrue from day-to-day and the directors shall also be entitled to be paid all travelling and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meeting of the company or otherwise in connection with the business of the company.

(4) Where any director holds any other office or place of profit under the company in accordance with section 192 or 193 of this Code, the terms of his appointment may provide for his remuneration in respect thereof but he shall not be entitled to any remuneration additional to the fees to which he is entitled as director unless and until the terms of his appointment to such office have been approved by ordinary resolution

of the company:

Provided that where any director holds any such office or place of profit under an appointment made prior to the sixth day of April, 1961 and the terms of his appointment contain provisions relating to his remuneration, such provisions, although not approved by ordinary resolution of the company, shall continue in operation and have effect,

(a) if the appointment is for a fixed term, not determinable by the company or on the director ceasing to be a director, until the expiration of that fixed period or the earlier determination of the appointment;

(b) in any other case, until the date of the first annual general meeting of the company held next after the commencement of this Code, or the earlier determination of the appointment.

#### Section 195-Prohibition of Tax-free Payments

(1) It shall not be lawful for a company to pay a director or secretary of the company remuneration free of income tax or otherwise calculated by reference to or varying with the amount of his income tax except under a contract which was in force prior to the sixth day of April, 1961 and provides expressly, and not by reference to the company's Regulations, for payment of remuneration as aforesaid.

(2) Any provision contained in a company's Regulations, or in any resolution of a company or of a company's directors, or in any contract, other than such a contract as is excepted from the provisions of subsection (1) of this section, for payment of remuneration as aforesaid 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 the commencement of this Code or in respect of a period before the commencement of this Code.

#### Section 196-Register of Directors and Secretary

(1) Every company shall keep at its registered office a register of its directors including substitute directors appointed in accordance with section 187 of this Code but excluding alternate directors appointed in accordance with section 188 of this Code, and secretaries.

(2) The register shall contain the following particulars with respect to each director, namely,

(a) his present forenames and surname;

- (b) any former forename or surname;
- (c) his usual residential address;
- (d) his business occupation, if any; and
- (e) particulars of any other directorships, other than alternate directorships held by him.

(3) The register shall contain the following particulars with respect to the secretary or, where there are joint secretaries, with respect to each of them, namely,

(a) in the case of an individual, the particulars required by paragraphs (a) to (d) of the immediately preceding subsection;

(b) in the case of a body corporate, its corporate name and registered or principal office:

Provided that when all the partners in a firm are joint secretaries the name and principal office of the firm may be stated instead of the residential address of each partner.

(4) The register shall during business hours, subject to such reasonable restrictions as the company may by its Regulations impose so that not less than two hours in each day, other than Saturdays, Sundays and public holidays, be allowed for inspection, be open to the inspection of any member of the company without charge and any other person on payment of one shilling, or such less sum as the company may prescribe, for each inspection.

(5) If any inspection required under this section is refused or if default is made in complying with subsection (1), (2) or (3) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one hundred pounds, and in the case of any such refusal the Court may by order compel an immediate inspection of the register.

(6) For the purposes of this section and sections 197 and 198 of this Code,

(a) in the case of a person usually known by a title different from his surname, the expression "surname" means that title;

(b) references to a former name do not include,

(i) in the case of a person usually known by a title, the name by which he was known prior to his succession to that title;



(ii) a name changed or disused before the person bearing the name attained the age of eighteen years or changed or disused for a period of not less than twenty years;

(iii) in the case of a married woman, the name by which she was known prior to the marriage.

#### Section 197-Registration of Particulars of Directors and Secretaries

(1) Every existing company shall, within twenty-eight days after the commencement of this Code, send to the Registrar for registration a return in the prescribed form containing the particulars specified in the register referred to in section 196 of this Code.

(2) Every company incorporated after the commencement of this Code shall include the particulars specified in the said register in the statement required to be sent to the Registrar in accordance with section 27 of this Code.

(3) Every company shall, within twenty-eight days of any change occurring among its directors or in its secretary or in any of the particulars contained in the register, other than those required under paragraph (e) of subsection (2) of section 196 of this Code, send to the Registrar for registration notification in the prescribed form of the change, specifying the date of the change.

(4) If default is made in complying with subsection (1) or (3) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(5) A director or secretary who resigns his office shall be deemed to be in default unless notification of his resignation is duly given to the Registrar in accordance with subsection (3) of this section.

#### Section 198-Publication of Names and Directors

(1) Every company shall in all trade circulars and business letters on or in which the company's name appears state in legible characters with respect to every director, including substitute directors appointed in accordance with section 187 of this Code but excluding alternate directors appointed in accordance with section 188 of this Code,

(a) his present forenames and surname,

(b) any former forenames or surname:

Provided that, if special circumstances exist which render it in the opinion of the

Registrar expedient that such an exemption should be granted, the Registrar may by legislative instrument grant, subject to such conditions as may be specified in the instrument, exemption from the obligations imposed by this section in respect of any company.

(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 to a fine not exceeding five pounds for each offence.

#### Section 199-Prohibition of Assignment of Officers

A provision in the Regulations of any company or in any agreement purporting to empower a director or other officer to assign his office to another person and any purported assignment of the office shall be void.

#### Section 200-Proceedings of Directors

Subject to any contrary provisions in the Regulations,

(a) the directors may meet together in Ghana or elsewhere for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, and may delegate any of their powers to committees consisting of such member or members of their body as they think fit; but any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on them by the directors;

(b) any director may, and the secretary on the requisition of a director shall, at any time summon a meeting of directors, and any director being a member of a committee may, and the secretary on the requisition of any such director shall, at any time summon a meeting of the committee;

(c) it shall not be necessary to give notice of a meeting of directors or of a committee of directors to any director for the time being absent from Ghana;

(d) the quorum necessary for the transaction of business of the directors and of every committee of directors may be fixed by the directors and unless so fixed shall be two, or, in the case of a one-man committee one;

(e) except as provided in paragraph (f) of this section no business shall be transacted in the absence of a quorum notwithstanding that a quorum was present at the commencement of the meeting;

(f) the continuing directors may act notwithstanding any vacancy in their body but, if and so long as their number is reduced below the number fixed as the necessary quorum, the continuing directors or director may act for four weeks after the number is so reduced, but thereafter may act only for the purpose of increasing their number

to that number or of summoning a general meeting of the company and for no other purpose;

(g) the directors and any committee of 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, those present may choose one of their number to be chairman of the meeting;

(h) questions arising at any meeting of the directors or any committee of directors shall be decided by a majority of votes and in the case of an equality of votes the chairman shall have a second or casting vote;

(i) attendance and voting by proxy shall not be permitted at meetings of directors or committees of directors;

(j) a resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, or of a committee of directors, shall be as valid and effectual as if it had been passed at a meeting of the directors or a committee of directors duly convened and held.

#### Section 201-Minutes of Directors' Meetings

(1) Every company shall cause minutes of all proceedings of meetings of its directors and any committee of directors to be entered in a book or books kept for the purpose.

(2) Any such minutes, if purporting to be signed by the chairman of the meeting at which the proceedings took place or 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 then, until the contrary is proved, the meeting shall be deemed to be duly convened, held and conducted and all appointments of directors shall be deemed to be valid.

(4) 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 liable to a fine not exceeding one hundred pounds.

#### Section 202-Limitations on the Powers of the Directors

(1) Notwithstanding subsection (3) of section 137 of this Code or any provision in the company's Regulations, the directors of a company with shares shall not, without the approval of an ordinary resolution of the company,

(a) sell, lease or otherwise dispose of the whole, or substantially the whole, of the

undertaking or of the assets of the company;

(b) issue any new or unissued shares, other than treasury shares, in the company unless the same shall first have been offered on the same terms and conditions to all the existing shareholders or to all the holders of the shares of the class or classes being issued in proportion as nearly as may be to their existing holdings;

(c) make voluntary contributions to any charitable or other funds, other than pension funds for the benefit of employees of the company or any associated company, of any amounts the aggregate of which will, in any financial year of the company, exceed one thousand pounds or two per centum of the income surplus of the company at the end of the immediately preceding financial year, whichever is the greater:

Provided that,

(a) no resolution of the company shall be effective as approving of such transaction as is referred to in paragraph (a) of this subsection unless it authorises in terms the specific transaction proposed by the directors;

(b) no resolution of the company shall be effective as approving of such a transaction as is referred to in paragraph (b) of this subsection if passed more than one year before the issue of the said shares unless such issue is in accordance with a scheme for the time being in force relating to the issue of shares to or for the benefit of persons bona fide in the employment of the company or any of its associated companies.

(1a) Paragraph (b) of the proviso to subsection (1) of this section shall not apply to a public company some or all of whose equity shares are dealt in on an approved stock exchange; [As inserted by the Companies Code (Amendment) Act, 1994 (Act 474) s. 2(a)].

(2) Notwithstanding any provisions of this Code or in the company's Regulations or in any resolution of the company in general meeting, no new or unissued shares or treasury shares shall be issued to any director or past director of the company or of any associated company or to his nominee or to any body corporate controlled by him unless the shares shall first have been offered on the same terms and conditions to all the existing shareholders or to all the holders of the shares of the class or classes being issued in proportion to their existing holdings or, in the case of a public company, to members of the public.

(2a) Subsection (2) of this section may be disapplied with the approval of an ordinary resolution of a public company some or all of whose equity shares are dealt in on an approved stock exchange or in respect of which application has been made to an approved stock exchange for permission to deal in such shares. [As inserted by the Companies Code (Amendment) Act, 1994 (Act 474) s. 2(b)].

(3) For the purposes of the immediately preceding subsection a body corporate shall be deemed to be controlled by a director if such body corporate or its directors are accustomed to act in accordance with the directions or instructions of such director or his nominee or if at a general meeting of such body corporate such director or his nominee is entitled to exercise or control the exercise of one-third or more of the voting power.

(4) Nothing in the foregoing subsections of this section shall prohibit,

(a) the issue of any shares under a bona fide underwriting agreement; or

(b) the issue to a director at a fair price payable in cash of such shares, if any, as, under the Regulations of the company, he is required to hold by way of share qualification.

(5) Unless the company's Regulations shall otherwise provide the directors of a company with shares shall not, without the approval of an ordinary resolution of the company, exercise the company's power to borrow money or to charge any of its assets where the moneys to be borrowed or secured, together with the amount remaining undischarged of moneys already borrowed or secured, apart from temporary loans obtained from the company's bankers in the ordinary course of business, will exceed the stated capital for the time being of the company.

(6) No person dealing with the company in good faith or registering any disposition of, or title to, property shall be concerned to see whether the conditions of this section have been fulfilled and the provisions of sections 139 to 143 of this Code shall apply to any transactions of the type referred to in this section notwithstanding that such conditions have not been fulfilled.

#### Section 203-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 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.

(3) In considering whether a particular transaction or course of action is in the best interests of the company as a whole a director may have regard to the interests of the employees, as well as the members, of the company, and, when appointed by, or as representative of, a special class of members, employees, or creditors may give

special, but not exclusive, consideration to the interests of that class.

(4) No provision, whether contained in the Regulations of a company, or in any contract, or in any resolution of a company 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 thereof.

#### Section 204-Exercise of Directors' Powers

The directors shall not, without the approval of an ordinary resolution of the company, exceed the powers conferred upon them by this Code and the company's Regulations or exercise such powers for a purpose different from that for which such powers were conferred notwithstanding that they may believe such exercise to be in the best interests of the company.

#### Section 205-Conflicts of Duty and Interest

Notwithstanding any provision in the company's Regulations, a director shall not, without the consent of the company in accordance with section 206 of this Code, place himself in a position in which his duty to the company conflicts or may conflict with his personal interests or his duties to other persons, and in particular, without such consent a director shall not,

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

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

(c) be personally interested, directly or indirectly, in any contract or other transaction entered into by the company except as provided by section 207 of this Code.

#### Section 206-Consent of Company

(1) For the purposes of section 205 of this Code the company shall not be deemed to have consented unless, after full disclosure of all material facts, including the nature and extent of any interests of the directors, the transaction concerned shall have been specifically authorised by an ordinary resolution of the company which shall either have been agreed to by all the members of the company entitled to attend and vote at a general meeting or have been passed at a general meeting at which neither the director concerned nor the holders of any shares in which he is beneficially interested, either directly or indirectly, shall have voted as members on such resolution.

(2) Consent in accordance with subsection (1) of this section may be given either before or after the occurrence of the transaction to which it relates:

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

#### Section 207-Contracts in which Directors are Interested

(1) Unless otherwise provided in the company's Regulations, a director, notwithstanding section 205 of this Code, shall be entitled to enter into a contract with the company and, subject to compliance with section 203 of this Code and with subsections (2) to (7) of this section, such contract or any other contract by the company in which any director is in any way interested shall not be liable to be avoided nor shall any director be liable to account for any profit made thereby by reason of such director holding that office or of the fiduciary relationship thereby established.

(2) Every director who is in any way, whether directly or indirectly, materially interested in any contract or proposed contract entered into or to be entered into by or on behalf of the company shall declare the nature and extent of his interest at a meeting of the directors of the company.

(3) 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 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 the director becomes so interested.

(4) For the purposes of this section, a general notice in writing given to the directors of the 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 or proposed contract so made or to be made:

Provided that,

(a) there is stated in the said notice the nature and extent of the interest of the director in such company or firm;

(b) at the time the question of confirming or entering into any contract is first taken

into consideration the extent of his interest in such company or firm is not greater than is stated in the notice;

(c) no such general notice shall be of any effect unless either it is given at a meeting of the directors, or the director giving the notice takes all reasonable steps to secure that it is brought up and read at the next meeting of directors after it is given;

(d) such a general notice shall not be effective for more than twelve months but may from time to time be renewed.

(5) A director of the company shall not enter into any contract on its behalf in which he or, to his knowledge, any director of the company or any associated company is in any way materially interested, whether directly or indirectly, until a resolution has been passed by the directors approving thereof.

(6) In the case of any proposed contract in which such officer is himself interested he shall, prior to the passing of the approving resolution, declare the nature and extent of his interest therein at a meeting of directors or by written notice given to the directors.

(7) A director shall not vote in respect of any contract or arrangement in which he is materially interested and if he shall do so his vote shall not be counted, nor shall he be counted in the quorum required for that business, but neither of these prohibitions shall apply to,

(a) any arrangement for giving any director any security and indemnity in respect of money lent by him to or obligations undertaken by him for the benefit of the company; or

(b) any arrangement for the giving by the company of any security to a third party in respect of a debt or obligation of the company for which the director himself has assumed responsibility in whole or in part under a guarantee or indemnity or by the deposit of a security; or

(c) any contract by a director to subscribe for or underwrite shares or debentures of the company.

(8) A copy of every declaration made and notice given in pursuance of this section shall, within three days after the making or giving thereof, be entered in a book kept for this purpose.

(9) Such book shall be open for inspection without charge by any director, secretary, auditor or member of the company at the registered office of the company and shall be produced at every general meeting of the company, and at any meeting of the directors if any director so requests in sufficient time to enable the book to be



available at the meeting.

(10) Any director who fails to comply with any of the provisions of this section and any officer who fails to comply with subsections (5) and (6) of this section shall be liable to a fine not exceeding one hundred pounds.

(11) If a company fails to comply with subsections (8) and (9) of this section the company and every officer of the company who is in default shall be liable to a fine not exceeding one hundred pounds and if any inspection or production required thereunder is refused the Court may by order compel an immediate inspection or production.

(12) For the purpose of this section an interest merely as holder of debentures, or of not more than two per centum of the shares or any class of shares, of a public company shall not be deemed to be a material interest.

#### Section 208-Directors Acting Professionally

Unless otherwise provided in the company's Regulations, any director may, notwithstanding section 205 of this Code, act by himself or his firm in a professional capacity for the company, except as auditor, and he or his firm shall be entitled to proper remuneration for professional services as if he were not a director.

#### Section 209-Civil Liabilities for Breach of Duty

If a director commits any breach of his duties under sections 203 to 205 of this Code,

(a) the director and any other person who knowingly participated in the breach shall be liable to compensate the company for any loss it suffers as a result of such breach;

(b) the director shall account to the company for any profit made by him as a result of such breach; and

(c) any contract or other transaction entered into between the director and the company in breach of such duties may be rescinded by the company.

#### Section 210-Legal Proceedings to Enforce Liabilities

(1) Proceedings to enforce the liabilities referred to in the immediately preceding section or to restrain a threatened breach of any duty under sections 203 to 205 of this Code or to recover from any director of the company any property of the company may be instituted by the company or by any member of the company.

(2) Proceedings may be instituted by the company on the authority of the board of directors or of any receiver and manager or liquidator of the company, or of an

ordinary resolution of the company which shall either have been agreed to by all the members of the company entitled to attend and vote at a general meeting or have been passed at a general meeting.

(3) At such general meeting neither the proposed defendants nor the holders of any shares in which they or any of them are beneficially interested shall vote on such resolution and if they do vote their votes shall not be counted.

(4) After an investigation of the affairs of the company, proceedings may, pursuant to section 225 of this Code, also be instituted in the name of the company by the Registrar.

(5) Where proceedings are instituted by a member he shall sue in a representative capacity on behalf of himself and all other members, except any that are defendants to the action, and shall join the company as a defendant; and to any such representative action the provisions of section 324 of this Code shall apply.

(6) The Court, on the application of any defendant, may stay proceedings by such member if satisfied that, in all the circumstances, including his participation in the transaction complained of and the circumstances in which he became a member, it is inequitable that he should be allowed to have the conduct of the action, and may, if it shall think fit order such member to give security for payment of the costs of the defendants and may direct that the action or any part of it shall be heard in chambers.

(7) No period of limitation shall apply to any proceedings under this section, but in any such proceedings the Court may relieve a director from liability in whole or in part and on such terms as it thinks fit if, in all the circumstances including lapse of time, the Court thinks it equitable so to do.

(8) In any proceedings under this section the Court shall have power when justice so requires, to order that any sum found to be payable by any defendant shall be restored, in whole or in part, to members or former members of the company instead of to the company itself; and in that event the Court may order that the necessary enquiries shall be made to ascertain the identity of the members and former members concerned and may give such consequential directions as may be necessary or expedient.

(9) No proceedings under this section shall be dismissed, settled or compromised without the approval of the Court after notice of the proposed dismissal, settlement or compromise has been given to all members of the company and to the Registrar in such manner as the Court directs.

(10) Within the time prescribed by such notice any member of the company and the Registrar may appear and call the attention of the Court to any matters which seem relevant and may give evidence and call witnesses.

(11) If the Court shall not approve the dismissal or compromise it may give the conduct of the action to any member willing to continue the same, or to the Registrar in the name of the company, making such consequential orders regarding the parties to the action or otherwise as may be necessary or expedient.

#### Section 211-Payments to Directors for Loss of Office or on Transfer of the Company's Undertaking

(1) It shall not be lawful for a company to make to any director or former director of the company or any associated company any payment by way of compensation for loss of any office in the company or any associated company, or as consideration for or in connection with his retirement from office, without particulars with respect to the proposed payment, including the amount thereof, being disclosed to the members of the company and the proposal being approved by an ordinary resolution of the company agreed to or passed in the manner provided by section 206 of this Code.

(2) It shall not be lawful for any payment to be made, whether by the company or otherwise, to any director or former director of a company in connection with the transfer of the whole or any part of the undertaking or property of the company or any associated company, whether such payment is expressed to be by way of compensation for loss of office or otherwise, unless particulars with respect to the proposed payment, including the amount thereof have been disclosed to the members of the company and the proposal approved by an ordinary resolution of the company agreed to or passed in the manner provided by section 206 of this Code.

(3) If any payment shall be made in contravention of this section the amount thereof shall be deemed to be money of the company used by a director for his own advantage within the meaning of section 205 of this Code.

#### Section 212-Payments to Directors in Connection with Takeover Bids

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

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

(b) by the holders of shares which, together with any shares already owned beneficially by the person making the offer or by any body corporate in which he is the controlling shareholder, confer the right to exercise or control the exercise of not less than one-third of the voting power at any general meeting of the company, and in connection with such an offer it is proposed that a payment shall be made or a payment has been made to any director or former director of the company or any associated company, over and above the receipt by him in respect of any shares in the

company held by him of the same price as may be receivable by other holders of the shares of the same class, it shall be the duty of that director to take all reasonable steps to secure that particulars of the payment are included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(2) If,

(a) any such director fails to take reasonable steps as aforesaid, 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 fails to do so, he shall be liable to a fine not exceeding fifty pounds.

(3) Unless,

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

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

(i) agreed to by all the holders of the shares to which the offer relates, or

(ii) passed at a meeting, summoned for the purpose by notice complying with subsection (5) of this section, of such holders at which neither the director concerned nor the holders of any shares in which he is beneficially interested, either directly or indirectly, shall have voted on such resolution, such payment shall be distributed in the manner provided by the next succeeding subsection.

(4) Where a payment is to be distributed in accordance with the provisions of the immediately foregoing subsection, the person making or proposing to make such payment and the director or former director to whom it is made or proposed to be made shall be jointly and severally liable to distribute the same among any persons who have sold their shares as a result of the offer in proportion to the number of shares sold by them, and if any director or former director shall receive any such payment he shall hold the same on trust for such persons:

Provided that,

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

(b) if, in proceedings instituted prior to the expiration of three months from the first transfer of any shares in pursuance of the offer, the Court shall award or approve the payment of damages to such director or former director for breach of any valid service

agreement, the amount of any such damages, but not of any costs or expenses incurred in connection with such proceedings, shall be paid to or retained by the director or former director out of such payment and only the balance thereof, if any, shall be distributable as aforesaid.

(5) The notice of any general meeting summoned for the purposes of subsection (3) of this section shall be convened, held and conducted as nearly as may be in accordance with the provisions of this Code and the company's Regulations relating to general meetings of the company, and the notices convening the meeting shall state that if the resolution approving the payment is not passed the payment will be distributable among the persons who have sold their shares in pursuance of the offer except to the extent that the Court may award or approve the payment to the director or former director concerned of damages for breach of a valid service agreement.

(6) It shall not be lawful for such an offer as is referred to in subsection (1) of this section to be made conditional upon approval of a payment or proposed payment to any director or former director and, if an offer is expressed to be made subject to such a condition, the condition shall be void and of no effect.

(7) For the purposes of paragraph (b) of subsection (1) of this section,

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

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

#### Section 213-Provisions Supplements to Section 211 and 212

(1) For the purposes of sections 211 and 212 of this Code and of this section the expression "payment" includes any benefit or advantage whether in cash or in kind.

(2) sections 211 and 212 of this Code shall not render unlawful or apply to the payment of damages awarded or approved by any competent court for breach of any valid service agreement or the bona fide payment of any pension or superannuation benefit in respect of past services in accordance with a valid service agreement.

(3) For the purposes of subsection (4) of section 212 of this Code and the immediately preceding subsection, a service agreement shall not be deemed to be valid if it shall have been entered into in contemplation of such a transfer as is referred to in subsection (2) of section 211 of this Code or of such an offer as is referred to in

subsection (1) of section 212 of this Code, and unless the contrary is proved the service agreement shall be deemed to have been entered into in contemplation of such transfer or offer if it is made within one year before or contemporaneously with, or at any time after the date of the agreement to transfer or the making of the offer.

(4) For the purposes of sections 211 and 212 of this Code if,

(a) any payment, not being remuneration properly payable in accordance with section 194 of this Code, is received by a director or former director within a period of one year before, or two years after the date of the agreement to make such transfer as is referred to in subsection (2) of section 211 of this Code or of the date of making such an offer as is referred to in subsection (1) of section 212 of this Code, and

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

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

#### Section 214-Duties of Directors in Connection with Sales or Purchases of the Company's Securities

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

(2) For the purposes of this section any shares or debentures bought or sold shall be deemed to have been bought or sold by a director if his interest therein is such as to require recording in relation to him in the register to be maintained in accordance with section 215 of this Code, unless it is proved that the sale or purchase was not made by him or on his instructions or advice or on the instructions or advice of any other person to whom he had imparted any special information affecting the value of the shares or debentures obtained by him in his capacity of director.

(3) This section shall not prejudice the right of the company to proceed against any director for breach of section 205 of this Code.

#### Section 215-Register of Directors' Holdings

(1) Every company shall keep a register showing, as respects each director of the company, the number and description and, in the case of debentures, the amount, of

any shares in or debentures of the company or any associated company of which he is the holder or in which he has, directly or indirectly, any beneficial interest or right to acquire, or of which he has an option to buy or sell:

Provided that the register need not include shares in any body corporate which is the wholly owned subsidiary of another body corporate.

(2) The nature and extent of a director's interest in any shares or debentures recorded in relation to him in the said register shall, if he so requires, be indicated in the register.

(3) Where any shares or debentures fail 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 Code and while he is a director, the register shall also show the date of, and price or other consideration for the transaction; and where there is an interval between the agreement for any such transaction and the completion thereof, the date shown shall be that of the agreement.

(4) The register shall be kept at the same place as the register of members maintained in accordance with section 32 of this Code, and shall be open to inspection during business hours, subject to such reasonable restrictions as the company's Regulations may impose but so that not less than two hours in each day, other than Saturdays, Sundays and public holidays, be allowed for inspection, by any member or debentureholder or any former member or debentureholder or by the auditor of the company or by the Registrar.

(5) The register shall also be produced at the commencement of any general meeting of the company and remain open and accessible during the continuance of the meeting to any person attending the meeting.

(6) It shall be the duty of any director of the company to give notice to the company of such matters relating to himself as may be necessary for the purposes of complying with subsections (1) and (3) of this section.

(7) Any such notice shall be in writing and shall be given within twenty-eight days after the commencement of this Code and within twenty-eight days after the occurrence of any transaction occurring thereafter which requires recording.

(8) If the notice is not given at a meeting of directors, the director giving it shall take reasonable steps to secure that it is brought up and read at the next meeting of directors after it is given.

(9) If default is made in complying with subsections (6), (7) and (8) of this section, the director concerned shall be liable to a fine not exceeding one hundred pounds for

each default.

(10) If default is made in complying with subsection (1), (3), (4) or (5) of this section the company and every officer of the company who is in default shall be liable to a fine not exceeding one hundred pounds and if any inspection required under subsections (4) and (5) is refused the Court may by order compel an immediate inspection of the register.

(11) The company shall not, by virtue of anything done for the purposes of this section, be affected with notice of, or put upon enquiry as to, the right of any person in relation to any shares and debentures.

(12) For the purposes of this section a director shall be deemed to be beneficially interested in shares or debentures if a body corporate holds them or has any right in or over them and that body corporate or its directors are accustomed to act in accordance with his directions or instructions, or 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.

#### Section 216-General savings of Existing Law Relating to Officers

The rights, duties and liabilities of officers and agents of companies shall continue to be governed by the rules of the common law and equity relating to principal and agent and master and servant save in so far as such rules are inconsistent with the express provisions of this Code.

#### Section 217-Injunction or Declaration in the Event of Illegal or Irregular Activity

(1) The Court on the application of any member may by injunction restrain the company from doing any act or entering into any transaction which is illegal or beyond the power or capacity of the company or which infringes any provision of its Regulations, or from acting on any resolution not properly passed in accordance with this Code and the company's Regulations, and may declare any such act, transaction or resolution already done, entered into, or passed to be void and of no effect:

Provided that,

(a) nothing in this section contained shall derogate from the protection afforded by any provision of this Code to any person dealing with the company;

(b) in relation to acts beyond the capacity or power of the company, this section shall be subject and without prejudice to the provisions of section 25 of this Code;

(c) the right afforded to a member to apply to the Court under this section shall be without prejudice to any right he may have to institute proceedings against any



director of the company pursuant to section 210 or to apply to the Court under section 218 of this Code.

(2) In any proceedings by a member under this section the Court may, if it shall think fit, order that the member shall give security for the costs of the company and may direct that the application shall be heard in chambers.

#### Section 218-Remedy Against Oppression

(1) Any member or debentureholder of a company or, in a case falling within section 225 of this Code, the Registrar may apply to the Court for an order under this section on the ground

(a) that the affairs of the company are being conducted or the powers of the directors are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or debentureholders or in disregard of his or their proper interests as members, shareholders, officers, or debentureholders of the company; or

(b) that some act of the company has been done or is threatened or that some resolution of the members, debentureholders or any class of them has been passed or is proposed which unfairly discriminates against, or is otherwise unfairly prejudicial to, one or more of the members or debentureholders.

(2) If on such application the Court is of opinion that either of such grounds is established, the Court may, with a view to bringing to an end or remedying the matters complained of, make such order as it thinks fit: and, without prejudice to the generality of the foregoing may by order,

(a) direct or prohibit any act or cancel or vary any transaction or resolution; or

(b) regulate the conduct of the company's affairs in future; or

(c) provide for the purchase of the shares or debentures of any members or debentureholders of the company by other members or debentureholders of the company or by the company itself and in the case of purchase of shares by the company without regard to the limitations imposed by sections 59 to 63, other than subsections (4) and (5) of section 59 of this Code.

(3) Where an order under this section makes any alteration in or addition to any of the company's Regulations then, notwithstanding anything in any other provision of this Code but subject to any provisions of the order, the company shall not have power without the leave of the Court to make any further alteration in or addition to the Regulations inconsistent with the provisions or the order.

(4) An office copy of any order under this section altering or adding to the company's Regulations shall, within twenty-eight days after the making thereof, be delivered by the company to the Registrar for registration; and if a company makes default in complying with this subsection the company and every officer of the company who is in default shall be liable to a fine not exceeding one hundred pounds.

(5) On any application under this section by a member or debentureholder of the company the Court, if it thinks fit, may order the application to give security for the costs of the company and may direct that the application shall be heard in chambers.

#### Section 219-Enquiries by the Registrar

(1) In order to ensure that the provisions of sections 123 to 133 of this Code (relating to the maintenance and auditing of accounts) are being duly complied with the Registrar may by written order call on any company to produce for his inspection all or any of the books of the company.

(2) Where it appears to the Registrar that there are circumstances suggesting in relation to any company,

(a) that any provisions of this Code are not being complied with, or

(b) that any document which the company is required to send to him under the provisions of this Code does not disclose a full and fair statement of the matters to which it purports to relate, or

(c) that the business of the company is being conducted with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose or that the business of the company is being conducted or the powers of the directors are being exercised in a manner oppressive to some part of the members or debentureholders or in disregard of their proper interests as members, shareholders, officers or debentureholders, or

(d) that persons concerned with its formation or the management of its affairs have in connection therewith been guilty of a breach of duty towards it or its members, or

(e) that the members of the company have not been given all the information with respect to its affairs that they might reasonably expect,

the Registrar may by written order call on the company to produce for his inspection all or any of the books of the company or to furnish in writing such information or explanation as he may specify in his order.

(3) Where the Registrar makes an order under subsection (1) or (2) of this section the company shall comply with the same within such time as may be specified in the

order and all persons who are or have been officers of the company shall, so far as lies within their power, produce such books or furnish such information or explanation.

(4) If the company shall make default in complying with subsection (3) of this section the company and any officer of the company who is in default shall be liable to a fine not exceeding one hundred pounds and if any officer or former officer of the company shall make default in complying with the said subsection (3) he shall likewise be liable to a fine not exceeding one hundred pounds.

(5) Unless the books, information, or explanations produced or given to the Registrar in accordance with the provisions of this section satisfy the Registrar that further action is not needed, he shall either proceed in accordance with section 225 of this Code or report the circumstances in writing to the Court.

(6) Nothing in this section shall require any company licensed under section 24 of the Companies Ordinance (Cap. 193) or any statutory re-enactment or modifications thereof, to carry on banking business to produce its books containing details of the accounts with it of its banking customers.

#### Section 220-Appointment of Inspector under Order of the Court

(1) The Court may order the Registrar to appoint one or more competent inspectors to investigate the affairs of a company and to report thereon to the Registrar in such manner as the Court directs,

(a) upon a report by the Registrar after enquiries by him in accordance with section 219 of this Code;

(b) upon the application of the Registrar; or

(c) upon the application of not less than one hundred members or of members holding not less than one-tenth of the issued shares or of members being not less than one-tenth in number of the total members.

(2) When the application is made under paragraph (c) of the foregoing subsection,

(a) the application shall be supported by such evidence as the Court may require for the purpose of showing that the applicants have good reason for requiring the investigation; and the Court may, before ordering the appointment of an inspector, require the applicants to give security to an amount not exceeding two hundred pounds for payment of the costs of the investigation;

(b) at least fourteen days' previous notice of the application shall be given to the Registrar who shall be entitled to be represented at the hearing and to give evidence and call witnesses.

(3) Any application under this section shall be heard in chambers and at least fourteen days' previous notice thereof shall be given to the company which shall be entitled to be represented at the hearing and to give evidence and call witnesses.

#### Section 221-Appointment of Inspector on Special Resolution of the Company

The Registrar shall appoint one or more competent inspectors to investigate the affairs of a company and to report thereon to the Registrar in such manner as the Registrar shall direct if the company by special resolution declares that its affairs ought to be investigated by an inspector appointed by the Registrar.

#### Section 222-Power to Carry Investigation into the Affairs of Associated Companies

If an inspector appointed under either of the two last foregoing sections to investigate the affairs of a company thinks it necessary for the purposes of his investigation to investigate also the affairs of any other body corporate which is or has at any relevant time been the company's associated company, he shall have power so to do, and shall report on the affairs of the other body corporate so far as he thinks the results of his investigation thereof are relevant to the investigation of the affairs of the first-mentioned company.

#### Section 223-Production of Documents and Evidence

(1) It shall be the duty of all officers and agents of the company and of all officers and agents of any other body corporate whose affairs are investigated by virtue of the immediately preceding section to produce to the inspectors 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 and otherwise to give to the inspectors all assistance in connection with the investigation which they are reasonably able to give.

(2) An inspector may examine on oath the officers and agents of the company or other body corporate in relation to its business and may administer an oath accordingly.

(3) If any officer or agent of the company or other body corporate,

(a) destroys or refuses to produce to the inspectors any book or document which it is his duty under this section so to produce, or

(b) refuses to answer any question which is put to him by the inspectors with respect to the affairs of the company or other body corporate, as the case may be,

the inspectors may certify the facts in writing to the Court, and the Court may thereupon inquire into the case, and after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which

may be offered in defence punish the offender in like manner as if he had been guilty of contempt of the Court.

(4) If an inspector thinks it necessary for the purposes of his investigation that a person whom he has no power to examine on oath should be so examined, he may apply to the Court and the Court may, if it sees fit, order that person to attend and be examined on oath before it on any matter relevant to the investigation; and on any such examination,

(a) the inspector may take part therein either personally or by a legal practitioner;

(b) the Court may put such questions to the person examined as the Court thinks fit;

(c) the person examined shall answer all such questions as the Court may put or allow to be put to him, but may at his own cost employ 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;

and 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:

Provided that, notwithstanding anything in paragraph (c) of this subsection, the Court may allow the person examined such costs as in its discretion it may think fit, and any costs so allowed shall be paid as part of the expenses of the investigation.

(5) In this section, any reference to officers or to agents shall include past, as well as present, officers or agents, as the case may be, and for the purposes of this section the expression "agents", in relation to a company or other body corporate shall include the bankers or legal practitioners of the company or other body corporate and any persons employed by the company or other body corporate as auditors.

#### Section 224-Inspectors' Report

(1) The inspectors may, and, if so directed by the Registrar, shall, make interim reports to the Registrar, and on the conclusion of the investigation shall make a final report to the Registrar.

(2) Any such report shall be written or printed, as the Registrar directs.

(3) The Registrar shall, unless in his opinion it is undesirable in the public interest,

(a) forward a copy of any report made by the inspectors to the registered office of the company;

(b) furnish a copy thereof on request and on payment of a reasonable charge, to any other person who is a member of the company or of any other body corporate dealt with in the report by virtue of section 222 of this Code, or whose interests as a creditor of the company or of any such other body corporate as aforesaid appear to the Registrar to be affected;

(c) where the inspectors are appointed under section 220 of this Code, furnish a copy to the Court; and

(d) where the inspectors are appointed under paragraph (c) of subsection (1) of section 220 of this Code, furnish, at the request of the applicants for the investigation, a copy to them;

and may also cause the report to be printed and published.

(4) A copy of any such report authenticated by the seal of the Registrar shall be admissible in any legal proceedings as evidence of the opinion of the inspectors in relation to any matter contained in the report.

#### Section 225-Proceedings after Investigations

If as a result of any information obtained in accordance with section 219 of this Code or as a result of any report made under the immediately preceding section, it appears to the Registrar that,

(a) any person may have been guilty of an offence for which he is criminally liable, the Registrar shall refer the matter to the Attorney-General who, if he considers that the case is one in which a prosecution ought to be instituted, shall institute proceedings accordingly;

(b) any company ought to be wound up or that an application should be made to the Court under section 218 of this Code, the Registrar may petition the Court to wind up the company, if it thinks it just and equitable to do so, or may apply to the Court under such section 218;

(c) proceedings ought in the public interest to be brought by any company against any director or former director of any company under section 210 of this Code or against any person to recover property, damages or compensation to which any body corporate is entitled, the Registrar may himself bring proceedings for that purpose in the name of the company or body corporate but, subject to section 226 of this Code, shall indemnify the company or body corporate against any costs or expenses incurred by it in connection with such proceedings.

#### Section 226-Expenses of Investigations

(1) The expenses of, and incidental to, an investigation by the Registrar under section 219 of this Code or by inspectors appointed by the Registrar under section 220 or 221 of this Code shall be defrayed in the first instance by the Registrar out of moneys provided by Parliament, but the following persons shall, to the extent mentioned, be liable to repay the Registrar, that is to say,

(a) any person who is convicted on a prosecution instituted by virtue of paragraph (a) of section 225 of this Code or who is ordered to restore property or pay damages or compensation in proceedings brought by virtue of paragraph (c) of section 225 of this Code may in the same proceedings be ordered to pay the said expenses to such extent as may be specified in the order;

(b) any body corporate in whose name proceedings are brought by virtue of paragraph (c) of section 225 of this Code shall be liable to the amount or value of any sums or property recovered by it as a result of those proceedings, and the expenses shall be a first charge on such sums or property;

(c) any body corporate dealt with by the report of any inspector appointed under section 220 or 221 of this Code and the applicants, other than the Registrar, for the investigation where the inspector was appointed under section 220 of this Code shall be liable to such extent, if any, as the Registrar shall direct.

(2) The report of any inspector may, if he thinks fit, and shall if the Registrar so directs, include a recommendation as to the directions, if any, which he thinks appropriate to be given under paragraph (c) of the preceding subsection.

(3) For the purposes of this section any costs or expenses incurred by the Registrar in connection with proceedings brought under paragraph (b) or (c) of section 225 of this Code shall be treated as expenses of the investigation giving rise to the proceedings.

(4) As between the persons specified in paragraphs (a), (b) and (c) of subsection (1) of this section, liability to repay the Registrar shall be borne, to the extent to which they are respectively liable under such paragraphs, in the first instance by those liable under paragraph (a), then by those liable under paragraph (b), and finally by those liable under paragraph (c).

Section 227-Power to require Information as to Persons Interested in Shares or Debentures

(1) Where it appears to the Registrar that there is good reason to investigate the ownership of any shares in or debentures of a company or where the directors of a company so request in writing he may himself carry out such investigation or by written order appoint one or more inspectors to carry out such investigation in manner hereinafter appearing. [As amended by the the Companies Code (Amendment) Act 1994 (Act 474) s.3]

(2) The Registrar or any inspector appointed by him may require any person whom he 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 the agent or adviser of someone interested therein,

to give him any information which such person has or can reasonably be expected to obtain as to the present and past interests 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 and debentures.

(3) 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.

(4) 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 is false in any material particular shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred pounds or to both, unless, in the case of a false statement, he proves that he believed on reasonable grounds that such statement was true.

(5) Where it appears to the Registrar that there is difficulty in finding out the relevant facts about any such shares or debentures, 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 give accurate information as required by this section, the Registrar may by order direct that the shares or debentures shall, until further order, be subject to the restrictions imposed by the next succeeding subsection.

(6) So long as any shares or debentures are directed to be subject to the restrictions imposed by such direction as is referred to in the immediately preceding subsection,

(a) any transfer of those shares or debentures or of the right to be issued therewith and any issue thereof shall be void;

(b) no voting rights shall be exercisable in respect thereof;

(c) no further shares or debentures shall be issued in right of those shares or



debentures or in pursuance of an offer made to the holders thereof;

(d) except in a liquidation, no payment shall be made of any sums due from the company on those shares or debentures.

(7) Where the Registrar makes an order directing that shares or debentures shall be subject to the said restrictions, or refuses to make an order directing that they shall cease to be subject thereto, any person having any interest in such shares or debentures may apply to the Court and the Court may, if it sees fit, direct that the shares or debentures shall cease to be subject to the said restrictions or any of them.

(8) Any person who,

(a) exercises or purports to exercise any right to dispose either of any shares or debentures which, to his knowledge, are for the time being subject to the said restrictions or any of them, or of any right to be issued with any such shares or debentures, or

(b) votes, whether as holder or proxy, or appoints a proxy to vote in respect of any shares or debentures which, to his knowledge, are for the time being subject to the restriction that no voting rights shall be exercisable in respect thereof, or

(c) being the holder of any shares or debentures fails to notify of the said restrictions any other holder or proxy for any holder whom he does not know to be aware thereof,

shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred pounds or to both, and where shares or debentures 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 liable to a fine not exceeding five hundred pounds.

(9) A prosecution shall not be instituted under the immediately preceding subsection except by, or with the consent of, the Attorney-General.

(10) Where an inspector has been appointed to carry out an investigation under this section he shall report in writing to the Registrar on the result of his investigation.

(11) The Registrar may, in his discretion,

(a) cause to be furnished to such person or persons as he shall think fit a copy of such report as is referred to in the immediately preceding subsection or of part or parts thereof and may cause the same or any parts thereof to be printed and published;

(b) may divulge to such person or persons as he shall think fit any information

obtained by him as a result of his or the inspector's investigation and may cause any such information to be published.

(12) The expenses of any investigation under this section shall be defrayed by the Registrar out of moneys provided by Parliament.

#### Section 228-Saving for Legal Practitioners and Bankers

Nothing in section 219 to 227 of this Code shall require disclosure to the Registrar or to any inspector appointed by him,

(a) by a legal practitioner of any privileged communication made to him in that capacity except as regards the name and address of his client;

(b) by the bankers of any body corporate in their capacity as bankers of such body corporate of any information as to the affairs of any of their customers other than such body corporate.

#### Section 229-Meaning of "Arrangement" and "Amalgamation"

In this Act,

(a) the expression "arrangement" means any change in the rights or liabilities of members, debentureholders or creditors of a company or any class thereof or in the Regulations of a company, other than a change effected under any of the foregoing sections of this Code or by the unanimous agreement of all the parties affected thereby;

(b) the expression "amalgamation" means any merger of the undertakings or any part of the undertakings of two or more companies or of the undertakings or part of the undertakings of one or more companies and one or more bodies corporate.

#### Section 230-Arrangement and Amalgamation by sale of Undertaking for Securities to be Distributed

(1) With a view to effecting any arrangement or amalgamation, a company may by special resolution resolve that the company be put into members' voluntary liquidation 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 Code or not, in this section called the transferee company, in consideration or part consideration of fully paid shares, debentures or other like interests in the transferee company and to distribute the same in specie among the shareholders of the company in accordance with their rights in the liquidation.

(2) Any sale and 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 or other like interests to which he is entitled under such distribution:

Provided that,

(a) if within one year from the date of the passing of any such special resolution as is referred to in subsection (1) of this section an order is made under section 218 of this Code or for the winding up of the company under the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180), the arrangement or amalgamation and the sale and distribution shall not be valid unless sanctioned by the Court;

(b) If any member of the company by notice in writing addressed to the liquidator and left at the registered office of the company within twenty-eight 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 manner provided by subsections (3), (4) and (5) of this section.

(3) 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 therefor shall be determined by agreement or, in default of agreement, by a single arbitrator appointed by the president for the time being of the Institute of Chartered Accountants in Ghana in accordance with the law relating to arbitration for the time being in force.

(4) The 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 costs of liquidation, been divided amongst the members in accordance with their rights.

(5) The purchase money shall be paid before the company is dissolved and raised by the liquidator in such manner as may be determined by the special resolution 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.

(6) Nothing in this section contained shall authorise any variation or abrogation of the rights of any creditors of the company.

(7) If any company otherwise than under the foregoing subsections of this section sells or resolves to sell the whole or any part of its undertaking or assets to another body corporate in consideration or part consideration of any shares, debentures or other like interests in that body corporate and resolves to distribute the same in specie among the members of the company, whether in a 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 of the company within twenty-eight 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 manner provided by subsections (3), (4) and (5) of this section:

Provided that nothing herein contained shall authorise any company,

(a) to purchase its shares except in accordance with sections 59 to 64 of this Code;

(b) to make any distribution to its shareholders except in accordance with sections 71 to 79 of this Code or in a liquidation.

#### Section 231-Arrangement or Amalgamation with Court Approval

(1) Where any arrangement or amalgamation is proposed, whether or not involving a compromise between a company and its creditors or members or any class or classes of them, the Court, on the summary application of the company or any member or creditor of the company or, in the case of a company being wound up, of the liquidator, may either order that meetings of the various classes of members and creditors concerned be summoned in such manner as the Court directs or that a postal ballot be taken of the various classes in manner provided by subsections (6), (7) and (8) of section 170 of this Code.

(2) If a three-fourths majority of each class of members concerned and a majority in number representing three-fourths in value of each class of creditors concerned shall approve the said arrangement or amalgamation the same shall be referred to the Registrar who shall appoint one or more competent reporters to investigate the fairness of the said arrangement or amalgamation and to report thereon to the Court.

(3) The remuneration of the reporters shall be fixed by the Registrar and it and the proper expenses of the investigation shall be borne by the company or such other party to the application as the Court shall order.

(4) If the Court shall, after considering the said report, make an order confirming the arrangement or amalgamation, with or without modifications, the same as confirmed shall be binding on the company and on all members and creditors thereof and its validity shall not subsequently be impeachable in any proceedings.

(5) Upon the hearing by the Court of the application to confirm the arrangement or amalgamation any member or creditor of the company claiming to be affected thereby shall be entitled to be represented and to object.

(6) The Court may prescribe such terms as it shall think fit as a condition of its confirmation including a condition that any members shall be given rights to require the company to purchase their shares at a price fixed by the Court or to be determined

in manner provided in the order.

(7) An arrangement or amalgamation may be carried out in accordance with the provisions of this section notwithstanding that it could have been accomplished under the previous section or any other provisions of this Code; but the provisions of section 75 to 79 of this Code shall also be complied with if the arrangement or amalgamation is one which, by virtue of section 75 requires the confirmation of the Court in accordance with such sections.

(8) An order made under subsection (4) of this section shall have no effect until an office copy of the order has been delivered to the Registrar who shall register the order and cause the same to be published in the Gazette.

(9) A copy of the order shall be annexed to every copy of the company's Regulations issued by the company after the order has been made; and if a company makes default the company and every officer of the company who is in default shall be liable to a fine not exceeding five pounds in respect of every copy in respect of which default is made.

#### Section 232-Powers of the Court for Facilitating Arrangements or Amalgamations

(1) Where an application is made to the Court under the last foregoing section and it is shown to the Court that under the arrangement or amalgamation the whole or any part of the undertaking or assets of any company, in this section referred to as a transferor company, is to be transferred to another company, in this section referred to as the transferee company, the Court may, either by the order sanctioning the arrangement or amalgamation or by any subsequent order, make provision for all or any of the following matters, that is to say,

(a) the transfer to the transferee company of the whole or any part of the undertaking, assets and liabilities of any transferor company;

(b) the allotting or appropriation by the transferee company of any shares, debentures or other like interests in that company which, under the arrangement or amalgamation, are to be allotted or appropriated by that company to or for any person;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;

(d) the dissolution, without winding up, of any transferor company;

(e) the provision to be made for any persons who, within such time and in such manner as the Court directs, dissent from the arrangement or amalgamation;

(f) such incidental, consequential and supplemental matters as are necessary to secure

that the arrangement or amalgamation shall be fully and effectively carried out.

(2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any charge which is, by virtue of the arrangement or amalgamation, to cease to have effect.

(3) Where an order is made under this section, every company in relation to which the order is made shall cause an office copy thereof to be delivered to the Registrar for registration within twenty-eight days after the making of the order; and if default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a fine not exceeding five pounds for each day during which the default continues.

(4) In this section the expression "property" includes property rights and powers of every description and the expression "liabilities" includes duties of every description notwithstanding that such rights, powers and duties are of a personal character which could not under the general law be assigned or performed vicariously.

#### Section 233-Information as to Arrangements and Amalgamations

(1) Where any notice of any resolution to approve an arrangement or amalgamation under section 230 or 231 of this Code is sent to members or creditors of any company, there shall be sent also a statement explaining the effect of the arrangement or amalgamation and in particular stating any material interests of the directors of the company or otherwise, and the effect thereon of the arrangement or amalgamation in so far as it is different from the effect on the like interests of other persons.

(2) In any notice of any such resolution which is given by advertisement, there shall be included either such a statement as aforesaid or a notification of the place at which and the manner in which members or creditors to whom the notice is addressed may obtain copies of such a statement; and every such member or creditor shall, on making application in the manner indicated in the notice, be furnished by the company, free of charge, with a copy of the statement.

(3) Where the arrangement or amalgamation affects the rights of debentureholders of the company, the said statement shall give the like explanation as respects the trustees of any deed for securing the debentures as it is required to give as respects the company's directors.

(4) Where a company makes default in complying with any requirements of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding five hundred pounds; and for the purposes of this

subsection any liquidator of the company and any trustee of a deed securing debentures of the company shall be deemed to be an officer of the company:

Provided that,

(a) a person shall not be liable under this subsection if he shows that the default was due to the refusal of any other person to supply the necessary particulars as to his interests;

(b) nothing herein contained shall derogate from the power of the Court under section 217 or 218 of this Code to declare ineffective any special resolution passed pursuant to section 230 of this Code.

(5) It shall be the duty of any director of the company and of any trustee for debentureholders of the company to give notice to the company of such matters relating to himself as may be necessary for the purposes of this section, and any such person who makes default in complying with this subsection shall be liable to a fine not exceeding fifty pounds.

Section 234-Power to Acquire Shares of Minority on Acquisition of Subsidiary Company

(1) Where a body corporate, whether a company within the meaning of this Code or not, in this section referred to as the transferee company, has made an offer to the holders of shares in a company, in this section referred to as the transferor company, then, provided that the conditions specified in subsection (2) of this section are duly fulfilled, the transferee company may compulsorily acquire the shares in the transferor company in the manner specified in this section.

(2) This section shall apply if,

(a) the offer by the transferee company is made to the holders of the whole of the shares in the transferor company, other than those already held by the transferee company or any of its associated companies or by nominees for the transferee company or any of its associated companies;

(b) the consideration for the acquisition is either,

(i) the allotment of shares in the transferee company, or

(ii) the allotment of shares in the transferee company or, at the option of the holders, a payment of cash;

(c) the same terms are offered to all the holders of the shares to whom the offer is made or, where there are different classes of shares, to all the holders of shares of the

same class;

(d) within four months after the making of the offer it has been accepted in respect of not less than nine-tenths of the whole of the shares and of not less than nine-tenths of the shares of each class, other than shares already held as aforesaid and the holders of such shares are not less than three-fourths in number of the holders of those shares and of each class thereof.

(3) Where the conditions specified in subsection (2) of this section are fulfilled, the transferee company may, within two months thereafter, give notice in the prescribed form to any shareholder who has not accepted the offer in respect of all his shares that it desires to acquire his shares and when such notice is given the transferee company shall, unless on an application made by the shareholder in accordance with subsection (4) of this section the Court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms of the offer.

(4) At any time within a period of two months from the service of the notice referred to in subsection (3) of this section, any shareholder to whom notice has been given in accordance with such subsection may apply to the Court; and the Court may order that the transferee company shall not be entitled to acquire the share of such holder or that the transferee company shall be bound to acquire those shares upon such other terms as the Court may order.

(5) On any application to the Court under subsection (4) of this section the Court, before making any order may, if it thinks fit, refer the matter to the Registrar who shall appoint one or more competent reporters to investigate the fairness of the offer and to report thereon to the Court.

(6) The remuneration of the reporters shall be fixed by the Registrar and it and the proper expenses of the investigation shall be borne by the transferee company or by the applicant or both as the Court shall order.

(7) Where the Court makes an order under subsection (4) of this section that the transferee company shall be bound to acquire the shares concerned upon terms different from those of the original offer then, unless the Court shall otherwise order, the transferee company shall give notice in the prescribed form, of such amended terms, to all other holders of shares of the same class and to all former holders of shares of the same class who accepted the original offer.

(8) At any time within two months of the giving of such notice any shareholder shall be entitled to require the transferee company to acquire his shares upon the same terms as those ordered by the Court and any such former holder shall be entitled to require the transferee company to pay or transfer to him any additional consideration to which he would have been entitled had his shares been acquired on the terms



ordered by the Court.

(9) Where a notice has been given by the transferee company under subsection (3) of this section and the Court has not, on an application by the shareholder under subsection (4) of this section, ordered to the contrary, the transferee company shall,

(a) on the expiration of two months from the date on which notice has been given, or

(b) if an application by the shareholder under subsection (4) of this section is then pending after that application has been disposed of,

transmit a copy of the notice to the transferor company together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company, and transfer to the transferor company the shares, or if the shareholder has exercised the cash option, if any, pay to the transferor company the cash, representing the consideration payable by the transferee company for the shares which by virtue of this section the transferee company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.

(10) Any sums received by the transferor company under subsection (9) of this section shall be paid into a separate bank account and any such sums and all shares so received shall be held by the transferor company on trust for the several persons entitled to the shares in respect of which the said sums and shares were received.

#### Section 235-Rights of Minority on Acquisition of Subsidiary Company

(1) Where, as a result of an offer to the shareholders of a company or any of them, shares in that company are transferred to another body corporate, whether a company within the meaning of this Code or not, in this section called the transferee company, or its nominee and those shares, together with any other shares in the first mentioned company held by, or by a nominee for, the transferee company, or by, or by a nominee for, any of its associated companies at the date of the transfer, comprise or include three-fourths of the shares in the first named company or any class of those shares, then,

(a) the transferee company shall within one month from the date of the transfer, unless on a previous transfer it has already complied with this requirement, give notice of that fact in the prescribed form to the holders of the remaining shares or of the remaining shares of that class, as the case may be; and

(b) any such holder may within three months from the giving of the notice to him require the transferee company to acquire all or any of his shares.

(2) Where a shareholder under subsection (1) of this section requires the transferee

company to acquire any shares, the transferee company shall be entitled and bound to acquire those shares on the terms of the offer or on such other terms as may be agreed or as the Court, on the application of either the transferee company or the shareholder, thinks fit to order.

(3) On any application to the Court under subsection (2) of this section the Court may, if it thinks fit, refer the matter to the Registrar who shall appoint one or more competent reporters to investigate the fairness of the offer and in that event subsections (5) and (6) of section 234 of this Code shall apply.

#### Section 236-Disqualification for Appointment as Receiver

(1) The following persons shall not be competent to be appointed or to act as receivers or managers of any property or undertaking of a company, namely,

(a) an infant;

(b) any one found by a competent court to be a person of unsound mind;

(c) a body corporate;

(d) anyone in respect of whom an order shall have been made under section 186 of this Code, so long as such order remains in force unless leave to act as receiver or manager of the property or undertaking of the company concerned has been given by the court in accordance with that section;

(e) an undischarged bankrupt, unless he shall have been granted leave to act as receiver or manager of the property or undertaking of the company concerned by the Court by which he was adjudged bankrupt.

(2) A director or auditor of a company shall not be qualified for appointment as a receiver or manager of any property or undertaking of that company.

(3) Any appointment made in contravention of this section shall be void; and if any of the persons named in subsection (2) of this section or in paragraph (a), (c), (d) or (e) of subsection (1) of this section shall act as such a receiver or manager he shall be liable to a fine not exceeding five hundred pounds, or, in the case of an individual, to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred pounds, or to both such imprisonment and fine.

#### Section 237-Power to Appoint Official Trustee

Where application is made to the Court to appoint a receiver or manager on behalf of secured creditors or debentureholders of a company which is being wound up under

the provisions of the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180), the Official Trustee may be appointed.

#### Section 238-Powers of Receivers and Managers

(1) A person appointed receiver of any property of a company shall, subject to the rights of any prior incumbrances, take possession of and protect the property, receive the rents and profits and discharge all outgoings in respect thereof and realise the security of those on whose behalf he is appointed; but unless also 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) As from the date of appointment of a receiver or manager the powers of the directors or liquidators in a members' voluntary liquidation to deal with the property or undertaking over which he is appointed shall cease unless and until the receiver or manager is discharged.

(4) If, on the appointment of a receiver or manager, the company is being wound up under the provisions of the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180), 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 an order of the Court.

#### Section 239-Receivers and Managers Appointed by Court

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.

#### Section 240-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 241 of this Code, 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 also be deemed to be an officer of the company and to stand in a fiduciary relationship to it, and section 203 of this Code shall apply to a manager as if he were a director of the company:

Provided, however, that in the exercise of his powers he may, pursuant to subsection (3) of section 203 of this Code, give special, but not exclusive, consideration to the interests of those on whose behalf he is appointed.

(2) Such a receiver or manager may apply to the Court for directions in relation to any 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 the Court thinks fit.

(3) The Court may, on the application of the company or any liquidator of the company, by order fix the amount to be paid by way of remuneration to any such receiver or manager; and may from time to time on application made either by the company or liquidator or by the receiver or manager, vary or amend the order.

(4) The power of the Court under the immediately preceding subsection 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 therefor;

(b) be exercisable notwithstanding that the receiver or manager has died or ceased to act before the making of the order or the application therefor; and

(c) where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that so fixed for that period, extend to requiring him or his personal representatives to account for the excess or such part thereof as may be specified in the order:

Provided that the power conferred by this paragraph 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.

#### Section 241-Liabilities of Receivers and Managers of 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 contract entered into by him 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.

#### Section 242-Notification that Receiver or Manager has been Appointed

(1) Where a receiver or manager of any property or undertaking of a company has been appointed, notice shall be given to the Registrar in accordance with section 116 of this Code; and every invoice, order or business letter issued by or on behalf of the company or the receiver or manager or the liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver or manager has been appointed.

(2) If default is made in complying with the requirements of this section relating to invoices, orders or business letters the company and every officer, liquidator, receiver or manager of the company who is in default shall be liable to a fine not exceeding twenty pounds in respect of each default.

#### Section 243-Accounts where Manager Appointed to Enforce a Floating Charge

(1) Where a manager is appointed of the whole or substantially the whole of the undertaking of any company on behalf of the holders of any debentures secured by a floating charge the provisions of section 19 of the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180), shall apply as regards the submission of a statement of affairs and of periodical accounts by the manager as if the company had been ordered to be wound up under such Act and as if the manager had been appointed liquidator.

(2) If any person makes default in complying with the requirements of this section he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

#### Section 244-Delivery to Registrar of Accounts of Receivers

(1) Except where the last foregoing section of this Code applies, every receiver or manager of any property of a company shall,

(a) within one month, or such longer period as the Registrar may allow, after the expiration of the period of twelve months from the date of his appointment and of every subsequent period of twelve months until he ceases to act, deliver to the Registrar for registration an abstract in the prescribed form showing his receipts and payments during that period of twelve months;

(b) within one month, or such longer period as the Registrar may allow, after he ceases to act as receiver or manager deliver to the Registrar for registration an abstract in the prescribed form showing his receipts and payments during the period from the

end of the twelve months to which the last abstract, if any, related, and the aggregate of his receipts and payments during the whole period of his appointment.

(2) Every receiver or manager who makes default in complying with the requirements of this section shall be liable to a fine not exceeding five pounds for every day during which the default continues.

#### Section 245-Enforcement of Receivers' Duties

(1) If any receiver or manager of any property or undertaking of a company,

(a) having made default in filing, delivering or making any return, account, or other document or in giving any notice which he is by any provision of this Code required to file, deliver, make, or give, fails to make good the default within twenty-eight days after the service on him of a notice requiring him to do so, or

(b) having been appointed out of Court under the powers contained in any instrument, has, after being required at any time by the liquidator of the company so to do, failed to render proper accounts of his receipts and payments and to vouch the same and to pay over to the liquidator the amount properly payable to him,

the Court may, on an application made for the purpose, make an order directing the receiver or manager to make good the default within such time as may be specified in the order and may provide that all costs of and incidental to the application shall be borne by the receiver or manager.

(2) An application for the purposes of this section may, in the case of such default as is mentioned in paragraph (a) of subsection (1) of this section, be made by the company or any member, creditor or liquidator of the company or by the Registrar, and in the case of such default as is mentioned in paragraph (b) thereof, be made by the liquidator.

#### Section 246-Modes of Winding Up

(1) The winding up of a company may be either,

(a) by an official liquidation in accordance with the provisions of the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180); or

(b) by a private liquidation in accordance with the provisions of this Part of this Code.

(2) 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, but the corporate state and corporate powers of the company shall continue until it is dissolved.

(3) Where a company is being wound up by way of a private liquidation, every invoice, order or business letter issued by or on behalf of the company or any liquidator of the company or a receiver or manager of any property of the company, being a document in or on which the name of the company appears, shall contain a statement that the company is being wound up under this Part of this Code.

(4) If default is made in complying with the provisions of the immediately preceding subsection the company and any officer of the company and any liquidator, receiver or manager who is in default shall be liable to a fine not exceeding twenty pounds.

#### Section 248-Procedure on Resolution for Liquidation

(1) A company may be wound up by way of private liquidation if,

(a) the company resolves by special resolution that it shall be wound up by way of private liquidation; and

(b) prior to the date of such resolution an affidavit declaring that the company is solvent is made in accordance with section 247 of this Code.

(2) The private liquidation shall be deemed to commence at the time of the passing of the resolution.

(3) When a company has passed a resolution for a private liquidation it shall, within fourteen days after the passing of the resolution, send to the Registrar a copy of the resolution and he shall publish the same in the Gazette.

#### Section 249-Statement and Accounts of Final Financial Year

For the purposes of sections 123 to 136 of this Code, the final financial year of a company in liquidation under this Part of this Code shall be deemed to end immediately prior to the date of the commencement of the winding up, and, subject as hereinafter mentioned, all the provisions of those sections shall continue to apply to the preparation, auditing and despatch of the statements, accounts and report referred to in those sections:

Provided that,

(a) a copy of the document referred to in section 124 shall be sent to the liquidator appointed in accordance with section 250 of this Code as well as to every member and debentureholder of the company in accordance with the said section 124;

(b) a copy of such documents shall be sent to the persons hereinbefore referred to within three months after the date of commencement of the winding up.

## Section 250-Resolution for Appointment and Removal of Liquidator

(1) The resolution for the private liquidation of a company shall include the appointment as liquidator of a person therein named; and no such resolution shall be valid for the purposes of this Part of this Code unless the person so named shall have previously consented in writing to his appointment.

(2) Where a vacancy occurs by death, resignation or otherwise in the office of liquidator, the company in general meeting may fill the vacancy and for that purpose a general meeting may be convened by any member or if there were more liquidators than one, by the continuing liquidators.

(3) The Court may, on the application of any member of the company or of the Registrar, remove a liquidator and appoint another in his place, or appoint a liquidator if, from any cause whatsoever, there is no liquidator acting.

(4) The company or the Court, as the case may be, shall give notice to the Registrar of the removal or appointment of a liquidator, and the Registrar shall register the notice and publish it in the Gazette.

## Section 251-Remuneration of Liquidator

For the purposes of a private liquidation the company shall, in general meeting, fix the remuneration to be paid to a liquidator appointed for the purpose of liquidation; and where the appointment of a liquidator is made by the Court the remuneration of the liquidator shall be fixed by the Court.

## Section 252-Disqualification of Liquidator

(1) The following persons shall not be competent to be appointed or to act as liquidators of a company under this Part of this Code, namely,

(a) an infant;

(b) any person found by a court of competent jurisdiction to be a person of an unsound mind;

(c) a body corporate;

(d) any person convicted on indictment, whether in Ghana or elsewhere, of any offence involving fraud or dishonesty or any offence in connection with the promotion, formation or management of a body corporate;

(e) an undischarged bankrupt or any other person subject to insolvency proceedings under the Insolvency Act, 1962 (Act 153).



(2) A director of a company shall not be qualified for appointment as a liquidator of that company.

(3) An auditor of a company may be appointed as liquidator of that company:

Provided that an auditor of a company shall not be appointed as liquidator in a private liquidation unless on his appointment special resolution is duly passed dispensing with the auditing of his accounts and he, or another auditor if more than one, is duly qualified under section 296 of this Code for appointment as auditor of a public company.

(4) Any appointment made in contravention of this section shall be void; and if any of the persons named in paragraph (a), (c), (d) or (e) of subsection (1) or in subsection (2) of this section shall act as liquidator of a company, he shall be liable to a fine not exceeding five hundred pounds or in the case of an individual to imprisonment for a term not exceeding five years or to a fine not exceeding five hundred pounds or to both such imprisonment and fine.

#### Section 253-Status of Liquidator

A liquidator appointed for the purpose of a private liquidation shall be deemed to stand in a fiduciary relationship to the company as if he were a director of the company and accordingly the provisions of sections 203 to 216 of this Code shall, *mutatis mutandis*, apply.

#### Section 254-Cessation of Directors' Powers

On the appointment of a liquidator for the purposes of a private liquidation all the powers of the board of directors shall vest in the liquidator and the powers and authority of every director shall cease, save in so far as the company in general meeting or the liquidator sanctions the continuance thereof and except so far as is necessary to enable the directors to prepare statements and accounts of the company.

#### Section 255-Powers of Liquidator

(1) A liquidator in a private liquidation may exercise all the powers of the liquidator in an official winding up under the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180).

(2) When several liquidators are appointed, any power given by this Code may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two.

(3) The Court shall have the same powers in relation to the liquidator in a private

liquidation as are by the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) conferred upon it in relation to official liquidations; and the liquidator may apply to the Court for directions in relation to any matter arising in connection with the performance of his functions or to exercise all or any of the powers which the Court might exercise if the company were being wound up under the said Act and, on any such application, the Court may give such directions or make such order as the Court thinks just.

#### Section 256-Books and Accounts during Private Liquidation

(1) The liquidator in a private liquidation 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 Registrar may allow, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year and of the trading during such time as the business of the company has been carried on, and within twenty-eight days thereafter shall send a copy of such accounts to the Registrar 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 twenty-eight days after the meeting referred to in the immediately preceding subsection the liquidator shall send to the Registrar 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 Registrar 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 subsection (2) and (3) of this section shall be audited by the auditors 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 Code; and

(c) such accounts are in accordance with the books and records and give all the information required by this Code 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,

(a) the liquidator, or one of the liquidators if more than one, is duly qualified under section 296 of this Code for appointment as auditor of a public company; and

(b) on or after his appointment as liquidator, the company resolved by special resolution that the accounts should not be required to be audited in accordance with this subsection.

(7) Meetings required to be convened under this section shall be convened and held, so far as may be, in accordance with the provisions of this Code 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 Registrar shall otherwise direct in which event he shall not destroy the same until the Registrar shall consent in writing.

(9) If a liquidator shall fail to comply with any of the provisions of this section he shall be liable to a fine not exceeding fifty pounds for each default.

#### Section 257-Liquidation Account

(1) The liquidator shall open an account, to be known as the private liquidation account, with a bank nominated by the company in general meeting for the purposes of the private liquidation.

(2) All receipts and payments by or on behalf of the liquidator in respect of the

company shall be credited or debited, as the case may be to such private liquidation account.

(3) If, on the application of the company or any other person interested in the liquidation proceedings, it appears to the Court before the termination of the liquidation, that assets have been lost to the estate by reason of any default by the liquidator, the Court may order that the private liquidation account be credited with such sum as may appear to the Court to be just.

#### Section 258-Duty of Liquidator in Case of Insolvency

(1) If in a private liquidation the liquidator is at any time of the opinion that the company may not be able to pay its debts in full within the period stated in the affidavit made under section 247 of this Code, he shall forthwith give notice thereof to the Registrar, together with a statement of the company's liabilities and assets.

(2) The said notice and statement shall be in the prescribed form.

(3) The Registrar, whether or not he makes an order under section 5 of the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180), shall register both the notice and the statement and cause a copy of the notice to be published in the Gazette.

(4) If the liquidator fails to comply with this section he shall be liable to a fine not exceeding five hundred pounds.

#### Section 259-Stay of Proceedings

(1) At any time during the course of a private liquidation and prior to the dissolution of the company, the company in general meeting may, by special resolution, resolve that, subject to the confirmation of the Court, the liquidation proceedings shall be stayed.

(2) After the passing of such special resolution, application may be made to the Court by the liquidator or any member of the company; and the Court may in its discretion and subject to such terms and conditions as the Court may think fit, order that the liquidation be stayed, that the liquidator be discharged and that the directors be permitted to resume the management of the company.

(3) At least twenty-eight days before the hearing of the application to the Court under the immediately preceding subsection, written notice thereof shall be given by the applicant to the Registrar, to all directors of the company and to any liquidator of the company, if not the applicant, and the Registrar shall cause the same to be published in the Gazette.

(4) The Registrar and any director, liquidator, member or creditor of the company

shall be entitled to appear on the hearing of the application and to call witnesses and give evidence.

(5) If an order confirming the resolution is made by the Court, the company shall send an official copy thereof to the Registrar and the Registrar shall register the same and cause a copy to be published in the Gazette; and thereupon the liquidation shall be deemed to have ceased and the company shall continue to be a going concern subject however, to any terms or conditions in the said order.

#### Section 260-Dissolution of Companies

(1) When the Registrar is satisfied that the winding up of the company is complete he shall strike the name of the company off the register and notify the same in the Gazette and the company shall thereupon be deemed to be dissolved as at the date of the publication of the notification in the Gazette.

(2) Where a company has been dissolved, the Court may, at any time within two years after the date of the dissolution, on an application being made for the purpose by the Registrar or by the liquidator of the company or by any former officer, member, or creditor of the company or any person claiming through or under him, make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void and ordering the name of the company to be restored to the registrar.

(3) An office copy of an order made under subsection (2) of this section shall be delivered to the Registrar for registration and he shall cause the same to be published in the Gazette and thereupon the name of the company shall be restored to the register and the company shall be deemed to have continued in existence as if it had not been dissolved except that for the purposes of any period of limitation time shall not be deemed to run during the period between dissolution and restoration.

(4) The Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had never been struck off.

#### Section 261-Dissolution without full Winding Up

(1) Where the Registrar, of his own knowledge, or upon information supplied by an officer, member or creditor of a company, has reasonable cause to believe that the company is not carrying on business or in operation, he may send to the company by registered post a letter enquiring whether the company is carrying on business or in operation.

(2) If the Registrar does not within two months of sending the letter receive any answer thereto, he may, at any time thereafter, send to the company by registered post a second letter, referring to the first letter and stating that no answer thereto has been

received by the Registrar, and that if an answer be not received to the second letter within two months from the date thereof, a notice will be published in the Gazette with a view to striking the name of the company off the register.

(3) If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within the specified time after sending the second letter receive any answer thereto, the Registrar may publish in the Gazette and send to the company by registered post a notice that at the expiration of three months from the date of that notice the name of the company shall, unless cause is shown to the contrary, be struck off the register and the company shall be dissolved.

(4) Where a company is being wound up and the Registrar has reasonable cause to believe that no liquidator is acting but is not satisfied that the winding up is complete, he may publish in the Gazette and send to the company and to the last known place of business of the person, if any, last known to have acted as liquidator, a like notice as is provided in the last foregoing subsection.

(5) At or after the expiration of the time mentioned in the notice the Registrar shall, unless cause is shown, strike the name of the company off the register and shall publish notice thereof in the Gazette and on such publication in the Gazette the company shall be dissolved:

Provided that,

(a) the liability, if any, of every director or other officer and member of the company shall continue and may be enforced as if the company had not been dissolved;

(b) nothing in this section shall affect the power of the Court to order the winding up of the company.

(6) When the name of a company has been struck off the register under this section, at any time within twenty years after the publication in the Gazette in accordance with subsection (5) of this section, the Court may, on application being made for this purpose by any liquidator or by any former officer, member or creditor of the company or by any person claiming through or under him, make an order upon such terms as the Court thinks fit, declaring the dissolution to have been void and ordering the name of the company to be restored to the register and all the provisions of subsection (3) of section 260 of this Code shall apply as if the order was one made under the said section 260.

(7) A notice or letter to be sent under this section to a company may be addressed to the company at its registered office or, if no office has been registered, to its last known place of business, if any, or to the care of some officer of the company or, if there is no officer of the company whose name and address are known to the Registrar,

may be sent to the person or each of the persons who subscribed the Regulations of the company addressed to him at the address mentioned in the subscription to the Regulations.

#### Section 262-Service of Documents by Company

(1) A document may be served by a company on any member, debentureholder, or director of the company either personally or by sending it through the post in a prepaid letter addressed to him at his address on the register of members, debentureholders, or directors, as the case may be, or if he has no registered address, at the address, if any, supplied by him to the company for the giving of notices to him, or by leaving it for him with some person apparently over the age of sixteen years at such address.

(2) A document may be served by a company on the joint holders of any share or debenture of the company by serving it on the joint holder named first in the register of members or debentureholders in respect of the share or debenture.

(3) A document may be served by a company upon the person upon whom the ownership of any share or debenture has devolved by reason of his being a legal personal representative, receiver or trustee in bankruptcy of a member or debentureholder either personally or by sending it through the post in a prepaid letter addressed to him by name, or by the title of representative of the deceased, receiver or trustee of the bankrupt, or by any like description, at the address, if any, supplied for the purpose by such person or by leaving it for him with some person apparently over the age of sixteen years at such address, or until such address has been supplied, by serving the document in any manner in which the same might have been served if the death, receivership or bankruptcy had not occurred.

(4) Where a document is sent by post, service shall be deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and to have been effected at the expiration of forty-eight hours after the letter containing the same is posted.

(5) The letter need not be despatched by registered post but where it is sent to an address outside Ghana it shall be despatched by air-mail.

#### Section 263-Service of Documents on Company

(1) A document may be served on a company by leaving it at, or sending it by post to, the registered office of the company or the latest office registered by the Registrar as the registered address of the company.

(2) Any document to be served by post on a company shall be posted in such time as to admit of its being delivered in due course of delivery within the time, if any,

prescribed for the service thereof; and in proving service it shall be sufficient to prove that a letter containing such document was properly addressed prepaid and posted, whether or not by registered post.

(3) If a company has no registered office, service upon any director of the company or, if the company has no director or if no director can be traced in Ghana, upon any member of the company, shall be deemed good and effectual service upon such company.

(4) If it shall be proved that any document was in fact received by the board of directors, managing director or secretary of a company such document shall be deemed to have been served on the company notwithstanding that service may not have been effected in accordance with the foregoing subsections of this section.

(5) Nothing in this section shall derogate from any provision in this Code relating to the service of any document, or from the power of any court to direct how service shall be effected of any document relating to legal proceedings before that court.

#### Section 264-Books and Registers

(1) Any register, minute book or book of account required by this Code to be kept by a company may be kept either by making entries in bound volumes, or by a system of mechanical recording or otherwise.

(2) Where any such register, minute book or book of account is not kept by making entries in bound volumes, adequate precautions shall be taken for guarding against the risk of falsification that might arise from the method of recording and for facilitating discovery.

(3) Where any system of mechanical recording is adopted, adequate arrangements shall be made for making the information therein available in an intelligible form to any one lawfully inspecting the register, minute book or book of account.

(4) If default is made in complying with subsection (2) or (3) of this section the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds.

#### Section 265-Control of Public Invitations

(1) It shall not be lawful for any person to make any invitation to the public,

(a) to acquire or dispose of any shares or debentures of a company, or

(b) to deposit money with any company for a fixed period or payable at call, whether bearing or not bearing interest,



unless the company concerned is a public company and the appropriate provisions contained in Part A of Chapter IV of this Code are duly complied with:

Provided that nothing in this subsection contained shall render unlawful the sale of any shares or debentures by or under the supervision of the Court.

(2) If any invitation to the public is made in breach of subsection (1) of this section, all persons making the invitation and every officer of any body corporate making the invitation who is in default shall be liable on conviction in the case of a body corporate to a fine not exceeding one thousand pounds and in any other case to imprisonment for a term not exceeding two years or to a fine not exceeding one thousand pounds or to both such imprisonment and fine.

(3) If as a result of any invitation to the public in breach of subsection (1) of this section any person acquires or disposes of any shares or debentures or deposits money with any company he shall be entitled to rescind such transaction and either in addition to or instead of rescinding, to recover compensation for any loss sustained by him from any person who is liable, whether convicted or not, in respect of the breach.

(4) Where, in accordance with subsection (3) of this section, any person claims to rescind any transaction he must do so with reasonable promptitude and shall not be entitled to rescind any transaction with the company or to recover compensation from it unless he takes steps to rescind before the commencement of the winding up of the company, but the fact that it is too late to rescind shall not prejudice his right to recover compensation from any person other than the company.

#### Section 266-Meaning of "Invitations to the Public"

(1) For the purposes of this Code an invitation shall be deemed to be made to the public if an offer or invitation to make an offer is,

(a) published, advertised or disseminated in Ghana by newspaper, broadcasting, cinematograph, or any other means whatsoever;

(b) made to or circulated among any persons whether selected as members or debentureholders of the company concerned or as clients of the persons making or circulating the invitation or in any other manner;

(c) made to any one or more persons upon the terms that the persons to whom it is made may renounce or assign the benefit thereof or of any shares or debentures to be obtained thereunder in favour of any other person;

(d) made to any one or more persons to acquire any shares or debentures dealt in upon any stock exchange or in respect of which the invitation states that application has

been or will be made for permission to deal in those shares or debentures upon any stock exchange:

Provided that,

(a) nothing herein contained shall be taken as requiring any invitation to be treated as made to the public if it can properly be regarded in all the circumstances as being a domestic concern of the persons making and receiving it;

(b) an invitation made by or on behalf of a private company exclusively to its existing shareholders and debentureholders, not being greater in number than is prescribed by subsection (3) of section 9 of this Code, and its existing employees shall not be deemed to be an invitation to the public unless the invitation is of the type referred to in paragraph (c) or (d) of this subsection.

(2) For the purposes of the foregoing subsection the issue of any form of application for shares or debentures or of any form to be completed on the deposit of money with a company shall be deemed to be an invitation to acquire those shares or debentures or to deposit money.

#### Section 267-Offers for Sale deemed to be made by Company

Where any company allots or agrees to allot any of its shares or debentures to any person with a view to the public being invited to acquire any of those shares or debentures, then, for all the purposes of this Code, any invitation so made shall be deemed to be an invitation to the public made by the company as well as by the person actually making the same, and any person who acquires any such shares or debentures in response to the invitation shall be deemed to be an allottee from the company of those shares or debentures:

Provided that where,

(a) an invitation to the public is made in respect of any such shares or debentures within six months after the allotment or agreement to allot, or

(b) at the date when the invitation to the public was made, the whole consideration to be received by the company in respect of the shares or debentures had not been so received,

it shall be assumed, unless the contrary is shown, that the allotment or agreement to allot was made by the company with a view to an invitation to the public being made in respect of those shares or debentures.

#### Section 268-Default in Complying with Conditions Constituting a Private Company

If a private company makes default in complying with any of the conditions in its Regulations specified in subsection (3) of section 9 of this Code, sections 295 and 301 of this Code shall thereafter apply to such company as if it were a public company:

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

#### Section 269-Documents to be Annexed to the Annual Return of a Private Company

(1) With the annual return required by section 122 of this Code a private company shall send to the Registrar for registration,

(a) a certificate that the company has not, since the date of the last return, or, in the case of the first return, since the date of incorporation of the company, issued any invitation to the public to acquire any shares or debentures of the company or to deposit money with the company; and

(b) a certificate that the number of members and debentureholders of the company does not exceed fifty or that any excess over fifty consists solely of persons who are bona fide in the employment of the company and persons who, having been formerly bona fide in the employment of the company were, while in that employment, and have continued after the determination of that employment to be, members or debentureholders of the company; and

either

(c) a copy of every profit and loss account, balance sheet, and group accounts circulated to the members and debentureholders pursuant to section 124 of this Code during the period to which the return relates, and a copy of the report of the directors and of the report of the auditors accompanying such accounts;

or

(d) (i) a written statement by the auditors of the company that, to the best of their knowledge and belief the accounts and reports referred to in section 124 of this Code have been sent to the members and debentureholders in accordance with that section; and

(ii) a copy of the auditors' report so sent; and

(iii) except in the case of a company limited by guarantee, a certificate that, to the best

of the knowledge and belief of the persons signing the certificate, no body corporate is or has been at any time beneficially interested, otherwise than by way of security, in any issued shares of the company, or that if any body corporate is or has been so interested it is an exempted body corporate as defined in subsection (5) of this section.

(2) The certificates required by paragraphs (a), (b), and (d) of subsection (1) of this section shall be signed by a director and by the secretary of the company.

(3) The copies required by paragraph (c) of subsection (1) of this section shall be certified by a director and by the secretary of the company to be true copies.

(4) The copy of the report of the auditors required by paragraph (d) of subsection (1) of this section shall be certified by the auditors to be a true copy and the statement referred to in that paragraph shall be signed by the auditors.

(5) For the purposes of this section a body corporate shall be an exempted body corporate if,

(a) it is not a public company;

(b) it has not at any time issued any invitation to the public to acquire any of its shares or debentures or to deposit money with it; and

(c) at all times since it became beneficially interested in any shares of the company,

(i) it has not had more than fifty members and debentureholders, not including persons who are bona fide in the employment of the body corporate and persons who, having been formerly bona fide in the employment of company were, while in that employment, and continued after the determination of that employment to be, members or debentureholders of the company; and

(ii) no other body corporate, other than an exempted body corporate, has been beneficially interested, other than by way of security, in any issued shares of the body corporate.

#### Section 270-Qualification of Auditors of Private Companies

(1) A person shall not be qualified for appointment as auditor of a private company unless,

(a) he is, under the Chartered Accountants Act, 1963 (Act 170), a member of the Institute of Chartered Accountants, or

(b) he is a practising accountant within the meaning of the said Act, and is not disqualified under subsection (3) of this section.

(2) If at any time within ten years from the commencement of this Code the Registrar is satisfied that the provisions of subsection (1) of this section have become or are about to become unworkable by reason of the shortage in Ghana of persons with the requisite qualifications, he may, by legislative instrument suspend the operation of the said subsection (1) for such period or periods, not exceeding in all a total period of five years, as he shall think fit, and so long as such suspension is in operation any person shall be qualified to be appointed auditor of a private company unless disqualified under subsection (3) of this section.

(3) The following persons shall be disqualified for appointment as auditor of a private company, that is to say,

(a) an officer of the company or of any associated company;

(b) a person who is a partner of or in the employment of an officer of the company or of any associated company;

(c) an infant;

(d) any person found by a competent court to be a person of unsound mind;

(e) a body corporate, except that members of an incorporated partnership may be appointed in the manner provided by subsection (2) of section 134 of this Code;

(f) any one in respect of whom an order shall have been made under section 186 of this Code so long as such order remains in force unless leave to act as auditor of the company concerned has been given by the Court in accordance with that section;

(g) an undischarged bankrupt, unless he shall have been granted leave to act as auditor of the company concerned by the court by which he was adjudged bankrupt;

(h) a person who is for the time being disqualified from acting as auditor of a company by order of the Registrar under subsection (4) of this section:

Provided that nothing contained in paragraph (b) of this subsection shall disqualify,

(a) a person from being appointed as auditor by reason only of the fact that he is a partner or in the employment of a person acting as secretary or registration officer of the company or any associated company;

(b) any person who, prior to the sixth day of April, 1961, was acting as auditor of a company from continuing to act or to be appointed as auditor of that company.

(4) The Registrar may, on cause being shown, by legislative instrument disqualify any person otherwise qualified from acting as auditor of any private company and may at any time remove such disqualification.

(5) From any instrument of the Registrar disqualifying any person or refusing to remove the disqualification there shall be a right to appeal to the Court.

(6) Any person not qualified for appointment as auditor who shall act as auditor of a private company shall be liable to a fine not exceeding five hundred pounds and the company by whom he is appointed and every officer thereof who is in default shall be liable to a fine not exceeding five hundred pounds.

#### Section 271-Requisitioning Extraordinary General Meetings of a Private Company

(1) The directors of a private company, notwithstanding any provision in its Regulations, shall, on the requisition of any two or more members of the company or a single member holding not less than one-tenth of the shares of the company, or, in the case of a company limited by guarantee, one-tenth of the total voting rights of all members, forthwith proceed duly to convene an extraordinary general meeting of the company.

(2) The requisition shall state the nature of the business to be transacted at the meeting and shall be signed by the requisitionists and sent to or deposited at the registered office of the company.

(3) If the directors do not, within seven days from the date of receipt of the requisition at the registered office of the company, proceed duly to convene a meeting for a date not later than twenty-eight days thereafter, the requisitionists or any of them may themselves convene a meeting but any meeting so convened shall not be held after the expiration of four months from the said date.

(4) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any fees or other remuneration of such of the directors as were in default.

(5) For the purposes of this section, the directors shall be deemed not to have proceeded duly to convene a meeting if they do not, within seven days after the receipt of the requisition at the registered office, cause notices of the meeting to transact the business specified in the requisition to be given in accordance with sections 152 to 155 of this Code.

#### Section 272-Appointment and Removal of Directors of Private Companies

(1) The appointment and removal of directors of a private company shall, subject to sections 180 to 185 of this Code, be regulated by the company's Regulations.

(2) In the absence of any contrary provision in the company's Regulations each of the existing directors shall continue to hold office until he vacates office under section 184 of this Code, or is removed under section 185 of this Code; and the company may at any time by ordinary resolution fill any vacancy in the number of directors and may at any time by ordinary resolution increase the number of directors so however that the total number of directors shall not exceed the maximum, if any, prescribed by the Regulations.

#### Section 273-Conversion of Private Company to Public Company

(1) A private company shall be converted into a public company if it shall alter its Regulations in such a manner that they no longer include all the provisions which, under subsection (3) of section 9 of this Code, are required to be included in the Regulations of a company in order to constitute it a private company.

(2) Within twenty-eight days after the date of the special resolution altering the Regulations the company shall deliver to the Registrar for registration,

(a) a copy of the said resolution in accordance with section 176 of this Code; and

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(b) unless the company is a company limited by guarantee, a prospectus complying with the provisions of the Seventh Schedule to this Code, or a statement in lieu of prospectus complying with the provisions of the Sixth Schedule to this Code.

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(3) The Registrar shall cause notice of the conversion of the company to be published in the Gazette.

(4) If default is made in complying with subsection (1) or (2) of this section the company and every officer of the company who is in default shall be liable to a fine not exceeding one hundred pounds.

#### Section 274-Statement in Lieu of Prospectus

(1) A public company shall, within twenty-eight days after its incorporation, or after its conversion from a private company in accordance with section 273 of this Code, deliver to the Registrar for registration a statement in lieu of prospectus, signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing, in the form and containing the

particulars set out in Part I of the Sixth Schedule to this Code and, in the cases mentioned in Part II of that Schedule, accompanied by the accounts and reports specified therein:

Provided that this subsection shall not apply to,

- (a) any company limited by guarantee;
- (b) any company which, within twenty-eight days after its incorporation or conversion from a private company, delivers for registration a prospectus complying in all respects with the Seventh Schedule to this Code.

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(2) Every existing company shall, within six months after the commencement of this Code, deliver to the Registrar for registration a like statement in lieu of prospectus signed by every director of the company or by his agent authorised in writing:

Provided that this subsection shall not apply to any existing company which, prior to the expiration of such six months,

- (a) alters its Regulations so as to convert the company into a private company by inserting in its Regulations the conditions specified in subsection (3) of section 9 of this Code; or
- (b) is converted into a company limited by guarantee in accordance with section 11 of this Code; or
- (c) registers and publishes a prospectus complying in all respects with the Seventh Schedule to this Code;

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and for the purposes of subsection (4) of this section an existing company shall be deemed to be a company to which this subsection applies until it has complied with proviso (a), (b) or (c) of this subsection.

Sixth Sch.

(3) Every statement in lieu of prospectus delivered under the foregoing subsections shall, where the persons making any such report as is specified in Part II of the said Sixth Schedule have made any such adjustments as are mentioned in paragraph 27 of such Schedule, have endorsed thereon or attached thereto a written statement signed by those persons setting out the adjustments and giving the reason therefor.



(4) A company to which subsection (1) or (2) of this section applies, shall not, after the commencement of this Code, issue any of its shares or debentures until after the expiration of seven days after the statement in lieu of prospectus has been delivered to the Registrar:

Provided that this subsection shall not prohibit the issue to the subscribers of the Regulations of the number of shares for which each has subscribed.

(5) If any shares are issued in contravention of the immediately preceding subsection any person to whom they are allotted shall be entitled to rescind the allotment at any time within three months of the allotment notwithstanding that the company is in course of being wound up, and every director of the company who knowingly contravenes or permits the contravention shall be liable to compensate the company and the allottee respectively for any loss which the company or the allottee may have sustained thereby.

(6) If a company contravenes subsection (1), (2) or (3) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one hundred pounds.

(7) Where a statement in lieu of prospectus delivered to the Registrar under subsection (1) or (2) of this section includes any untrue statement or omits truthfully to state any of the particulars required to be stated by virtue of the Sixth Schedule then,

(a) any person, which expression for the purposes of this subsection shall not include the company itself, who authorised the delivery of the statement in lieu of prospectus for registration shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding one hundred pounds or both, unless he shall prove either that the untrue or omitted statement was immaterial or that he had reasonable grounds to believe and did, up to the time of delivery for registration of the statement in lieu of prospectus, believe that the untrue statement was true;

(b) an allottee who acquired any shares or debentures in the company in reliance on the statement in lieu of prospectus and who was misled by the untrue statement or omission shall be entitled to rescind the allotment of such shares or debentures and to recover from any person guilty of an offence under the foregoing paragraph, whether convicted or not, compensation for any loss which he has suffered by reason of such reliance:

Provided that an allottee shall not be entitled to rescission under this subsection unless he claims to rescind with reasonable promptitude after discovering that an untrue statement or omission was made, and, in any case, prior to the winding up of the company;

(c) any person who acquires any shares or debentures in the company from an allottee in reliance on the statement in lieu of prospectus and who was misled by the untrue statement or omission shall be entitled to recover from any person guilty of an offence under paragraph (a) of this subsection, whether convicted or not, compensation for any loss which he has suffered by reason of such reliance.

#### Section 275-Prospectus on Invitations to the Public to Acquire or Dispose of Securities

(1) Notwithstanding section 265 of this Code it shall be lawful to make an invitation to the public to acquire or dispose of any shares or debentures of a public company if,

(a) within six months prior to the making of the invitation there has been delivered to the Registrar and registered by him in accordance with section 279 of this Code a prospectus relating to such shares or debentures complying in all respects with the relevant provisions of sections 276 to 278 of this Code; and

(b) except as provided in subsection (2) of this section, every person to whom the invitation is made is supplied with a true copy of such prospectus at the time when the invitation is first made to him; and

(c) every copy of the prospectus states on its face that it has been registered by the Registrar and the date of registration.

(2) Paragraph (b) of the foregoing subsection shall not apply to an invitation made by or through a member of an approved stock exchange to a client of that member or to an invitation made by or through an exempted dealer or to an invitation made by a summary complying with subsection (3) of this section. [As amended by the Companies Code (Amendment) Act 1994 (Act 474) s. 4(a)].

(3) It shall be lawful to publish by newspaper advertisement or otherwise a summary of the contents of a prospectus, duly registered in accordance with section 279 of this Code, so long as the summary

(a) does not contain any form of application for any shares or debentures which has not been approved by the Registrar or, in respect of shares or debentures dealt in or to be dealt in upon an approved stock exchange by such stock exchange;

(b) states with reasonable prominence where copies of the full prospectus may be obtained and the fact that it has been registered and the date of registration;

(c) is in terms previously approved by the registrar, or, where the shares or debentures concerned are dealt in upon an approved stock exchange or where the prospectus or summary states that application is to be made to an approved stock exchange for

permission to deal thereon in such shares or debentures, is in terms previously approved by such stock exchange. [As substituted by the Companies Code (Amendment) Act, 1994 (Act 474) s. 4(b)].

#### Section 276-General and Restricted Invitations to the Public

##### Seventh Sch.

(1) Except as provided in section 277 of this Code, where the invitation invites the public to acquire any shares or debentures of a public company, the prospectus referred to in the immediately preceding section shall state the matters specified in Part I of the Seventh Schedule to this Code and set out the reports specified in Part II of that Schedule:

Provided that this subsection shall not apply to,

(a) an invitation by a company in respect of shares or debentures of that company or any of its associated companies made solely to the existing shareholders or debentureholders of that company; or

(b) an invitation by a company in respect of shares or debentures of that company which are in all respects uniform with shares or debentures of that company previously issued and for the time being dealt in on an approved stock exchange.

##### Seventh Sch.

(2) A prospectus relating to any invitation to the public to acquire or dispose of any shares or debentures of a public company, being an invitation not falling within subsection (1) of this section, either because it does not invite the public to acquire any shares or debentures or because it is excluded from the ambit of that subsection by virtue of the proviso thereto, need not state all the matters or set out the reports specified in the Seventh Schedule to this Code; but shall not contain any untrue statement and, if the shares or debentures to which it relates are dealt in on any stock exchange, whether in Ghana or elsewhere, or if application has been, or is being, made to a stock exchange for permission to deal in those shares or debentures the prospectus,

(a) shall state that the shares or debentures are dealt in on that stock exchange or, as the case may be, that application has been or is to be made for permission to deal therein on that stock exchange; and

(b) shall state whether or not that stock exchange is an approved stock exchange within the meaning of this Code; and

(c) shall contain the particulars and information required by that stock exchange;

and in any other case shall state that the shares or debentures are not dealt in on any stock exchange.

(3) An invitation falling within subsection (1) of this section is hereafter in this Code described as a general invitation; and an invitation falling within subsection (2) of this section is hereafter in this Code described as a restricted invitation.

#### Section 277-Certificates of Exemption

Seventh Sch.

(1) Where it is proposed to make a general invitation to the public to acquire any shares or debentures of a public company and application is made to an approved stock exchange for permission for those shares or debentures to be dealt in on that stock exchange there may, on the request of the applicant, be given by or on behalf of that stock exchange a certificate of exemption, that is to say, a certificate that, having regard to the proposals, as stated in the request, as to the size and other circumstances of the invitation, compliance with the requirements of the Seventh Schedule would be unduly burdensome.

Seventh Sch.

(2) If a certificate of exemption is granted and if the proposals aforesaid are adhered to, a prospectus containing the particulars and information required by the said stock exchange if duly published in the manner required by such stock exchange shall be deemed to be a prospectus complying with the Seventh Schedule to this Code.

#### Section 278-Expert's Consent

(1) If any prospectus relating to an invitation to the public in respect of any shares or debentures of a public company, whether a general invitation or a restricted invitation, includes a statement purporting to be made by an expert, the prospectus shall not be delivered for registration unless,

(a) such expert has given his written consent, and has not, before delivery of the prospectus for registration in accordance with section 279 of this Code, withdrawn such consent, to the publication of the prospectus with the inclusion of the statement in the form and context in which it is included; and

(b) a statement that he has given and not withdrawn his consent appears in the prospectus.

(2) If, after delivery of the prospectus for registration but prior to registration thereof any such expert withdraws his consent the person who has delivered the prospectus

for registration shall immediately notify the Registrar.

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

#### Section 279-Registration of Prospectuses

(1) Every prospectus delivered to the Registrar for registration pursuant to section 275 of this Code shall be delivered in triplicate.

(2) Where a general invitation is being made by or on behalf of a company in respect of its shares or debentures, one copy of the prospectus delivered to the Registrar shall be signed by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing as well as being signed, in the manner referred to in subsections (3) and (4) of this section, by or on behalf of any other person also making the invitation.

(3) In every case one copy of the prospectus so delivered shall be signed by the person making the invitation or by his agent authorised in writing.

(4) Where the person making the invitation is a firm or body corporate it shall be sufficient if the prospectus is signed by or on behalf of the firm or body corporate by not less than half the partners or by not less than two directors of the body corporate, and any such partner or director may sign by his agent authorised in writing.

(5) One copy of the prospectus so delivered shall have endorsed thereon or attached thereto,

(a) any consent of an expert required by section 278 of this Code; and

(b) in the case of a prospectus relating to a general invitation, a certified copy or translation of each of the documents required to be available for inspection in accordance with paragraph 45 of the Seventh Schedule to this Code, or, where a certificate of exemption has been granted pursuant to section 277 of this Code, required to be available for inspection under the regulations of the stock exchange:

Provided that if a copy or translation of any such document has already been delivered by the company to the Registrar for registration, the Registrar may dispense with the need to endorse or attach a further copy thereof if, in the opinion of the Registrar, the copy originally delivered is readily identifiable and accessible.

(6) If the prospectus relates to shares or debentures dealt in on an approved stock exchange or states that application has been or will be made to an approved stock exchange for permission to deal in the shares or debentures to which it relates, there

shall be delivered to the Registrar with the prospectus a certificate signed by or on behalf of that approved stock exchange that,

- (a) the prospectus has been scrutinised by the stock exchange; and
- (b) its requirements relating to the contents thereof have been satisfied;

and the Registrar shall thereupon register the prospectus within forty-eight hours of the delivery of the prospectus to him, unless it is incomplete or irregular on its face or unless, prior to registration, any consent of an expert required by section 278 of this Code has been withdrawn.

(7) If the prospectus relates to any invitation made by or through an exempted dealer there shall be delivered to the Registrar with the prospectus a certificate signed by or on behalf of that exempted dealer that,

- (a) he accepts personal responsibility for the contents of the prospectus; and
- (b) it complies in all respects with the provisions of this Code;

and the Registrar shall thereupon register the prospectus within forty-eight hours of the delivery of the prospectus to him unless it is incomplete or irregular on its face or unless, prior to registration any consent of an expert required by section 278 of this Code has been withdrawn.

(8) In any case not falling within subsection (6) or (7) of this section the Registrar shall register the prospectus and any documents required to be endorsed thereon or attached thereto at the expiration of twenty-one days from the delivery to him in accordance with subsection (1) of this section, or such shorter time as he may allow in any particular case, unless,

- (a) any consent of an expert required by section 278 has been withdrawn; or
- (b) in the opinion of the Registrar, the prospectus does not comply with the provisions of this Code or contains any untrue statement or omits to state any material fact or is otherwise incomplete or misleading;

in which case he shall refuse to register the same until any necessary consents are given or the prospectus is amended to the Registrar's satisfaction.

(9) From any refusal by the Registrar to register a prospectus the company or any other person who has delivered the prospectus for registration may apply to the Court which, after hearing the applicant and the Registrar, and such evidence as they may call, may either order the Registrar to register the prospectus or may dismiss the

application and prohibit any person before the Court from publishing the prospectus until it has been amended to the satisfaction of the Registrar.]

(9a) In any case not falling within subsection (5) or (6) of this section the Registrar may, for the purpose of reaching an opinion on whether a prospectus—

(a) does not comply with the provisions of this Code; or

(b) contains any untrue statement; or

(c) omits to state any material fact; or

(d) is otherwise incomplete or misleading,

refer the prospectus to the Securities Regulatory Commission for its opinion and in such a case the Commission shall give its opinion with the period of 21 days, in relation to the prospectus, referred to in subsection (8) of this section.<sup>1</sup> [As inserted by the Securities Industry Law, 1993 (PNDCL 333) s. 145 ss 1. ]

(10) If the Court orders the prospectus to be registered it shall be registered by the Registrar upon delivery to him of an office copy of the order.

(11) Every copy of any prospectus which has been delivered for registration in accordance with the provisions of this section shall state at its head the following:

"A copy of this prospectus has been delivered to the Registrar of Companies, Ghana, for registration. The Registrar has not checked and will not check the accuracy of any statements made and accepts no responsibility therefor or for the financial soundness of the company or the value of the securities concerned".

(12) Until the contrary is shown, the first publication of the prospectus shall be assumed to have occurred on the date of registration thereof.

#### Section 280-Meaning of "Approved Stock Exchange" and "Exempted Dealer"

(1) For the purposes of this Code "approved Stock exchange" means a body corporate approved as a stock exchange under section 25 of the Securities Industry Law, 1993 (PNDCL 333). [As amended by the Securities Industry Law, 1993 (PNDCL 333) s. 145 ss 2. ]

(2) It shall be the duty of every approved stock exchange to furnish to the Registrar as at the first day of January in each year, and at any other time if called upon by the Registrar to do so, a list showing,

(a) the name and business address and the style under which he carries on business of each person who at the date of the list is a member of that stock exchange, and if a body corporate, the name of each of the directors thereof; and

(b) the names of all persons who are for the time being authorised by that member to deal in securities on his behalf.

(3) The Minister may, by legislative instrument, declare any person, firm or body corporate carrying on business in Ghana to be an exempted dealer, whereupon, so long as the instrument remains in force, such person, firm or body corporate shall be an exempted dealer for the purposes of this Code.

#### Section 281-Waiting Period

(1) For the purpose of this Code the expression "the waiting period" means a period of ten days after the first publication of a registered prospectus or such longer period as may be stated in the prospectus as the period prior to the expiration of which applications, offers or acceptances in response thereto will not be accepted or treated as binding:

Provided that,

(a) where the shares or debentures to which the invitation relates are dealt in on a stock exchange or where the prospectus states that application has been or will be made for permission to deal therein on any stock exchange, and

(b) to comply with the requirements of that stock exchange it is necessary to advertise the prospectus in one or more newspapers,

then the publication of the prospectus shall not be deemed to have occurred until the prospectus is so advertised.

(2) No binding contract or legally enforceable obligation shall be entered into in response to any invitation to the public in respect of any shares or debentures of any public company until after the expiration of the waiting period, and any application, offer or acceptance by any person in response to the invitation shall be revocable by such person at any time prior to the expiration of the waiting period:

Provided that nothing in this subsection shall invalidate any bona fide underwriting agreement in respect of any such shares or debentures.

#### Section 282-Withdrawal of Applications after the Waiting Period



Where a general invitation is made to the public in respect of any shares or debentures of a public company, an application for such shares or debentures shall not be revocable during a period of seven days immediately after the expiration of the waiting period unless, prior to the expiration of the period of seven days, some person responsible for the prospectus has, in accordance with section 286 of this Code, given public notice having the effect under that section of excluding or limiting the responsibility of the person giving it.

#### Section 283-Invitations in Respect of Securities to be dealt in on a Stock Exchange

(1) Where a prospectus, issued in connection with any general or restricted invitation to the public to acquire any shares or debentures in a public company, states that application has been or will be made for permission for such shares or debentures to be dealt in on a stock exchange, any agreement to acquire such shares or debentures made in pursuance of such prospectus shall become void if the application is refused by that stock exchange or if permission to deal in the shares or debentures is not granted within twenty-eight days after the expiration of the waiting period.

(2) If any agreement becomes void in accordance with the foregoing subsection, the person or persons making the invitation shall forthwith repay and restore without interest all money and other property received from any person in response to the invitation.

(3) If any money or other property is not repaid or restored in accordance with subsection (2) of this section within eight days after it becomes repayable or returnable, the person or persons making the invitation and, in the case of a body corporate, the directors of that body corporate shall be jointly and severally liable to repay that money or restore that property with interest at the rate of five per centum per annum on the amount or value thereof from the expiration of the eighth day:

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

(4) So long as the persons making the invitation may become liable to repay any money in accordance with subsection (2) of this section, all moneys received from any persons in response to the invitation shall be kept in a separate bank account and shall be deemed to be held on trust to give effect to the provisions of this section; and if default is made in complying with this subsection, the persons making the invitation and, in the case of a body corporate, every officer thereof who is in default shall be liable to a fine not exceeding five hundred pounds.

#### Section 284-Minimum Subscription

(1) Where any public company makes a general invitation to the public to subscribe for any of its shares or debentures, the amount payable on application for such shares

or debentures shall not be less than twenty per centum of the subscription price.

Seventh Sch.

(2) Unless, within twenty-eight days of the expiration of the waiting period, the amount stated in the prospectus as the minimum amount which, in the opinion of the directors, must be raised in order to provide for the matters specified in sub-paragraph (b) of paragraph 24 of the Seventh Schedule to this Code, hereinafter called the minimum subscription, has been subscribed and the amount payable on application for the minimum subscription has been paid to and received by the company, any agreement to subscribe for any such shares or debentures shall become void at the expiration of such twenty-eight days.

(3) If any agreement becomes void in accordance with the last foregoing subsection, the company shall forthwith repay without interest all moneys received from any persons in response to the invitation.

(4) If any money is not repaid in accordance with subsection (3) of this section within eight days after it becomes repayable, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per centum per annum from the expiration of the eighth day:

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

(5) So long as the company may become liable to repay any money in accordance with subsection (3) of this section, all moneys received from any person in response to the invitation shall be kept in a separate bank account and shall be deemed to be held on trust to give effect to the provisions of this section; and if default is made in complying with this subsection the company and every officer of the company who is in default shall be liable to a fine not exceeding five hundred pounds.

Section 285-Application of Sections 275 to 279, and 281 to 284 to Authorized Mutual Funds

In relation to any invitation to the public to acquire or dispose of any shares in a public company which, pursuant to section 319 of this Code, has been declared to be an authorised mutual fund, the provisions of sections 275 to 279 and 281 to 284 of this Code shall have effect subject to the terms of any instrument made by the Registrar under the said section 319.

Section 286-Civil Remedy for Mis-statements or Omissions in a Prospectus

(1) Where a prospectus published in connection with any general or restricted invitation to the public in respect of any shares or debentures of a public company

contains any untrue statement or omits to state any of the particulars or to set out any of the reports which, under the foregoing sections of this Code, it is required to state or set out, then, subject to the provisions of this section, every person enumerated in subsection (2) of this section shall be liable to pay compensation to any persons who acquire or dispose of any shares or debentures on the faith of the prospectus for any loss they may have sustained by reason of such untrue statement or omission.

(2) Subject to the provisions of this section, the following persons shall be liable to pay compensation in accordance with subsection (1) of this section, namely,

(a) every person making the invitation to which the prospectus relates;

(b) every person who was a director of a body corporate making the invitation at the time when the prospectus was published;

(c) where the invitation was made by the company to whose shares or debentures the invitation relates,

(i) every person who has authorised himself to be named and is named in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time;

(ii) every promoter of the company who was a party to the preparation of the prospectus: and

(d) every person who, pursuant to section 278 of this Code, has consented to the publication of the prospectus containing a statement by him as an expert.

(3) No person shall be liable under the foregoing subsections of this section if he proves,

(a) that as regards every untrue statement, not purporting to be made on the authority of an expert, other than himself, or of a public official document or statement, he had reasonable grounds to believe and did believe up to the time of the publication of the prospectus or, where any waiting period applies, up to the expiration of the waiting period, that the statement was true;

(b) that as regards any omission, he was not cognisant thereof up to the time of the publication of the prospectus or, where any waiting period is applicable, up to the expiration of the waiting period;

(c) that as regards every untrue statement purporting to be a statement by an expert, other than himself, or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct

and fair copy of or extract from the report or valuation, and that he had reasonable grounds to believe and did believe up to the time of the publication of the prospectus that the person making the statement was competent to make it and had given the consent required by section 278 of this Code and had not withdrawn that consent before the date of registration of the prospectus;

(d) that as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document;

(e) that after the publication of the prospectus but before the expiration of any waiting period he, on becoming aware of any untrue statement therein or omission therefrom, withdrew his consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor; or

(f) that the prospectus was published without his knowledge and that, on becoming aware of its publication, he forthwith gave reasonable public notice that it was published without his knowledge.

(4) A person enumerated in subparagraph (i) of paragraph (c) of subsection (2) of this section shall not be liable under subsections (1) and (2) of this section if he proves that having consented to being named as a director or as having agreed to become a director he withdrew his consent before the registration of the prospectus and that it was published without his authority or consent.

(5) A person enumerated in paragraph (d) of subsection (2) of this section shall not be liable under subsections (1) and (2) of this section,

(a) if the untrue statement or omission was not made by him; or

(b) if he proves,

(i) that as regards any untrue statement made by him, he was competent to make the statement and that he had reasonable grounds to believe and did believe, up to the date of publication of the prospectus or, where any waiting period applies, up to the expiration of the waiting period, that the statement was true;

(ii) that having given his consent under section 278 of this Code he withdrew it in writing before delivery of the prospectus for registration; or

(iii) that, after delivery of the prospectus for registration but before publication thereof, or, where any waiting period applies, before the expiration of the waiting period, he, on becoming aware of the untrue statement or omission, withdrew his consent in

writing and gave reasonable public notice of the withdrawal, and of the reason therefor.

(6) Where,

(a) any person is named in a prospectus as a director of a company or as having agreed to become a director of a company, and he has not consented to become a director or has withdrawn his consent before the publication of the prospectus and has not authorised or consented to the publication thereof, or

(b) the consent of a person is required under section 278 of this Code to the publication of the prospectus and he either has not given that consent or has withdrawn it before the publication of the prospectus,

every person making the invitation to which the prospectus relates and every person who was a director of any body corporate making the invitation at the time when the prospectus was published, except any without whose knowledge or consent the prospectus was published, shall be liable to indemnify the person referred to in paragraph (a) or (b) of this subsection against all damages, costs, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him as an expert, or in defending himself against any legal proceeding brought against him in respect thereof.

#### Section 287-Rescission for Mis-statements in a Prospectus

(1) If any person acquires any shares or debentures of a public company from that company or disposes of any shares or debentures of a public company to that company as a result of an untrue statement of a material fact made, whether innocently or fraudulently, in a prospectus published in connection with any invitation to the public made by or on behalf of that company, such person shall, subject to subsection (2) of this section, be entitled to rescind the acquisition or disposition of the shares or debentures.

(2) Such person shall not be entitled to rescission unless he claims to rescind with reasonable promptitude after discovering that the untrue statement was made and, in any case prior to the commencement of the winding up of the company.

#### Section 288-Voting Rights of Shares Offered to the Public

(1) No invitation shall be made to the public to acquire any shares in a public company unless the voting rights attached to all the shares of the company, notwithstanding that they may have been issued before the commencement of this Code, are such as are required by sections 49 and 50 of this Code in the case of shares issued after the commencement of this Code.

(2) If any person shall make an invitation to the public in breach of this section he shall be liable to a fine not exceeding one thousand pounds and if the invitation is made by or on behalf of the company, the company, and every officer of the company who is in default, shall be liable to a like fine.

#### Section 289-Public Invitations to Deposit Money with Public Companies

(1) Notwithstanding section 265 of this Code it shall be lawful to make an invitation to the public to deposit money with a public company if,

(a) the public company is licensed, under section 24 of the Companies Ordinance (Cap. 193) or any statutory re-enactment thereof, to carry on banking business; or

(b) prior to the making of the invitation the written consent of the Registrar has been obtained to the making thereof and the invitation is made in accordance with such conditions and restrictions as he has imposed.

(2) The Registrar may, in his absolute discretion grant or withhold such consent as is referred to in paragraph (b) of subsection (1) of this section and, without prejudice to the generality of the foregoing, may require the registration with and approval by him of any advertisement or circular to be used in connection with the invitation.

(3) If any advertisement or circular used in connection with the invitation contains any untrue statement then, subject to subsection (4) of this section, any person who made the invitation and every person who was a director of a body corporate making the invitation at the time when the advertisement or circular was published, shall be liable to pay compensation to any persons who deposited money with the public company on the faith of the advertisement or circular for any loss they may have sustained by reason of such untrue statement.

(4) No person shall be liable under subsection (3) of this section if he proves,

(a) that he had reasonable grounds to believe and did believe up to the time of publication of the advertisement or circular that the statement was true; or

(b) that the advertisement or circular was published without his knowledge and that on becoming aware of its publication he forthwith gave reasonable public notice that it was published without his knowledge.

(5) If any person deposits any money with a public company as a result of an untrue statement of a material fact made, whether innocently or fraudulently, in any advertisement or circular published in connection with any invitation to the public made by or on behalf of that company such person shall be entitled to require the

company immediately to repay such money with interest at the rate of five per centum per annum or such higher rate as may have been agreed to be paid on the deposit.

#### Section 290-Prohibition of Waiver and Notice Clauses

A condition purporting to require or bind any person to waive compliance with any of the foregoing sections of this Part of this Code or purporting to affect him with notice of any contract, document or matter, not specifically referred to in any prospectus or statement in lieu of prospectus, advertisement or circular, shall be void.

#### Section 291-Criminal Liability for Mis-statements

(1) Where a prospectus, advertisement or circular published in relation to any invitation to the public to acquire or dispose of any shares or debentures of a company or to deposit money with a company,

(a) contains any untrue statement, or

(b) omits truthfully to state any of the matters which, under the foregoing sections of this Part of this Code, it is required to state,

any person who authorised the publication of the prospectus, advertisement or circular shall be liable on conviction to imprisonment for a term not exceeding two years or a fine not exceeding one thousand pounds or both, or in the case of a body corporate to a fine not exceeding one thousand pounds, unless he proves, either that the untrue or omitted statement was immaterial or that he had reasonable grounds to believe and did believe, up to the time of publication of the prospectus, that the statement was true.

(2) For the purposes of this section a person shall not be deemed to have authorised the publication of a prospectus by reason only of his having given the consent required by section 278 of this Code and the Register shall not be deemed to have authorised the publication of an advertisement or circular by reason of his having given the consent referred to in section 289 of this Code.

#### Section 291-"Discretion of Registrar to Waive or Modify the Application of Part A of Chapter IV

(1) Notwithstanding any other provisions of this Code, the Registrar, in his absolute discretion may waive or modify the requirements of any of the provisions of Part A of Chapter IV of this Code in relation to an invitation to the public to acquire or dispose of any shares or debentures of a company or to deposit money with the company for a fixed period or payable at call, whether bearing or not bearing interest.

(2) Any such invitation and any prospectus relating thereto shall be deemed to comply with this Code to the extent that the Registrar has waived or modified any of such

requirements. [As inserted by the Companies Code (Amendment) by the Company Code (Amendment) Act, 1944 (Act 474) s. 5].

#### Section 292-Limitation on Liability of Shareholders in Public Companies to Restore Illegal Dividends

If a public company pays a dividend in contravention of subsection (1) of section 71 of this Code, a shareholder therein shall not be liable to restore to the company any amount received by him in respect of such dividend if he shall show that, at the time when he received the same, he did not know that the payment contravened the subsection.

#### Section 293-Interim Dividends

The directors of a public company with shares may, unless the Regulations of the company shall otherwise provide, from time to time pay to the shareholders of the company interim dividends on account of dividends to be declared by the company in accordance with section 73 of this Code:

Provided that,

(a) no payment shall be made in contravention of subsection (1) of section 71 of this Code; and

(b) if a payment is made in contravention of such subsection the persons specified in subsection (2) of the said section 71 shall be liable to restore the same to the company with interest in accordance with that subsection as qualified by section 292 of this Code.

#### Section 294-Restrictions on the Transferability of Securities of Public Companies

(1) Notwithstanding subsection (2) of section 95 of this Code, the Regulations of a public company shall not impose any restriction on the right to transfer any shares of the company and if the Regulations purport to impose any such restriction it shall be ineffective:

Provided that this subsection shall not,

(a) prohibit any restriction on the right to transfer any shares on which there is an unpaid liability; or

(b) preclude any company from refusing to register a transfer of shares to any person who is an infant or to any one found by a competent court to be a person of unsound mind.



(2) Notwithstanding subsection (2) of section 97 of this Code, a public company shall not after the commencement of this Code issue any debenture of the company which imposes any restriction on the right to transfer such debenture and if the debenture purports to contain any such restriction it shall be ineffective:

Provided that this subsection shall not render ineffective any restriction contained in a debenture issued before the commencement of this Code or while the company was a private company.

#### Section 295-Documents to be Annexed to Annual Returns of a Public Company

The annual return of every public company required by section 122 of this Code shall be accompanied by a copy, certified both by a director and the secretary of the company to be a true copy, of every balance sheet, profit and loss account, group accounts, directors' report and auditors' report sent to members and debentureholders of the company in accordance with section 124 of this Code during the period to which the return relates.

#### Section 296-Qualification of Auditors of a Public Company

(1) A person shall not be qualified for appointment as auditor of a public company notwithstanding that he may have been appointed auditor thereof while it was a private company, unless he is, under the Chartered Accountants Act, 1963 (Act 170) a member of the Institute of Chartered Accountants; and is not disqualified under subsection (2) of this section.

(2) The following persons shall be disqualified for appointment as auditor of a public company, namely,

(a) an officer of the company, or of any associated company;

(b) a person who is a partner of or in the employment of an officer of the company, or of any associated company;

(c) an infant;

(d) any person found by a competent court to be a person of unsound mind;

(e) a body corporate, except that members of an incorporated partnership may be appointed in the manner provided by subsection (2) of section 134 of this Code;

(f) any one in respect of whom an order shall have been made under section 186 of this Code so long as such order remains in force unless leave to act as auditor of the company concerned has been given by the Court in accordance with that section;

(g) an undischarged bankrupt, unless he shall have been granted leave to act as auditor of the company concerned by the court by which he was adjudged bankrupt;

(h) a person who is for the time being disqualified from acting as auditor of a company by instrument of the Registrar under subsection (3) of this section:

Provided that nothing contained in paragraph (b) of this subsection shall disqualify a person from being appointed as auditor by reason only of the fact that he is a partner or in the employment of a person acting as secretary or registration officer of the company of any associated company.

(3) The Registrar may, on cause being shown, by legislative instrument disqualify any person from acting as auditor of any public company and may at any time remove such disqualification.

(4) From any instrument of the Registrar disqualifying any person or refusing to remove the disqualification there shall be a right of appeal to the Court.

(5) Any person not qualified for appointment as auditor who shall act as auditor of a public company shall be liable to a fine not exceeding five hundred pounds and the company by whom he is appointed and every officer thereof who is in default shall be liable to a like fine.

#### Section 297-Extraordinary General Meetings of Pubic Companies

(1) The directors of a public company, notwithstanding anything in its Regulations, shall, on the requisition of members of the company holding not less than one-twentieth of the shares of the company, or, in the case of a company limited by guarantee, members of the company representing not less than one-twentieth of the total voting rights of all members of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.

(2) The requisition shall state the nature of the business to be transacted at the meeting and shall be signed by the requisitionists and sent to or deposited at the registered office of the company, and may consist of several documents in like form each signed by one or more requisitionists.

(3) If the directors do not, within twenty-eight days from the date of receipt of the requisition at the registered office of the company, proceed duly to convene a meeting for a date not later than twenty-eight days thereafter the requisitionists, or any of them, may themselves convene a meeting but any meeting so convened shall not be held after the expiration of four months from the said date.

(4) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the

company, and any sum so repaid shall be retained by the company out of any fees or other remuneration of such of the directors as were in default.

(5) For the purposes of this section, the directors shall be deemed not to have proceeded duly to convene a meeting if they do not, within twenty-eight days of the receipt of the requisition at the registered office, cause notices of the meeting to transact the business specified in the requisition to be given in accordance with sections 152 to 155 of this Code.

#### Section 298-Rotation of Directors of a Public Company

Subject to sections 181 to 185 and section 300 of this Code, and except as otherwise provided in the company's Regulations, the following rules shall apply to the retirement and appointment of directors of a public company, that is to say,

(a) at the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office;

(b) the directors to retire in every year shall be those who have been longest in office since their last election, but, as between persons who became directors on the same day those to retire shall, unless they otherwise agree among themselves, be determined by lot;

(c) any director appointed to the office of managing director shall not, while holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors;

(d) a retiring director shall be eligible for re-election;

(e) the company, at the annual general meeting at which a director retires as aforesaid, may fill the vacated office by electing a person thereto, and in default the retiring director shall, if offering himself for re-election, be deemed to have been re-elected unless at such meeting it is expressly resolved not to fill such vacated office or unless a resolution for the re-election of such director shall have been put to the meeting and lost;

(f) no person, other than a director retiring at the meeting shall, unless recommended by the directors, be eligible for election to the office of director at any general meeting unless not less than three nor more than twenty-eight days before the date appointed for the meeting there shall have been left at the registered office of the company notice in writing signed by a member entitled to attend and vote at the meeting of his intention to propose such person for election, and also notice in writing signed by that person of his willingness to be elected;

(g) on any increase or decrease in the number of directors the company may by ordinary resolution determine in what rotation the increased or decreased number is to retire from office.

#### Section 299-Voting for Directors of a Public Company

(1) At a general meeting of a public company, other than a company limited by guarantee, a resolution for the appointment of two or more persons as directors of the company by a single resolution shall not be moved unless a resolution that it shall be so moved has first been agreed to by the meeting without any vote being given against it.

(2) A resolution moved in contravention of this section shall be void, whether or not its being so moved was objected to at that time.

(3) For the purposes of this section, a resolution approving appointments or nominating persons for appointment shall be treated as a resolution for appointment.

(4) This section shall not apply where the company's Regulations provide for cumulative voting in accordance with section 300 of this Code.

#### Section 301-Prohibition of Loans by Public Companies to Directors

(1) It shall not be lawful for any public company to make a loan to any person who is its director or a director of any associated company, or to enter into any guarantee or provide any security in connection with a loan made to such a person by any other person:

Provided that nothing in this section shall apply,

(a) to the making of a loan to an associated company or the entering into any guarantee or the providing of any security in connection with a loan made to an associated company by any other person; or

(b) subject to subsection (2) of this section, in the case of a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, to anything done by the company in the ordinary course of that business.

(2) Proviso (b) to subsection (1) of this section shall not authorise the making of any loans or the entering into any guarantee or the providing of any security, unless the total amount lent, guaranteed, and secured in respect of loans to such persons as aforesaid does not exceed one per centum of the net assets of the company; and for

the purpose of this subsection the expression "net assets" means the assets less the liabilities of the company as shown in the last audited balance sheet of the company.

(3) If any company shall make 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 not exceeding one hundred pounds and the directors authorising the making of the loan or the entering into the guarantee or the providing of the security shall be jointly and severally liable to indemnify the company against any loss arising therefrom.

#### Section 302-Meaning of "External Company"

(1) The provisions of sections 303 to 317, other than section 315, in this Chapter of this Code shall apply to all external companies as defined in this section.

(2) An external company is a body corporate formed outside Ghana which, at or subsequently to, the commencement of this Code has an established place of business in Ghana.

(3) The expression "established place of business" means a branch, management, share, transfer, or registration office, factory, mine, or other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of the body corporate or maintains a stock of merchandise belonging to that body corporate from which he regularly fills orders on its behalf:

Provided that,

(a) a body corporate shall not be deemed to have an established place of business in Ghana merely because it carries on business dealings in Ghana through a bona fide broker or general commission agent acting in the ordinary course of his business as such;

(b) the fact that a body corporate has a subsidiary which is incorporated, resident, or carrying on business in Ghana, whether through an established place of business or otherwise, shall not of itself constitute the place of business of that body corporate.

#### Section 303-Document to be Delivered to Registrar by External Company

(1) External companies which, after the commencement of this Code, establish a place of business in Ghana shall, within one month of the establishment of the place of business, deliver to the Registrar for registration,

(a) a certified copy of the charter, statutes, regulations, memorandum and articles, or other instrument constituting or defining the constitution of the company, in a

language acceptable to the Registrar;

(b) a statement in duplicate in the prescribed form giving the following particulars regarding the company, namely,

(i) its name;

(ii) the nature of its business or businesses or other main objects;

(iii) the present forenames and surname and any former forename or surname, and the address and business occupation of some one or more person, in this Code referred to as a local manager, authorised to manage the business in Ghana of the company;

(iv) if the company has shares, the number and nominal value, if any, of its authorised and issued shares, the amount paid up thereon and the amount remaining payable thereon, distinguishing between the amounts paid and payable in cash and the amounts paid and payable otherwise than in cash;

(v) the address of its registered or principal office in the country of its incorporation;

(vi) the address of its principal place of business in Ghana and the number of its post office box;

(vii) the name and address in Ghana of a person, in this Code referred to as a process agent, authorised by the company to accept service of process and other documents on its behalf;

(c) such particulars, and copies, of any charges on the property of the company as are required to be delivered for registration in accordance with section 310 of this Code, or, if there are no such charges, a statement in the prescribed form to that effect.

(2) External companies which at the commencement of this Code already have an established place of business in Ghana shall, within six months after the commencement of this Code, send to the Registrar for registration the documents referred to in subsection (1) of this section.

(3) The Registrar shall register the said documents in the register of external companies and cause the particulars contained in the statement referred to in paragraph (b) of subsection (1) of this section to be published in the Gazette.

(4) For the purposes of sub-paragraph (iii) of paragraph (b) of subsection (1) of this section and of section 309 of this Code,

(a) in the case of a person usually known by a title different from his surname, the

expression "surname" means that title;

(b) reference to a former name shall not include,

(i) in the case of a person usually known by a title, the name by which he was known prior to his succession to that title;

(ii) a name changed or disused before the person bearing the name attained the age of eighteen years, or changed or disused for a period of not less than twenty years;

(iii) in the case of a married woman, the name by which she was known prior to the marriage.

#### Section 304-Returns Required on Alteration of Registered Particulars

(1) If any alteration is made in the charter, statutes, regulations, memorandum and articles, or other instrument referred to in paragraph (a) of subsection (1) of the immediately preceding section, the company shall, within two months of the effective date of the alteration, deliver to the Registrar for registration notice in the prescribed form giving details of the alteration.

(2) If any alteration is made in any of the particulars contained in the statement referred to in paragraph (b) of subsection (1) of the immediately preceding section, the company shall, within the times prescribed by the subsection (3) or (4) of this section, deliver to the Registrar for registration notice in the prescribed form in duplicate giving details of the alteration.

(3) In the case of any alteration in any of the particulars referred to in sub-paragraph (i), (ii), (iv) or (v) of paragraph (b) of subsection (1) of the immediately preceding section, the notice required by subsection (2) of this section shall be delivered to the Registrar within two months after the effective date of the alteration.

(4) In the case of any alteration in any of the particulars referred to in sub-paragraph (iii), (vi) or (vii) of paragraph (b) of subsection (1) of the immediately preceding section, the notice required by subsection (2) of this section shall be delivered to the Registrar within twenty-eight days of the date of the alteration, and the Registrar shall cause the particulars in such notice to be published in the Gazette.

#### Section 305-Local Managers

(1) An external company shall not appoint any person as its local manager or cause any person to be named as such in any statement or notice delivered to the Registrar under the foregoing sections of this Code unless such person is competent, in accordance with section 182 of this Code, to be appointed a director of a company formed in Ghana under this Code.

(2) The acts of any person registered as the local manager of an external company while carrying on the business in Ghana of that company shall bind the company unless the local manager has no authority so to act and the person with whom he was dealing had actual knowledge of the absence of authority, or, having regard to his position with or relationship to the company, ought to have known of such absence of authority.

#### Section 306-Service on External Company

(1) Any process or other document shall be sufficiently served on an external company if delivered or sent by post to the person last registered as the company's process agent at his last registered address even if the process agent refuses to accept service or the company has ceased to maintain a place of business in Ghana:

Provided that this subsection shall not apply to service of a document,

(a) if the company was struck off the register of external companies under section 312 of this Code more than six years previously; or

(b) if one person was last registered as process agent and that person is dead or, in the case of a body corporate, dissolved; or

(c) if two or more persons were last registered as process agents and each of those persons is dead, or in the case of a body corporate, dissolved.

(2) Where,

(a) no registration of the name and address of a person as the process agent of an external company has been effected, or

(b) the foregoing subsection does not apply by reason of paragraph (b) or (c) of the proviso thereto,

any process or other document shall be sufficiently served on the company if delivered or sent by post to any place of business of the company in Ghana or, if the company has ceased to have any place of business in Ghana, to the registered office or principal place of business of the company in the country of its incorporation.

(3) Any document to be served by post on an external company shall be posted in such time as to admit of its being delivered in due course of delivery within the time, if any, prescribed for the service thereof; and in proving service it shall be sufficient to prove that a letter containing such document was properly addressed, prepaid, and posted, whether or not by registered post.



(4) If it shall be proved that any document was in fact received by any local manager or process agent or by the board of directors, managing director or secretary of the external company such document shall be deemed to have been served on that company notwithstanding that service may not have been effected in accordance with the foregoing subsection of this section.

(5) Nothing in this section shall derogate from the power of any court to direct how service shall be effected of any document relating to legal proceedings before that court.

#### Section 307-Accounts of External Company

(1) Every external company shall, once in every year at intervals of not more than fifteen months, make out and deliver to the Registrar for registration a profit and loss account and balance sheet and, if the company is a holding company, group accounts, in the form and containing the same particulars as the accounts which, under paragraph (a) of subsection (1) of section 124 of this Code, the directors would have been required to send to the members and debentureholder of the company if it were a company formed in Ghana under this Code:

Provided that the Registrar may accept for registration a profit and loss account, a balance sheet and group accounts prepared in the form required under the law of the place of the company's incorporation if, in his opinion, such accounts give substantially the same, or greater, information as that required to be given in the accounts referred to in section 124 of this Code.

(2) The accounts mentioned in subsection (1) of this section shall be in a language acceptable to the Registrar.

(3) Notwithstanding that the profit and loss account, the balance sheet and the group accounts prepared in the form required under the law of the place of the company's incorporation do not give substantially as much information as that required in the accounts referred to in section 124 of this Code, the Registrar may, in his absolute discretion, nevertheless agree to accept such accounts for registration in compliance with subsection (1) of this section; but in that event, subject as provided by subsection (5) of this section, the company shall also deliver to the Registrar for registration, in a language acceptable to the Registrar,

(a) a profit and loss account, made out as nearly as may be in the form and containing the particulars required by section 125 of this Code and giving a true and fair view of the profit or loss, during the period to which it relates, on the company's operations in Ghana as if such operations had been conducted by a separate company formed in Ghana under this Code;

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(b) a statement as at the end of the company's financial year showing the company's assets locally situated in Ghana classified, distinguished and valued in accordance with the provisions of section 126 and Part II of the Fourth Schedule to this Code, and the nature and amount of any specific charges on such assets; and

(c) a report on the account and statement referred to in the foregoing paragraphs of this subsection by an auditor qualified in accordance with section 296 of this Code, stating that in his opinion and to the best of his information the accounts and statements are in accordance with the books and records of the company and give the information required by this Code in the manner therein required and give a true and fair view of the matters therein stated:

Provided that this subsection shall not apply to any company which,

(a) has at any time made in Ghana any invitation to the public to acquire any of its shares or debentures or to deposit money with it; or

(b) has issued any shares or debentures which are for the time being dealt in on any stock exchange in Ghana.

(4) In the profit and loss account referred to in paragraph (a) of subsection (3) of this section, the company shall be entitled to make such apportionments and to add such notes and explanations as shall, in its opinion, be necessary or desirable in order to give a true and fair view of the profit or loss on its operations in Ghana and for this purpose may debit a reasonable rate of interest on capital employed in Ghana.

(5) Notwithstanding that the Registrar agrees to accept a profit and loss account, a balance sheet and group accounts under subsection (3) of this section, he may waive compliance with paragraphs (a), (b) and (c) of that subsection or any of such paragraphs if satisfied that compliance therewith is impracticable having regard to the nature of the company's operations in Ghana.

(6) In relation to the accounts and statements referred to in this section the Registrar shall have the same powers to modify the requirements of Parts I, II and III of the Fourth Schedule to this Code as he has in relation to companies formed in Ghana under this Code.

(7) This section shall not apply to an external company carrying on banking business in Ghana under a licence granted pursuant to section 24 of the Companies Ordinance, (Cap. 193), or any statutory re-enactment thereof, unless such company,

(a) has at any time made in Ghana any invitation to the public to acquire any of its shares or debentures; or

(b) has issued any shares of debentures which are for the time being dealt in officially on any stock exchange in Ghana.

(8) Where this section applies to any such banking company the exemptions referred to in Part IV of the Fourth Schedule to this Code shall apply to the accounts and balance sheet of such company.

(9) If it appears to the Minister to be desirable in the public interest, the Minister may, by legislative instrument, direct that, in the case of any external company or class of external company, this section shall not apply or shall apply subject to such exceptions and modifications as shall be specified in the instrument.

#### Section 308-Obligation to State name, etc., of External Company

(1) Every external company shall,

(a) conspicuously exhibit on every place where it carries on business in Ghana the name of the company, the country in which the company is incorporated, and, if the liability of the members is limited, the fact that it is so limited;

(b) cause the name of the company and of the country in which it is incorporated and if the liability of the members is limited the fact that it is so limited to be stated in legible letters at the head of all business letters of the company despatched in Ghana.

(2) Where the name of the company is in a foreign language, the requirements of this section relating to the name of the company shall be deemed to be fulfilled by exhibiting and stating translation thereof in a language acceptable to the Registrar.

(3) The fact that the word "limited", or its equivalent in a foreign language, forms part of the company's name shall not be deemed a sufficient compliance with the obligations imposed by this section relating to the exhibition and stating of the fact that the liability of the members is limited.

#### Section 309-Publication of names of Local Managers

(1) Every external company shall, in all trade circulars and business letters on or in which the company's name appears and which are despatched in Ghana by or on behalf of the company, state in legible letters with respect to each local manager,

(a) his present forenames or initials thereof, and his present surname; and

(b) any former forename or surname:

Provided that if special circumstances exist which render it in the opinion of the

Registrar expedient that such an exemption should be granted, the Registrar may by legislative instrument grant, subject to such conditions as may be specified in the instrument, exemption from the obligations imposed by this section in respect of any company.

(2) The provisions of subsection (4) of section 303 of this Code shall apply to this section.

#### Section 310-Registration of Particulars of Charges

The provisions of Part L of Chapter II of this Code shall extend to charges on property in Ghana which are, or have been, created, and to charges on property in Ghana which is acquired, by an external company:

Provided that,

(a) particulars of charges created prior to the date when the external company had an established place of business in Ghana, and

(b) particulars of charges created prior to the commencement of this Code,

shall be deemed to be duly registered if particulars thereof are duly delivered to the Registrar for registration in accordance with section 303 of this Code and the failure to register any such charge as is referred to in paragraph (a) or (b) of this proviso shall not affect the validity of the charge.

#### Section 311-Notification of Winding Up of External Company

(1) Where, in the case of an external company,

(a) a winding up order is made by a court of the country in which the company is incorporated,

(b) a resolution is passed or other appropriate proceedings are taken in that country to lead to the voluntary winding up of the company, or

(c) the company is dissolved or otherwise ceases to exist according to the law of the country in which it was incorporated,

the local managers and process agents of the company shall, within twenty-eight days thereafter cause notice thereof in the prescribed form to be given to the Registrar who shall register the same and cause the particulars contained therein to be published in the Gazette.

(2) Where any such events have occurred as are referred to in paragraph (a) or (b) of

subsection (1) of this section the local managers of the company shall, on every invoice, order or business document on or in which the company's name appears, cause a statement to appear in legible letters to the effect that the company is being wound up in the country where it is incorporated.

(3) If any person shall in Ghana carry on, or purport to carry on, business on behalf of the company after the date on which it was dissolved or has otherwise ceased to exist in the country in which it was incorporated he shall be liable to a fine not exceeding five pounds for each day during which he continues so to do.

(4) Nothing in this section contained shall derogate from the provisions of the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180), enabling an external company, whether or not it has been dissolved or has otherwise ceased to exist according to the law of the country in which it was incorporated, to be wound up under that Act.

#### Section 312-Cessation of Business of External Company

(1) If any external company ceases to have an established place of business in Ghana it shall within twenty-eight days after so ceasing, give notice thereof to the Registrar in the prescribed form in duplicate and the Registrar shall register the same and cause a copy of the notice to be published in the Gazette.

(2) The Registrar shall thereupon strike the name of the company off the register of external companies.

(3) After notice has been given to the Registrar in accordance with subsection (1) of this section and so long as the company shall not have an established place of business in Ghana then, except as provided in subsection (6) of this section, no person shall be under any obligation to deliver any document relating to that company to the Registrar pursuant to the foregoing sections in this Chapter of this Code.

(4) Where the Registrar has reasonable cause to believe that an external company has ceased to have a place of business in Ghana he may send by registered post to the registered local manager and process agent and, if more than one, to all such persons, a letter enquiring whether the company is maintaining an established place of business in Ghana.

(5) If the Registrar receives an answer to the effect that the company has ceased to have an established place of business in Ghana or does not, within three months, receive any reply, he may strike the name of the company off the register of external companies.

(6) At any time within six years after the date on which the company was struck off the register of external companies under subsections (1) and (2) or (4) and (5) of this section, all persons shall continue to have a right to inspect the documents relating to

that company; and during such six years the company shall, notwithstanding subsection (3) of this section, continue to be under the obligation imposed by section 304 of this Code to give notice of any alteration in the names of the company's process agent.

#### Section 313-Penalties and Disabilities

(1) If any external company or any local manager or process agent of an external company fails to comply with any of the obligations imposed upon it or him by the foregoing provisions of this Chapter of this Code, the external company and any local manager or process agent who is in default shall be liable to a fine not exceeding fifty pounds or, in the case of a continuing default, five pounds for every day during which the default continues.

(2) If there is any default in delivering to the Registrar any document required to be delivered for registration pursuant to the foregoing provisions of this Chapter of this Code, the rights of the external company concerned under or arising out of any contract made in Ghana during such time as the default continues shall not be enforceable by action or other legal proceedings:

Provided that,

(a) the external company may apply to the Court for relief against the disability imposed by this subsection and the Court, on being satisfied that it is just and equitable to grant relief, may grant such relief either generally or as respects any particular contract and on such conditions as the Court may impose;

(b) nothing herein contained shall prejudice the rights of any other parties against the external company in respect of such contract;

(c) if any action or proceeding shall be commenced by any other party against the external company to enforce the rights of such party in respect of such contract, nothing therein contained shall preclude the external company from enforcing in that action or proceeding by way of counterclaim, set off or otherwise, such rights as it may have against that party in respect of that contract.

#### Section 314-Control of Public Invitations Relating to External Companies

(1) If any person makes in Ghana any invitation to the public to acquire or dispose of any shares or debentures of an external company or to deposit money with any external company for a fixed period or payable at call, whether bearing or not bearing interest, then, subject as hereinafter mentioned, the provisions of Part W of Chapter II and of Part A of Chapter IV of this Code shall apply as if the external company were a public company within the meaning of this Code.

(2) The Registrar, in his absolute discretion, may waive or modify the requirements of any of the provisions of Part A of Chapter IV of this Code in relation to any such public invitation as is referred to in subsection (1) of this section.

(2a) Any such invitation and any prospectus relating thereto shall be deemed to comply with this Code to the extent that the Registrar has waived or modified any of such requirements. [As inserted by the Companies Code (Amendment) Act, 1994 (Act 474) s. 6].

(3) Where the invitation to the public is a general invitation within the meaning of section 276 of this Code the prospectus, in addition to complying with the Seventh Schedule to this Code, subject to any modifications in accordance with the immediately preceding subsection and subject to section 277 of this Code, shall also contain particulars with respect to the following matters, namely,

(a) the instrument constituting or defining the constitution of the company;

(b) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected;

(c) an address in Ghana where copies of the foregoing or, if the same are in a foreign language, certified translations thereof can be inspected;

(d) the date on which and the country in which the company was incorporated.

(4) Any prospectus registered and any advertisement or circular published in connection with any such invitation shall state the country in which the external company is incorporated and the address of its principal place of business in Ghana.

(5) Unless the provisions of this section are complied with the making of the invitation shall be deemed to be a breach of section 265 of this Code.

#### Section 315-Control of Public Invitations relating to other Non-Ghanaian Companies

(1) For the purposes of this and the following section the expression "non-Ghanaian Company" means any association incorporated or to be incorporated outside Ghana not being an external company as defined in section 302 of this Code.

(2) If any person makes in Ghana any invitation to the public which is either,

(a) a general invitation, as defined by section 276 of this Code, to acquire any shares or debentures of a non-Ghanaian company, or

(b) an invitation to deposit money with any non-Ghanaian company for a fixed period or payable at call whether bearing or not bearing interest,

then, subject as hereinafter mentioned, the provisions of Part W of Chapter II and Part A of Chapter IV of this Code shall apply as if the non-Ghanaian company were a public company within the meaning of this Code, and subsections (2) and (3) of the immediately preceding section shall apply as if such company were an external company.

(3) Any prospectus, advertisement or circular registered or published in connection with any such invitation shall state the country in which the non-Ghanaian company is incorporated and, if the liability of its members is limited shall so state.

(4) Unless the provisions of this section are complied with the making of the invitation shall be deemed to be a breach of section 265 of this Code.

(5) Sections 286, 287, 290 and 291 of this Code shall apply in relation to any invitation to the public to acquire or dispose of any shares or debentures of a non-Ghanaian company, whether or not an invitation of the types referred to in subsection (2) of this section, and sections 289, 290 and 291 shall apply in relation to any invitation to the public to deposit money with any non-Ghanaian company, as if the company were a public company within the meaning of this Code.

#### Section 316-Application of Sections 266 and 267 to External and Non- Ghanaian Companies

(1) For the purposes of the foregoing provisions of this Chapter of this Code, the expression "invitation to the public" shall bear the meaning assigned to it in section 266 of this Code:

Provided that an invitation made by or on behalf of an external or non-Ghanaian company exclusively to its existing shareholders and debentureholders, not being greater in number than is prescribed by subsection (3) of section 9 of this Code, and its existing employees shall not be deemed to be an invitation to the public unless the invitation is of the type referred to in paragraph (c) or (d) of subsection (1) of section 266.

(2) Section 267 of this Code shall apply to invitations to the public made in respect of shares or debentures of external and non-Ghanaian companies.

#### Section 317-Interpretation

For the purposes of the foregoing provisions of this Chapter of this Code,

(a) the expression "certified" means that the document concerned has endorsed thereon a certificate, to the effect that it is a true and complete copy of the original or, as the case may be, an accurate translation of the original, under the seal of the



company or signed by a director and the secretary of the company; and

(b) the expression "secretary" includes any person occupying the position of secretary by whatever name called.

#### Section 318-Unit Trusts

[Repealed by Securities Industry Law, 1993 (PNDCL 333) s. 146]

#### Section 319-Mutual Funds

(1) Where the Registrar is satisfied that a body corporate, being a public company within the meaning of this Code or an external company having an established place of business in Ghana within the meaning of Chapter V of this Code, has been incorporated for the purpose of holding and managing securities or other property, and that in the Regulations of the body corporate or in some other instrument binding the body corporate satisfactory arrangements are made for ensuring,

(a) that if any invitation is made to the public to subscribe for its shares the price at which the shares are offered shall be based on the net value of its assets at the time of the offer with no addition except for a reasonable service charge, and

(b) that the body corporate will at any time repurchase any such shares from the holder thereof at a price based on the net value of its assets at the time of the repurchase without any deduction except for a reasonable service charge,

he may, in his absolute discretion and subject to such conditions and restrictions as he shall think fit, by legislative instrument declare such body corporate to be an authorised mutual fund for the purposes of this Code and, by such instrument, may direct that so long as such body corporate remains an authorised mutual fund any of the provisions of sections 59 to 63, 66 and 67, 275 to 279, 281 to 284 and 314 of this Code shall not have effect in relation to that body corporate or to invitations to the public to acquire or dispose of its shares or any of such provisions shall have effect with such modifications as are specified in the instrument.

(2) If the Registrar considers that the instrument declaring any body corporate to be an authorised mutual fund should be revoked or that the terms of the instrument should be varied, he may serve on the body corporate a written notice that he is considering the revocation of the instrument or, as the case may be, a specified variation of its conditions, restrictions or directions, and inviting the body corporate to make, within a period of one month from the date of service of the notice, any representations it may desire to make with respect to the proposed revocation or variation,

(3) The Registrar may revoke or vary the instrument after the expiration of the said period, but, before deciding whether or not to revoke or vary the instrument, he shall

take into consideration any representations so made by the body corporate and, if it so requests, afford it an opportunity of being heard by the Registrar within that period.

(4) If any authorised mutual fund shall commit any breach or non-observance of any of the conditions or restrictions in the instrument declaring it to be an authorised mutual fund every officer of the body corporate who is in default shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding one thousand pounds or to both such imprisonment and fine.

#### Section 320-Inducing Persons to Invest

(1) Any person who by any statement, promise or forecast which is untrue, misleading, false or deceptive induces or attempts to induce another person to enter into or offers to enter into,

(a) any agreement for or with a view to acquiring, disposing of, or underwriting, securities, or lending or depositing money to or with any body corporate, or

(b) any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities,

shall be guilty of an offence and liable to a term of imprisonment not exceeding seven years unless he shall prove that he had reasonable grounds to believe and did believe that the statement was true or that the promise or forecast was not misleading, false or deceptive.

(2) Any person who, by any dishonest concealment of material facts induces or attempts to induce another person to enter into any of the transactions referred to in subsection (1) of this section shall be guilty of a like offence and subject to the like punishment as that prescribed by subsection (1) of this section.

#### Section 321-Penalty for False Statements

(1) If any person in any return, report, certificate, account, or other document required under any provision of this Code to be sent to the Registrar wilfully makes a statement false in any particular, knowing it to be false, he shall be guilty of an offence, and shall be liable on conviction to imprisonment for a term not exceeding two years, or to a fine not exceeding one thousand pounds or to both such imprisonment and fine.

(2) Nothing in this section shall affect the liability of any body corporate or other person under any other section of this Code or other enactment; but the penalties imposed by this section shall be alternative, and not additional to any penalties imposed by such other section or enactment.

### Section 322-Penalty for Improper use of "Incorporated" or "Limited"

If any person or persons trade or carry on business in Ghana under any name or title of which the words "incorporated", "corporation" or any contraction or imitation thereof or any equivalent in any other language forms part or of which the word "limited" or any contraction or imitation thereof or any equivalent in any other language is the last word, that person or those persons shall unless duly incorporated under this Code or some other enactment and, where "limited" or any contraction or imitation thereof is the last word, unless duly, incorporated with limited liability, be liable to a fine not exceeding five pounds for every day during which that name or title has been used.

### Section 323-Publication of Misleading Statements regarding Shares or Capital

(1) It shall not be lawful to state the number of the authorised or issued shares of any body corporate or the amount of its capital in any notice, advertisement, business letter or other publication of the body corporate unless such statement shall include with equal prominence accurate particulars of the number of shares issued, and of the stated and paid up capital of the body corporate.

(2) In the event of any breach of this section the body corporate and every officer of the body corporate who is in default shall be liable to a fine not exceeding five hundred pounds.

### Section 324-Representative Actions

Where, under any section of this Code it is provided that if legal proceedings are instituted by any person he shall sue in a representative capacity on behalf of himself and other members of a class the following provisions shall apply, that is to say,

(a) such person may commence proceedings in such representative capacity without obtaining the consent and approval of any other member of the class represented and, subject to paragraph (b) of this section, such person shall have the sole conduct of the action and no other member of the class shall be deemed to be a party to the proceedings or in any way liable for the costs thereof;

(b) any member of the class represented may at any time prior to final judgment apply to the Court for leave to be made a party to the proceedings whether as co-plaintiff or otherwise and the Court may grant leave upon such terms regarding the conduct of the action and otherwise as it shall think fit; and if such leave is granted the applicant shall become a party to the proceedings and liable accordingly to have an order for costs made against him;

(c) any judgment given in the action shall bind and enure for the benefit of all members of the class represented, whether or not they have intervened in the

proceedings in accordance with paragraph (b) of this section;

(d) no proceedings shall be dismissed, settled or compromised without the leave of the Court which may, if it shall think fit, order that notice of the proposed dismissal, settlement or compromise shall be given to all members of the class represented and any other persons;

(e) in relation to proceedings under section 210 of this Code this section shall be supplemented by the provisions of that section;

(f) nothing in this section contained shall affect the validity of any agreement between the members of the class represented, relating to contribution towards the costs of the party or parties suing in a representative capacity.

#### Section 325-Costs in Actions by Limited Companies

Where a body corporate with limited liability is the plaintiff in any legal proceedings the Court may, if it appears by credible evidence that there is reason to believe that the body corporate will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for the costs, and may stay all proceedings until the security is given.

#### Section 326-Contribution between Joint Wrongdoers

Where more than one officer of a body corporate or other persons are liable to pay any damages, costs, compensation, debt, or monetary penalty under, or in respect of any breach of, any section of this Code, they shall have a right of contribution amongst themselves; and in any action to enforce liability or in an action to recover contribution the Court may award contribution on such terms as it shall consider equitable in all the circumstances and may exempt any person from liability to make contribution or direct that the contribution to be recovered from any persons shall amount to a complete indemnity.

#### Section 327-Power to Grant Relief

1) If in any proceedings against a member, officer or auditor of a company for any default or breach of duty under any section of this Code or against any trustee for debentureholders in respect of any breach of duty or trust it appears to the court hearing the case that that member, officer, auditor or trustee is or may be liable but that he has acted honestly and reasonably and that, having regard to all the circumstances of the case, he ought fairly to be excused, the court may relieve him in whole or in part from his liability on such terms as the court may think fit.

(2) Where any such member, officer, auditor or trustee has reason to apprehend that any claim may be made against him in respect of any breach of duty or 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 breach of duty or trust had been brought.

(3) Written notice of any application to the Court under subsection (2) of this section shall be given to the Registrar at least twenty-one days before the date of the hearing of the application and the Registrar may appear on the hearing of the application and call such evidence and make such representations as he thinks fit.

#### Section 328-Registrar of Companies

(1) The President may appoint a registrar of Companies in this Code referred to as the Registrar, to carry out the duties and functions vested by or under this Code or any other enactment in the Registrar.

(2) Until any other appointment is made the Registrar-General shall be the Registrar.

(3) There may be appointed such Assistant and Deputy Registrars of Companies and such other officers as are required for the purposes of this Code.

(4) Anything in this Code appointed, authorised or required to be done to or by the Registrar or to be signed by the Registrar may be done to or by or signed by any Assistant or Deputy Registrar and shall be as valid and effectual as if done to or by or signed by the Registrar.

(5) The Registrar shall have a seal and such seal shall bear the words "Registrar of Companies, Ghana".

#### Section 329-Fees

In respect of the several matters set out in the first column of the Table in Part I of the Eighth Schedule to this Code there shall be paid to the Registrar the several fees specified in the second column of that Table, but subject to the exemption referred to in Part II of that Schedule.

#### Section 330-Documents to be Translated

Where, under any section of this Code, any document is required to be prepared or registered such document shall, unless the section otherwise provides, be in a language acceptable to the Registrar. Where, under any section of this Code, any document is required to be prepared or registered such document shall, unless the section otherwise provides, be in a language acceptable to the Registrar.

#### Section 331-Registration of Documents

(1) Where, under any section of this Code, any document or particulars require to be registered by the Registrar, registration shall be effected by inserting the document or making the appropriate entries of the particulars in the file maintained at the Companies' Registration Office in relation to the company concerned.

(2) For the purposes of any provision of this Code, no document or particulars shall be deemed to have been delivered to the Registrar for registration until the appropriate registration fee has been paid to the Registrar.

(3) If the Registrar is of opinion that any documents or particulars delivered to him for registration,

(a) contain matter contrary to law, or

(b) by reason of any error, omission or misdescription have not been duly completed, or

(c) otherwise do not comply with the requirements of this Code, or

(d) contain any error,

he may request that the document or particulars be appropriately amended or completed and re-submitted and may refuse to register the document or particulars until appropriately amended or completed; and in that event the document or particulars shall not be deemed to have been delivered for registration until re-submitted appropriately amended or completed.

#### Section 332-Prescribed Forms

(1) Where any section of this Code provides that any document shall be in the prescribed form such document shall be in the form prescribed by the Registrar by legislative instrument.

(2) The Registrar may, by legislative instrument, prescribe forms for the purposes of this Code.

(3) Where any section of this Code provides that a document shall be delivered to the Registrar for registration the Registrar may refuse to accept the same if, in his opinion, it is insufficiently legible or is written upon paper insufficiently durable to be suitable for registration.

(4) If the Registrar shall, in accordance with subsection (3) of this section, refuse to accept any document for registration the same shall not, for the purposes of any section of this Code, be deemed to have been duly delivered to him unless a duplicate thereof in a form acceptable to him is duly delivered within the time prescribed by

such section or within such extended time as the Registrar may allow for the delivery of a duplicate.

(5) The Registrar shall not have power to refuse to accept any document on the ground that the paper on which it is written is insufficiently durable if the same is written on the appropriate printed form issued by the Government Printer.

#### Section 333-Inspection, Copies and Evidence of Registered Documents

(1) Any person may,

(a) inspect the register of particulars of charges and any document registered by the Registrar upon payment of two thousand five hundred cedis for each inspection of the register and documents relating to one company; [As amended by the Companies Code (Amendment) Act, 1997 (Act 531) s. 3].

(b) require a certificate of the incorporation of any company or a copy of any other document, or any part of any other document, registered by the Registrar to be certified under the hand of the Registrar, on payment of such fees as the Registrar may prescribe, not exceeding one pound for each page.

(2) No process for compelling the production of any document kept by the Registrar shall issue from any court except with the leave of that court and any process if issued shall bear thereon a statement that it is issued with the leave of the court.

(3) A copy of, or extract from, any document registered by the Registrar, certified to be a true copy under the hand of the Registrar, whose official position it shall not be necessary to prove, shall in all legal proceedings be admissible in evidence as of equal validity with the original document.

#### Section 334-Authentication of Documents Issued by Registrar or Minister

(1) All documents purporting to be orders, certificates, licences, approvals or revocations thereof made or issued by the Registrar or the Minister for the purposes of this Code and purporting to be sealed with the seal of the Registrar, or be signed by him, or to be signed by the Minister or on his behalf by a properly authorised officer, shall be received in evidence as such without further proof of validity unless the contrary is shown.

(2) A certificate that any order made, certificate issued, or act done is the order, certificate, or act of the Registrar or the Minister shall, if signed by the Registrar or Minister respectively be conclusive evidence of the fact so certified.

#### Section 335-Enforcement of Duty to make Returns

If a body corporate or any officer or liquidator of a body corporate, having made default in complying with any provision of this Code which requires it, to deliver any return, account, or other document, or to give notice of any matter, fails to end the default within twenty-eight days after the service of a notice on the body corporate or the officer or liquidator requiring it or him to do so, the Court may, on an application made to the Court by the Registrar or by any member or creditor of the body corporate, make an order directing the body corporate and any officer thereof or the liquidator to make good the default within such time as may be specified in the order; and may provide that all costs of and incidental to the application shall be borne by the body corporate or by any officer or liquidator of the body corporate responsible for the default.

#### Section 336-Regulations

- (1) The Registrar may, by legislative instrument, make Regulations regulating the exercise by him of any of the powers and discretions conferred upon him by this Code.
- (2) Such Regulations shall not be invalid by reason of the fact that they purport to regulate the exercise by the Registrar of a power which, under any provision of this Code, is exercisable in his absolute discretion.

#### Section 337-Registrar's Power to Obtain Directions of the Court

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

#### Section 338-Periodical Reports by Registrar

- (1) The Registrar shall, at intervals of not more than three years cause a report on the operation of this Code to be made to the Minister who shall lay the same before the National Assembly.
- (2) In any such report the Registrar shall, in addition to giving general statistical information relating to the registration and dissolution of companies, report on the exercise by him of his powers under this Code and, in particular, shall refer to all cases in which he has, under the powers conferred by this Code, waived compliance or modified any of the normal provisions of this Code, and shall state in each case his reasons for so doing.

#### Section 339-Extension to Unregistered Companies.

- (1) The Minister may, by legislative instrument, direct that any of the provisions of this Code shall apply to all bodies



corporate formed in Ghana otherwise than under the Companies Ordinance, (Cap. 193), or this Code or to certain classes of

such bodies or to certain named bodies corporate formed in Ghana, as specified in the instrument, as if they were

companies registered under this Code.

(2) If any such instrument is made the Minister may from time to time exempt any named body corporate from the

application to it of any of such provisions.

(3) No instrument shall be made under subsection (1) of this section unless a draft of the order has been laid before

National Assembly and approved by a resolution thereof.

#### Section 340-Repeals

The enactments mentioned in the first column of the Tenth Schedule to this Code are hereby repealed to the extent specified in the second column of that Schedule.