

# COMPANIES AND ALLIED MATTERS ACT, 2019

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# COMPANIES AND ALLIED MATTERS ACT, 2019

## A Bill

### For

**An Act to repeal the Companies and Allied Matters Act, Cap. C20, Laws of the Federation of Nigeria, 2004 and enact the Companies and Allied Matters Act, 2019 to provide for the incorporation of companies, limited liability partnerships, limited partnerships, registration of business names together with incorporation of trustees of certain communities, bodies, associations; and for related matters.**

[ ]

Commencement

ENACTED by the National Assembly of the Federal Republic of Nigeria—

### PART A - CORPORATE AFFAIRS COMMISSION

1. (1) There is established the Corporate Affairs Commission (in this Act referred to as “the Commission”). Establishment of the Corporate Affairs Commission.
  - (2) The Commission —
    - (a) is a body corporate with perpetual succession and a common seal;
    - (b) may sue and be sued in its corporate name; and
    - (c) may acquire, hold or dispose of any property, movable or immovable, for the purpose of performing its functions.
  - (3) The headquarter of the Commission shall be in the Federal Capital Territory, Abuja, and there shall be established an office of the Commission in each State of the Federation.
2. (1) There is established for the Commission, a Governing Board (in this Act referred to as “the Board”) which shall be responsible for performing the functions of the Commission. Establishment of Governing Board of the Commission.
  - (2) The Board shall consist of-
    - (a) a chairman who is appointed by the President on the recommendation of the Minister, and who, by reason of his ability, experience or specialised knowledge of

corporate, industrial, commercial, financial or economic matters, business or professional attainment, is capable of making outstanding contributions to the work of the Commission;

(b) one representative of the –

- (i) business community, appointed by the Minister on the recommendation of the Nigerian Association of Chambers of Commerce, Industries, Mines and Agriculture,
- (ii) legal profession, appointed by the Minister on the recommendation of the Nigerian Bar Association,
- (iii) accountancy profession, appointed by the Minister after consultation with professional bodies of accountants as are established by Acts of the National Assembly,
- (iv) Institute of Chartered Secretaries and Administrators of Nigeria, appointed by the Minister on the recommendation of the Institute,
- (v) Nigerian Association of Small and Medium Enterprises, appointed by the Minister on the recommendation of the Association,
- (vi) Manufacturers Association of Nigeria, appointed by the Minister on the recommendation of the Association,
- (vii) Securities and Exchange Commission not below the rank of a Director or its equivalent, and
- (viii) each of the Federal Ministries of Industry, Trade and Investment, Justice and Finance who shall not be below the rank of Director; and

(c) the Registrar-General of the Commission.

3. (1) Subject to the provisions of subsection (2), a person appointed as a member of the Board (not being an ex-officio member) shall hold office for a term of three years and may be eligible for re-appointment for one further term of three years and no more

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

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

(4) A member of the Board ceases to hold office if-

(a) he resigns his appointment as a member of the Board by three month notice under his hand and addressed to the Minister;

(b) he becomes of unsound mind or is incapable of discharging his duties;

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

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

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

(f) in the case of a person who possesses professional qualifications, he is disqualified or suspended from practising his profession in any part of Nigeria by an order of any competent authority made in respect of him personally.

(5) There is vacancy on the Board if a member-

(a) dies;

(b) is removed from office in accordance with subsection (2);

(c) resigns from office in accordance with subsection (4) (a); or

(d) completes his tenure of office; or

(e) ceases to hold office in accordance with paragraphs (b) to (f) of subsection (4).

(6) A vacancy on the Board shall be filled by the appointment of another person to the vacant office in accordance with the provisions of this Act, as soon as it is reasonably practicable after the occurrence of such vacancy.

(7) Where a vacancy on the Board is created as a result of death, removal or resignation of a member of the Board, a replacement of the immediate past member shall be appointed to complete the unexpired period of his predecessor's term of office.

4. The Board shall-

Functions of the Board.

(a) review and provide general policy guidelines for performing of the functions of the Commission in accordance with international commercial best practice;

(b) have general oversight on the administration of the Commission;

(c) review and approve the strategic plans of the Commission;

(d) receive and consider management reports and advise the Minister on the reports;

(e) determine the terms and conditions of service of employees of the Commission;

(f) fix the remuneration, allowances and benefits of employees of the Commission, in consultation with the National Salaries, Income and Wages Commission;

(g) ensure compliance with the provisions of this Act; and

(h) do such other things as are necessary to ensure the effective and efficient performance of the functions of the Commission.

5. Members of the Board appointed under section 2 (2) (a) - (b) shall be paid such remuneration and allowances as the Minister may, from time to time, direct.

Remuneration and allowances of members.

6. (1) Subject to this section and section 27 of the Interpretation Act, the Board may make standing orders regulating its proceedings. Proceedings of the Board.  
Cap. I23, LFN, 2004.
- (2) The Chairman shall preside at every meeting of the Board but, in his absence, the members present shall elect one of them present to preside at the meeting.
- (3) The quorum for meetings of the Board is five.
- (4) The Board may appoint any of its officers to act as secretary at any of its meetings.
7. (1) A member of the Board who is directly interested in any company or enterprise, the affairs of which are being deliberated upon by the Board, or is interested in any contract made or proposed to be made by the Board shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board. Disclosure of interest.
- (2) A disclosure, under subsection (1), shall be recorded in the minutes of the Board, and the member shall-
- (a) not take part, after such disclosure, in any deliberation or decision of the Board with regard to the subject matter in respect of which his interest is disclosed; and
  - (b) be excluded for the purpose of constituting a quorum of the Board for any such deliberation or decision.
8. (1) The functions of the Commission shall be to- Functions of the Commission.
- (a) administer this Act, including the registration, regulation and supervision of -
    - (i) the formation, incorporation, management, striking off and winding up of companies,
    - (ii) business names, management and removal of names from the register, and
    - (iii) the formation, incorporation, management and dissolution of incorporated trustees;
  - (b) establish and maintain a company's registry and office in each State of the Federation suitably and adequately equipped to perform its functions under this Act or any other law;
  - (c) arrange or conduct an investigation into the affairs of

any company, incorporated trustees or business names where the interest of shareholders, members, partners or public so demands;

(d) ensure compliance by companies, business names and incorporated trustees with the provisions of this Act and such other regulations as may be made by the Commission;

(e) perform such other functions as may be specified in this Act or any other law; and

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

(2) Nothing in this section affects the powers, duties or jurisdiction of the Securities and Exchange Commission under the Investments and Securities Act (or any amendment thereto or re-enactment thereof).

Cap. I23, LFN, 2004.

9. (1) The Commission shall appoint a Registrar-General who –

Appointment of Registrar-General.

(a) is qualified to practice as a legal practitioner in Nigeria;

(b) has been so qualified for at least 10 years; and

(c) in addition, has had experience in company law practice or administration for at least eight years.

(2) The Registrar-General –

(a) is the Chief Executive of the Commission;

(b) is subject to the directives of the Board and shall hold office on such –

(i) terms and conditions as may be specified in his letter of appointment, and

(ii) other terms and conditions as may be determined by the Board with the approval of the President.

(3) The Registrar-General is the accounting officer for the purpose of controlling and disbursing amounts from the Fund established under section 13.

10. The Commission may appoint such other staff as it may deem necessary for the efficient performance of the functions of the Commission under this Act. Appointment of staff.
11. Notwithstanding the provisions of any enactment to the contrary, a person appointed to the office of Registrar-General under section 9 of this Act or a person appointed under section 10 of this Act who is a legal practitioner shall, while so appointed, be entitled to represent the Commission as a legal practitioner for the purpose and in the course of his employment. Right to appear in Court.
12. (1) Service in the Commission shall be approved service for the purpose of the Pensions Reform Act (or any amendment thereto or re-enactment thereof) and accordingly, officers and other persons employed in the Commission are, in respect of their service in the Commission entitled to pensions, gratuities and other retirement benefits as determined in the Commission's conditions of service. Service in the Commission to be pensionable.  
Act No. 4, 2014.
- (2) Nothing in this Act shall prevent the appointment of a person to any office on terms in the Commission which preclude the grant of pension contributions or gratuity.
13. The Commission shall establish a fund (in this Act referred to as "the Fund") which shall consist of – Fund of the Commission.
- (a) money as may be allocated to it by the Federal Government; and
- (b) such other money as may accrue to it in the performance of its functions.
14. The Commission may apply the proceeds of the Fund – Expenditure of the Commission.
- (a) to the cost of administration of the Commission;
- (b) for re-imbursing members of the Board or any Committee set up by the Board for such expenses as may be authorised or approved by the Board, in accordance with the rate approved in that behalf by the Minister;
- (c) to the payment of salaries, fees or other remuneration or allowances, pensions and gratuities payable to the employees of the Commission;
- (d) for the maintenance of any property acquired or vested in the Commission; and

(e) for any purpose related to the functions of the Commission under this Act.

15. (1) The financial year of the Commission starts on the 1st day of January and end on the 31st day of December of the same year or any time as may be prescribed by Financial Regulations issued by the Federal Government of Nigeria. Annual accounts, audit and estimates.
- (2) The Commission shall keep proper accounts and records in relation thereto and shall prepare in respect of each year a statement of accounts in such form as may be prescribed by the Financial Reporting Council of Nigeria.
- (3) The accounts of the Commission shall be audited, not later than six months after the end of the year, by auditors appointed by the Commission from the list and in accordance with guidelines issued by the Auditor-General for the Federation, and the fees of the auditors and the expenses of the audit generally shall be paid from the funds of the Commission.
- (4) The Commission shall, not later than 30<sup>th</sup> September in each year, cause to be prepared an estimate of the expenditure and income of the Commission during the next succeeding year and shall be submitted to the Minister.
16. The Commission shall, not later than 30<sup>th</sup> June in each year, submit to the Minister a report on the activities of the Commission during the immediate preceding year, in such form as may be prescribed by the Minister and shall include in such report the audited accounts of the Commission. Annual report.
17. (1) A suit shall not be commenced against the Commission before the expiration of 30 days after a written notice of intention to commence the suit is served upon the Commission by the intending plaintiff or his agent. Pre-action notice and restriction on levy of execution.
- (2) The notice referred to in subsection (1) shall clearly state the -
- (a) cause of action;
  - (b) particulars of the claim;
  - (c) name and place of abode of the intending plaintiff; and
  - (d) relief sought.

## PART B - INCORPORATION OF COMPANIES AND INCIDENTAL MATTERS

### CHAPTER 1: FORMATION OF COMPANY

18. (1) As from the commencement of this Act, any two or more persons may form and incorporate a company by complying with the requirements of this Act in respect of registration of the company. Right to form a company.
- (2) Notwithstanding subsection (1), one person may form and incorporate a private company by complying with the requirements of this Act in respect of private companies.
- (3) A company may not be formed or incorporated for an unlawful purpose.
19. (1) No association, or partnership consisting of more than 20 persons shall be formed for the purpose of carrying on any business for profit or gain by the association, or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other enactments in force in Nigeria. Association and partnership of more than 20 members when permitted.
- (2) Nothing in this section shall apply to-
- (a) any co-operative society registered under the provisions of any enactment in force in Nigeria; or
  - (b) any partnership for the purpose of carrying on practice -
    - (i) as legal practitioners, by persons each of whom is a legal practitioner, or
    - (ii) as accountants by persons each of whom is entitled by law to practise as an accountant.
- (3) If at any time the number of members of an association or partnership exceeds 20 in contravention of this section and it carries on business for more than 14 days while the contravention continues, each person who is a member of the company, association or partnership during the time it so carries on business is liable to a fine as prescribed by the Commission for every day during which the default continues.
20. (1) Subject to subsection (2), an individual shall not join in the formation of a company under this Act if he is - Capacity of individual to form company.
- (a) less than 18 years of age;
  - (b) of unsound mind and has been so found by a court in Nigeria or elsewhere;

(c) an undischarged bankrupt; or

(d) disqualified under sections 281 and 283 of this Act from being a director of a company.

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

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

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

21. (1) An incorporated company may be a company-

Types of companies.

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

(b) having the liability of its members limited by the memorandum of association 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 Act referred to as “a company limited by guarantee”); or

(c) not having any limit on the liability of its members (in this Act referred to as “an unlimited company”).

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

22. (1) Private company is one which is stated in its memorandum of association to be a private company.

Private company.

(2) Subject to the provisions of the articles, a private company may restrict the transfer of its shares and also provide that-

(a) the company shall not, without the consent of all its members, sell assets having a value of more than 50% of the total value of the company’s assets;

(b) a member shall not sell that member's shares in the company to a non-member, without first offering those shares to existing members; and

(c) a member, or a group of members acting together, shall not sell or agree to sell more than 50% of the shares in the company to a person who is not then a member, unless that non-member has offered to buy all the existing members' interests on the same terms.

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

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

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

(a) subscribe for any share or debenture of the company; or

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

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

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

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

25. An unlimited company shall be registered with a share capital not below the minimum issued share capital permitted under section 27 (2) (a) of this Act. Unlimited company.

26. (1) Where a company is to be formed for the promotion of commerce, art, science, religion, sports, culture, education, research, charity or other similar objects, and the income and property of the company are to be applied solely towards the promotion of its objects and no portion thereof is to be paid or transferred directly or indirectly to the members of the company except as permitted by this Act, the company shall not be registered as a company limited by shares, but may be registered as a company limited by guarantee. Company limited by guarantee.
- (2) Any provision in the memorandum or articles of association or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company or purporting to divide the company's undertaking into shares or interest is void.
- (3) A company limited by guarantee shall not be incorporated with the object of carrying on business for the purpose of making profits for distribution to members.
- (4) The memorandum of a company limited by guarantee shall not be registered without the authority of the Attorney-General of the Federation.
- (5) The Attorney-General of the Federation shall within thirty days grant authority to the promoters of a company limited by guarantee where there are no objections to the memorandum or other cogent reasons to decline to grant approval to register the company as one limited by guarantee.
- (6) Where further information is required by the Attorney-General of the Federation from the promoters of a company limited by guarantee, the thirty-day period shall begin on receipt of all relevant information.
- (7) Where all valid documents are furnished and no decision has been made by the Attorney-General of the Federation within the thirty-day period -
- (a) the promoters shall place advertisements in three national dailies and shall invite objections, if any, to the incorporation of the company;
  - (b) an objection shall state the grounds on which it is made and shall be forwarded to the Commission within 28 days from the date of the last publications in the newspapers, where there is objection to the incorporation of the company;
  - (c) the Commission –
    - (i) shall consider the objection and may require the objector and applicant to furnish further information or documentation; and
    - (ii) may uphold or reject the objection as it deems fit and inform the applicant accordingly.
- (8) If the Commission is satisfied that the memorandum and articles of association have complied with the provisions of this Section, it shall cause the application to

be advertised in the prescribed form in three national daily newspapers.

- (9) The advertisement referred to in subsection (8) shall invite objections, if any, to the incorporation of the company and the objection shall state the grounds on which it is made and shall be forwarded to reach the Commission within 28 days of the date of the last of the publications in the newspapers, and if any objection is made the Commission shall consider it and may require the objector and applicant to furnish further information or documentation, and may uphold or reject the objection as it deems fit and inform the applicant accordingly.
- (10) If –
- (a) after the advertisement, no objection is received within the period specified in subsection (9) or, where any objection is received, the same is rejected, the Commission, having regard to all the circumstances, may assent to the application or withhold its assent; and
- (b) the Commission assents to the application, it shall register the company and issue a certificate of incorporation.
- (11) If a company limited by guarantee carries on business for the purpose of distributing profits to its members, all officers and members who are cognisant of the fact that it is so carrying on business shall jointly and severally be 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 penalty as prescribed by the Commission for every day during which it carries on such business.
- (12) The total liability of a member 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 N100,000.
- (13) Subject to compliance with subsection (10), the articles of association of a company limited by guarantee may provide that a member can retire or be removed from membership of the company by a special resolution duly filed with the Commission.
- (14) If in breach of subsection (10), the total liability of the members of any company limited by guarantee is at any time less than N100,000, every director and member of the company who is cognisant of the breach is liable to a penalty as prescribed by the Commission for every day during which the default continues.
- (15) Subject to section 117 (4) (d) of this Act, if upon the winding up of a company limited by guarantee, there remains, after the discharge of all its debts and liabilities, any property of the company, the same shall not be distributed among

the members but shall be transferred to some other company limited by guarantee having objects similar to the objects of the company or applied to some charitable object and such other company or association shall be determined by the members prior to dissolution of the company.

## MEMORANDUM OF ASSOCIATION

27. (1) The memorandum of association of every company shall state -

Requirements with respect to the memorandum of a company.

- (a) the name of the company;
- (b) that the registered office of the company shall be situated in Nigeria;
- (c) the nature of the business or businesses which the company is authorised to carry on, or, if the company is not formed for the purpose of carrying on business, the nature of the object or objects for which it is established;
- (d) the restriction, if any, on the powers of the company;
- (e) that the company is a private or public company, as the case may be; and
- (f) that the liability of its members is limited by shares, by guarantee or unlimited, as the case may be.

(2) If the company has a share capital-

- (a) the memorandum of association shall also state the amount of the minimum issued share capital which shall not be less than N100,000.00 in the case of a private company and N2,000,000.00, in the case of a public company, with which the company proposes to be registered, and the division thereof into shares of a fixed amount; and
- (b) each subscriber shall write opposite his name the number of shares he takes.

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

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

(a) the income and property of the company shall be applied solely towards the promotion of its objects, and that no portion thereof shall be paid or transferred directly or indirectly to the members of the company except as permitted by, or under this Act; and

(b) each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year after he ceases to be a member for payment of debts and liabilities of the company, and of the costs of winding up, such amount as may be required not exceeding a specified amount and the total of which shall not be less than N100,000.

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

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

#### NAME OF COMPANY

28. Subject to the provisions of section 27 of this Act, the form of memorandum of association of- Form of memorandum of association.

(a) a company limited by shares,

(b) a company limited by guarantee, and

(c) an unlimited company,

shall be in such form as may be prescribed by regulations issued by the Commission.

29. (1) The name of a private company limited by shares shall end with the word, "Limited". Name as stated in the memorandum of association.

(2) The name of a public company limited by shares shall end with the words, "Public Limited Company".

(3) The name of a company limited by guarantee shall end with the words, "Limited by Guarantee".

(4) The name of an unlimited company shall end with the word, "Unlimited".

(5) A company may use the abbreviations, “Ltd”, “PLC” “Ltd/Gte” and “Ultd” for the words, “Limited”, “Public Limited Company”, “Limited by Guarantee” and “Unlimited” respectively in the name of the company.

30. (1) If a company, through inadvertence or otherwise, on its first registration or on its registration by a new name, is registered under a name identical with that by which a company in existence is previously registered, or nearly resembling it to be likely to deceive, the first-mentioned company may, with the approval of the Commission, change its name, and if the Commission directs, the company concerned shall change its name within six weeks from the date of the direction or such longer period as the Commission may allow.
- (2) If a company defaults in complying with a direction under subsection (1), such company shall, without prejudice to any other lawful action which the Commission may take against it, be liable to a penalty as prescribed by the Commission, for every day during which the default continues.
- (3) Any company may, by special resolution and with the approval of the Commission signified in writing, change its name, provided that no such approval shall be required where the only change in the name of a company is the substitution of the words, “Public Limited Company”, for the word, “Limited” or vice versa on the conversion of a private company into a public company or a public company into a private company in accordance with this Act.
- (4) Nothing in this Act precludes the Commission from requiring a company to change its name if it discovers that such a name conflicts with an existing trade mark or business name registered in Nigeria prior to the registration of the company and the consent of the owner of the trade mark or business name was not obtained.
- (5) Where a company changes its name, the Commission shall enter the new name on the register in place of the former name, and issue a certificate of incorporation altered to meet the circumstances of the case.
- (6) The change of name does not affect any right or obligation of the company, or render defective any legal proceeding by or against the company, and any legal proceeding that could have been continued or commenced against or by it in its former name, may be continued or commenced against or by it in its new name.
- (7) Any change made in the name of a company under this section shall be published periodically by the Commission in a national daily newspaper and on its website.

Change of name of company.

31. (1) The Commission may, upon receipt of an application delivered to it in hard copy or through electronic communication and on payment of the prescribed fees, reserve a name pending registration of a company or change of name by a company upon confirmation of the availability of such name.

Reservation of name.

- (2) The reservation mentioned in subsection (1) shall be determined upon receipt of the application under subsection (1), and shall be valid for such period as the Commission may deem fit not exceeding 60 days, and during the period of reservation no other company shall be registered under the reserved name or under any name which, in the opinion of the Commission nearly resembles the reserved name.
- (3) Notwithstanding the provisions of subsections (1) and (2), the Commission may at any time before a certificate of incorporation is issued, withdraw or cancel a reserved name if it discovers that such name is identical with that by which a company in existence is already registered, or so nearly resembles it as to be likely to deceive.
- (4) If any name becomes available in the event of a change of name or otherwise, the Commission shall have the power to approve the name for use by another company after 60 days from the date of approval of such change of name.
- (5) The Commission may withdraw or cancel approval for reservation of name where it is discovered that the approval was fraudulently, unlawfully or improperly procured.

32. (1) A company shall have articles of association prescribing regulations for the company. Articles of association.

(2) Unless it is a company to which model articles apply by virtue of section 34 it shall register articles of association.

(3) Articles of association registered by a company shall be -

(a) contained in a single document, and

(b) divided into paragraphs numbered consecutively.

(4) Reference in this Act to a company's "articles" are to its articles of association.

33. (1) The Minister may by regulations prescribe model articles of association for companies. Power of Minister to prescribe model articles.

(2) Different model articles may be prescribed for different descriptions of companies.

(3) A company may adopt all or any of the provisions of model articles.

(4) Any amendment of model articles by regulations does not affect a company registered before the amendment takes effect.

(5) In this section, “amendment” includes addition, alteration or repeal.

34. (1) On the formation of a limited company if articles are -

Default application of  
model articles.

(a) not registered; or

(b) registered, in so far as they do not exclude or modify the relevant model articles, the relevant model articles form part of the company’s articles in the same manner and to the same extent as if those articles expressly included the relevant model articles in the form in which those articles had been duly registered.

(2) In this section, the “relevant model articles” means the model articles prescribed by the Commission for a company of that description as in effect at the date on which the company is registered.

35. (1) Unless a company’s articles specifically restrict the objects of the company, its objects are unrestricted.

Statement of company’s  
objects.

(2) Where a company amends its articles to add, remove or alter a statement of the company’s objects-

(a) it shall give notice to the Commission;

(b) on receipt of the notice, the Commission shall register it; and

(c) the amendment is not effective until after the entry of that notice in the register.

(3) Any such amendment does not affect any right or obligation of the company or render defective any legal proceeding by or against it.

## REGISTRATION OF COMPANIES

36. (1) The memorandum of association shall be delivered to the Commission together with an application for registration of the company, the documents required by this section and a statement of compliance. Registration documents.
- (2) The application for registration shall state -
- (a) the company's proposed name;
  - (b) the registered office address and head office address if different from the registered office address;
  - (c) whether the liability of the members of the company is to be limited and, if so, whether it is to be limited by shares or by guarantee; and
  - (d) whether the company is to be a private or a public company.
- (3) If the application is delivered by a person as agent for the subscribers to the memorandum of association, it shall state the name and address of that agent.
- (4) The application shall contain-
- (a) in the case of a company that has a share capital, a statement of initial issued share capital and initial shareholdings;
  - (b) in the case of a company that is limited by guarantee, a statement of guarantee;
  - (c) a statement of the company's proposed directors;
  - (d) a statement of the proposed registered office of the company; and
  - (e) a copy of the proposed articles of association to the extent that these are not supplied by the default application of model articles.
37. (1) The statement of initial issued share capital and initial shareholdings required to be delivered in the case of a company that has a share capital shall state- Statement of capital and initial shareholdings.
- (a) the total number of shares of the company to be taken on formation by the subscribers to the memorandum of association;

- (b) the aggregate nominal value of those shares;
- (c) for each class of shares-
  - (i) prescribed particulars of the rights attached to the shares,
  - (ii) the total number of issued shares of that class, and
  - (iii) the aggregate nominal value of issued shares of that class; and
- (d) the amount to be paid up and the amount (if any) to be unpaid on each share (whether on account of the nominal value of the share or by way of premium).

(2) The statement of initial issued share capital and initial shareholdings shall –

- (a) contain such information as may be prescribed for the purpose of identifying the subscribers to the memorandum of association; and
- (b) with respect to each subscriber to the memorandum-
  - (i) the number, nominal value (of each share) and class of shares to be taken by him on formation, and
  - (ii) the amount to be paid up and the amount (if any) to be unpaid on each share (whether on account of the nominal value of the share or by way of premium).

(3) Where a subscriber to the memorandum is to take shares of more than one class, the information required under subsection (2) (b) is required for each class.

(4) The total fees payable to the Commission in connection with the filing or increase of a company's issued share capital under this Part of this Act shall be as the Minister may by regulation specify.

38. (1) The statement of guarantee required to be delivered in the case of a company that is limited by guarantee shall - Statement of guarantee.

- (a) contain such information as may be prescribed for the purpose of identifying the subscribers to the memorandum of association; and

(b) that each member undertakes that, if the company is wound up while he is a member, or within one year after he ceases to be a member, he shall contribute to the assets of the company such amount as may be required for-

(i) payment of the debts and liabilities of the company contracted before he ceases to be a member, payment of the costs, charges and expenses of winding up, and

(ii) adjustment of the rights of the contributories among themselves, not exceeding a specified amount.

39. (1) The statement of the company's proposed directors required to be delivered to the Commission shall contain the required particulars of- Statement of proposed Directors.

(a) the person who is, or persons who are, to be the first director or directors of the company; and

(b) where applicable, the person who is, or persons who are, to be the first secretary or joint secretaries of the company.

(2) The required particulars are the particulars that are required to be stated in the case of a -

(a) director, in the company's register of directors and register of directors' residential addresses; and

(b) secretary, in the company's register of secretaries.

(3) The statement shall also contain a consent by each of the persons named as a director, as secretary or one of joint secretaries, to act in the relevant capacity but if all the partners in a firm are to be joint secretaries, consent may be given by one partner on behalf of all of them.

40. (1) The statement of compliance required to be delivered to the Commission is a statement by the applicant or his agent that the requirements of this Act as to registration have been complied with. Statement of compliance

(2) The Commission may accept the statement of compliance as sufficient evidence of compliance.

(3) Nothing in this section prevents the Commission from accepting declaration of compliance which is signed by a legal practitioner and attested before the

commissioner for oaths or notary public.

41. (1) The Commission shall register the memorandum and articles unless in its opinion Registration.

—

- (a) they do not comply with the provisions of this Act;
- (b) the business which the company is to carry on, or the objects for which it is formed, or any of them, are illegal;
- (c) any of the subscribers to the memorandum is incompetent or disqualified in accordance with section 20 of this Act;
- (d) there is non-compliance with the requirement of any other law as to registration and incorporation of a company; or
- (e) the proposed name conflicts with or is likely to conflict with an existing company, trade mark or business name registered in Nigeria.

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

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

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

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

(a) that the company is incorporated;

(b) in the case of -

(i) a limited company, that the liability of the members is limited by shares or by guarantee, or

(ii) an unlimited company, that the liability of the

members is unlimited; and

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

- (6) The certificate of incorporation shall be *prima facie* evidence that all the requirements of this Act in respect of registration and matters precedent and incidental to it have been complied with and that the association is a company authorised to be registered and duly registered under this Act.
- (7) The Commission may withdraw, cancel or revoke a certificate of incorporation issued under this Act where it is discovered that the certificate was fraudulently, unlawfully or improperly procured.
- (8) The Commission may cause the publication of the withdrawal, cancellation or revocation of certificates of incorporation periodically in the Federal Government Gazette.

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

Effect of registration.

## CAPACITY AND POWERS OF COMPANIES

43. (1) Except to the extent that the company's memorandum or any enactment otherwise provides, every company shall, for the furtherance of its business or objects, have all the powers of a natural person of full capacity.
- Powers of companies  
prohibition of donations  
for political purpose.
- (2) A company shall not have or exercise power either directly or indirectly to make a donation or gift of any of its property or funds to a political party or political association, or for any political purpose, and if any company, in breach of this subsection makes any donation or gift of its property to a political party or political association, or for any political purpose, the officers in default and any member who voted for the breach shall be jointly and severally liable to refund to the company the sum or value of the donation or gift and in addition, every such officer or member commits an offence and is liable to a fine equal to the amount or value of the donation or gift.
44. (1) A company shall not, carry on any business expressly prohibited by its memorandum and shall not exceed the powers conferred upon it by its memorandum or this Act.
- Effect of *ultra vires*  
acts.

(2) A breach of subsection (1), may be asserted in any proceeding under sections 344 - 358 of this Act or under subsection (4) of this section.

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

(4) On the application of-

(a) any member of the company, or

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

any act, conveyance or transfer of any property in breach of subsection (1).

(5) If the transactions sought to be prohibited in any proceeding under subsection (4) 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 compensation to the company or to the other parties to the contract for any loss or damage sustained by them by reason of the setting aside or prohibition of the performance of such contract but no compensation shall be allowed for loss of anticipated profits to be derived from the performance of such contract.

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

Effect of reliance on restrictions in the memorandum.

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

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

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

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

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

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

Effect of memorandum and articles.

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

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

(4) In any action by any member or officer to enforce any obligation owed under the memorandum or articles to him and any other member or officer, such member or officer may, if any other member or officer is affected by the alleged breach of such obligation, with his consent, sue in a representative capacity on behalf of himself and all other members or officers who may be affected other than any who is a defendant and the provisions of Chapter 13 of this Act shall apply.

47. (1) A company shall, on being so required by any member, send to him a copy of the memorandum and articles, and a copy of any enactment which alters the memorandum, subject to payment, in the case of a copy of the memorandum and of the articles, of the cost of producing the said documents (such cost not to exceed N500 or such other amount that the Commission may prescribe) or such lesser sum as the company may prescribe and, in the case of a copy of an enactment, of such sum not exceeding the published price thereof as the company may require.

Member's right to copies of memorandum, etc.

(2) If a company defaults in complying with this section, the company and every

officer of the company who is in default is liable to such penalty as the Commission shall prescribe by regulation.

48. (1) Where an alteration is made in the memorandum of a company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration.
- (2) Where any such alteration has been made, the company at any time after the date of the alteration issues any copy of the memorandum which is not in accordance with the alteration, it shall be liable to such penalty as the Commission shall prescribe by regulation for each copy so issued, and every officer of the company who is in default is liable to the like penalty.
49. (1) A company may not alter the conditions contained in its memorandum except in the cases and in the manner and to the extent for which express provision is made in this Act.
- (2) Only those provisions which are required by section 27 or by any other specific provision contained in this Act, to be stated in the memorandum of the company concerned, are deemed to be conditions contained in its memorandum.
50. (1) The name of the company shall not be altered except with the consent of the Commission in accordance with section 30.
- (2) The business which the company is authorised to carry on or, if the company is not formed for the purpose of carrying on business, the objects for which it is established, may be altered or added to in accordance with the provisions of section 51.
- (3) Any restriction on the powers of the company may be altered in the same way as the business or objects of the company.
- (4) The share capital of the company may be altered in accordance with the provisions of sections 128 - 130, but not otherwise.
- (5) Subject to section 54, any other provision of the memorandum may be altered in accordance with section 51, or as otherwise provided in this Act.
51. (1) Where a company has stated its business or objects in its memorandum, such a company may, at a meeting of which notice in writing has been duly given to all members (whether or not they are entitled to), by special resolution alter the provisions of its memorandum with respect to the business or objects of the company:

Copies of memorandum issued to embody alterations.

Restriction on alteration of memorandum.

Alteration of memorandum.

Mode of alteration of business or objects.

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

confirmed by the Court.

(2) An application under this section may be made to the Court by the holders of not less —

(a) in the aggregate, than 15% in nominal value of the company's issued share capital or any class thereof or, if the company is not limited by shares, not less than 15% of the company's members; or

(b) than 15% of the company's debentures entitling the holders to object to alterations of its objects:

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

(3) An application under this section shall be made not later than 28 days after the date on which the resolution altering the company's business or objects was passed, and may be made on behalf of the persons entitled to make the application by such one or more of them as they may appoint in writing for that purpose.

(4) On an application under this section, the Court may make an order confirming the alteration either wholly or in part and on such terms and conditions as it deems fit, and may adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interest of dissenting members, and the Court may give such directions and make such orders as it considers expedient for facilitating or carrying into effect any such arrangement, but that no part of the capital of the company shall be expended in any case.

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

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

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

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

making—

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

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

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

(8) If the Commission—

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

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

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

(10) If a company defaults in giving notice or delivering any document to the Commission as required by subsection (7), the company and every officer of the company who is in default is liable to such penalty as the Commission shall prescribe by regulation, and for every day during which the default continues.

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

as if any order dismissing the proceedings were an order confirming the alteration.

- (12) For the purpose of this section only, any reference to “member” includes any person financially interested in the company within the context of subsection (2) (b).

52. (1) Subject to the provisions of section 49 and of this section and of any part of Part B (which preserves the rights of minorities in certain cases) any provision in a company’s memorandum, which might lawfully have been in articles of association instead of in the memorandum, may be altered by the company by special resolution, but if an application is made to the court for the alteration to be cancelled, the alteration does not have effect except in so far as it is confirmed by the Court.

Power to alter provisions in the memorandum in certain cases.

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

- (3) Section 51 (2), (3), (4), (7), (8) and (9) (which relate to mode of alteration of business or objects) except subsection (2) (b) thereof, shall apply in relation to any alteration and application made under this section as they apply in relation to alterations and to applications made under that section.

- (4) This section applies to a company’s memorandum, whether registered before or after the commencement of this Act.

53. (1) Subject to the provisions of this Act and to the conditions or other provisions contained in its memorandum, a company may, by special resolution, alter or add to its articles, including deletion or modification of the provisions stated in section 27 (1) (a) - (d).

Alteration of articles.

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

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

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

(a) take or subscribe for more shares than he held at the date on which he became a member; or

(b) increase his liability to contribute to the share capital of the company; or

(c) pay money by any other means to the company.

## CHAPTER 2 - RE-REGISTRATION OF COMPANIES

55. A company may by re-registration under this Part alter its status from —

Alteration of status by re-registration.

- (a) a private company to a public company;
- (b) a public company to a private company;
- (c) a private limited company to an unlimited company;
- (d) an unlimited company to a limited company; or
- (e) a public limited company to an unlimited company.

56. (1) A private company (whether limited or unlimited) may be re-registered as a public company limited by shares if—

Re-registration of private company as public.

- (a) a special resolution that it should be so re-registered is passed;
- (b) the conditions specified under subsection (2) are met, and
- (c) an application for re-registration is delivered to the Commission in accordance with section 60, together with—
  - (i) the other documents required by that section, and
  - (ii) a statement of compliance.

(2) The conditions are—

- (a) that the company has a share capital;
- (b) that the requirements of section 57 are met as regards its share capital;
- (c) that the requirements of section 58 are met as regards its net assets;
- (d) if section 59 applies, that the requirements of that section are met; and

(e) that the company has not previously been re-registered as an unlimited company.

(3) The company shall make such changes to its name and articles, as are necessary in connection with its becoming a public company.

(4) If the company is unlimited it shall also make such changes in its articles as are necessary in connection with its becoming a company limited by shares.

57. (1) The following requirements shall be met at the time the special resolution is passed that the company should be re-registered as a public company—

Requirements as to share capital.

(a) the nominal value of the company's allotted share capital shall be not less than the minimum specified in section 27 (2);

(b) the company's allotted shares shall be paid up at least one-quarter of the nominal value of that share and the whole of any premium on it;

(c) if any share in the company or any premium on it has been fully or partly paid up by an undertaking given by any person that he or another should work or perform services (whether for the company or any other person), the undertaking shall have been performed or otherwise discharged; or

(d) if shares have been allotted as fully or partly paid up as to their nominal value or any premium on them otherwise than in cash, and the consideration for the allotment consists of, or includes, an undertaking to the company (other than one to which paragraph (c) applies), then either—

(i) the undertaking shall have been performed or otherwise discharged, or

(ii) there shall be a contract between the company and some person pursuant to which the undertaking is to be performed within five years from the time the special resolution is passed.

(2) Shares allotted in pursuance of an employees' share scheme, by reason of which the company would, but for this subsection, be precluded under subsection (1) (b) from being re-registered as a public company, shall not be regarded for the purpose

of determining whether the requirements in subsection (1) (b), (c) and (d) are met.

- (3) No more than one-tenth of the nominal value of the company's allotted share capital is to be disregarded under subsection (2) and for this purpose the allotted share capital is treated as not including shares disregarded under the subsection.
- (4) Shares disregarded under subsection (2) are treated as not forming part of the allotted share capital for the purposes of subsection (1) (a).
- (5) A company shall not be re-registered as a public company if it appears to the Commission that—
  - (a) the company has resolved to reduce its share capital;
  - (b) the reduction is supported by a solvency statement in accordance with regulations made by the Minister; and
  - (c) the effect of the reduction is, or will be, that the nominal value of the company's allotted share capital is below the minimum specified in section 27 (2).

58. (1) A company applying to re-register as a public company shall obtain—

Requirements as to net assets.

- (a) a balance sheet prepared as at a date not more than seven month before the date on which the application is delivered to the Commission;
  - (b) an unqualified report by the company's auditor on that balance sheet; and
  - (c) a written statement by the company's auditor that, in his opinion at the balance sheet date, the amount of the company's net assets was not less than the aggregate of its called-up share capital and undistributable reserves.
- (2) Between the date of the balance sheet and the date on which the application for re-registration is delivered to the Commission, there shall be no change in the company's financial position that results in the amount of its net assets becoming less than the aggregate of its called-up share capital and un-distributable reserves.
- (3) In subsection (1) (b), an "unqualified report" means—
  - (a) if the balance sheet was prepared for a financial year of the company, a report stating without material qualification the auditor's opinion that the balance sheet has been properly prepared in accordance with the

requirements of this Act;

(b) if the balance sheet was not prepared for a financial year of the company, a report stating without material qualification the auditor's opinion that the balance sheet has been properly prepared in accordance with the provisions of this Act which would have applied if it had been prepared for a financial year of the company.

(4) For the purpose of an auditor's report on a balance sheet that was not prepared for a financial year of the company, the provisions of this Act apply with such modifications as are necessary.

(5) For the purposes of subsection (3), a qualification is material unless the auditor states in his report that the matter giving rise to the qualification is not material for the purpose of determining (by reference to the company's balance sheet) whether at the date of the balance sheet the amount of the company's net assets was not less than the aggregate of its called-up share capital and un-distributable reserves.

(6) In this Part –

(a) “net assets” means the aggregate of the company's assets less the aggregate of its liabilities, and

(b) “un-distributable reserves” are its —

(i) share premium account, and

(ii) capital redemption reserve;

(c) the amount by which its accumulated or unrealised profits (so far as not previously utilised by capitalisation) exceed its accumulated or unrealised losses (so far as not previously written off in a reduction or reorganisation of capital duly made); and

(d) any other reserve that the company is prohibited from distributing by any enactment (other than one contained in this Part) or by its articles.

(7) The reference in subsection (6) (c) to capitalisation does not include a transfer of profits of the company to its capital redemption reserve.

59. (1) This section applies where the shares are allotted —

Recent allotment of  
shares for non-cash  
consideration.

(a) by the company in the period between the date the balance sheet required by section 58 is prepared and the passing of the resolution that the company should re-register as a public company; and

(b) as fully or partly paid up as to their nominal value or any premium on them otherwise than in cash.

(2) The Commission shall not entertain an application by the company for re-registration as a public company unless the requirements of section 57 have been complied with, or the allotment is in connection with—

(a) a share exchange as described in subsections (3) - (5);  
or

(b) a proposed merger with another company as described in subsection (6).

(3) An allotment is in connection with a share exchange if—

(a) the shares are allotted in connection with an arrangement under which the whole or part of the consideration for the shares allotted is provided by—

(i) the transfer to the company allotting the shares of shares (or shares of a particular class) in another company, or

(ii) the cancellation of shares (or shares of a particular class) in another company; and

(b) the allotment is open to all the holders of the shares of the other company in question (or, where the arrangement applies only to shares of a particular class, to all the holders of the company's shares of that class) to take part in the arrangement in connection with which the shares are allotted.

(4) In determining whether a person is a holder of shares for the purposes of subsection (3), there shall be disregarded—

(a) shares held by, or by a nominee of, the company allotting the shares; and

- (b) shares held by, or by a nominee of—
  - (i) the holding company of the company allotting the shares,
  - (ii) a subsidiary of the company allotting the shares, or
  - (iii) a subsidiary of the holding company of the company allotting the shares.

(5) It is immaterial, for the purposes of deciding whether an allotment is in connection with a share exchange, whether or not the arrangement in connection with which the shares are allotted involves the issue to the company allotting the shares of shares (or shares of a particular class) in the other company.

(6) There is a proposed merger with another company if one of the companies concerned proposes to acquire all the assets and liabilities of the other in exchange for the issue of its shares or other securities to shareholders of the other.

(7) For the purposes of this section—

- (a) the consideration for an allotment does not include any amount standing to the credit of any of the company's reserve accounts, or of its profit and loss account, that has been applied in paying up (to any extent) any of the shares allotted or any premium on those shares; and
- (b) "arrangement" means any agreement, scheme or arrangement pursuant to Chapter 27.

60. (1) An application for re-registration as a public company shall contain—

- (a) a statement of the company's proposed name on re-registration; and
- (b) in the case of a company without a secretary, a statement of the company's proposed secretary.

(2) The application shall be accompanied by—

- (a) a copy of the special resolution that the company should re-register as a public company;
- (b) a copy of the company's memorandum and articles as proposed to be amended;
- (c) a copy of the balance sheet and other documents

Application and accompanying documents.

referred to in section 58 (1); and

(d) if section 59 applies, a copy of the valuation report (if any) under subsection (2) (a) of that section.

(3) The statement of compliance required to be delivered together with the application is a statement that the requirements of this Part as to re-registration as a public company have been complied with.

(4) The Commission may accept the statement of compliance as sufficient evidence that the company is entitled to be re-registered as a public company.

61. (1) The statement of the company's proposed secretary shall contain the required particulars of the person or persons who is or are to be the secretary or joint secretaries of the company. Statement of proposed secretary.

(2) The required particulars are those required to be stated in the company's register of secretaries.

(3) The statement shall also contain consent by the person named as secretary, or each of the persons named as joint secretaries, to act in the relevant capacity and if all the partners in a firm are to be joint secretaries, consent may be given by one partner on behalf of all of them.

62. (1) If, on an application for re-registration as a public company, the Commission is satisfied that the company is entitled to be re-registered, the company shall be re-registered accordingly. Issue of certificate of incorporation on re-registration.

(2) The Commission shall issue a certificate of incorporation altered to meet the circumstances of the case.

(3) The certificate shall state that it is issued on re-registration and the date on which it is issued.

(4) Upon the issue of the certificate—

(a) the company by virtue of the issue of the certificate becomes a public company,

(b) the changes in the company's name, memorandum and articles take effect; and

(c) where the application contained a statement of proposed secretary, the person or persons named in the statement as secretary or joint secretaries of the company are deemed to have been appointed to that

office.

(5) The certificate is *prima facie* evidence that the requirements of this Act as to re-registration have been complied with.

63. (1) A public company may be re-registered as a private limited company if—

Re-registration of public company as private limited company.

- (a) a special resolution that it should be so re-registered is passed;
- (b) the conditions specified under this section are met; and
- (c) an application for re-registration is delivered to the Commission in accordance with section 66, together with —
  - (i) the other documents required by that section; and
  - (ii) a statement of compliance.

(2) The conditions are that—

- (a) where no application under section 64 for cancellation of the resolution has been made—
  - (i) having regard to the number of members who consented to, or voted in favour of, the resolution, no such application may be made, or
  - (ii) the period within which such an application could be made has expired; or
- (b) where such an application has been made—
  - (i) the application has been withdrawn, or
  - (ii) an order has been made confirming the resolution and a copy of that order has been delivered to the Commission.

(3) The company shall make such changes—

- (a) in its name; and
- (b) in its memorandum and articles, as are necessary in connection with its becoming a private company

limited by shares or, as the case may be, by guarantee.

64. (1) Where a special resolution by a public company to be re-registered as a private limited company has been passed, an application to the Court for the cancellation of the resolution may be made—
- Application to Court to  
cancel resolution.
- (a) by the holders of at least 5% in nominal value of the company's issued share capital or any class of the company's issued share capital (disregarding any shares held by the company as treasury shares);
  - (b) if the company is not limited by shares at least 5% of its members; or
  - (c) by at least 50 members of the company, but not by a person who has consented to or voted in favour of the resolution.
- (2) The application shall be made within 28 days after the passing of the resolution and may be made on behalf of the persons entitled to make it by such one or more of their number as they may appoint for that purpose.
- (3) On the hearing of the application, the Court shall make an order either cancelling or confirming the resolution.
- (4) The Court may—
- (a) make that order on such terms and conditions as it deems fit;
  - (b) if it deems fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the

court for the purchase of the interests of dissenting members; and

- (c) give such directions, and make such orders, as it considers expedient for facilitating or carrying into effect any such arrangement.

(5) The Court order may, if the Court deems fit—

- (a) provide for the purchase by the company of the shares of any of its members and for the reduction accordingly of the company's capital; and

- (b) make such alteration in the company's memorandum articles as may be required in consequence of that provision.

(6) The Court order may, if the court deems fit, require the company not to make amendment to its articles without the leave of the Court.

65. (1) On making an application to the Court to cancel the resolution, the applicants, or the person making the application on their behalf, shall immediately give notice to the Commission, without prejudice to any provision of rules of court as to service of notice of the application.

Notice to Commission of Court application or order.

(2) On being served with notice of any such application, the company shall immediately give notice to the Commission.

(3) Within 15 days of the making of the Court order on the application, or such longer period as the Court may at any time direct, the company shall deliver to the Commission a copy of the order.

(4) If default is made in complying with subsections (2) and (3), the company and each officer of the company is liable to such penalty as the Commission shall prescribe by regulation for every day during which the default continues.

66. (1) An application for re-registration as a private limited company shall contain a statement of the company's proposed name on re-registration.

Application and accompanying documents.

(2) The application shall be accompanied by a copy of the —

- (a) resolution that the company should re-register as a private limited company; and

- (b) company's memorandum and articles as proposed to be amended.

- (3) The statement of compliance required to be delivered together with the application is a statement that the requirements of this Part as to re-registration as a private limited company have been complied with.
- (4) The commission may accept the statement of compliance as sufficient evidence that the company is entitled to be re-registered as a private limited company.
67. (1) If, on an application for re-registration as a private limited company, the Commission is satisfied that the company is entitled to be so re-registered, the company shall be re-registered accordingly. Issue of certificate of incorporation on re-registration.
- (2) The Commission shall issue a certificate of incorporation altered to meet the circumstance.
- (3) The certificate shall state that it is issued on re-registration and the date on which it is issued.
- (4) Upon the issue of the certificate—
- (a) the company by virtue of the issue of the certificate becomes a private limited company, ;
- (b) the changes in the company’s name, memorandum and articles take effect.
- (5) The certificate is *prima facie* evidence that the requirements of this Act as to re-registration have been complied with.
68. (1) A private limited company may be re-registered as an unlimited company if— Re-registration of private limited company as unlimited.
- (a) all the members of the company have assented to its being so re- registered;
- (b) the condition specified under subsection (2) is met; and
- (c) an application for re-registration is delivered to the Commission in accordance with section 69, together with —
- (i) the other documents required by that section, and
- (ii) a statement of compliance.
- (2) The condition is that the company has not previously been re-registered as limited.

(3) The company shall make such changes in its name and its memorandum and articles—

(a) as are necessary in connection with its becoming an unlimited company; and

(b) if it is to have a share capital, as are necessary in connection with its becoming an unlimited company having a share capital.

(4) For the purposes of this section—

(a) a trustee in bankruptcy of a member of the company is entitled, to the exclusion of the member, to assent to the company's becoming unlimited; and

(b) the personal representative of a deceased member of the company may assent on behalf of the deceased.

(5) In subsection (4) (a), "a trustee in bankruptcy of a member of the company" includes—

(a) a permanent trustee or an interim trustee on the sequestrated estate of a member of the company; and

(b) a trustee under a protected trustee deed granted by a member of the company.

69. (1) An application for re-registration as an unlimited company shall contain a statement of the company's proposed name on re-registration.

Application and accompanying documents.

(2) The application shall be accompanied by—

(a) the prescribed form of assent to the company's being re-registered as an unlimited company, authenticated by or on behalf of all the members of the company; and

(b) a copy of the company's memorandum and articles as proposed to be amended.

(3) The statement of compliance required to be delivered together with the application is a statement that the requirements of this Part as to re-registration as an unlimited company have been complied with.

(4) The statement shall contain a statement by the directors of the company—

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

(b) if any of the members has not authenticated that form himself, that the directors have taken all reasonable steps to satisfy themselves that each person who authenticated it on behalf of a member was lawfully empowered to do so.

(5) The Commission may accept the statement of compliance as sufficient evidence that the company is entitled to be re-registered as an unlimited company.

70. (1) If, on an application for re-registration of a private limited company as an unlimited company the Commission is satisfied that the company, is entitled to be so re-registered, the company shall be re-registered accordingly.

Issue of certificate of incorporation on re-registration.

(2) The Commission shall issue a certificate of incorporation altered to meet the circumstance.

(3) The certificate shall state that it is issued on re-registration and the date on which it is issued.

(4) Upon the issue of the certificate—

(a) the company by virtue of the issue of the certificate becomes an unlimited company; and

(b) the changes in the company's name, memorandum and articles take effect.

(5) The certificate is conclusive evidence that the requirements of this Act as to re-registration have been complied with.

71. (1) An unlimited company may be re-registered as a private limited company if—

Re-registration of unlimited company as limited.

(a) a special resolution that it should be re-registered is passed,

(b) the condition specified under subsection (2) is met, and

(c) an application for re-registration is delivered to the commission in accordance with section 72, together with—

(i) the other documents required by that section, and

(ii) a statement of compliance.

(2) The condition is that the company has not previously been re-registered as unlimited.

(3) The special resolution shall state whether the company is to be limited by shares or by guarantee.

(4) The company shall make such changes—

(a) in its name; and

(b) in its memorandum and articles, as are necessary in connection with its becoming a company limited by shares or, as the case may be, by guarantee.

72. (1) An application for re-registration as a limited company shall contain a statement of the company's proposed name on re-registration.

Application and accompanying documents.

(2) The application shall be accompanied by—

(a) a copy of the resolution that the company should re-register as a private limited company;

(b) if the company is to be limited by guarantee, a statement of guarantee; and

(c) a copy of the company's memorandum and articles as proposed to be amended.

(3) The statement of guarantee required to be delivered in the case of a company that is to be limited by guarantee shall state that each member undertakes that, if the company is wound up while he is a member, or within one year after he ceases to be a member, he will contribute to the assets of the company to such amount as may be required for—

(a) payment of the debts and liabilities of the company contracted before he ceases to be a member;

(b) payment of the costs, charges and expenses of winding up; and

(c) adjustment of the rights of the contributories among themselves, not exceeding a specified amount.

- (4) The statement of compliance required to be delivered together with the application is a statement that the requirements of this Part as to re-registration as a limited company have been complied with.
- (5) The Commission may accept the statement of compliance as sufficient evidence that the company is entitled to be re-registered as a limited company.

73. (1) If, on an application for re-registration of an unlimited company as a limited company, the Commission is satisfied that the company is entitled to be so re-registered, the company shall be re-registered accordingly.

Issue of certificate of incorporation on re-registration.

(2) The Commission shall issue a certificate of incorporation altered to meet the circumstances of the case.

(3) The certificate shall state that it is issued on re-registration and the date on which it is so issued.

(4) Upon the issue of the certificate—

(a) the company by virtue of the issue of the certificate becomes a limited company; and

(b) the changes in the company's name, memorandum and articles take effect.

(5) The certificate is *prima facie* evidence that the requirements of this Act as to re-registration have been complied with.

74. (1) A company which on re-registration under section 71 has already allotted its share capital, shall within 15 days after the re-registration deliver a statement of the share capital to the Commission.

Statement of capital required where company already has share capital.

(2) This does not apply if the information which would be included in the statement has already been sent to the Commission in a statement of —

(a) capital and initial shareholdings; or

(b) capital contained in an annual return.

(3) The statement of capital shall state with respect to the company's share capital on re-registration—

(a) the total number of shares of the company;

(b) the aggregate nominal value of those shares;

- (c) for each class of shares—
  - (i) prescribed particulars of the rights attached to the shares,
  - (ii) the total number of shares of that class, and
  - (iii) the aggregate nominal value of shares of that class; and
- (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).

(4) If default is made in complying with this section, the company and each officer of the company are liable to such penalty as the Commission shall prescribe by regulation for every day during which the default continues.

75. (1) A public company limited by shares may be re-registered as an unlimited company with a share capital if—

Re-registration of public company as unlimited.

- (a) all the members of the company have assented to its being so re-registered,
- (b) the condition specified under subsection (2) is met; and
- (c) an application for re-registration is delivered to the registrar in accordance with section 76, together with—
  - (i) the other documents required by that section, and
  - (ii) a statement of compliance.

(2) The condition is that the company has not previously been re-registered as —

- (a) limited; or
- (b) unlimited.

(3) The company shall make such changes—

- (a) in its name; and
- (b) in its memorandum and articles, as are necessary in connection with its becoming an unlimited company.

(4) For the purposes of this section—

(a) a trustee in bankruptcy of a member of the company is entitled, to the exclusion of the member, to assent to the company's re-registration; and

(b) the personal representative of a deceased member of the company may assent on behalf of the deceased.

(5) In subsection (4) (a), "a trustee in bankruptcy of a member of the company" includes—

(a) a permanent trustee or an interim trustee on the sequestrated estate of a member of the company; and

(b) a trustee under a protected trustee deed granted by a member of the company.

76. (1) An application for re-registration of a public company as an unlimited company shall contain a statement of the company's proposed name on re- registration.

Application and accompanying documents.

(2) The application shall be accompanied by—

(a) the prescribed form of assent to the company's being re-registered as an unlimited company, authenticated by or on behalf of all the members of the company; and

(b) a copy of the company's memorandum and articles as proposed to be amended.

(3) The statement of compliance required to be delivered together with the application is a statement that the requirements of this Part as to re-registration as an unlimited private company have been complied with.

(4) The statement shall contain a statement by the directors of the company—

(a) that the persons by whom or on whose behalf the form of assent is authenticated constitute the whole membership of the company, and

(b) if any of the members has not authenticated that form himself, that the directors have taken all reasonable steps to satisfy themselves that each person who authenticated it on behalf of a member was lawfully empowered to do so.

(5) The Commission may accept the statement of compliance as sufficient evidence that the company is entitled to be re-registered as an unlimited company.

77. (1) If, on an application for re-registration of a public company as an unlimited company, the Commission is satisfied that the company is entitled to be so re-registered, the company shall be re-registered accordingly.

Issue of certificate of incorporation on re-registration.

(2) The Commission shall issue a certificate of incorporation altered to meet the circumstances of the case.

(3) The certificate shall state that it is issued on re-registration and the date on which it is so issued.

(4) Upon the issue of the certificate the —

(a) company, by virtue of the issue of the certificate, becomes an unlimited company; and

(b) changes in the company's name, memorandum and articles take effect.

(5) The certificate is *prima facie* evidence that the requirements of this Act as to re-registration have been complied with.

### CHAPTER 3 - FOREIGN COMPANIES

78. (1) Subject to sections 80 - 83 of this Act, every foreign company which before or after the commencement of this Act was incorporated outside Nigeria, and having the intention of carrying on business in Nigeria, shall take all steps necessary to obtain incorporation as a separate entity in Nigeria for that purpose, but until so incorporated, the foreign company shall not carry on business in Nigeria or exercise any of the powers of a registered company and shall not have a place of business or an address for service of documents or processes in Nigeria for any purpose other than the receipt of notices and other documents, as matters preliminary to incorporation under this Act.

Foreign companies intending to carry on business in Nigeria.

(2) Any act of the company in contravention of subsection (1) is void.

(3) Nothing in this section affects the status of any foreign company -

(a) which before the commencement of this Act was granted exemption from compliance under the provisions of any preceding Companies Acts that had been applicable in Nigeria before the commencement of this Act; and

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

79. If any foreign company fails to comply with the requirements of section 80 of this Act in so far as they may apply to the company, the company commits an offence and is, in addition to being liable to prosecution, also liable to such penalty as the Commission shall specify by regulation, and every officer or agent of the company who authorises or permits the default or failure to comply is, whether or not the company is also convicted of any offence, liable on conviction to such penalty as the Commission shall specify by regulation, and where the offence is a continuing one, the company and every officer or agent of the company are liable to a further penalty as the Commission shall specify by regulation for every day during which the default continues. Penalties.

80. (1) A foreign company may apply to the Minister for exemption from the provisions of section 78 of this Act if that foreign company belongs to one of the following categories, that is— Power to exempt foreign companies.

- (a) foreign companies other than those specified in paragraph (d), invited to Nigeria by or with the approval of the Federal Government to execute any specified individual project;
- (b) foreign companies which are in Nigeria for the execution of specific individual loan projects on behalf of a donor country or international organisation;
- (c) foreign government-owned companies engaged solely in export promotion activities; and
- (d) engineering consultants and technical experts engaged on any individual specialist project under contract with any of the governments in the Federation or any of their agencies or with any other body or person, where such contract has been approved by the Federal Government.

(2) An application for exemption under this section shall be in writing addressed to the Minister and shall set out—

- (a) the name and place of business of the foreign company outside Nigeria;
- (b) the name and place of business or the proposed name and place of business of the foreign company in Nigeria;

- (c) the name and address of each director, partner or other principal officer of the foreign company;
  - (d) a certified copy of the charter, statutes, or memorandum and articles of association of the company, or other instrument constituting or defining the constitution of the company and if the instrument is not written in the English language, a certified translation thereof;
  - (e) the names and addresses of one or more persons resident in Nigeria authorised to accept, on behalf of the foreign company, service of processes and any notice required to be served on the company;
  - (f) the business or proposed business in Nigeria of the foreign company and the duration of such business;
  - (g) particulars of any project previously carried out by the company as an exempted foreign company; and
  - (h) such other particulars as may be required by the Minister or Secretary to the Government of the Federation.
- (3) Where the Minister, upon the receipt of an application for exemption, is of the opinion that the circumstances are such as to render it expedient that such an exemption should be granted, the Minister, subject to such conditions as he may prescribe, exempt the foreign company from the obligations imposed by or under this Act.
- (4) Every exemption granted under this section shall specify the period or, as the case may be, the project or series of projects, for which it is granted and shall lapse at the end of such period or upon the completion of such project or series of projects.
- (5) The Minister may at any time revoke any exemption granted to any company if he is of the opinion that the company has contravened any provision of this Act or has failed to meet any condition contained in the exemption order or for any other good or sufficient reason.
- (6) The Minister shall cause to be published in the Federal Government Gazette the name of any company—
- (a) to which an exemption has been granted and the period or, as the case may be, the project or series of projects

for which the exemption is granted; and

(b) which exemption has been revoked and the effective date of such revocation.

(7) Every exempted company shall deliver to the Commission upon payment of a prescribed fee a notice of its exemption within 30 days of the grant of such exemption.

(8) If an exempted company fails to comply with the provisions of subsection (7), it is liable to such penalty as the Commission shall specify by regulation for every day during which the default continues.

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

(2) An exempted foreign company that fails to comply with the provisions of subsection (1), is liable to such penalty as the Commission shall specify by regulation, for every year of default.

82. Subject to this Act and save as may be stated in the instrument of exemption, a foreign company exempted pursuant to this Act shall have the status of an unregistered company and accordingly, the provisions of this Act applicable to an unregistered company shall apply in relation to such an exempted company as they apply in relation to an unregistered company under this Act. Exempted foreign company to have status of unregistered company.

83. (1) A person who, for the purpose of obtaining an exemption or of complying with any of the provisions of section 80 of this Act, makes any statement or presents any instrument which is false commits an offence unless he proves that he has taken all reasonable steps to ascertain the truth of the statement made or contained in the instrument so presented. Penalties for false information.

(2) Any person who contravenes subsection (1) commits an offence under this section is liable on conviction to a fine or imprisonment as the Court deems fit.

84. Except as provided under sections 80, 81 and 82 of this Act –

Application of certain sections to foreign companies.

(a) nothing shall be construed as authorising the disregard by any exempted foreign company of any enactment or rule of law; and

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

## CHAPTER 4 – PROMOTERS

85. Any person who undertakes to take part in forming a company with reference to a given project and set it going and who takes the necessary steps to accomplish that purpose, or who, with regard to a proposed or newly formed company, undertakes a part in raising capital for it, is deemed a promoter of the company:
- Persons promoting a company.

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

86. (1) A promoter stands in a fiduciary relationship to the company and shall observe utmost good faith towards the company in any transaction with it or on its behalf and shall compensate the company for any loss suffered by reason of his failure to do so.
- Duties and liabilities of a promoter.
- (2) 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.
- (3) Any transaction between a promoter and the company may be rescinded by the company unless, after full disclosure of all material facts known to the promoter, such transaction shall have been entered into or ratified on behalf of the company by —
- (a) the company's board of directors independent of the promoter;
  - (b) all the members of the company; or
  - (c) the company at a general meeting at which neither the promoter nor the holders of any share in which he is beneficially interested shall vote on the resolution to enter into or ratify that transaction.
- (4) No period of limitation shall apply to any proceeding brought by the company to enforce any of its rights under this section but in any such proceeding the Court may relieve a promoter in whole or in part and on such terms as it deems fit from liability if in all the circumstances, including lapse of time, the Court deems it equitable to do so.

## CHAPTER 5 - ACTS BY OR ON BEHALF OF THE COMPANY IN EXERCISE OF COMPANY'S POWERS

87. (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
- Division of powers between general meeting and board of

from, the members in general meeting or the board of directors.

directors.

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

88. Unless otherwise provided in this Act or in the articles, the board of directors may—

Delegation to committees and managing directors.

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

## LIABILITY FOR ACTS OF THE COMPANY

89. 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 the company is criminally and civilly liable to the same extent as if it were a natural person:
- Acts of the general meeting, board of directors, or of managing directors.

Provided that—

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

90. (1) Except as provided in section 89 of this Act, the acts of any officer or agent of a company shall not be deemed to be acts of the company, unless—
- Acts of officers or agents.

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

- (2) The authority of an officer or agent of the company may be conferred prior to any

action by him or by subsequent ratification, and knowledge of such action by the officer or agent and acquiescence by all the members of the company or by the directors or by the managing director for the time being, shall be equivalent to ratification by the members in general meeting, board of directors, or managing director, as the case may be.

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

91. (1) Any provision, whether contained in the articles of the company or in any contract with a company or otherwise, for exempting any officer of the company or any person employed by the company as auditor from, or indemnifying him against any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, or breach of trust of which he may be guilty in relation to the company, is void.

When provision exempting, officer or other person from liability to the company is void.

(2) Notwithstanding the provisions of subsection (1), a —

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

(b) company may, in pursuance of any such provision as mentioned in subsection (1), indemnify any such officer or auditor against any liability incurred by him in defending any proceeding, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under section 740 of this Act in which relief is granted to him by the Court.

92. Except as mentioned in section 223 of this Act, regarding particulars in the register of particulars of charges, a person is not deemed to have knowledge of the contents of the memorandum and articles of a company or of any other particulars, documents, or the contents of documents merely because such particulars or documents are registered by the Commission or referred to in the particulars or documents so registered, or are available for inspection at an office of the company.

Abolition of constructive notice of registered documents.

93. A person dealing with a company or with someone deriving title under the company, is entitled to make the following assumptions and the company and those deriving title under it shall be estopped from denying their truth that—

Presumptions of regularity.

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

- (b) every person described in the particulars filed with the Commission pursuant to sections 36 (4) (c), 319 and 337 of this Act as a director, managing director or secretary of the company, or represented by the company, acting through its members in general meeting, board of directors, or managing director, as an officer or agent of the company, has been duly appointed and has authority to exercise the powers and discharge the duties customarily exercised or performed by a director, managing director, or secretary of a company carrying on business of the type carried on by the company or customarily exercised or performed by an officer or agent of the type concerned;
- (c) the secretary of the company, and every officer or agent of the company having authority to issue documents or certified copies of documents on behalf of the company, has authority to warrant the genuineness of the documents or the accuracy of the copies so issued;
- (d) a document has been duly sealed by the company if it bears what purports to be the seal of the company attested by what purports to be the signatures of two persons who, in accordance with paragraph (b), can be assumed to be a director and the secretary of the company:

Provided that a person shall not be entitled to –

- (i) make such assumptions, 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; and
- (ii) 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 merely because the company's articles provided that authority to act in the matter that may be delegated to a committee, an officer or agent.

94. Where, in accordance with sections 89 - 93 of this Act, a company would be liable to a third party for the acts of any officer or agent, the company shall, except where there is collusion between the officer or agent and the third party, be liable notwithstanding

Liability of company not affected by fraud or forgery of officer.

that the officer or agent has acted fraudulently or forged a document purporting to be sealed by or signed on behalf of the company.

#### COMPANY'S CONTRACTS

95. (1) Contracts on behalf of a company may be made, varied or discharged as follows— Form of contract.

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

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

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

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

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

(2) Prior to ratification by the company, the person 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 entitled to the benefit thereof.

97. (1) A bill of exchange or promissory note is deemed to have been made, accepted, or endorsed on behalf of a company if made, or expressed to be made, accepted, or Bills of exchange and promissory note.

endorsed in the name of the company, or if expressed to be made, accepted or endorsed on behalf or on account of the company by a person acting under its authority.

- (2) The company and its successors shall be bound thereby if the company is, in accordance with sections 89 - 91, liable for the acts of those who made, accepted or endorsed it in its name or on its behalf or account, and a signature by a director or the secretary on behalf of the company shall not be deemed to be a signature by procurator for the purposes of section 25 of the Bills of Exchange Act.

Cap. B8, LFN, 2004.

98. A company may have a common seal but need not have one, and where a company has a common seal, the design and use of that seal shall be regulated by the company's articles and it shall have its name engraved in legible characters on the seal.

Common seal of the company.

99. (1) A company whose objects require or comprise the transaction of business in foreign countries may, if authorised by its articles, have for use in any territory, district, or place outside Nigeria, an official seal, the design and use which shall be regulated by the company's articles, and shall indicate on its face of the name of every territory, district, or place where it is to be used.

Official seal for use abroad.

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

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

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

- (5) In the case of companies that have a common seal, a deed or other document to which an official seal is duly affixed shall bind the company as if it has been sealed with the common seal of the company.

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

Power of Attorney.

- (2) A deed signed by a person empowered as provided in subsection (1) shall bind the company and have the same effect as it would have if it were a deed signed by the company.

## AUTHENTICATION AND SERVICE OF DOCUMENTS

101. A document or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorised officer of the company, and need not be signed as a deed unless otherwise so required in this Part and that an electronic signature is deemed to satisfy the requirement for signing under this section. Authentication of documents.
102. (1) A document is validly executed by a company as a deed for the purposes of this Act, if it is duly executed by the company and it is delivered as a deed. Execution of deeds by company.
- (2) A company may execute a document described or expressed as a deed without affixing a common seal on the document by signature on behalf of the company by —
- (a) a director of the company and the secretary of the company;
  - (b) at least two directors of the company; or
  - (c) a director of the company in the presence of at least one witness who shall attest the signature.
- (3) A document mentioned in subsection (2) that is signed on behalf of the company in accordance with that subsection has the same effect as if the document was executed under the common seal of the company.
- (4) Where a document is to be signed by a person on behalf of more than one company, the document shall not be considered to be signed by that person for the purposes of subsection (2) or (3), unless the person signs the document separately in each capacity.
- (5) This section applies in the case of a document mentioned in subsection (2) that is executed by the company in the name or on behalf of another person, whether or not that person is also a company.
103. Where any written law or rule of law requires any document to be under or executed under the common seal of a company, or provides for consequences for not sealing, the document is deemed to have satisfied the provisions of that written law or rule of law if the document is signed in the manner set out in sections 101 and 102. Alternative to sealing.
104. A court process shall be served on a company in the manner provided by the rules of court and any other document may be served on a company by leaving it at, or sending it by post to, the registered office or head office of the company. Service of documents on companies.

## CHAPTER 6 - MEMBERSHIP OF THE COMPANY

105. (1) A subscriber of the memorandum of a company shall be deemed to have agreed to become a member of the company, and on its registration shall be entered as the member in its register of members. Definition of member.
- (2) Every other person who agrees in writing to become a member of a company, and whose name is entered in its register of members, is a member of the company.
- (3) In the case of a company having a share capital, each member is a shareholder of the company and shall hold at least one share, except in relation to a company that has only one shareholder.
106. (1) As from the commencement of this Act, an individual is not capable of becoming a member of a company if he is — Capacity to be a member.
- (a) of unsound mind and has been so found by a court in Nigeria or elsewhere; or
- (b) an undischarged bankrupt.
- (2) A person under the age of 18 years shall not be counted for the purpose of determining the legal minimum number of members of a company.
- (3) A corporate body in liquidation is not capable of becoming a member of a company.
- (4) Where, at the commencement of this Act, any person falling within the provisions of subsection (1) is a member of a company by reason of being a shareholder of the company, his share vests in his committee or trustee, as the case may be.
- (5) Where, after the commencement of this Act, any shareholder purports to transfer any share or shares to a person falling within the provisions of subsection (1), the purported transfer shall not vest the title in the shares in that person, but the title remains in the purported transferor or his personal representative who holds the shares in trust for that person during the period of his incapacity.
107. Every member shall, notwithstanding any provision in the articles, have a right to attend any general meeting of the company and to speak and vote on any resolution before the meeting: Right of member to attend meetings and vote.
- Provided that the articles may provide that a member shall not be entitled to attend and vote unless all calls or other sums payable by him in respect of shares in the company have been paid.

108. If a person falsely and deceitfully impersonates any member of a company and thereby obtains or endeavours to obtain any benefit due to any such member, he commits an offence and is liable on conviction to – Personation of members.

- (a) imprisonment for a term of not more than seven years or a fine as the court deems fit;
- (b) pay such additional fines as the Commission may specify by regulation; and
- (c) account to the aggrieved member for any benefit which he directly or indirectly derived as a result of his act of impersonation.

109. (1) Every company shall keep a register of its members and enter in the register the Register of members.

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

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

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

(4) Where a company defaults in complying with the provisions of this section, the company and each officer of the company is liable to –

- (a) such penalties as the Commission shall specify by regulation; and

(b) an additional daily default fine that the Commission shall specify by regulation.

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

110. (1) The register of members shall be kept at the registered office of the company, Location of register.  
except if the —

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

(b) company arranges with some other person for the making up of the register to be undertaken on behalf of the company by that person, it may be kept at the office of that other person at which the work is done, but the register shall not be kept in the case of a company registered in Nigeria at a place outside Nigeria.

(2) Every company shall send notice to the Commission of the change in location of the register, and a company is not bound to send notice under this subsection where the register has at all times since it came into existence or, in the case of a register in existence at the commencement of this Act, at all times since then, been kept at the registered office of the company.

(3) Where a company fails to comply with the provisions of subsection (2) within 28 days of the change of the location of the register, the company and every one of its officers are liable to —

(a) such penalties as the Commission shall specify by regulation; and

(b) an additional daily default fine that the Commission shall specify by regulation.

111. (1) Every company having more than 50 members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index of the names of the members of the company. Index of members to be kept.

(2) Where a company makes any alteration in the register of members, the company shall, within 14 days after the date which the alteration is made, make such necessary alterations in the index.

- (3) The index shall, in respect of each member, contain sufficient indication to enable the account of that member in the register to be readily found.
- (4) The index shall, at all times, be kept at the same place as the register of members.
- (5) If default is made in complying with the provisions of this section, the company and every officer of the company are liable to such penalties as the Commission shall specify by regulation.

112. (1) Except when the register of members is closed under the provisions of this Act, the register and the index of members' names shall be open during business hours (subject to such reasonable restrictions as the company in general meeting may impose, that not less than two hours in each day shall be allowed for inspection) to the inspection of any member of the company without charge.
- (2) A member or any person may, with the permission of the company which permission shall not be unreasonably withheld require a copy of the register, or of any part, on payment of such amount the Commission may prescribe or such lesser amount the company may prescribe for every page required to be copied, and the company shall cause any copy required by any person to be duly endorsed by an officer of the company and sent to that person within a period of 10 days commencing on the day after the day on which the requirement is received by the company:

Inspection of register and index.

Provided that the Commission may require such copy without any restriction or charge.

- (3) If any inspection required under this section is refused, or if any copy required under this section is not sent within the prescribed period, the company and every officer of the company is liable in respect of each default to such penalties as the Commission shall specify by regulation.
- (4) Notwithstanding the provisions of subsection (3), the Court may by order compel an immediate inspection of the register and index or direct that the copies required shall be sent to the persons requiring them.

113. Where, by virtue of section 110 (1) (b), the register of members is kept at the office of some person other than the company, and by reason of any default of that person, the company fails to comply with subsections 112 (1) or (2), or with any requirements of this Act as to the production of the register, that other person is liable to the same penalties as if the person were an officer of the company who was in default, and the power of the Court under section 112 (4) shall extend to the making of orders against that other person and his officers and servants.

Consequences of agents' default to keep register.

114. A company may, on giving notice by advertisement in a daily newspaper circulating in the district in which the registered office of the company is situated, close the

Power to close register.

register of members or any part of it for any time or times not exceeding, on the whole, 30 days in each year.

115. (1) If—

Power of Court to rectify register.

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

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

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

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

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

(4) Where the court makes an order for rectification of the register, the company shall, within 14 days of the court order, file a copy of the order and a notice of the particulars of the rectification with the Commission.

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

Register to be evidence.

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

Liability of members.

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

- (3) Subject to subsections (1) and (2), 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 the adjustment of the rights of the members and past members among themselves, but subject to the following qualifications—
- (a) a past member is not liable to contribute if he has ceased to be a member for a period of one year or upwards before the commencement of the winding up;
  - (b) a past member is not liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this section;
  - (c) in the case of a company limited by shares, no contribution is 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 is required from any member or past member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up; and
  - (e) any sum due from the company to a member or past member, in his capacity as member, by way of dividends or otherwise shall not be set- off against the amount for which he is liable to contribute in accordance with this section but any such sum is to be taken into account for the purposes of final adjustment of the rights of the members and past members amongst themselves.
- (5) For the purposes of this section, the expression “past member” includes the estate of a deceased member and where any person dies after becoming liable as a member or past member, such liability shall be enforceable against his estate.
- (6) Except as contained in this section, a member or past member is not liable as a member or past member for any of the debts and liabilities of the company.

118. If a public company or a company limited by guarantee carries on business or its objects, without having at least two members and does so for more than six months, every director or officer of the company, during the time that it so carries on business with only one or no member, is liable jointly and severally with the company for the debts of the company contracted during that period.

Liability for company debts where membership is below legal minimum.

#### DISCLOSURE OF PERSONS WITH SIGNIFICANT CONTROL

119. (1) Notwithstanding the provisions of section 120, every person with significant control over a company shall, within seven days of becoming such a person, indicate to the company in writing the particulars of such control.

Disclosure of capacity by shareholder.

(2) A company after receiving or coming into possession of the information required under subsection (1), shall, not later than one month from the receipt of the information or any change therein, notify the Commission of that information provided that a company shall in every annual return, disclose the information required under subsection (1) in respect of the year for which the return is made.

(3) The Commission shall maintain a register of persons with significant control in which it shall enter the information received from the company or any change therein under subsection (2).

(4) A company shall inscribe against the name of every member in the register of members the information received in pursuance of the requirements of this section.

(5) If default is made by any person or company in complying with subsections (1), (2) and (4), the person or company and every officer of the company are liable to such fines as the Commission may prescribe by regulation for every day during which the default continues.

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

Obligation of disclosure by substantial shareholder in public company.

(2) A person is a substantial shareholder in a public company if he holds himself or by his nominee, shares in the company which entitle him to exercise at least 5% of the unrestricted voting rights at any general meeting of the company.

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

(4) The notice shall be given notwithstanding that the person has ceased to be a

substantial shareholder before the expiration of the period referred to in subsection (3).

- (5) The company shall, within 14 days of receipt of the notice or of becoming aware that a person is a substantial shareholder give notice in writing to the Commission of this fact.
- (6) If any person or company fails to comply with the provisions of this section, the person or the company is liable to such fines as the Commission may prescribe by regulation for each day the default continues.

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

Person ceasing to be a substantial shareholder to notify company.

- (2) A person required to give notice under subsection (1), shall do so within 14 days after he becomes aware that he has ceased to be substantial shareholder.
- (3) The company shall within 14 days of receipt of the notice or of becoming aware that a person has ceased to be a substantial shareholder, give notice in writing to the Commission of this fact.
- (4) If any person or company fails to comply with the provisions of this section, the person or the company is liable to such fines as the Commission may prescribe by regulation for each day the default continues.

122. (1) A public company shall keep a register in which it shall enter—

Register of interests in shares.

- (a) in alphabetical order, the names of persons from whom it has received a notice under section 121; and
- (b) against each name so entered, the information given in the notice, and where it receives a notice under section 121, the information given in that notice.

- (2) The register shall be kept at the place where the register of members required to be kept under section 110 is kept and subject to the same right of inspection as the register of members.
- (3) The Commission may, at any time in writing, require the company to furnish it with a copy of the register or any part of the register and the company shall furnish the copy within 14 days after the day on which the requirement is received.
- (4) If the company ceases to be a public company, it shall continue to keep the register until the end of the period of six years beginning with the day following that on

which it ceases to be such a company.

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

(6) If default is made in complying with this section, the company and every officer of the company are liable to –

(a) such fine as the Commission may prescribe by regulation; and

(b) additional daily default fine that the Commission shall specify by regulation.

123. The matter relating to beneficial interests in shares required by section 120 shall be entered in a different part of the register of interests which shall be so made up that the entries inscribed in it appear in chronological order.

Registration of interests to be disclosed.

#### CHAPTER 7 - SHARE CAPITAL

124. (1) Where, after the commencement of this Act, a memorandum delivered to the Commission under section 36 states that the association to be registered is to be registered with shares, the amount of the share capital stated in the memorandum to be registered shall not be less than the minimum issued share capital.

Minimum issued share capital.

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

(3) Where, at the commencement of this Act, the issued share capital of an existing company is less than the minimum issued share capital, the company shall, not later than six months after the commencement of this Act, issue shares to an amount not less than the minimum issued share capital.

(4) Subject to subsection (3), where a company is registered with shares, its issued capital shall not at any time be less than the minimum issued share capital.

(5) Where a company to which subsections (3) and (4) apply fails to comply with the applicable subsection, the company is –

(a) liable to such fine as the Commission may prescribe by regulation; and

(b) in addition, liable to a daily default fine as the Commission shall specify by regulation for every day during which the default continues.

## ALTERATION OF SHARE CAPITAL

125. A company having a share capital may in general meeting and not otherwise, alter the conditions of its memorandum to —
- Alteration of share capital by consolidation, etc.
- (a) consolidate and divide all or any part of its share capital into shares of larger amount than its existing shares; and
  - (b) subdivide its shares or any of them, into shares of smaller amount than is fixed by the memorandum, but in the subdivision the proportion between the amount paid and the amount unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived.
126. (1) If a company having a share capital has—
- Notice required where shares consolidated, etc.
- (a) consolidated and divided its share capital into shares of larger amount than its existing shares, or
  - (b) subdivided its shares or any of them,
- the company shall within one month after so doing, give notice of it to the Commission specifying, the shares consolidated, divided, or subdivided.
- (2) If default is made in complying with this section, the company and every officer of the company are liable to such fine as the Commission may prescribe by regulation, for every day during which the default continues.
127. (1) A company having a share capital, may in general meeting and not otherwise, increase its issued share capital by the allotment of new shares of such amount as it considers expedient.
- Increase of issued share capital and notice of increase.
- (2) Where a company increased its share capital, it shall, within 15 days after the passing of the resolution authorising the increase, give to the Commission notice of the increase and the Commission shall record the increase.
  - (3) Where, in connection with the increase of shares, any approval is required to be obtained under any enactment other than this Act, the company shall give notice of that fact to the Commission within 15 days after the passing of the resolution authorising the increase, together with an affidavit sworn to by a director of the company to that effect, and upon receipt of the notice and affidavit by the Commission, the period of 15 days stated in subsection (2) is deemed extended,

for a period terminating no later than 10 days after receipt of the approval is required to be obtained by the company under an enactment other than this Act.

- (4) If the company has not obtained the required approval under an enactment other than this Act within 48 days of the date on which it notified the Commission under subsection (3), the company shall file another notice and affidavit to that effect with the Commission, and shall do so for every successive period of 48 days that elapses after the date on which it first notified the Commission under subsection (3).
  - (5) If the Company fails to obtain the approval that is required to be obtained under an enactment other than this Act within nine months from the date on which it first notified the Commission under subsection (3), the resolution increasing the company's issued share capital becomes null and void.
  - (6) The notice to be given under this section includes the particulars prescribed with respect to the classes of shares affected and the condition subject to which the new shares have been or are to be issued and the notice shall be accompanied by a printed copy of the resolution authorising the increase.
  - (7) If default is made in complying with the provisions of this section, the company in default is liable to such fine as the Commission may prescribe by regulation for every day during which the default continues.
  - (8) Where a company increases its share capital, it shall be by an ordinary resolution and shall amend its memorandum and articles of association to reflect the new issued share capital.
128. (1) Where a company allots new shares, thereby increasing its issued share capital, the increase shall not take effect unless —
- Increase of issued capital on increase of shares.
- (a) at least 25% of the share capital including the increase has been paid up; and
  - (b) the directors have delivered to the Commission a statutory declaration verifying that fact.
- (2) Where a company fails to comply with the applicable subsection, it shall be liable to such fine as the Commission may prescribe by regulation for every day during which the default continues.
129. If an unlimited company resolves to be re-registered as a limited company under this Act, it may—
- Power for unlimited company to provide reserve share capital on re-registration.
- (a) increase the nominal amount of its issued share capital

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

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

### REDUCTION OF SHARE CAPITAL

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

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

131. (1) Subject to confirmation by the Court, a company having share capital may, if so authorised by its articles, by special resolution reduce its share capital in any way. Special resolution for reduction of share capital.

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

- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up,
- (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets, or
- (c) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is in excess of the company’s wants,

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

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

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

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

any paid-up share capital, the Court may, if having regard to any special circumstance of the case it considers proper to do so, direct that subsections (3) - (5) shall not apply as regards any class or classes of creditors.

133. (1) The Court, if satisfied—

Court order confirming reduction.

(a) with respect to every creditor of the company who under section 132 is entitled to object to the reduction of capital, that either—

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

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

(b) that the share capital does not by this reduction fall below the minimum issued share capital, may make an order confirming the reduction on such terms and conditions as it deems fit.

(2) Where the Court so orders, it may also—

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

(b) make an order requiring the company to publish (as the court directs) the reasons for reduction of capital or such other information in regard to it as the court considers expedient with a view to giving proper information to the public and (if the court deems fit) the causes which led to the reduction.

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

134. (1) The Commission, on delivery to it the order of the court confirming the reduction of a company’s share capital, and minutes of the meeting of the company (approved by the Court) showing, with respect to the company’s share capital as altered by the order—

Registration of order and minutes of reduction.

(a) the amount of the share capital;

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

(c) the amount (if any) at the date of the registration deemed to be paid up on each share, shall register the order and minutes.

(2) On the registration of the order and minutes, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

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

(4) The Commission shall certify the registration of the order and minutes, and the certificate—

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

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

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

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

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

Liability of members on reduced shares.

(2) Subsections (3) and (4) shall apply if—

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

(b) after the reduction of capital, the company is unable

(within the meaning of section 572) to pay the amount of the creditor's debt or claim.

- (3) Every person who was a member of the company at the date of the registration of the order for reduction and minutes, is liable to contribute for the payment of the debt or claim in question an amount not exceeding that which he would have been liable to contribute if the company had commenced to be wound up on the day before that date.
- (4) If the company is wound up, the Court, on application of the creditor in question and proof of ignorance referred to in subsection (2) (a), may, if it deems fit, settle a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.
- (5) Nothing in this section affect the rights of the contributories among themselves.

136. If an officer of the company—

- (a) wilfully conceals the name of a creditor entitled to object to the reduction of capital,
- (b) wilfully misrepresents the nature or amount of the debt or claim of any creditor, or
- (c) aids, abets or is privy to any concealment or misrepresentation,

Penalty for concealing name of creditor, etc.

he commits an offence and is liable on conviction to such fines as the Commission shall specify by regulation.

#### MISCELLANEOUS MATTERS RELATING TO CAPITAL

137. (1) Where the net assets of a public company are half or less of its called-up share capital, the directors shall, not later than 30 days from the earliest day on which that fact is known to a director of the company, duly convene an extraordinary general meeting of the company, for a day not later than 60 days from that day for the purpose of considering whether any, and if so, what steps should be taken to deal with the situation.
- (2) If there is a failure to convene an extraordinary general meeting as required by subsection (1), each of the directors of the company who—
  - (a) allows the failure, or
  - (b) after the expiry of the period during which that meeting

Duty of directors on serious loss of capital.

should have been convened, allows the failure to continue,

is liable to such fines as the Commission shall specify by regulation.

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

## CHAPTER 8 – SHARES AND NATURE OF SHARES

138. (1) Subject to the provisions of this Act, the rights and liabilities attaching to the shares of a company or any class thereof shall—
- Rights and liabilities attached to shares.
- (a) be dependent on the terms of issue or the company's articles; and
- (b) notwithstanding anything to the contrary in the terms or the articles, include the right to attend any general meeting of the company and vote at such a meeting.
139. The shares or other interests of a member in a company are personal property transferable in the manner provided in articles of association of the company.
- Shares as transferable property.
140. (1) Unless otherwise provided by any other enactment, any share issued by a company shall carry the right on a poll at a general meeting of the company to one vote in respect of each share, and no company may by its articles or otherwise authorise the issue of shares which carry more than one vote in respect of each share or which do not carry any right to vote.
- Prohibition of non-voting and weighted shares.
- (2) If a company contravenes any of the provisions of this section, the company and any officer in default are liable to a daily default fine as the Commission shall specify by regulation and any resolution passed in contravention of this section shall be void.
- (3) Nothing in this section shall affect any right attached to a preference share under section 168.

## ISSUE OF SHARES

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

142. (1) A company shall not in any event allot newly issued shares unless they are offered in the first instance to all existing shareholders of the class being issued in proportion as nearly as may be to their existing holdings. Pre-emptive rights of existing shareholders.
- (2) The offer to existing shareholders shall be by notice specifying –
- (a) the number of shares to which the shareholder is entitled to subscribe;
  - (b) the price; and
  - (c) a reasonable time period after the expiration of which the offer, if not accepted, will be deemed to be declined.
- (3) On the receipt of notice from the shareholder that he declines to accept the shares offered or after the expiration of the specified time, the board of directors may, subject to the terms of any resolution of the company, dispose of the shares at a price not less than that specified in the offer, in such manner as they think most beneficial to the company.
143. (1) A company may, where so authorised by its articles, issue classes of shares. Issue of classes of shares.
- (2) Shares shall not be treated as being of the same class unless they rank equally for all purposes.
144. Without prejudice to any special rights previously conferred on the holders of existing shares or class of shares, any share in a company may be issued with such preferred, deferred or other special rights or such restrictions, whether with regard to dividend, return of capital or otherwise, as the company may determine by ordinary resolution. Issue with rights attached.
145. (1) Shares of a company may be issued at a premium. Issue of shares at a premium.
- (2) Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premium on those shares shall be transferred to, “the share premium account”.
- (3) The provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the share premium account were paid-up share capital of the company.
- (4) Notwithstanding anything to the contrary in subsection (2), the share premium account may be applied by the company in:
- (a) paying up unissued shares of the company to be issued

to members of the company as fully-paid bonus shares;

(b) writing off the preliminary expense of a newly incorporated company;

(c) writing off the expenses of, or the commission paid on any issue of shares of the company; or

(d) providing for the premium payable on redemption of any redeemable share of the company.

146. It is unlawful for a company to issue shares at a discount.

Issue of shares at a discount.

147. (1) No company limited by shares shall, after the commencement of this Act issue any preference shares which are irredeemable.

Issue of redeemable preference shares.

(2) A company limited by shares may, if so authorized by its articles, issue preference shares which are liable to be redeemed subject to such conditions as may be prescribed in the terms of issue or in the articles of the company.

148. (1) Where a company has purported to issue or allot shares and the issue or allotment of those shares was invalid by reason of any provision of this Act or any other enactment, of the articles or the terms of issue or allotment were inconsistent with or unauthorised by any such provision, the company may within 30 days of an application made by a holder, mortgagee of those shares or by a creditor of the company, and by special resolution, validate the issue or allotment of those shares or confirm the terms of the issue and allotment, as the case may be.

Validation of improperly issued shares.

(2) Where a company refuses to validate the issue or allotment of the shares or confirm the terms of the issue and allotment, the Court may, upon application made by a holder, a mortgagee of those shares or by a creditor of the company, and upon being satisfied that in all the circumstances it is just and equitable to do so, validate the issue, allotment of those shares or confirm the terms of the issue and allotment, as the case may be.

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

## ALLOTMENT OF SHARES

149. (1) The power to allot shares is vested in the company, and, in relation to a private company, this power may be delegated to the directors, subject to any condition

Authority to allot shares.

or direction that may be imposed in the articles or by the company in general meeting.

(2) The power to allot shares of a public company is subject to the provisions of the Investment and Securities Act.

Cap. I24, LFN, 2004.

(3) The powers to allot the shares of a company are not exercised by the directors of a company unless express authority to do so has been vested in the board of directors by -

(a) the company in a general meeting; or

(b) the company's articles.

(4) In this section, the reference to shares includes any right to subscribe for, or to convert any security into, shares in the company other than shares so allotted.

(5) The authorisation to the directors under this section may be given to be exercised in a particular instance, or to be exercised generally, and may be unconditional or subject to conditions.

150. (1) Without prejudice to the provisions of the Investment and Securities Act, the following provisions apply in respect of an application for an allotment of issued shares of a company—

Method of application and allotment.

Cap. I24, LFN, 2004.

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

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

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

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

151. An allotment of shares made and notified to an applicant in accordance with section 150 is an acceptance by the company of the offer by the applicant to purchase its shares and the contract takes effect on the date on which the allotment is made by the company. Allotment as acceptance of contract.

152. Subject to the provisions of sections 160 – 163 of this Act, a company may, in its articles, make provision with respect to payments on allotment of its shares. Payment on allotment.

153. (1) An allotment made by a public company before the holding of the statutory meeting to an applicant in contravention of the provisions of this Act, is voidable at the instance of the applicant – Effect of irregular allotment.

(a) within one month after the holding of the statutory meeting of the company and not later, or

(b) where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment, and not later:.,

Provided that the allotment shall be so voidable notwithstanding that the company is in the course of being wound up.

(2) If any director of a company knowingly contravenes, permits or authorises the contravention of any of the provisions of this Act with respect to allotment, he is liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby, but proceedings to recover any such loss, damages, or costs shall not be commenced after the expiration of two years from the date of the allotment.

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

(a) a return of the allotments in the prescribed form, stating –

(i) the number and nominal value of the shares comprised in the allotment,

(ii) the names, addresses and description of the allottees, and

(iii) the amount, if any, paid or due and payable on each share, whether on account of the nominal value of the shares or by way of any premium payable in relation to such shares;

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

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

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

(iii) with respect to public companies, particulars of the valuation of the consideration in accordance with section 162; and

(c) such other documents and particulars as may be required by the Commission, but where the Commission requires that additional documents or particulars be submitted it shall grant the company additional time of at least seven days within which to provide the additional documents and particulars, and the additional time granted is deemed to be an extension of the one month period in subsection (1).

(2) If default is made in complying with this section, each officer of the company is liable to such penalty as the Commission shall specify in the regulation for every day during which the default continues.

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

155. (1) Except as provided in section 156, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission,

Prohibition of payments of commissions, discounts out of shares

discount or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any share in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any share in the company, whether the shares or capital money are so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or any such money is paid out of the nominal purchase money or contract price, or otherwise. and capital.

(2) Nothing in this section affects the payment of any brokerage or agency fees agreed between the company and a broker or agent of the company, for services provided by such broker or agent in connection with the raising of the capital by the company.

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

156. (1) A company may pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any share in the company or procuring or agreeing to procure subscription, whether absolute or conditional, for any share in the company if—

Power to pay  
Commission in certain  
cases.

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

(b) the commission paid or agreed to be paid does not exceed 10% of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is lesser;

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

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

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

prospectus inviting subscription for the shares is issued, also disclosed in that circular or notice; and

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

(2) If default is made in delivering any document required to be delivered to the Commission under this section, the company and every officer in default is liable to such penalty as the Commission shall specify in the regulation.

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

Statement in balance sheet as to Commission.

(2) If default is made in complying with this section, the company and every officer of the company is liable to such penalty as the Commission shall specify by regulation for every day during which the default continues.

#### CALL ON AND PAYMENT FOR SHARES

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

Call on shares.

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

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

(3) The joint holders of a share are jointly liable to pay all calls in respect of the share.

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

(5) A sum which by the terms of issue of a share becomes payable on allotment or at

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

- (6) The directors may, if they think fit, receive from any member willing to advance the same, all or any part of the money uncalled and unpaid upon any share held by him, and upon all or any of the money so advanced may (until the same would, but for such advance, become payable) pay interest at such rate not exceeding the current bank rate per annum as may be agreed upon between the directors and the member paying such sum in advance (unless the company in general meeting otherwise directs).

159. A company limited by shares may, by special resolution determine that any portion of its share capital which has not been already called up are not capable of being called up except in the event and for the purposes of the company being wound up and thereupon, that portion of its share capital shall not be capable of being called up, except in the event and for the purposes specified in subsection (1). Reserve liability of company having share capital.
160. Subject to the provisions of sections 161 and 162, the shares of a company and any premium on them shall be paid up in cash, or where the articles so permit, by a valuable consideration other than cash or partly in cash and partly by a valuable consideration other than cash. Payment for shares.
161. (1) Shares are not deemed to have been paid for in cash except to the extent that the company shall have actually received cash for them at the time of, or subsequently to, the agreement to issue the shares. Meaning of payment in cash.
- (2) 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.
162. (1) Where a public company agrees to accept payment for its shares otherwise than wholly in cash, it shall appoint an independent valuer who shall determine the true value of the consideration other than cash and prepare and submit to the company a report on the value of the consideration. Payment for shares of public companies other than in cash.
- (2) The valuer is entitled to require from the officers of the company such information and explanation as he thinks necessary to enable him to carry out the valuation or make the report under subsection (1).

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

163. Where it is authorised by its articles, a company may—

Power to pay different amounts on shares.

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

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

Lien on shares.

- (2) A company's lien, if any, on a share shall extend to all dividends payable on, and any bonus shares issued in relation to such share.
- (3) A company may sell, in such manner as the directors think fit, any share on which the company has a lien, but no sale shall be made unless a sum in respect of which

the lien exists is currently payable, nor until the expiration of 14 days after a notice in writing, demanding payment of such part of the amount in respect of which the lien exists as is currently payable, has been given to the registered holder of the shares, or the person entitled to them by reason of his death or bankruptcy.

- (4) For the purpose of giving effect to any such sale, the directors may authorise a person to transfer the shares sold to the purchaser of the shares and the purchaser shall be registered as the holder of the shares comprised in any such transfer.
  - (5) The purchaser is not bound to see to the application of the purchase money and his title to the shares is not affected by any irregularity or invalidity in the proceedings in reference to the sale.
  - (6) The proceeds of the sale of any share pursuant to this section shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue, if any, shall (subject to a like lien for sums not presently payable as existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.
165. (1) If a member fails to pay any call or instalment of a call on the day appointed for payment, the directors may, thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of the sum of the call or instalment as is unpaid, together with any interest which may have accrued. Forfeiture of shares.
- (2) The notice shall state a further day (not earlier than the expiration of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made, and it shall state that in the event of non-payment at or before the time appointed, the shares in respect of which the call was made are liable to be forfeited.
  - (3) If the requirements of the notice as is mentioned in subsections (1) and (2) are not complied with, any share in respect of which notice was given may, at any time thereafter, before the payment required by the notice is made, be forfeited by a resolution of the directors to that effect.
  - (4) A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition, the forfeiture may be cancelled on such terms as the directors think fit.
  - (5) A person whose shares have been forfeited ceases to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all money which, at the date of forfeiture, were payable by him to the company in respect of the shares, but his liability ceases when the company receives payment in full of all money in respect of the shares.

- (6) A statutory declaration that the declarant is a director or the secretary of the company, and that a share in the company has been duly forfeited on a date stated in the declarations, is *prima facie* evidence of the facts stated in it as against all persons claiming to be entitled to the shares.
- (7) The company may receive the consideration, if any, given for the share on any sale or disposition of it and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of, and he shall thereupon be registered as the holder of the share, and is not bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.
- (8) The provisions of this section as to forfeiture apply in the case of non- payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

#### CLASSES OF SHARES

166. (1) If at any time the share capital of a company is divided into different classes of shares under section 143, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the company is being wound up, be varied-
- Power to vary rights.
- (a) in accordance with the provision in the company's articles for the variation of those rights; or
  - (b) where the company's articles contain no such provision, with the consent, in writing, of the holders of three- quarters of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class.
- (2) To every such separate general meeting as mentioned in subsection (1), the provisions of this Act relating to general meetings apply, but the necessary quorum shall be two persons at least holding or representing by proxy one- third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.
  - (3) The rights conferred upon the holders of the shares of any class issued with preferred or other rights are not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking *pari passu* with them.
  - (4) Any proposed amendment of a provision contained in a company's articles for the

variation of the rights attached to a class of shares, or the insertion of any such provision into the articles, shall be treated as a variation of those rights and shall require the consent, in writing, of the holders of three-quarters of the issued shares of that class, or the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class, before the procedure for the amendment of the articles can proceed.

167. (1) Where in pursuance of section 166, the rights attached to any class of shares are at any time varied, the holder of at least 15% of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the Court to have the variation cancelled, and, where any such application is made, the variation shall not have effect, unless it is confirmed by the court, and for the purpose of this section, any share in the company's share capital that are held by the company as treasury shares shall not be taken into account for the purpose of computing the aggregate per cent of shares held by holders seeking to make an application to the Court.
- (2) An application to the court under this section shall, in a proper case, be made within 21 days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application or by such one or more of them as they may appoint in writing for the purpose.
- (3) If on any such application the court, after hearing the applicant and any other persons applying to it to be heard and appearing to be interested in the application, is satisfied that the variation would unfairly prejudice the shareholders of the class represented by the applicant, the Court, having regard to all the circumstances of the case, may disallow the variation, and shall, if not satisfied, confirm the variation.
- (4) The decision of the Court on any such application is final.
- (5) The company shall, within 15 days after the making of an order by the Court on an application to it under this section, forward a copy of the order to the Commission and if default is made in complying with the provisions of this subsection, the company and each officer of the company is liable to such fine as the Commission shall specify in the regulation for every day during which the default continues.
- (6) In this section, "variation" includes abrogation, and cognate expressions are construed accordingly.

Application for cancellation of variation.

168. (1) Notwithstanding the provisions of section 140, the articles may provide that preference shares issued after the commencement of this Act shall carry the rights to attend general meetings and on a poll at the meetings, to more than one vote per share in the following circumstances, but not otherwise, but upon any

Right of a preference share to more than one vote.

resolution—

- (a) during such period as the preferential dividend or any part of it remains in arrears and unpaid, such period starting from a date not more than 12 months or such lesser period as the articles may provide, after the due date of the dividend;
- (b) which varies the rights attached to such shares;
- (c) to remove an auditor of the company or to appoint another person in place of such auditor; or
- (d) for the winding up of the company or during the winding up of the company.

(2) Notwithstanding the provisions of section 140, 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 is necessary in order to preserve the existing ratio which the votes exercisable by the holders of such preference shares at a general meeting of the company bear to the total votes exercisable at the meeting.

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

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

Construction of class rights.

- (a) unless the contrary intention appears, no dividend is payable on any shares unless the company resolves to declare such dividend;
- (b) unless the contrary intention appears, a fixed preferential dividend payable on any class of shares is cumulative, and no dividend shall be payable on any share ranking subsequent to them until all the arrears of the fixed dividend have been paid;
- (c) unless the contrary intention appears, in a winding up arrears of any cumulative preferential dividend, whether earned or declared or not, are payable up to the date of actual payment in the winding up;

- (d) if any class of shares is expressed to have a right to a preferential dividend, then, unless the contrary intention appears, such class has no further right to participate in dividends;
- (e) if any class of shares is expressed to have preferential rights to payment out of the assets of the company in the event of winding up, then, unless the contrary intention appears, such class has no further right to participate in the distribution of assets in the winding up;
- (f) in determining the rights of the various classes to share in the distribution of the company's property on a winding up, no regard shall be given, 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; and
- (g) subject to this section, all shares rank equally in all respects unless the contrary intention appears in the company's articles.

#### NUMBERING OF SHARES

170. Each share in a company having a share capital shall be distinguished by its appropriate number: Shares to be numbered.

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

#### SHARE CERTIFICATES

171. (1) Every company shall, within two months after the allotment of any of its shares and within three months after the date on which a transfer of any such shares is lodged with the company, complete and have ready for delivery the certificates of all shares allotted or transferred, unless the conditions of issue of the shares otherwise provide. Issue of share certificates.
- (2) Every person whose name is entered as a member in the register of members is entitled, without payment, to receive within three months of allotment or lodgment of transfer or within such other period as the conditions of issue

provide, one certificate for all his shares or several certificates each for one or more of his shares upon payment of a fee as the directors shall determine.

- (3) Every certificate issued by a company shall be under the company's seal (where the company has a common seal) or otherwise signed as a deed by the company and shall specify the shares to which it relates and the amount paid up on them:

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

- (4) If a share certificate is defaced, lost or destroyed, it may be replaced on such term, as to evidence and indemnity and the payment of out-of-pocket expenses of the company of investigating evidence as the directors think fit.
- (5) If any company on which a notice has been served requiring it to make good any default in complying with the provisions of subsection (1), fails to make good the default within 10 days after the service of the notice, the Court may, on the application of the person entitled to have the certificate delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order, and the order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company responsible for the default.
- (6) If default is made in complying with this section, the company and each officer of the company is liable to such penalty as the Commission shall specify in the regulation for every day during which the default continues.

172. (1) A certificate, under the common seal of the company (where the company has a common seal) or otherwise signed as a deed by the company, specifying any share held by any member, is a prima facie evidence of the title of the member to the shares.

Effect of share certificate.

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

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

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

Probate, etc., as evidence of grant.

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

174. (1) No company has the power to issue bearer shares.

Prohibition of bearer shares.

(2) For the purposes of this Act, a “bearer share” means a share which is represented by a certificate, warrant or other document (in any form or by whatever name called) which states or indicates that the bearer of the certificate is the owner of the shares.

## TRANSFER AND TRANSMISSION

175. (1) The transfer of a company’s shares shall be by instrument of transfer and except as expressly provided in the articles, transfer of shares shall be without restrictions, and instruments of transfer shall include electronic instrument of transfer.

Transfer of shares.

(2) Notwithstanding anything in the articles of a company, a company shall not register a transfer of shares in the company, unless a proper instrument of transfer has been delivered to the company:

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

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

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

176. (1) On the application of the transferor of any share or interest in a company, the company shall enter, in its register of members, the name of the transferee in the same conditions as if the application for the entry were made by the transferee, and register of transfer includes electronic register of transfer.

Entry in register of transfers.

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

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

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

- (a) a fee, as the company may determine, is paid to the company in respect of the instrument;
- (b) the instrument of transfer is accompanied by the certificate of the shares to which it relates and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer; and
- (c) the instrument of transfer is in respect of only one class of shares.

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

Notice of refusal to register.

(2) If default is made in complying with this section, the company and each officer of the company is liable to such penalty as the Commission shall specify in the regulation.

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

Transfer by personal representative.

179. (1) In case of the death of a member, the survivor or survivors where the deceased was a joint holder, or the legal personal representative of the deceased where he was a sole holder, is the only person recognised by the company as having any title to his interest in the shares, but nothing in this section shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.

Transmission of shares.

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

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

executing to that person a transfer of the share in the prescribed form.

- (4) All the limitations, restrictions and provisions of this Act and the company's articles relating to the rights to transfer and the registration of transfers of share, are applicable to any such notice or transfer as mentioned in subsection (3) as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.
- (5) A person becoming entitled to a share by reason of the death or bankruptcy of the holder, is entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he is not, unless the articles otherwise provide, before being registered as a member in respect of the share, entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company:

Provided that the directors may at any time give notice requiring any such person to elect either to be registered himself or to transfer the share, and if the notice is not complied with within 90 days, the directors may thereafter withhold payment of all dividends, bonuses or other money payable in respect of the share until the requirements of the notice have been complied with.

180. (1) Any person claiming to be interested in any share, dividend or interest on them, may protect his interest by serving on the company concerned a notice of his interest.
- (2) The company shall enter, on the register of members, the fact that such notice has been served and shall not register any transfer or make any payment or return in respect of the shares contrary to the terms of the notice until the expiration of 42 days' notice to the claimant to the proposed transfer or payment.
- (3) In the event of any default by the company in complying with this section, the company shall compensate any person injured by the default.

Protection of beneficiaries.

181. (1) When the holder of any share of a company wishes to transfer to any person only a part of the shares represented by one or more certificates, the instrument of transfer together with the relevant certificates shall be delivered to the company with a request that the instrument of transfer be recognised and registered and a certificate of transfer shall include a certificate issued in electronic form.
- (2) A company to which a request is made under subsection (1), may recognise the instrument of transfer by endorsing on it the words, "certificate lodged" or words to the like effect.
- (3) The recognition by a company of any instrument of transfer of shares in the company shall be taken as a representation by the company to any person acting on the faith of the recognition that there have been produced to the company such

Certification of transfers.

documents as on the face of them show a prima facie title to the shares in the transferor named in the instrument of transfer, but not as a representation that the transferor has any title to the shares.

(4) Where any person acts on the faith of a false recognition by a company made negligently, the company shall be under the same liability to that person as if the recognition has been made fraudulently.

(5) For the purposes of this section—

(a) an instrument of transfer is deemed to be recognised if it bears the words, “certificate lodged” or words to the like effect;

(b) the recognition of an instrument of transfer is deemed to be made by a company if—

(i) the person issuing the instrument is a person authorised to issue certificated instruments of transfers on the company’s behalf, and

(ii) the recognition is signed by a person authorised to recognise transfers of shares on the company’s behalf or by any officer or servant either of the company or of a body corporate so authorised; and

(c) a recognition is deemed to be signed by any person if—

(i) it purports to be authenticated by his signature or initials (whether handwritten or not), and

(ii) it is not shown that the signature or initials was or were placed there by any person other than him or a person authorised to use the signature or initials for the purpose of transfers on the company’s behalf.

#### TRANSACTIONS BY COMPANY IN RESPECT OF ITS OWN SHARES

182. (1) The provisions of this section apply with respect to the redemption by a company of any redeemable preference share issued by it under section 147.

Redemption of redeemable preference shares.

(2) The shares are not redeemed unless they are fully paid, and redemption shall be made only out of—

(a) profits of the company which would otherwise be

available for dividend; or

- (b) the proceeds of a fresh issue of shares made for the purposes of the redemption.
- (3) Before the shares are redeemed, the premium, if any, payable on redemption, shall be provided for out of the profits of the company or out of the company's share premium account.
- (4) Where shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall, out of profits which would otherwise have been available for dividend, be transferred to a reserve fund, to be called "the capital redemption reserve account", a sum equal to the nominal amount of the shares redeemed, and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company.
- (5) Subject to the provisions of this section, the redemption of preference shares may be effected on such terms and in such manner as are provided by the articles of the company or in the terms of issue of the relevant preference shares.
- (6) The redemption of preference shares under this section by a company shall not be taken as reducing the amount of the company's share capital.
- (7) The capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.
- (8) Any redeemable share issued by a company is regarded as a preference share and the provisions of this Act with respect to preference shares shall apply to all redeemable shares.

183. (1) In this section –

- (a) 'financial assistance means a gift, guarantee, any form of security or indemnity, a loan or any form of credit or any other financial assistance given by a company, the net assets of which are thereby reduced by up to 50%, or which has no net assets;
- (b) 'net assets' means the aggregate of the company's assets, less the aggregate of its liabilities ("liabilities" to include any charges or provision for liabilities in accordance with the applicable accounting standards applied by the company in relation to its accounts).

Prohibition of Financial Assistance by Company for acquisition of its shares.

(2) Subject to the provisions of this section—

- (a) where a person is acquiring or is proposing to acquire shares in a company, it shall not be lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of that acquisition before or at the same time as the acquisition takes place; and
- (b) where a person has acquired shares in a company and any liability has been incurred (by that or any other person), for the purpose of this acquisition, it shall not be lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of reducing or discharging the liability so incurred.

(3) Nothing in subsection (1) of this section shall be taken to prohibit—

- (a) the lending of money by the company in the ordinary course of its business, where the lending of money is part of the ordinary business of a company;
- (b) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of, or subscription for, fully-paid shares in the company or its holding company, being a purchase or subscription by trustees of or for shares to be held by or for the benefit of employees of the company, including any director holding a salaried employment or office in the company;
- (c) the making by a company of loans to persons, other than directors, bona fide in the employment of the company with a view to enabling those persons to purchase or subscribe for fully-paid shares in the company or its holding company, to be held themselves by way of beneficial ownership;
- (d) any act or transaction otherwise authorised by law including –
  - (i) a distribution of a company's assets by way of dividend lawfully made or a distribution made in the course of the company's winding up,
  - (ii) the allotment of bonus shares,

- (iii) a reduction of capital confirmed by order of the court under this Act, and
    - (iv) a redemption or purchase of shares;
  - (e) anything done in pursuance of an order of the court under a scheme of arrangement; a scheme of merger or any other scheme or restructuring of a company done with the sanction of the Court; or
  - (f) an assistance given by a company where its principal purpose in giving the assistance is not to reduce or discharge any liability incurred by a person for the purpose of the acquisition of shares in the company or its holding company, or the reduction or discharge of any such liability, but an incidental part of some larger purpose of the company, and the assistance is given in good faith in the interests of the company.
- (4) This section does not prohibit a private company from giving financial assistance in a case where the acquisition of shares in question is or was an acquisition of shares in the company or, if it is a subsidiary of another private company, in that other company, provided that:
- (a) the financial assistance may only be given if the company has net assets which are not thereby reduced or to the extent that they are reduced, if the assistance is provided out of distributable profits;
  - (b) the giving of assistance under this section must be approved by special resolution of the company in general meeting; and
  - (c) the directors of the company proposing to give the financial assistance and, where the shares acquired or to be acquired are shares in its holding company, the directors of that holding company shall, before the financial assistance is given, make a statutory declaration in a form prescribed by the Commission.
- (5) If a company acts in contravention of this section, the company and every officer of the company who is in default shall be liable to such penalty as the Commission shall specify by regulation.
- (6) A Company may accept from any shareholder, a share in the Company, surrendered to it as a gift, but may not extinguish or reduce a liability in respect of an amount unpaid on any such share, except in accordance with section 131 of this

Act.

184. (1) A limited liability company may purchase its own shares including redeemable shares provided that -

Acquisition by a company of its own shares.

- (a) a company may only purchase its own shares if so permitted by its articles;
- (b) the shareholders shall, by special resolution, approve the acquisition by the company of the shares that it intends to purchase;
- (c) only fully paid up shares of a company may be purchased by the company, and the terms of purchase shall provide for payment for the purchase;
- (d) within seven days after the passing of the special resolution referred to in paragraph (b), the company shall cause to be published in two national newspapers, a notice of the proposed purchase by the company of its own shares;
- (e) within 15 days after the publication in two national newspapers, the directors of the company shall make and file with the Commission, a statutory declaration of solvency, to the effect that the company is solvent and can pay its debts as they fall due, and that after the purchase of its shares, the company shall remain solvent and can pay its debts as they fall due;
- (f) a company may not under this section purchase its shares if, as a result of the purchase, there would no longer be any issued shares of the company other than redeemable shares or shares held as treasury shares.

(2) Within a period of six weeks following the publication in two national newspapers, any of the company's creditors may make an application to the Court for an order cancelling the resolution and a dissenting shareholder who did not vote in favour of the share buyback shall also have the right to seek an order of court cancelling the resolution.

(3) The ability of the company to proceed with the share buyback shall depend on the order of the court, where applicable.

(4) For the purpose of determining a company's creditors under this section, service providers whose fees are not yet due shall be excluded.

(5) Where a company holds shares as treasury shares, the company shall be entered in the register of members as the member holding those shares.

185. Where a company buys back its shares, payment for the share buyback shall be made from the distributable profits of the company.

Payment for share buyback.

186. A company may buy back its shares -

Persons from who shares can be bought back.

(a) from the existing shareholders or security holders on a proportionate basis;

(b) from the existing shareholders in a manner permitted pursuant to a scheme of arrangement sanctioned by the court;

(c) from the open market; and

(d) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or any other similar scheme.

187. (1) A company shall not hold more than 15% of the nominal value of the issued share capital of any class of its shares as treasury shares.

Limit on number of shares acquired.

(2) Where a company buys back more than 15% of the issued share capital of any class of its shares, the company shall, before the end of 12 months beginning with the date on which that contravention occurs –

(a) reissue,

(b) cancel, or

(c) reissue and cancel such number of shares that will ensure that the company holds not more than 15% of the issued share capital of any class of its shares as treasury shares upon the completion of the transaction.

(3) Notwithstanding anything contained in section 142, a company shall not exercise any right in respect of the treasury shares (including any right to attend or vote at meetings) and any purported exercise of such a right shall be void.

(4) No dividend shall be paid, and no other distribution (whether in cash or otherwise) of the company's assets (including any distribution of assets to members on a winding up) shall be made to the company, in respect of the treasury shares.

(5) Nothing in this section prevents an allotment of shares as fully paid bonus shares

in respect of the treasury shares, or the payment of any amount payable on the redemption of the treasury shares (if they are redeemable shares).

(6) Shares allotted as fully paid bonus shares in respect of the treasury shares shall be treated as if purchased by the company at the time they were allotted.

188. (1) A contract with a company providing for the acquisition by the company of shares in the company is specifically enforceable against the company, except to the extent that the company cannot perform the contract without thereby being in breach of the provisions of section 184.

Enforceability of contract to acquire shares.

(2) In any action brought on a contract referred to in subsection (1), the company shall have the burden of proving that performance of the contract is prevented by the provisions of section 184.

189. Where shares are held as treasury shares, the company may at any time –

Re-issue of shares acquired.

(a) sell the shares (or any of them) for a cash consideration,  
or

(b) transfer the shares (or any of them) for the purpose of or pursuant to an employees' share scheme.

190. (1) A company which is a subsidiary may acquire shares in its holding company where the subsidiary company is concerned as personal representative or trustee, unless the holding company or any subsidiary of it is beneficially interested otherwise than by way of security for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

Acquisition of shares of holding company.

(2) A subsidiary which is, at the commencement of this Act, a holder of shares of its holding company or a subsidiary which acquired shares in its holding company before it became a subsidiary of that holding company, may continue to hold such shares but, subject to subsection (1), shall have no right to vote at meetings of the holding company or any class of shareholders of the holding company and shall not acquire any future shares in it except on a capitalisation issue.

(3) Where a public company, or a nominee of a public company, acquires shares in the company, and those shares are shown in a balance sheet of the company as an asset, an amount equal to the value of the shares shall be transferred out of profits available for dividend to a reserve fund and shall not be available for distribution.

## CHAPTER 9 – DEBENTURES

### CREATION OF DEBENTURE AND DEBENTURE STOCK

191. A company may borrow money for the purpose of its business or objects and may mortgage or charge its undertaking, property and uncalled capital, or any part thereof, and issue debentures, debenture stock and other securities whether outright or as security for any debt, liability or obligation of the company or of any third party.

Power to borrow money, to charge property and to issue debentures.

192. (1) Every company shall, within 60 days after the allotment of any of its debentures or after the registration of the transfer of any debentures, deliver to the registered holder thereof, the debenture or a certificate of the debenture stock under the common seal of the company (if the company has a common seal) or otherwise executed as a deed by the company.

Documents of title to debentures or certificate of debenture stock.

(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 as the company may determine 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, is liable to such fine as the Commission shall specify in the regulation, and on application by any person entitled to have the debentures or debenture stock certificate delivered to him, the Court may order the company to deliver the debenture or debenture stock certificate and may require the company and any such officer to bear all the costs of and incidental to the application.

193. Every debenture shall include a statement on the following matters —

Statements to be included in debentures.

(a) the principal amount borrowed;

(b) the maximum discount which may be allowed on the issue or re-issue of the debentures, and the maximum premium at which the debentures may be made redeemable;

(c) the rate of and the dates on which interest on the debentures issued shall be paid and the manner in which payment shall be made;

(d) the date on which the principal amount shall be repaid or the manner in which redemption shall be effected, whether by the payment of instalments of principal or otherwise;

(e) in the case of convertible debentures, the date and terms

on which the debentures may be converted into shares and the amounts which may be credited as paid up on those shares, and the dates and terms on which the holders may exercise any right to subscribe for shares in respect of the debentures held by them; and

(f) the charges securing the debenture and the conditions subject to which the debenture shall take effect.

194. (1) Statements made in debenture or debenture stock certificates is *prima facie* evidence of the title to the debentures of the person named therein as the registered holder and of the amounts secured thereby. Effect of statements in debentures.
- (2) If any person changes his position to his detriment in reliance in good faith on the continued accuracy of any statement 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, which he would not have suffered had the statement been or continued to be accurate, but nothing in this subsection shall derogate from any right the company may have to be indemnified by any other person.
195. A contract with a company to take up and pay for any debenture of the company may be enforced by an order for specific performance. Enforcement of contracts relating to debentures.

### TYPES OF DEBENTURES

196. A company may issue perpetual debentures, and a condition contained in any debenture, or in any deed for securing any debentures, shall not be invalid by reason only that the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding. Perpetual debentures.
197. Debentures may be issued upon the terms that in lieu of redemption or repayment, they may, at the option of the holder or the company, be converted into shares in the company upon such terms as may be stated in the debentures. Convertible debentures.
198. (1) Debentures may either be secured by a charge over the company's property or may be unsecured by any charge. Secured or unsecured debentures.
- (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 legal proceedings are brought by a debenture holder to enforce the security of a series of debentures of which he holds part, the debenture holder shall sue in a representative capacity on behalf of himself and all other debenture holders of that series.

199. A company limited by shares may issue debentures which are, or at the option of the company are, liable to be redeemed.

Redeemable debentures.

200. (1) Where either before or after the commencement of this Act, a company has redeemed any debenture previously issued, unless—

Power to re-issue redeemed debentures in certain cases.

(a) any provision, express or implied, to the contrary is contained in the articles or in any contract entered into by the company; or

(b) the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled,

the company shall have, and shall be deemed always to have had, power to re-issue the debentures, either by re-issuing the same debentures or by issuing other debentures in their place.

- (2) On a re-issue of redeemed debentures, the person entitled to the debentures, shall have, and shall be deemed always to have had, the same priorities as if the debentures had never been redeemed.
- (3) Where a company has, either before or after the commencement of this Act, deposited any of its debentures to secure advances, from time to time, on current account or otherwise, the debenture shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit, whilst the debentures remained so deposited.
- (4) The re-issue of a debenture or the issue of another debenture in its place under this section shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued.
- (5) Any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped, may give the debenture in evidence in any proceeding for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice of, or but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such

case the company is liable to pay the proper stamp duty and penalty.

- (6) Nothing in this section shall prejudice any power to issue debentures in place of any debenture paid off or otherwise satisfied or extinguished which, by its debentures or the securities for the same, is reserved to a company.

201. (1) The trustee of a debenture trust deed shall hold all contracts, stipulations and undertakings given to him and all mortgages, charges and securities vested in him in connection with the debentures covered by the deed, or some of those debentures, exclusively for the benefit of the debenture holders concerned (except in so far as the deed otherwise provides) and the trustee shall exercise due diligence in respect of the enforcement of those contracts, stipulations, undertakings, mortgages, charges and securities and the fulfillment of his functions generally.

Rights of debenture holders.

(2) A debenture holder may sue—

- (a) the company which issued the debentures he holds for payment of any amount payable to him in respect of the debentures; or
- (b) the trustee of the debenture trust deed covering the debentures he holds for compensation for any breach of the duties which the trustee owes him, and in any such action, it shall not be necessary for any other debenture holder of the same class, or if the action is brought against the company, the trustee of the covering trust deed, to be joined as a party.

(3) This section applies notwithstanding anything contained in a debenture or trust deed or other instrument, but a provision in a debenture or trust deed is valid and binding on all the debenture holders of the class concerned in so far as it enables a meeting of the debenture holders by a resolution supported by the votes of the holders of at least three quarters in value of the debentures of that class in respect of which votes are cast on the resolution to—

- (a) release any trustee from liability for any breach of his duties to the debenture holders which he has already committed, or generally from liability for all such breaches (without necessarily specifying them) upon his ceasing to be trustee;
- (b) consent to the alteration or abrogation of any of the rights, powers or remedies of the debenture holders and the trustee of the debenture trust deed covering their debentures (except the powers and remedies under

section 233; or

- (c) consent to the substitution for the debentures of a different class issued by the company or any other company or corporation, or the cancellation of the debentures in consideration of the issue to the debenture holders of shares credited as fully paid in the company or any other company.

202. (1) The terms of any debenture or trust deed may provide for the convening of general meetings of the debenture holders and for the passing, at such meetings, of a resolution binding on all the holders of the debentures of the same class. Meetings of debenture holders.
- (2) Whether or not the debenture or trust deed contain such provisions as are referred to in subsection (1), the Commission may at any time direct a meeting of the debenture holders of any class to be held and conducted in such manner as the Commission deems fit to consider ancillary or consequential direction as it shall deems fit.
- (3) Notwithstanding anything contained in a debenture trust deed, or in any debenture, contract or instrument, the trustee of a debenture deed shall, on the requisition of persons holding, at the date of the deposit of the acquisition debentures covered by the trust deed which carry at least one-tenth of the total voting rights attached to all the issued and outstanding debentures of that class, proceed to convene a meeting of that class of debenture holders.

#### FIXED AND FLOATING CHARGES

203. (1) A “floating charge” means an equitable charge over the whole or a specified part of the company’s undertakings and assets, including cash and uncalled capital of the company both present and future, but so that the charge shall not preclude the company from dealing with such assets until— Meaning of floating and fixed charges.
- (a) the security becomes enforceable and the holder thereof, pursuant to a power in that behalf in the debenture or the deed securing the same, appoints a receiver or manager or enters into possession of such assets; or
  - (b) the Court appoints a receiver or manager of such assets on the application of the holder; or
  - (c) the company goes into liquidation.
- (2) On the happening of any of the events mentioned in subsection (1), the charge

shall be deemed to crystallise and become a fixed equitable charge on such of the company's assets as are subject to the charge, and if a receiver or manager is withdrawn with the consent of the chargee, or the chargee withdraws from possession before the charge has been fully discharged, the charge shall thereupon be deemed to cease to be a fixed charge and again to become a floating charge.

204. 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 prohibits 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 notice of that prohibition at the time when the charge was granted to him:

Priority of fixed over floating charge.

Provided that a person is deemed to have notice of such prohibition in a floating charge where a notice indicating the existence of such prohibition is registered with the Commission.

205. (1) Whenever a fixed or floating charge has become enforceable, the Court may appoint a receiver and in the case of a floating charge, a receiver and manager of the assets subject to the charge.

Powers of the court.

(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 it is satisfied that the security of the debenture holder is in jeopardy, and the security of the debenture holder shall be deemed to be in jeopardy if the Court is satisfied that events have occurred or are about to occur which render it unreasonable in the interests of the debenture holder that the company should retain power to dispose of its assets.

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

206. Where a receiver or manager is appointed by the Court, advertisement to this effect shall be made by the receiver or the receiver and manager in the Federal Government Gazette and in two daily newspapers.

Advertisement of appointment of receiver and manager.

207. (1) Where a receiver is appointed on behalf of the holders of any debenture of a registered company secured by a floating charge, or possession is taken by, or on behalf of those debenture holders of any property comprising of subject to the charge, then if the company is not at the time in the course of being wound up, the debts which in every winding up are under the provisions relating to preferential payments in section 657 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 in priority to any claim for principal or interest in respect of the debentures.

Preferential payment to debenture holders in certain cases.

(2) In the application of the provisions relating to preferential payments—

- (a) section 657 shall be construed as if the provision for payment of accrued holiday remuneration becoming payable on the termination of employment before or by the effect of the winding-up order or resolution, were a provision for payment of such remuneration becoming payable on the termination of employment before or by the effect of appointment of the receiver or possession being taken; and
- (b) the periods of time mentioned is reckoned from the date of the appointment of the receiver or of possession being taken, as the case may be, and if such date occurred before the commencement of this Act, the provisions relating to preferential payments which would have applied but for this Act, shall be deemed to remain in full force.

- (3) Any payment 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.
- (4) Notwithstanding any provision in this Act or any other law to the contrary, the holder of a fixed charge shall have priority over other debts of the company including preferential debts.

#### DEBENTURE TRUST DEED

208. (1) Every company which offers debentures to the public for subscription or purchase shall, before issuing any of the debentures, execute a debenture trust deed in respect of them and procure the execution of the deed by the trustee for the debenture holders appointed by the deed. Execution of debenture trust deed.
- (2) No debenture trust deed shall cover more than one class of debentures, whether or not the trust deed is required by this section to be executed.
  - (3) Where a trust deed is required to be executed by this section but has not been executed, the Court, on the application of a debenture holder concerned, may—
    - (a) order the company to execute a trust deed;
    - (b) direct that a person nominated by the Court to be appointed as a trustee; and
    - (c) give such consequential directions as it deems fit, as to the contents of the trust deed and its execution by the trustee.

(4) For the purposes of this Act, debentures shall belong to different classes if different rights attach to them in respect of—

- (a) the rate of, or dates for payment of, interest;
- (b) the dates when, or the instalments by which, the principal of the debenture shall be repaid, unless the difference is solely that the class of debentures shall be repaid during a stated period of time and particular debentures may be repaid at different dates during that period according to selections made by the company or by drawings, ballot or otherwise;
- (c) any right to subscribe for or convert the debentures into shares in, or other debentures of, the company or any other company; or
- (d) the powers of the debenture holders to realise any security.

(5) Debentures further belong to different classes, if they do not rank equally for payment when any security invested in the debenture holders under any trust deed is realised or when the company is wound up, if, in the circumstances mentioned in subsection (4) the subject matter of any such security or the proceeds, or any assets available to satisfy the debentures, is or are not to be applied in satisfying the debentures strictly in proportion to the amount of principal, premiums and arrears of interest to which the holders of them are respectively entitled.

(6) A debenture is covered by a trust deed if the holder of the debenture is entitled to —

- (a) participate in any money payable by the company under the deed; or
- (b) the benefit of any mortgage, charge or security created by the deed, whether alone or together with other persons.

(7) If a company issues debentures in circumstances in which this section requires a debenture trust deed to be executed, without such a deed having been executed in compliance with this section, or if the company issues debentures under a trust deed which covers two or more classes of debentures, the directors of the company who are in default commit an offence and are liable jointly on conviction to such fine as the court deems fit and in addition, the directors of the company shall be jointly severally liable to such fines as the Commission shall specify in the regulation.

209. (1) Every debenture trust deed, whether required by section 208 or not, shall state—

Contents of debenture trust deed.

- (a) the maximum sum which the company may raise by issuing debentures of the same class;
- (b) the maximum discount which may be allowed on the issue or re-issue of the debentures, and the maximum premium at which the debentures may be made redeemable;
- (c) the nature of any asset over which a mortgage, charge or security is created by the trust deed in favour of the trustee for the benefit of the debenture holders equally, and except where such a charge is a floating charge, the identity of the assets subject to it;
- (d) the nature of any asset over which a mortgage, charge or security has been or will be created in favour of any person other than the trustee for the benefit of the debenture holders equally, and except where such a charge is a floating charge, the identity of the assets subject to it;
- (e) whether the company has created or will create any mortgage, charge or security for the benefit of some, but not all, of the holders of debentures issued under the trust deed;
- (f) any prohibition or restriction on the power of the company to issue debentures or create mortgages, charges or any security on any of its assets ranking in priority to, or equally with the debentures issued under the trust deed;
- (g) whether the company has power to acquire debentures issued under the trust deed before the date of their redemption and to re-issue the debentures;
- (h) the rate of, and the dates on which, interest on the debentures issued under the trust deed shall be paid and the manner in which payment may be made;
- (i) the date or dates on which the principal or the debentures issued under the trust deed shall be repaid or redeemed, and unless the whole principal is to be repaid to all the debenture holders at the same time, the

manner in which redemption is effected, whether by the payment of equal instalments of principal in respect of each debenture, or by the selection of debentures for redemption by the company, or by drawing, ballot, or otherwise;

- (j) in the case of convertible debentures, the dates and terms on which the debentures may be converted into shares and the amounts which may be credited as paid up on those shares in the right of the debentures held by them;
- (k) the circumstances in which the debenture holders are entitled to realise any mortgage, charge or security vested in the trustee or any other person for their benefit (other than the circumstances in which they are entitled to do so by this Act);
- (l) the powers of the company and the trustee to call meetings of the debenture holders and the rights of debenture holders to require the company or the trustee to call such meetings;
- (m) whether the rights of debenture holders may be altered or abrogated and if so, the conditions which shall be fulfilled, and the procedure which shall be followed, to effect such an alteration or abrogation;
- (n) the amount or rate of remuneration to be paid to the trustee and the period for which it is paid, and whether it is paid in priority to the principal, interest and costs in respect of debentures issued under the trust deed; and
- (o) provisions for the replacement of the trustee if required.

(2) If debentures are issued without a covering debenture trust deed being executed, the statements required by subsection (1) shall be included in each debenture or in a note forming part of the same document or endorsed thereon, and in applying that subsection references to the debenture trust deed shall be construed as references to all or any of the debentures of the same class.

(3) Subsection (2) shall not apply if the debenture is the only debenture of the class to which it belongs which has been or may be issued, and the rights of the debenture holder may not be altered or abrogated without his consent.

(4) Any director who issues a debenture in violation of the provisions of this section is liable to such fines as the Commission shall specify in the regulation.

210. (1) Every debenture covered by a debenture trust deed shall state, either in the body or in a note forming part of the same document or endorsed therein —

Contents of debenture covered by trust deed.

(a) the matters required to be stated in a debenture trust deed by section 209 (1) (a), (b), (f), (h), (i), (j), (l) and (m);

(b) whether the trustee of the covering debenture trust deed holds the mortgages, charges and securities vested in him by the trust deed in trust for the debenture holders equally, or in trust for some only of the debenture holders, and if so, which debenture holders; and

(c) whether the debenture is secured by a floating charge vested in the trustee of the covering debenture trust deed or in the debenture holders.

(2) A debenture issued by a company shall state on its face in legible print, that it is unsecured if no mortgage, charge or security is vested in the holder of the debenture or in any other person for his benefit as security for payment of principal or interest.

(3) Any director of a company who issues a debenture in violation of the provisions of subsections (1) and (2) is liable to such fines as the Commission shall specify in the regulation.

211. (1) Whether or not a debenture is secured by a charge over the company's property, there may be created in relation to such debenture, a trust deed appointing trustees for the debenture holders.

Trustees for debenture holders.

(2) It is the duty of such trustee to safeguard the rights of the debenture holders and, on behalf of and for the benefit of the debenture holders, exercise the rights, powers and discretions conferred upon him by the trust deed.

(3) Charges securing the debentures may be created in favour of the debenture holders by vesting them in the trustees.

(4) Any provision contained in a trust deed or in any contract with the holders of debentures secured by a trust deed is void if it would have the effect of exempting a trustee from, or indemnifying him against, liability for any breach of trust or failure to show the degree of care and diligence required of him as trustee having regard to the powers, authorities or discretions conferred on him by the trust deed.

(5) In subsection (4), nothing is 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 at least three quarters in value of the debenture holders present in person, or where proxies are permitted, by proxy at a meeting summoned for the purpose.

(6) Notwithstanding any provision contained in the debentures or trust deed, the Court may, on the application of any debenture holder or of the Commission, remove any trustee and appoint another in his place if satisfied that such trustee has interests which conflicts or may conflict with those of the debenture holders or that for any reason it is undesirable that such trustee should continue to act:

Provided that where any such application is made by a debenture holder, the Court if it deems fit, may order the applicant to give security for the payment of the costs of the trustee and may direct that the application be heard in Chambers.

212. (1) A person is not qualified for appointment as a trustee of a debenture trust deed if he is—

Disqualification for appointment as trustee of debenture trust deed.

(a) an officer or employee of the company which issues debentures covered by the trust deed or of a company in the same group of companies as the company issuing debentures;

(b) less than 18 years of age;

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

(d) an undischarged bankrupt; or

(e) disqualified under section 283 from being appointed as a director of a company, but a corporation shall not be disqualified from being appointed as a trustee.

(2) If a trustee becomes subject to any of the disqualifications mentioned in subsection (1) after he has been appointed, he shall immediately cease to be qualified to act as a trustee of the debenture trust deed.

(3) Any person who acts as a trustee of a debenture trust deed whose appointment is invalid under subsection (1) or who is disqualified from acting under subsection (2), commits an offence and is liable on conviction as the Court deems fit, or to such fines as the Commission shall specify in the regulation.

213. (1) Subject to the provisions of this section, anything contained in a trust deed for securing an issue of debentures, or in any contract with the holders of debentures

Liability of trustees for debenture holders.

secured by a trust deed, is void if it would have the effect of exempting a trustee from or indemnifying him against liability for breach of trust, where he fails to show the degree of care and diligence required of him as trustee, having regard to the provisions of the trust deed conferring on him any power, authorities or discretion.

(2) Subsection (1) does not invalidate—

(a) any release validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or

(b) any provision enabling such a release to be given—

(i) on the agreement of a majority of not less than three quarters in value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for that purpose, and

(ii) either with respect to specific acts or omissions or on the trustee dying or ceasing to act.

(3) Subsection (1) does not operate to—

(a) invalidate any provision in effect at the commencement of this Act in any such trust deed or contract, provided that any person entitled to the benefit of that provision, or afterwards given the benefit thereof under subsection (4), remains a trustee of the trust deed in question; or

(b) deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him, while any such provision was in effect.

(4) While any trustee of a trust deed remains entitled to the benefit of a provision exempted by subsection (3), the benefit of that provision may be given—

(a) to all trustees of the deed, present and future; or

(b) to any named trustee or proposed trustee, by a resolution, passed by a majority of at least three-quarters in value of the debenture holders present in person or, where proxies are permitted by proxy at a meeting summoned for that purpose in accordance with the provisions of the trust deed or, if the trust deed makes

no provision for summoning meetings, a meeting summoned for that purpose in any manner approved by the Court.

214. (1) Except as expressly provided in the terms of any debenture, debentures shall be transferable without restriction by a written transfer in any usual or common form, or any other form which the directors of the company may approve, and that the transferee is entitled to the debenture and to the money secured thereby without regard to any equity, set-off or cross-claim between the company and the original, or any intermediate, holder.

Restrictions on transferability of debentures.

(2) The terms of any debenture may impose restrictions of any nature on the transferability of debentures, including power for the company to refuse to register any transfer and provisions for compulsory acquisition or rights of first refusal in favour of other debenture holders, or members or officers of the company:

Provided that if any restriction is imposed on the right to transfer any debenture, notice of the restriction shall be endorsed on the face of the debenture or debenture stock certificate and in the absence of such endorsement, the restriction shall be ineffective as regards any transferee for value, whether or not he has notice of the restriction.

#### PROVISIONS AS TO COMPANY'S REGISTER OF CHARGES, DEBENTURE HOLDERS AND AS TO COPIES OF INSTRUMENTS CREATING CHARGES

215. Every company shall cause a copy of every instrument creating any charge requiring registration under this Part to be kept at the registered office of the company, but, in the case of a series of uniform debentures, a copy of one debenture of the series is sufficient.

Company to keep copies of instruments creating charges.

216. (1) Every company shall keep, at the registered office of the company, a register of charges and enter therein all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company, giving in each case a short description of the property charged, the amount of the charge, and, except in the case of securities to bearer, the names of the persons entitled thereto.

Company's register of charges.

(2) If any officer of the company knowingly and willfully authorises or permits the omission of any entry required to be made under this subsection, he is liable to such fines as the Commission shall specify in the regulation.

217. (1) The copies of instruments creating any charge requiring registration under this Part with the Commission and the register of charges kept under section 216 of this Act, shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that at least two

Inspection of register and copies of instrument.

hours in each day shall be allowed for inspection) to inspection by any creditor or member of the company without fee and the register of charges shall also be open to inspection by any other person on payment of such fee as the Commission shall determine or such less sum as may be prescribed by the company for each inspection, as the company may prescribe:

Provided that the Commission may request for and obtain such copy without any restriction or charge.

- (2) If inspection of copies of instruments creating charges or of the register is refused, each officer of the company who is in default is liable to such fines as the Commission shall specify in the regulation for every day during which the refusal continues.
- (3) If any such refusal occurs, the Court may by order compel an immediate inspection of the copies of instruments or register.

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

Register of debenture holders.

(2) The register shall contain the —

- (a) names and addresses of the debenture holders;
- (b) principal of the debentures held by each of them;
- (c) amount or the highest amount of any premium payable on redemption of the debentures;
- (d) issue price of the debenture and the amount paid up on the issue price;
- (e) date on which the name of each person was entered on the register as a debenture holder; and
- (f) date on which each person ceased to be a debenture holder.

(3) The entry required under this section shall be made within 30 days of the conclusion of the agreement with the company to become a debenture holder or within 30 days of the date at which he ceases to be one.

219. (1) Every register of holders of debentures of a company shall, except when duly closed (but subject to such reasonable restrictions as the company may in general meeting impose, so that at least two hours in each day shall be allowed for inspection), be open to the inspection of the registered holder of such debentures

Inspection of register of debentures, etc.

or any holder of shares in the company without fee, and of any other person on payment of such fee as the Commission shall determine or such less sum as may be prescribed by the company:

Provided that the Commission may at any time during working hours request for and obtain such copy without any restriction or charge.

- (2) Any such registered holder of debentures or any other person may require a copy of the register of the holders of debentures of the company or any part thereof on payment of such fee as the Commission shall determine or such less sum as may be prescribed by the company.
- (3) A copy of any trust deed for securing any issue of debentures shall be duly endorsed by an officer of the company and forwarded to every holder of such debentures at his request on payment in the case of a printed trust deed, of the sum of such fee as the Commission shall determine or such less sum as may be prescribed by the company, or, where the trust deed has not been printed, on payment of such fee as the Commission shall determine or such less sum as may be prescribed by the company for every page required to be copied.
- (4) If inspection is refused, or a copy is refused or not forwarded, the company and every officer of the company who is in default is liable to such fine as the Commission shall specify in the regulation for every day during which the default continues.
- (5) Where a company is in default, a Court may by order compel an immediate inspection of the register or direct that the copies required shall be sent to the person requiring them.
- (6) For the purposes of this section, a register is deemed to be duly closed in accordance with provisions contained in the articles or in the debentures or, in the case of debenture stock, in the stock certificates, or in the trust deed or other document securing the debentures or debenture stock, during such periods, not exceeding in the whole 30 days in any year, as may be therein specified.

220. On the application of the transferor of any debenture in a company, the company shall enter in its register of debenture holders the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

Entry in register of transfer.

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

Notice of refusal to register.

(2) If any default is made in complying with the provisions of this section, the company and each officer of the company are liable to such fine as the

Commission shall specify by regulation.

222. (1) Subject to the provisions of this Part, every charge created by a company, being a charge to which this section applies, shall, so far as any security on the company's property or undertaking is conferred, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge (including any provisions in a floating charge that prohibits or restricts the company from granting any further charge ranking in priority to or *pari passu* with the floating charge) together with the instrument, if any, by which the charge is created or evidenced, have been or are delivered to or received by the Commission for registration in the manner required by this Act or by any enactment repealed by this Act within 90 days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a charge becomes void under this section, the money thereby secured shall immediately become payable and registration under this section shall give rise to constructive notice of the matters stated in the particulars of charge

Registration of charges created by companies.

(2) The provisions of this section apply to a —

- (a) charge for the purpose of securing any issue of debentures;
- (b) charge on uncalled share capital of the company;
- (c) charge created or evidenced by an instrument which if executed by an individual would require registration as a bill of sale;
- (d) charge on land, wherever situate, or any interest therein, but not including a charge for rent or other periodical sum issuing out of land;
- (e) charge on book debts of the company;
- (f) floating charge on the undertaking or property of the company;
- (g) charge on calls made but not paid;
- (h) charge on a ship or aircraft or any share in a ship; and
- (i) charge on goodwill, or on any intellectual property.

(3) Where a charge affects or relates to property situate in Nigeria and in addition to registration under subsection (1), registration elsewhere in Nigeria is necessary to

make the charge valid or effectual, it shall, subject to this subsection, be sufficient evidence of compliance with the requirements of subsection (1), if, instead of delivery of the original instrument creating or evidencing the charge, there is delivered to and received by the Commission within the prescribed period of 90 days, or such extended time as the Court may allow, a true copy of it duly certified as such by the secretary to the company.

- (4) A reference in any enactment to the date of execution of an instrument for the purposes of computation of time within which registration is to be effected with or without penalty, shall be construed as a reference to the date of presentation of a copy of the instrument to the Commission under this Act, and time shall be computed accordingly, and if a certified copy is delivered to the Commission under this subsection, the original of it shall be produced to the Commission for inspection and comparison, if the Commission so requires.
- (5) In the case of a charge created out of Nigeria, affecting or in relation to property situate outside Nigeria, the delivery to and the receipt by the Commission of a copy verified in the prescribed manner of the instrument by which the charge is created or evidenced, shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself, and 90 days after the date on which the instrument or copy could, in due course of post, and if dispatched with diligence, have been received in Nigeria shall be substituted for 90 days after the date of the creation of the charge as the time within which the particulars and instrument or copy are to be delivered to the Commission.
- (6) Where a charge is created in Nigeria but affects or relates to property outside Nigeria, the instrument creating or purporting to create the charge may be sent for registration under this section, notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situate.
- (7) Where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not, under this section, be treated as a charge on those book debts.
- (8) The holding of debentures entitling the holder to a charge on land is not, for the purposes of this section, deemed to be an interest in land.
- (9) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it is, for the purposes of this section, sufficient if there are delivered to or received by the Commission within 90 days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debenture of the series, the following particulars—

- (a) the total amount secured by the whole series;
- (b) the dates of the resolutions authorising the issues of the series and the date of the covering deed, if any, by which the security is created or defined;
- (c) a general description of the property charged; and
- (d) the names of the trustees, if any, for the debenture holders, together with the deed containing the charge, or, if there is no such deed, one of the debentures of the series:

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the Commission, for entry in the register, particulars of the date and amount of each issue, but an omission to do this does not affect the validity of the debentures issued.

- (10) Where any commission, allowance or discount has been paid or made either directly or indirectly by a company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debenture of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for such debentures, the particulars required to be sent for registration under this section shall include particulars as to the amount or rate percent of commission, discount or allowance paid or made, but an omission to do this does not affect the validity of the debentures issued.
- (11) The deposit of any debenture as security for any debt of the company shall not, for the purposes of subsection (10), be treated as the issue of the debentures at a discount.
- (12) The total fees payable to the Commission in connection with the filing, registration or release of a charge with the Commission under this Part shall not exceed 0.35% of the value of the charge or such other amount as the Minister may specify in the Federal Government Gazette.
- (13) In this Part -

“charge” includes mortgage;

“book debt”, for the purposes of subsection (2) (e), means a debt due or to become due to the company at some future date on account of or in connection with a profession, trade or business carried on by the company, whether entered in a book or not, and includes a reference to a charge on a future debt of the same nature

although not incurred or owing at the time of the creation of the charge, but does not include a reference to a charge on a marketable security or on a negotiable instrument;

“intellectual property”, for the purposes of this section, means any patent or a licence under a patent, any registered design or design right or a licence, any trademark or licence under a trademark, or any copyright or a licence under a copyright;

"security financial collateral arrangement" means an agreement or arrangement, evidenced in writing, where:

- (a) the purpose of the agreement or arrangement is to secure the relevant financial obligations owed to the collateral-taker;
- (b) the collateral-provider creates or there arises a security interest in financial collateral to secure those obligations;
- (c) the financial collateral is delivered, transferred, held, registered or otherwise designated so as to be in the possession or under the control of the collateral-taker or a person acting on its behalf; any right of the collateral-provider to substitute equivalent financial collateral or withdraw excess financial collateral shall not prevent the financial collateral being in the possession or under the control of the collateral-taker; and
- (d) the collateral-provider and the collateral-taker are both non-natural persons.

(14) This section does not apply in relation to a security financial collateral arrangement or any charge created or otherwise arising under a security financial collateral arrangement.

223. (1) The Commission shall keep, with respect to each company, a register in the prescribed form of all the charges requiring registration under this Part and shall, on payment of such fee as may be specified by regulations made by the Commission, enter in the register with respect to such charges in the case of —

Register of particulars of charges.

- (a) a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are specified in section 222 (9); and

(b) any other charge—

- (i) if the charge is a charge created by the company, the date of its creation, and if the charge was a charge existing on property acquired by the company, the date of its creation and the date of the acquisition of the property,
- (ii) the amount secured by the charge,
- (iii) short particulars of the property,
- (iv) the persons entitled to the charge, and
- (v) or a floating charge, a notice indicating the existence of any provisions in the charge that prohibit or restrict the company from granting any further charge ranking in priority to or *pari passu* with the floating charge.

(2) Where a charge is registered under this Part, the Commission shall issue a registration certificate setting out the parties to the charge, the amount thereby secured, with such other particulars as the Commission may consider necessary, and the certificate is *prima facie* evidence of due compliance with the requirements as to registration under this Part.

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of such fees as may be prescribed by the Commission.

224. (1) It is the duty of a company to send to the Commission for registration, the particulars of every charge created by the company and of the issues of debentures of a series requiring registration under section 222, but registration of any such charge may be effected on the application of any person interested therein.

Duty of company to register charges.

(2) Where registration is effected on the application of a person other than the company, that person is entitled to recover from the company the amount of any fees properly paid by him to the Commission on the registration.

(3) If any company defaults in sending to the Commission for registration, the particulars of any charge created by the company or of the issues of debentures of a series requiring registration, unless the registration has been effected on the application of some other person, the company and each officer of the company who is in default commits an offence and are liable to such penalty as may be prescribed by the Commission.

225. (1) Where a company acquires any property which is subject to a charge of any such kind as would, if it has been created by the company after the acquisition of the property, have been required to be registered under this Part, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the Commission for registration in the manner required by this Act within 90 days after the date on which acquisition is completed:

Duty of company acquiring property to register subsisting charges.

Provided that, if the property is situate and the charge was created outside Nigeria, 90 days after the date on which the copy of the instrument could in due course of post, and if despatched with due diligence, have been received in Nigeria shall be substituted for 90 days after the completion of the acquisition, as the time within which the particulars and the copy of the instrument are to be delivered to the Commission.

- (2) If default is made in complying with this section, the company and each officer of the company are liable to such penalty as may be prescribed by the Commission for every day during which the default continues.
- (3) It is sufficient compliance with this section in any case affecting land registered under any enactment in a State, where the charge is registered before the land is acquired by the company, if a true copy of the charge duly certified by the Registrar of Land is delivered to the Commission within the time prescribed by this section.

226. (1) Where, at the date of commencement of this Act, a company has property on which there is a charge, particulars of which would require registration if it had been created by the company after the date of such commencement, then, unless the charge has been discharged or the property has ceased to be held by the company prior to the expiration of six months from the date of such commencement, the company shall, within that time, cause particulars of the charge as prescribed by section 222 to be delivered to the Commission for registration together with the document, if any, by which the charge was created or a copy thereof, certified as required by that section.

Existing charges.

- (2) Failure to comply with the provisions of this section does not affect the validity of the charge.

227. Where a charge, particulars of which require registration under section 222, is expressed to secure all sums due or to become due or some other uncertain or fluctuating amount, the particulars required under section 222 (9) 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 is void, so far as any security on the company's property is thereby conferred, as respects any excess over the stated maximum:

Charges to secure fluctuating amounts.

Provided that, if additional stamp duty is subsequently paid on such charge; and at any time thereafter prior to the commencement of the winding up of the company, amended particulars of the said charge stating the increased maximum sum deemed to be secured thereby (together with the original instrument by which the charge was created or evidenced) are delivered to the Commission for registration, then, as from the date of such delivery, the charge, if valid, is 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.

228. (1) The company shall cause a copy of every certificate of registration given under section 223 to be endorsed on every debenture or certificate of debenture stock which is issued by the company and the payment of which is secured by the charge so registered:

Endorsement of certificate of registration on debentures.

Provided that nothing in this subsection shall be construed as requiring a company to cause a certificate of registration of any charge given to be endorsed on any debenture or certificate of debenture stock issued by the company before the charge was created.

- (2) If any person authorises or permits the delivery of any debenture or certificate of debenture stock which under the provisions of this section is required to have endorsed on it a copy of a certificate of registration without the copy being so endorsed upon it, he is, without prejudice to any other liability, liable to such penalty as may be prescribed by the Commission.

229. If the Commission is satisfied with respect to any registered charge that—

Entries of satisfaction of charges

- (a) the debt for which the charge was given has been paid or satisfied in whole or in part; or
- (b) part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking,

the company may, enter on the register a memorandum of satisfaction to the extent necessary to give effect thereto and, where it enters a memorandum of satisfaction it shall, if required, furnish the company with a copy of the entry, and any such entry shall have effect, subject to the requirement of any other enactment as to registration.

230. The court, on being satisfied that –

Rectification of register.

- (a) the omission to register a charge within the time required by this Act or that the omission or misstatement of any particular with respect to any such

charge or in a memorandum of satisfaction was -

- (i) accidental, or due to inadvertence or to some other sufficient cause, or
  - (ii) is not of a nature to prejudice the position of creditors or shareholders of the company; or
- (b) that on other grounds it is just and equitable to grant relief,

may, on the application of the company or any person interested and on such terms and conditions as seems to the court just and expedient, order that the time for registration is extended or, as the case may be, that the omission or misstatement shall be rectified.

231. (1) If any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any power contained in any instrument, he shall, within seven days from the date of the order or the appointment under the said powers, give notice of the fact to the Commission and the Commission shall, on payment of such fee as may be specified by regulations, enter the fact in the register of charges. Registration of appointment order, etc.
- (2) Where a person appointed receiver or manager of the property of a company under the powers contained in any instrument, ceases to act as such receiver or manager, he shall, on so ceasing, give the Commission notice to that effect, and the Commission shall enter the notice in the register of charges.
- (3) If any person makes default in complying with the requirements of this section, he is liable to such penalty as the Commission shall specify by regulation.

#### REALISATION OF SECURITY

232. (1) A debenture holder is entitled to realise any security vested in him or in any other person for his benefit if— Realisation of debenture holder's security.
- (a) the company fails to pay any instalment of interest, or the whole, part of the principal or any premium, owing under the debenture or the debenture trust deed covering the debenture, within one month after it becomes due;
  - (b) the company fails to fulfil any of the obligations imposed on it by the debentures or the debenture trust deed;
  - (c) the circumstance occur whereby the terms of the

debentures or debenture trust deed entitled the holder of the debenture to realise his security; or

(d) the company is wound up.

(2) A debenture holder whose debenture is secured by a floating charge vested in him or the trustee of the covering debenture trust deed, or any other person, is additionally, entitled to realise his security if—

(a) any creditor of the company issues a process of execution against any of its assets or commences proceedings for winding up of the company by order of any court of competent jurisdiction;

(b) the company ceases to pay its debts as they fall due; or

(c) the company ceases to carry on business;

(d) the company suffers, after the issue of debentures of the class concerned, losses or diminutions in the value of its assets which in the aggregate amount to more than one half of the total amount owing in respect of debentures of the class held by the debenture holder who seeks to enforce his security and debentures whose holder ranks before him for payment of principal or interest; or

(e) the circumstances occur which entitle a debenture holder who ranks for payment of principal or interest in priority to the debentures secured by the floating charges to realise his security.

233. (1) At any time after a debenture holder or a class of debenture holders, becomes entitled to realise his or their security, a receiver of any asset subject to a mortgage, charge or security in favour of the class of debenture holders or the trustee of the covering trust deed, or any other person, may be appointed by—

Remedies available to debenture holders.

(a) that trustee;

(b) the holders of debentures of the same class containing power to appoint;

(c) debenture holders having more than one half of the total amount owing in respect of all the debentures of the same class; or

(d) the court on the application of the trustee.

(2) Subject to any condition imposed in the debenture or debenture trust deed, a debenture holder, or a trustee in the case of a trust deed, may—

(a) bring an action in a representative capacity against the company for payment and enforcement of the security;  
or

(b) realise his security by—

(i) bringing a foreclosure action, or

(ii) commencing a winding-up proceeding.

(3) A receiver appointed under this section has, subject to the order made by the court, power to take possession of the assets subject to the mortgage, charge or security and sell those assets and, if the mortgage, charge or security extends to such property collect debts owed to the property enforce claims vested in the company, compromise, settle and enter into arrangements in respect of claims by or against the company, on the company's business with a view to selling it on the most favourable terms, grant or accept leases of land and licences in respect of patents, designs, copyright or trademarks and recover any instalment unpaid on the company's issued shares.

(4) Where a representative action is being brought under subsection (2) (a), the approval of the court shall be obtained where the company is being wound up.

(5) The remedies given by this section are in addition to, and not in substitution for, any other powers and remedies conferred on the trustee of the debenture trust deed or on the debenture holders, by the debentures or debenture trust deed, and any power or remedy which is expressed in any instrument to be exercisable if the debenture holders become entitled to realise their security, is exercisable on the occurrence of any of the events specified under section 230 (1) of this Act or, in the case of a floating charge in section 203 of this Act, but a manager of the business or of any of the assets of a company may not be appointed for the benefit of debenture holders unless a receiver has also been appointed and has not ceased to act.

(6) The provisions of sections 550 - 563 of this Act shall apply to receivers and managers under this Part.

(7) No provision in any instrument which purports to exclude or restrict the remedies given by this section is valid.

234. Subject to the provisions of this Part of this Act and unless the context otherwise admits, the provisions of sections 171, 172, 175, 177, 180 and 181 of this Act relating to share certificates and transfer of shares shall apply in respect of shares as if “debentures” were substituted for “shares” and “debenture holders” for “shareholders”.

Application of certain sections.

## CHAPTER 10 - MEETINGS AND PROCEEDINGS OF COMPANIES

235. (1) Every public company shall, within a period of six months from the date of its incorporation, hold a general meeting of the members of the company (in this Act referred to as “the statutory meeting”).

Statutory Meeting.

(2) The directors shall, at least 21 days before the day on which the statutory meeting is held, forward to every member of the company a copy of the statutory report.

(3) The statutory report shall be certified by not less than two directors or by a director and the secretary of the company and shall state—

- (a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid-up than in cash, and stating in the case of shares partly paid-up, the extent to which they are paid up, and the consideration for which they have been allotted;
- (b) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid;
- (c) the names, addresses and descriptions of the directors, auditors, managers, if any, and secretary of the company;
- (d) the particulars of any pre-incorporation contract together with the particulars of any modification or proposed modification;
- (e) any underwriting contract that has not been carried out and the reasons therefor;
- (f) the arrears, if any, due on calls from every director; and
- (g) the particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares or debentures to any director or to the manager.

(4) The report shall contain an abstract of the receipts of the company and the

payments made from them up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares, debentures and other sources, the payments made from such receipts and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company.

- (5) The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors.
- (6) The directors shall cause a copy of the statutory report, certified as required by this section, to be delivered to the Commission for registration within 14 days after the sending of copies to the members of the company.
- (7) The directors shall cause a list, showing the names, descriptions and addresses of the members of the company and the number of shares held by them respectively, to be produced at the commencement of the meeting and to remain open and accessible to any member of the company during the continuance of the statutory meeting.
- (8) The members of the company present at the statutory meeting are at liberty to discuss any matter relating to the formation of the company, its commencement of business or arising out of the statutory report.
- (9) Any member who wishes a resolution to be passed on any matter arising out of the statutory report shall give further 21 days' notice from the date on which the statutory report was received to the company of his intention to propose such a resolution, in which case, the statutory meeting shall not be held until the expiration of the 21 days' notice given to the company by the member.
- (10) The statutory meeting may be adjourn and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as the original meeting.

236. Without prejudice to the provisions of section 567 of this Act, if a company fails to comply with the requirements of section 235 of this Act, the company and any officer in default commits an offence and are liable to a fine for every day during which the default continues in such amount as the Commission shall specify in its regulations.

Non-compliance and penalty.

## GENERAL MEETING

237. (1) Except in the case of a small company or any company having a single shareholder, every company shall in each year hold a general meeting as its annual general meeting in addition to any other meeting in that year, and specify the meeting as such in the notices calling it; and not more than 15 months shall

Annual general meeting.

elapse between the date of one annual general meeting of a company and the next:

Provided that—

- (a) so long as a company holds its first annual general meeting within 18 months of its incorporation it need not hold it in that year or in the following year; or
- (b) except for the first annual general meeting, the Commission shall have power to extend the time within which any annual general meeting shall be held, by a period not exceeding three months so that not more than 18 months shall elapse between the date of the last annual general meeting and the date of any meeting so extended.

- (2) If default is made in holding a meeting of a company in accordance with subsection (1), the Commission, may, on its own or on the application of any member of the company call, or direct the calling of a general meeting of the company and give such ancillary or consequential directions as the Commission considers expedient, including directions modifying or supplementing, in relation to the calling, holding, conducting of the meeting, the operation of the company's articles, and that the directions that may be given under this subsection shall include a direction that one member of the company present in person or by proxy may apply to the court for an order to take a decision which binds all the members.
- (3) A general meeting held in pursuance of subsection (2) is, subject to any direction of the Commission, deemed to be an annual general meeting of the company, but, where a meeting so held is not held in the year in which the default in holding the company's annual general meeting occurred, the meeting so held shall not be treated as the annual general meeting for the year in which it is held unless, at that meeting, the company resolves that it shall be so treated.
- (4) Where a company resolves that a meeting shall be treated as its annual general meeting, a copy of the resolution shall, within 15 days after the passing, be filed with the Commission.
- (5) If default is made in holding a meeting of the company in accordance with subsection (1), or in complying with any direction of the Commission under subsections (2) and (3), or in complying with subsection (5), the company and every officer of the company are liable to a penalty in such amount as the Commission shall specify in its regulations.

238. All businesses transacted at annual general meetings are deemed special business, except declaring a dividend, presentation of the financial statements and the reports of the directors and auditors, election of directors in the place of those retiring, the

Businesses transacted at annual general meeting.

appointment, fixing of the remuneration of the auditors, appointment of members of the audit committee and disclosure of remuneration of managers of a company, which are ordinary business.

### EXTRAORDINARY GENERAL MEETING

239. (1) The board of directors may convene an extraordinary general meeting whenever they deem fit, and if at any time they are not within Nigeria, sufficient directors capable of acting to form a quorum, any director may convene an extraordinary general meeting. Extraordinary general meeting.
- (2) An extraordinary general meeting of a company may be requisitioned by any member or members of the company holding at the date of the requisition not less than one-tenth of the paid up capital of the company as at the date of the deposit carrying the right of voting, or in the case of a company not having a share capital, members of the company representing not less than one tenth of the total voting rights of all the members having at the said date a right to vote at general meetings of the company, and the directors shall on receipt of the requisition immediately proceed to convene an extraordinary general meeting of the company, notwithstanding anything in its articles.
- (3) The requisition shall state the objects of the meeting, and be signed by the requisitionists and deposited at the registered office of the company, and the requisition may consist of several documents in like form each signed by one or more requisitionists.
- (4) If the directors do not within 21 days from the date of the deposit of the requisition proceed to convene a meeting, the requisitionists, or any one or more of them representing more than one half of the total voting rights of all of them, may themselves convene a meeting but any meeting so convened shall not be held after the expiration of three months from that date.
- (5) A meeting convened under this section by a requisitionist or requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.
- (6) Any reasonable expenses incurred by the requisitionist or requisitionists by reason of the failure of the directors to convene a meeting, shall be repaid to the requisitionists by the company.
- (7) For the purpose of this section, the directors are, in the case of a meeting at which a resolution is to be proposed as a special resolution, deemed not to have duly convened the meeting if they do not give such notice as is required by section 241 of this Act.
- (8) All businesses transacted at an extraordinary general meeting are deemed special.

240. (1) With the exception of small companies and companies having a single shareholder, all statutory and annual general meetings shall be held in Nigeria. Place of meeting.

(2) A private company may hold its general meetings electronically provided that such meetings are conducted in accordance with the articles of the company.

#### NOTICE OF MEETINGS

241. (1) The notice required for all types of general meetings is 21 days from the date on which the notice was sent out. Length of notice for calling meetings.

(2) A general meeting of a company, notwithstanding that it is called by a shorter notice than that specified in subsection (1), is deemed to have been duly called if it is so agreed in the case of—

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

(b) any other general meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding at least 95% in nominal value of the shares giving a right to attend and vote at the meeting or, in the case of a company not having a share capital, together representing at least 95% of the total voting rights at that meeting of all the members.

242. (1) The notice of a meeting shall specify the place, date and time of the meeting, and the general nature of the business to be transacted 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, set out the terms of the resolution. Contents of notice.

(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 is deemed to be a sufficient specification that the business is for the declaration of dividends, presentation of the financial statements, reports of the directors and auditors, the election of directors in the place of those retiring, fixing of the remuneration of the auditors, and, if the requirements of sections 409 and 410 of this Act are 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 254 of this Act,

to appoint a proxy to attend and vote instead of him, the notice shall contain, a statement that a 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, each officer of the company is liable to a penalty in such amount as the Commission shall specify in its regulations .

- (5) An error or omission in a notice with respect to the place, date, time or general nature of the business of a meeting shall not invalidate the meeting, unless the officer of the company responsible for the error or omission acted in bad faith or failed to exercise care and diligence provided that in the case of accidental error or omission, the officer responsible shall effect the necessary correction either before or during the meeting.

243. (1) The following persons are entitled to receive notice of a general meeting—

Persons entitled to notice.

- (a) every member;
- (b) every person upon whom the ownership of a share devolves by reason of his being a legal representative, receiver or a trustee in bankruptcy of a member;
- (c) every director of the company;
- (d) every auditor for the time being of the company; and
- (e) the secretary, and Commission in the case of public companies.

- (2) No other person is entitled to receive notice of general meetings.

244. (1) A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within Nigeria) to the address, supplied by him to the company for the giving of notice to him.

Service of notice.

- (2) Where a notice is sent by post, service of the notice is deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of seven days after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.
- (3) In addition to the notice given personally or by post, notice may also be given by electronic mail to any member who has provided the company an electronic mail address.

(4) A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the register of members in respect of the share.

(5) A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, within Nigeria supplied for the purpose by the person claiming to be so entitled, or until such an address has been so supplied by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

(6) In this section, “registered address”, means any address whether physical or electronic supplied by a member to the company.

245. (1) Failure to give notice of any meeting to a person entitled to receive it invalidates the meeting unless such failure is an accidental omission on the part of the person giving the notice.

Failure to give notice.

(2) Failure to give notice to a person entitled to it, due to a misrepresentation or misinterpretation of the provisions of this Act, or the articles, shall not amount to an accidental omission for the purposes of subsection (1).

246. In addition to the notice required to be given to those entitled to receive it in accordance with the provisions of this Act every public company shall, at least 21 days before any general meeting, advertise a notice of such meeting in at least two daily newspapers.

Additional notice.

247. (1) If for any reason it is impracticable to call a meeting of a company or of the board of directors in any manner in which meetings of that company or board may be called, or to conduct the meeting of the company or board in the manner prescribed by the articles or this Act, the Court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, in the case of the meeting of the company, and of any director of the company, in case of the meeting of the board, order a meeting of the company or board, as the case may be, to be called, held and conducted in such manner as the Court deems fit, and where any such order is made, may give such ancillary or consequential directions as it deems expedient.

Power of Court to order meetings.

(2) The directions that may be given under subsection (1) include a direction that one member of the company present in person or by proxy in the case of a meeting of the company, and one director in the case of the board may apply to the Court for an order to take a decision which shall bind all the members.

- (3) Any meeting called, held and conducted in accordance with an order under subsection (1), is for all purposes deemed to be a meeting of the company or of the board of directors duly called, held and conducted.

## VOTING

248. (1) At any general meeting, a resolution put to the vote shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by— Procedure of voting.
- (a) the chairman, where he is a shareholder or a proxy;
  - (b) at least three members present in person or by proxy;
  - (c) a member or members present in person or by proxy and representing at least one tenth of the total voting rights of all the members having the right to vote at the meeting; or
  - (d) any member or members holding shares in the company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to at least one-tenth of the total sum paid up on all the shares conferring that right.
- (2) Unless a poll is so demanded, a declaration by the chairman that a resolution has on a show of hands been carried unanimously or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company, is a conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, the resolution.
249. (1) Any provision contained in a company's articles is void if it would have the effect of— Right to demand poll.
- (a) excluding the right to demand a poll at a general meeting on any question other than the election of the chairman of the meeting or the adjournment of the meeting; or
  - (b) making ineffective a demand for a poll on any such question which is made by any of the persons mentioned in section 248 of this Act.
- (2) The instrument appointing a proxy to vote at a meeting of a company is also deemed also to confer authority to demand or join in demanding a poll, and for the purposes of subsection (1), a demand by a person as proxy for a member is the

same as a demand by the member.

- (3) Notwithstanding section 248 of this Act and subsections (1) and (2) of this section, there shall be no right to demand a poll on the election of members of the audit committee under section 404 of this Act.

250. (1) On a poll taken at a meeting of a company, or a meeting of any class of members of a company, a member entitled to more than one vote, if he votes, need not use all his votes or cast all the votes he uses in the same way.

Voting on a poll.

- (2) Except as provided in subsection (4), if a poll is duly demanded, it shall be taken in such manner as the chairman directs, and the result of the poll is deemed to be the resolution of the meeting at which the poll was demanded.

- (3) In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

- (4) A poll demanded on the election of a chairman or on a question of adjournment is taken immediately, and on any other question is taken at such time as the chairman of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

251. (1) Subject to section 252 of this Act, every member has a right to attend any general meeting of the company in accordance with the provisions of section 107.

Right of attendance at general meeting.

- (2) In the case of joint holders, the vote of the senior joint holder who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders, and for this purpose seniority is determined by the order in which the names stand in the register of members.

- (3) A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, receiver, *curator bonis*, or other person in the nature of a committee, receiver or curator bonis appointed by that court, and any such committee, receiver, *curator bonis* or other person may vote by proxy.

252. Every person who is entitled to receive notice of a general meeting of the company as provided under section 251 of this Act, is entitled to attend such a meeting.

Attendance at meetings.

253. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting is valid for all purposes and any such objection made in due time shall be referred to the chairman of the meeting, whose decision is final and conclusive.

Objections as to qualification to vote.

254. (1) Any member of a company entitled to attend and vote at a meeting of the company is entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of him, and a proxy appointed to attend and vote instead of a member has the same right as the member to speak at the meeting, and unless the articles provide, this section shall not apply in the case of a company not having a share capital. Proxies.

(2) In every notice calling a meeting of a company having a share capital, there shall appear a statement that a member entitled to attend and vote is entitled to appoint a proxy or, where that is allowed, two or more proxies, to attend and vote instead of him, and that a proxy need not be a member and if default is made in complying with this subsection as respects any meeting, each officer of the company is liable to a penalty in such amount as the Commission shall specify in its regulations.

(3) Any provision contained in a company's articles is void in so far as it would have the effect of requiring the instrument appointing a proxy or any other document necessary to show the validity of the appointment of a proxy, to be received by the company or any other person more than 48 hours before a meeting or adjourned meeting in order that the appointment may be effective at the meeting.

(4) If, for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense only to some of the members entitled to receive notice of the meeting and to vote by proxy at the meeting, each officer of the company who authorises or permits their issue is liable to a penalty in such amount as the Commission shall specify in its regulations:

Provided that an officer is not liable under this subsection by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy or a list of persons willing to act as proxy if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(5) A vote given in accordance with the terms of an instrument of proxy is valid notwithstanding the previous death, insanity of the principal, revocation of the proxy or of the authority under which the proxy was executed, the transfer of the share in respect of which the proxy is given, where no intimation in writing of such death, insanity, revocation or transfer is received by the company before the commencement of the meeting or adjourned meeting at which the proxy is used.

(6) The instrument appointing a proxy shall be in writing, under the hand of the appointer or his attorney duly authorised in writing and, if the appointer is a corporation, either by deed, or under the hand of an officer or attorney duly authorised.

(7) The instrument appointing a proxy and the power of attorney or other authority,

under which it is signed or a certified copy of that power or authority is deposited at the registered office or head office of the company or at such other place within Nigeria as is specified for that purpose in the notice convening the meeting, at least 48 hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote, or, in the case of a poll, at least 24 hours before the time appointed for the taking of the poll, and if defaulted, the instrument of proxy shall not be treated as valid.

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

255. (1) A corporation, whether a company within the meaning of this Act or not, may if it is—

Corporation representation at meetings of companies, etc.

(a) a member of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body, authorise such person as it deems fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company; or

(b) a creditor (including a holder of debentures) of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body, authorise such person as it deems fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or of any rule made thereunder or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person authorised as provided in subsection (1), is entitled to exercise the same powers on behalf of the corporation which he represents as that corporation might exercise if it were an individual shareholder, creditor or holder of debentures of that other company.

256. (1) Except in the case of a company with one member or provided in the articles, no business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business and throughout the meeting.

Quorum.

(2) Except in the case of a company with one member or provided in the articles, the quorum for the meeting of a company is one third of the total number of members of the company or 25 members (whichever is less) present in person or by proxy, but where the number of members is not a multiple of three, then the number nearest to one third, but where the number of members is six or less, the quorum is

two members and for the purpose of determining a quorum, all members or their proxies shall be counted.

- (3) Where a member withdraw from the meeting for what appears to the chairman to be insufficient reasons and for the purpose of reducing the quorum, and the quorum is no longer present, the meeting may continue with the number present, and their decision bind all the shareholders but where there is only one member, he may seek direction of the Court to take a decision.
- (4) Where there is a quorum at the beginning, but no quorum later due to some shareholders leaving for what appears to the chairman to be sufficient reasons, the meeting shall be adjourned to the same place, and time, in a week's time, and if there is no quorum still at the adjourned meeting, the members present are then the quorum and their decision shall bind all shareholders and where only one member is present, he may seek direction of the Court to take a decision.

257. The compensation of managers of a company shall be disclosed to members of the company at the annual general meeting.

Disclosure of remuneration of managers.

258. (1) A resolution is an ordinary resolution when it has been passed by a simple majority of votes cast by members of the company as, being entitled to do so, vote in person or by proxy at a general meeting.

Resolutions.

- (2) A resolution is a special resolution when it has been passed by at least three-fourths of the votes cast by members of the company as, vote in person or by proxy at a general meeting of which 21 days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given:

Provided that, if it is so agreed by majority in number of the members having the right to attend and vote at any such meeting, being a majority together holding at least 95% in nominal value of the shares giving that right or, in the case of a company not having a share capital, together representing at least 95% of the total voting rights at that meeting of all the members, a resolution may be proposed and passed as a special resolution at a meeting of which less than 21 days' notice has been given.

- (3) At any meeting in which a special resolution is submitted to be passed, a declaration of the chairman that the resolution is carried is, unless a poll is demanded, conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (4) In computing the majority of a poll demanded on the question that a special resolution be passed, reference shall be had to the number of votes cast for and against the resolution.
- (5) For the purposes of this section, notice of a meeting is deemed to be duly given

and the meeting to be duly held when the notice is given and the meeting held in the manner provided by this Act or the articles.

- (6) A company may, by its articles, provide that any matter not required by the articles or this Act to be passed by a special resolution, shall be passed by an ordinary resolution.

259. All resolutions shall be passed at general meetings and are not effective unless so passed, but in the case of a private company a written resolution signed by all the members entitled to attend and vote are as valid and effective as if passed in a general meeting. Written resolutions.

260. (1) Subject to provisions of this section, it is the duty of a company, on the requisition in writing of such number of members as specified in this section and (unless the company otherwise resolves) at the expense of the company to – Circulation of members' resolutions.

(a) give to members of the company entitled to receive notice of the next annual general meeting notice of any resolution submitted by a member which may properly be moved and is intended to be moved at that meeting; and

(b) circulate to members entitled to receive notice of general meeting any statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting, and where the statement has more than 1,000 words to circulate a summary of it.

(2) The number of members necessary for a requisition under subsection (1) shall be—

(a) any one or more members representing at least one-twentieth of the total voting right of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or

(b) at least 100 members holding shares in the company on which there has been paid up an average sum, per member, of at least N500.

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

general effect of the resolution in any manner permitted for giving notice of meetings of the company:

Provided that the copy is served, or notice of the effect of the resolution is given, as the case may be, in the same manner and at the same time as notice of the meeting and, where it is not practicable for it to be served or given at that time, it shall be served or given as soon as practicable.

- (4) A company is not bound under this section to give notice of any resolution or to circulate any statement unless—
  - (a) a copy of the requisition signed by the requisitionists (two or more copies which between them contain the signatures of all the requisitionists) is deposited at the registered office of the company—
    - (i) in the case of a requisition requiring notice of a resolution, at least six weeks before the meeting, and
    - (ii) in the case of any other requisition, at least one week before the meeting; and
  - (b) there is deposited or tendered with the requisition, a sum reasonably sufficient to meet the company's expenses in giving effect to it, but if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date six weeks or less, the copy, though not deposited within the time required by this subsection, is deemed to have been properly deposited for that purposes.
- (5) The company is also not bound under this section to circulate any statement if, on the application of the company or any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter, and the Court may order the company's costs on an application under this section to be paid in whole or in part by the requisitionist, notwithstanding that the requisitionist is not party to the application.
- (6) Notwithstanding anything in the company's articles, the business which may be dealt with at an annual general meeting includes any resolution of which notice is given in accordance with this section and for purposes of this subsection, notice is deemed to have been given, notwithstanding the accidental omission in giving it to one or more members.

(7) Where there is default in complying with the provisions of this section, each officer of the company is liable to a penalty in such amount as the Commission shall specify in its regulations.

261. Where by any provision contained in this Act, special notice is required of a resolution, the resolution is not effective unless notice of the intention to move it has been given to the company at least 28 days before the meeting at which it is to be moved, and the company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting, or if that is not practicable, shall give them notice thereof, either by advertisement in a newspaper having an appropriate circulation, or in any other mode allowed by the articles, at least 21 days before the meeting:

Resolutions requiring special notice.

Provided that if, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date 28 days or less after the notice has been given, the notice, though not given within the time required by this section, is deemed to have been properly given.

262. (1) Subject to section 51 (7) (b) of this Act, a printed copy of every resolution or agreement to which this section applies shall, within 15 days after the passing or making of the resolution or agreement, be forwarded to the Commission.

Registration and copies of certain resolutions.

(2) Where, pursuant to the provisions of sections 49 - 52 of this Act, a company by special resolution alters the provisions of its memorandum and the Commission is satisfied that the alteration is not in compliance with the applicable provisions of those sections, it may refuse to file a copy of the resolution in its records and shall notify the company, and any person aggrieved by the refusal may appeal to the court within 21 days from the receipt of the notification.

(3) A copy of every such resolution or agreement shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or making of the agreement.

(4) This section applies to—

(a) special resolutions;

(b) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective, unless they had been passed as special resolution;

(c) resolutions or agreements which have been agreed to by all the members of any class of shareholders but which, if not so agreed to, would not have been effective,

unless they had been passed by some particular majority or in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members; and

(d) resolutions requiring a company to be wound up voluntarily, passed under section 620 (a) of this Act.

(5) If a company fails to comply with subsection (1), the company and each officer of the company are liable to a penalty in such amount as the Commission shall specify in its regulations.

(6) If a company fails to comply with subsection (3), the company and each officer of the company are liable to a penalty for each copy in respect of which default is made in such amount as the Commission shall specify in its regulations.

(7) For the purposes of subsections (5) and (6), a liquidator is deemed to be an officer of the company.

263. Where a resolution is passed at an adjourned meeting of—

Effect of resolutions passed at adjourned meetings.

(a) a company,

(b) the holders of any class of shares in a company, or

(c) the directors of a company,

the resolution shall, for all purposes be treated as having been passed on the date on which it was in fact passed, and not be deemed to have been passed on any earlier date.

#### MISCELLANEOUS MATTERS RELATING TO MEETINGS AND PROCEEDING

264. (1) The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and 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.

Adjournment.

(2) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting and the business to be transacted shall be given as in the case of an original meeting, but if otherwise it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

(3) If within one hour from the time appointed for the meeting a quorum is not

present, the meeting if convened upon the requisition of members shall be dissolved, but in any other case, it shall stand adjourned to the same day in the next week, at the same time and place or to such other day and at such other time and place as the chairman, and in his absence the directors, may direct.

- (4) If a meeting stands adjourned under subsection (3) any two or more members present at the place and time to which it so stands adjourned shall form a quorum and their decision shall bind all shareholders, and where only one member is present, he may seek the direction of the Court to take a decision.
- (5) The provisions of this section do not apply to a company with one member.

265. (1) The chairman, of the board of directors shall preside as chairman at every general meeting of the company, and if there is no such chairman, if he is not present within one hour after the time appointed for the holding of the meeting or is unwilling to act, the directors present shall elect one among themselves to be chairman of the meeting.

Powers and duties of the chairman of the general meeting.

(2) If at any meeting no director is willing to act as chairman or no director is present within one hour after the time appointed for holding the meeting, the members present shall choose one among themselves to be chairman of the meeting.

(3) The duties and powers of the chairman includes a duty to—

- (a) preserve order and power to take such measures as are reasonably necessary to do so;
- (b) see that proceedings are conducted in a regular manner;
- (c) ensure that the true intention of the meeting is carried out in resolving any issue that arises before it;
- (d) ensure that all questions that arise are promptly decided; and
- (e) act in the interest of the company.

(4) The Chairman shall cast his vote in the interest of the company as a whole, but if he is a shareholder, he may cast it in his own interest.

(5) The Chairman has power to adjourn a meeting in accordance with section 264 (1) of this Act.

(6) The chairman of a public company shall not act as the chief executive officer of such company.

266. (1) With the exception of a company having a single member, every company shall cause minutes of all proceedings —

Minutes of proceedings and effect.

- (a) of general meetings,
- (b) at meetings of its directors, and
- (c) at meetings of its managers,

to be entered in books kept for that purpose.

(2) Any such minute if purported to be signed by the chairman of the meeting at which the proceedings were held, or by the chairman of the next succeeding meeting, is *prima facie* evidence of the proceedings.

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

(4) In the case of a company that has only one member-

- (a) where that single member takes any decision that —
  - (i) may be taken by the company in general meetings, and
  - (ii) has effect as if agreed by the company in general meeting,

he shall provide the board with details of that decision; and

- (b) if a person fails to comply with this section he commits an offence and is liable to a penalty for each day the default continues in such amount as the Commission shall specify in its regulations, and failure to comply with this section does not affect the validity of any decision taken by that single member.

(5) If a company fails to comply with subsection (1), the company and every officer of the company are liable to a penalty for every day the default continues in such amount as the Commission shall specify in its regulations.

267. (1) The books containing the minutes of proceedings of any general meeting of a company held on or after the commencement of this Act, shall be kept at the registered office of the company, and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, but so that at least six hours in each day be allowed for inspection) be open to inspection by members without charge.
- (2) Any member is entitled to be furnished within seven days after receipt of his request in that behalf to the company, with a copy of any such minutes certified by the secretary at a charge not exceeding N100 for every page.
- (3) If any inspection required under this section is refused or if any copy required under this section is not sent within required time, the company and every officer of the company are liable in respect of each default to a penalty in such amount as the Commission shall specify in its regulations.
- (4) In the case of any such refusal or default, the Court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings, or direct that the copies required be sent to the person requiring them.

Inspection of minute books and copies.

268. The provisions of the foregoing sections apply to any class meetings except where expressly excluded by this Act.

Class meetings.

## CHAPTER 11 – DIRECTORS

269. (1) A Director of a company registered under this Act is a person duly appointed by the company to direct and manage the business of the company.
- (2) There is a rebuttable presumption in favour of any person dealing with the company that all persons who are described by the company as directors, whether as executive or otherwise, is duly appointed.
- (3) Where a person not duly appointed acts or holds himself out as a director, he commits an offence and is liable on conviction to imprisonment for a term of two years or a fine as the Court deems fit for each day he so acts or holds out himself as a director or both and shall be restrained by the company.
- (4) If it is the company that holds him out as a director, it is liable to a fine in such amount as the Commission shall specify in its regulations for each day it holds him out, and he and the company may be restrained by any member from so acting until he is duly appointed.

Meaning of Directors.

270. (1) Without prejudice to the provisions of sections 269 and 276 of this Act, and for the purposes of sections 279, 301 and 307 of this Act, “director” shall include any

Shadow director.

person on whose instructions and directions the Directors are accustomed to act.

(2) Subject to sections 301, 306 and 307 of this Act, nothing contained in section 276 of this Act is deemed to derogate from the duties or liabilities of the duly appointed directors.

(3) Where a person in his professional capacity gives advice and a director acts on it, that shall not be construed to make such a person under this Act a person in accordance with whose directions or instructions the director of a company is accustomed to act.

## APPOINTMENT OF DIRECTORS

271. (1) Every company, not being a small, company shall have at least two directors. Number of Directors.

(2) Subject to subsection (1), any company whose number of directors falls below two shall, within one month of its so falling, appoint new directors and shall not carry on business after the expiration of one month, unless such new directors are appointed.

(3) A director or member of a company, not being a small company, who knows that a company carries on business after the number of directors has fallen below two for more than 60 days is liable for all liabilities and debts incurred by the company during that period when the company so carried on business.

272. Subject to section 271 of this Act, the number of directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum of association or a majority of them or the directors may be named in the articles. Appointment of first directors.

273. (1) The members at the annual general meeting may re-elect or reject directors and appoint new ones. Subsequent appointments of directors.

(2) In the event of all the directors and shareholders dying, any of the personal representatives apply to the Court for an order to convene a meeting of all the personal representatives of the shareholders entitled to attend and vote at a general meeting to appoint new directors to manage the company, and if they fail to convene a meeting, the creditors, if any, may do so.

274. (1) The Board of directors may appoint new directors to fill any casual vacancy arising out of death, resignation, retirement or removal. Casual vacancy.

(2) Where a casual vacancy is filled by the directors, the person may be approved by the general meeting at the next annual general meeting, and if not so approved, he shall immediately cease to be a director.

(3) The directors may increase the number of directors if it does not exceed the

maximum allowed by the articles, but the general meeting may increase or reduce the number of directors generally, and may determine in what rotation the directors shall retire, provided that such reduction shall not invalidate any prior act of the removed director.

275. (1) A public company shall have at least three independent directors.

Independent directors in public companies.

(2) In a public company, any person who nominates candidates for the board who would comprise a majority of the members of the board shall nominate at least three persons who would be Independent directors.

(3) In this section, “independent director” means a director of the company who, or whose relatives either separately or together with him or each other, during the two years preceding the time in question -

(a) was not an employee of the company;

(b) did not -

(i) make to or receive from the company payments of more than N20,000,000, or

(ii) own more than a 30% share or other ownership interest, directly or indirectly, in an entity that made to or received from the company payments of more than the amount stated in subparagraph (i) or act as a partner, director or officer of a partnership or company that made to or received from the company payments of more than such amount;

(c) did not own directly or indirectly more than 30% of the shares of any type or class of the company, and

(d) was not engaged directly or indirectly as an auditor for the company.

276. Where a person not duly appointed as a director acts as such on behalf of the company, his act does not bind the company and he is personally liable for such action, but where it is the company which holds him out as director, the company is bound by his acts.

Liability of a person where not duly appointed.

277. (1) The shareholding qualification for directors may be fixed by the articles of association of the company and unless so fixed no shareholding qualification shall be required.

Share qualification of Directors.

- (2) It is the duty of every director who is by the articles of the company required to hold a specified share qualification, and who is not already so qualified, to obtain qualification within two months after his appointment.
- (3) The office of director of a company is vacated if the director does not, within two months from the date of his appointment, obtain his qualification or after the expiration of the said period, he ceases at any time to hold his shareholding qualification.
- (4) A person vacating office under this section is incapable of being re-appointed a director of the company until he has obtained his shareholding qualification.
- (5) If, after the expiration of the period, any unqualified person acts as a director of the company, he is liable to a penalty in such amount as the Commission shall specify in its regulations for every day between the expiration of the said period or the day on which he ceased to be qualified, as the case may be, and the last day on which it is proved that he acted as a director.

278. (1) Any person who is appointed or to his knowledge proposed to be appointed director of a public company and who is 70 or more years old shall disclose this fact to the members at the general meeting.

Duty of Directors to disclose age and multiple directorship to the company.

(2) Any person who is proposed to be appointed a director of a public company shall disclose any position he holds as a director in any other public company at the meeting in which he is proposed for appointment as a director.

(3) Any person who fails to disclose his age or multiple directorship as required under this section shall, without prejudice to the provisions of section 307 (4) of this Act, be liable to a penalty in such amount as the Commission shall specify in its regulations.

279. (1) If any person, being an insolvent person, acts as director of or directly or indirectly takes part in, or is concerned in the management of any company, he commits an offence and is liable on conviction to a fine as the Court deems fit, or imprisonment for a term at least six months but not more than two years, or both.

Provisions as to insolvent persons acting as directors.

(2) In this section, “company” includes an unregistered company.

280. (1) Where—

Restraint of fraudulent persons.

(a) a person is convicted by a High Court of any offence in connection with the promotion, formation or management of a company, or

(b) in the course of winding up a company, it appears that a person—

(i) has been guilty of any offence for which he is liable (whether he has been convicted or not) under sections 668 – 670 of this Act, or

(ii) has been guilty of any offence involving fraud,

the court shall make an order that that person shall not be a director of or in any way, whether directly or indirectly, be concerned or take part in the management of a company for a specified period not exceeding 10 years.

- (2) The period of disqualification referred to in subsection (1) shall commence after the sentence for the offence has been served or on the date the fine for the offence is paid.
- (3) In this section, the “High Court and the court”, where used in relation to the making of an order against any person by virtue of subsection (1) (a), include the court before which he is convicted, as well as any court having jurisdiction to wind up the company, and in relation to the granting of leave means any court having jurisdiction to wind up the company as respects which leave is sought.
- (4) A person intending to apply for the making of an order under this section by the court having jurisdiction to wind-up a company shall give at least 10 days’ notice of his intention to the person against whom the order is sought, and on the hearing of the application, the last mentioned person may appear in person and give evidence or call witnesses.
- (5) An application for the making of an order under this section by the court having jurisdiction to wind-up a company, may be made by the official receiver, the liquidator of the company or person who is or has been a member or creditor of the company, and on the hearing of any application for an order under this section by the official receiver or the liquidator, or of any application for leave under this section by a person against whom an order has been made on the application of the official receiver or liquidator, the official receiver or liquidator shall appear and call the attention of the court to any matter which seem to him to be relevant, and may himself give evidence or call witnesses.
- (6) An order may be made by virtue of subsection (1) (b) (ii), notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made, and for the purposes of the said paragraph (b) (ii), “officer” includes any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.
- (7) If any person acts in contravention of an order made under this section, he commits an offence and in respect of each offence, is liable on conviction to a fine

as the Court deems fit or to imprisonment for a term of at least six months or more than two years, or both.

281. A person may be appointed a director for life provided that he shall be removable under section 288 of this Act. Appointment of director for life.
282. Subject to the provisions of this Act, a person may be appointed a director of a public company notwithstanding that he is 70 years or more of age but special notice shall be required of any resolution appointing or approving the appointment of such a director for the purposes of this section, and the notice given to the company and by the company to its members shall state the age of the person to whom it relates. Right to appoint a director at any age.
283. The following persons shall be disqualified from being director— Disqualification for directorship.
- (a) an infant, that is, a person under the age of 18 years;
  - (b) a lunatic or person of unsound mind;
  - (c) a person suspended or removed under section 288 of this Act;
  - (d) a person disqualified under sections 279, 280, 284 of this Act; and
  - (e) a corporation other than its representative appointed to the board for a given term.
284. (1) The office of director shall be vacated if the director— Vacation of office of director.
- (a) ceases to be a director by virtue of section 277 of this Act;
  - (b) becomes bankrupt or makes any arrangement or composition with his creditors;
  - (c) becomes prohibited from being a director by reason of any order made under sections 280 - 281 of this Act;
  - (d) becomes of unsound mind; or
  - (e) resigns his office by notice in writing to the company.
- (2) Where a director presents himself for re-election, a record of his attendance at the meetings of the board during the preceding one year shall be made available to members at the general meeting where he is to be re-elected.

285. (1) Unless the articles provide, at the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one third of the directors or if their number is not three or a multiple of three, then the number nearest one-third shall retire from office. Rotation of directors.
- (2) The directors to retire in every year are 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 are (unless they agree among themselves) determined by lot.
- (3) The company at the meeting at which a director retires in the manner mentioned in subsections (1) and (2), may fill the vacated office by electing a person to that office and in default, the retiring director is, if offering himself for re-election, 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 have been put to the meeting and lost.
- (4) No person other than a director retiring at the meeting is, unless recommended by the directors, eligible for election to the office of director at any general meeting unless not less than three nor more than 21 days before the date appointed for the meeting there shall have been left at the registered office or head office of the company notice in writing, signed by a member duly qualified to attend and vote at the meeting for which such notice is given, of his intention to propose such person for election, and also notice in writing signed by that person of his willingness to be elected.

286. The acts of a director, manager, or secretary are valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification. Validity of acts of directors.

287. (1) At a general meeting of a company other than a private company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be made, unless resolution that it shall be made has first been agreed to by the meeting without any vote being given against it. Mode of voting on appointment of directors.
- (2) A resolution moved in contravention of this section is void, whether or not its being so moved was objected to at the time:

Provided that—

- (a) this subsection shall not be taken as excluding the operation of section 286 of this Act; and
- (b) where a resolution so moved is passed, no provision for automatic re-appointment of retiring directors in default of another appointment applies.

(3) For the purposes of this section, a motion for approving a person's appointment or for nominating a person for appointment is treated as a motion for his appointment.

(4) Nothing in this section applies to a resolution altering the company's articles.

#### REMOVAL OF DIRECTORS

288. (1) A company may by ordinary resolution remove a director before the expiration of his period of office, notwithstanding anything in its articles or in any agreement between the company and him. Removal of directors.

(2) A special notice is required of any resolution to remove a director under this section, or to appoint some other person instead of a director so removed, at the meeting at which he is removed, and on receipt of notice of an intended resolution to remove a director under this section, the company shall immediately send a copy of the notice to the director concerned and (whether or not he is a member of the company) and is entitled to be heard on the resolution at the meeting.

(3) Where notice is given of an intended resolution to remove a director under this section and the director concerned makes, with respect to it, representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so—

(a) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and

(b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company), and if a copy of the representations is not sent as required in this section because it is received too late or because of the company's default, the director may (without prejudice to his right to be heard orally) require that the representations are read out at the meeting:

Provided that copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter and the court may order the

company's costs on an application under this section to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.

- (4) A vacancy created by the removal of a director under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.
- (5) A person appointed director in place of a person removed under this section is treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become director on the day on which the person in whose place he is appointed was last appointed a director.
- (6) Nothing in this section is taken as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his appointment as a director or of any appointment terminating with that as director, or as derogating from any power to remove a director which may exist apart from this section.

#### PROCEEDINGS OF DIRECTORS

289. (1) The directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, and the first meeting of the directors shall be held not later than six months after the incorporation of the company.
- (2) Unless the articles provide otherwise, any question arising at any meeting is decided by a simple majority of votes, and in case of an equality of votes, the chairman has a second or casting vote.
  - (3) A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.
  - (4) The directors may elect a chairman of their meetings and determine the period for which he is to hold office, but if no such chairman is elected or if at any meeting the chairman is not present within five minutes after the time appointed for holding same, the directors present may choose one of them to be chairman of the meeting.
  - (5) The directors may delegate any of their powers to a managing director or to committees consisting of such member or members of their body as they think fit and the managing director or any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be made by the directors.
  - (6) A committee may elect a chairman of its meeting, and if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after

Proceedings of directors.

the time appointed for holding the same, the members present may choose one of them to be chairman of the meeting.

(7) A committee may meet and adjourn as it deems proper, and any question arising is determined by a majority of votes of the members present, and in the case of equality of votes the chairman has a second or casting vote.

(8) A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, is as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

(9) In all the directors' meetings, each director is entitled to one vote.

290. (1) Unless the articles provide otherwise, the quorum necessary for the transaction of the business of directors are two where there are not more than six directors, but where there are more than six directors, the quorum is one-third of the number of directors, and where the number of directors is not a multiple of three, then the quorum is one third to the nearest number. Quorum.

(2) Where a committee of directors is appointed by the board of directors, the board shall fix its quorum, but where no quorum is fixed, the whole committee shall meet and act by a majority.

291. Where the board is unable to act because a quorum cannot be formed, the general meeting may act in place of the board and where a committee is unable to act because a quorum cannot be formed, the board may act in place of the committee. Failure to have a quorum.

292. (1) Every director is entitled to receive notice of the directors' meetings, unless he is disqualified by any reason under the Act from continuing with the office of director. Notice of meeting.

(2) There shall be given 14 days' notice in writing to all directors entitled to receive notice unless provided in the articles.

(3) Failure to give notice in accordance with subsection (2) invalidates the meeting.

(4) Unless the articles provide otherwise, it is not necessary to give notice of a meeting of directors to any director absent from Nigeria, but if he has given an address in Nigeria, the notice shall be sent to such an address.

#### REMUNERATION AND OTHER PAYMENTS

293. (1) The remuneration of the directors is determined by the company in general meeting and such remuneration is deemed to accrue from day-to-day. Remuneration of directors.

(2) The directors may also be paid travelling, hotel and other expenses properly

incurred by them in attending and returning from meetings of the directors, committee of the directors, general meetings of the company or in connection with the business of the company.

- (3) Where remuneration has been fixed by the articles, it is alterable only by a special resolution.
- (4) A company is not bound to pay remuneration to directors, but where the company agrees to pay, the directors shall be paid such remuneration out of the fund of the company.
- (5) The amount of remuneration is a debt from the company so that if directors take office on the basis of the articles, they shall be able to sue the company on account of the debt or prove it in liquidation.
- (6) A director who receives more money than he is entitled to, is guilty of misfeasance and is accountable to the company for such money.
- (7) The remunerations of directors is apportionable.

294. (1) A managing director receives such remuneration (whether by way of salary, commission, participation in profits, or partly in one way and in another) as the directors may determine.

Remuneration of a managing director.

(2) Where a managing director is removed for any reason under section 288 of this Act, he may claim for breach of contract if there is any or where a contract could be inferred from the terms of the articles.

(3) Where he performs some services without a contract, he is entitled to payment on a *quantum merit*.

295. (1) It is not lawful for a company to pay a director remuneration (whether as director or otherwise) free of income tax, or calculated by reference to or varying with the amount of his income tax, or at or with the rate or standard rate of income tax, except under a contract which was in effect at the commencement of this Act, and provides expressly, and not by reference to the articles, for payment or remuneration.

Prohibition of tax- free payments to directors.

(2) Any provision contained in a company's articles or in any contract other than such a contract as mentioned in subsection (1), or in any resolution of a company or of a company's directors for payment to a director of remuneration as mentioned in subsection (1), 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 does not apply to remuneration due before this Act comes into effect or in respect of a period before it comes into effect.

296. (1) It is not lawful for a company to make a loan to any person who is its director or a director of its holding company, or to enter into any guarantee or provide any security in connection with a loan made to such a person as earlier mentioned by any other person:

Prohibition of loans to directors in certain circumstances.

Provided that nothing in this section applies –

- (a) subject to subsection (2), to anything done to provide any such person as mentioned in this subsection with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him to properly discharge his duties as an officer of the company; or
- (b) in the case of a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, to anything done by the company in the ordinary course of that business.

(2) Subsection (1) (a) does not authorise the making of any loan, or the entering into any guarantee, or the provision of any security except -

- (a) with the prior approval of the company given at a general meeting at which the purposes of the expenditure, the amount of the loan or the extent of the guarantee or security, are disclosed; or
- (b) on condition that, if the approval of the company is not given as in subsection (2) (a) at or before the next annual general meeting, the loan shall be repaid or the liability under the guarantee or security shall be discharged, within six months from the conclusion of that meeting.

(3) Where the approval of the company is not given as required by any such condition, the directors authorising the making of the loan, the entering into the guarantee or the provision of the security, are jointly and severally liable to indemnify the company against any loss arising from it.

297. A company shall not make to any director of the company any payment by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, unless particulars with respect to the proposed payment and the amount have been disclosed to members of the company and the proposal is

Payment by company for loss of office to be approved.

approved by the company.

298. (1) If in connection with the transfer of the whole, or any part of the undertaking or property of a company, it is proposed to make any payment to a director of the company by way of compensation for loss of office, or as consideration for or, in connection with his retirement from office, the payment is unlawful unless particulars with respect to the proposal and the amount have been disclosed to members of the company and the proposal is approved by the company.

Payment to director for loss of office, etc., or transfer of property illegal.

(2) Where a payment declared by this section to be illegal is made to a director of a company, the amount received is deemed to have been received by him in trust for the company.

299. (1) Where, in connection with the transfer to any person of all or any of the shares in a company, being a transfer resulting from—

Directors to disclose payment for loss of office, etc., in certain cases.

(a) an offer made to the general body of shareholders,

(b) an offer made by or on behalf of some other body corporate with a view to the company becoming its subsidiary or a subsidiary of its holding company,

(c) an offer made by or on behalf of an individual with a view to his obtaining the right to exercise or control the exercise of at least one-third of the voting power at any general meeting of the company, or

(d) any other offer which is conditional on acceptance to a given extent payment is to be made to a director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office,

it is the duty of that director to do all things reasonably necessary to secure that particulars with respect to the proposed payment and the amount, are included in or sent with any notice of the offer made for their shares which is given to any shareholder.

(2) If—

(a) any such director fails to do all things reasonably necessary as mentioned in this section, or

(b) any person who has been properly required by any such director to include the said particulars in or send them with any such notice fails so to do,

he is liable to a penalty in such amount as the Commission shall specify in its regulations.

(3) If—

(a) the requirements of subsection (1) of this section are not complied with in relation to any such payments; or

(b) the making of the proposed payment is not, before the transfer of any share in pursuance of the offer, approved by a meeting summoned for the purpose of the holders of the shares to which the offer relates and of other holders of shares of the same class as any of the said shares,

any sum received by the director on account of the payment is deemed to have been received by him in trust for any person who has sold his shares as a result of the offer made, and the expenses incurred by him in distributing that sum amongst those persons shall be borne by him and not retained out of that sum.

(4) Where the shareholders referred to in subsection (3) (b) are not all the members of the company and no provision is made by the articles for summoning or regulating such a meeting as is mentioned in that paragraph, the provisions of this Act and of the company's articles relating to general meetings of the company, for that purpose, apply to the meeting either without modification or with such modification as the Commission on the application of any person concerned may direct for the purpose of adapting them to the circumstances of the meeting.

(5) If at a meeting summoned for the purpose of approving any payment as required by subsection (3) (a), a quorum is not present and, after the meeting has been adjourned to a later date, a quorum is again not present, the payment is, for the purposes of that subsection be deemed to have been approved.

300. (1) Where, in proceedings for the recovery of any payment which has been received by any person in trust by virtue of section 298 and 299 (1) and (3) of this Act, it is shown that—

Provisions  
supplementary to  
sections 298 to 299.

(a) the payment was made in pursuance of any arrangement entered into as part of the agreement for the transfer in question, or within one year but before two years after that agreement or the offer leading thereto, and

(b) the company or any person to whom the transfer was made was privy to that arrangement,

the payment is deemed, except in so far as the contrary is shown, to be one to which the subsections apply.

(2) If in connection with any such transfer mentioned in sections 298 and 299 of this Act —

(a) the price to be paid for any share held by a director of the company whose office is to be abolished or who is to retire from office in the company held by him is in excess of the price obtainable at the time by other holders of the like shares, or

(b) any valuable consideration is given to any such director,

the excess or the money value of the consideration, as the case may be, shall, for the purposes of that section, be deemed to have been a payment made to him by way of compensation for loss of office, or as consideration for or in connection with his retirement from office.

(3) References in sections 297 - 299 of this Act to payments made to any director of a company by way of compensation for loss of office or as consideration for or in connection with his retirement from office does not include any *bona fide* payment by way of damages for breach of contract or by way of pension in respect of past services and for the purposes of this subsection, “pension” includes any superannuation allowance, superannuation gratuity or similar payment.

(4) Nothing in section 298 or 299 of this Act shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any such payments as are mentioned there, or with respect to any other like payments made, or to be made, to the directors of a company.

#### DISCLOSURE OF DIRECTORS' INTERESTS

301. (1) Every company shall keep a register showing as respects each director of the company (not being its holding company) the number, description and amount of shares in, debentures of the company or any other body corporate, being the company's subsidiary, holding company, or a subsidiary of the company's holding company, which are held by or in trust for him or of which he has any right to become the holder:

Register of directors' shareholding, etc.

Provided that the register need not include shares in any body corporate which is the wholly-owned subsidiary of another body corporate, and for this purpose, a body corporate is wholly-owned subsidiary of another if it has no members but that other and that other's wholly-owned subsidiaries and its or their nominees.

- (2) Where any share or debenture 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 Act and while he is a director, the register shall also show the date of, and price or other consideration for the transaction:

Provided that where there is an interval between the agreement for any such transaction and the completion thereof, the date is that of the agreement.

- (3) The nature and extent of a director's interest or right in or over shares or debentures recorded in relation to him in the said register shall, if he so requires, be indicated in the register.
- (4) The company shall not by virtue of anything done for the purposes of this section, be affected with notice of, or put upon inquiry as to the rights of any person in relation to shares or debentures
- (5) The said register shall, subject to the provisions of this section, be kept at the company's registered or head office and be open to inspection during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that at least two hours in each day be allowed for inspection) —

- (a) during the period beginning 14 days before the date of the company's annual general meeting and ending three days after the date of its conclusion, it shall be open to the inspection of any member or holder of debentures of the company; and

- (b) during that or any other period, it shall be open to the inspection of any person acting on behalf of the Commission.

- (6) In computing the 14 days and the three days mentioned in subsection (5), any day which is a Saturday, Sunday or a public holiday is disregarded.
- (7) Without prejudice to the rights conferred by subsection (5), the Commission may, at any time, request for the production to it of a copy of the register, or any part thereof.
- (8) The register shall also be produced at the commencement of the company's annual general meeting and remain open and accessible during the continuance of the meeting to any person attending the meeting.
- (9) If default is made in complying with subsection (1) or (2), or if any inspection required under this section is refused, or any copy required is not sent within a

reasonable time, the company and each officer of the company are liable to a penalty in such amount as the Commission shall specify in its regulations, and if default is made in complying with subsection (8), the company and every officer of the company are liable to a penalty in such amount as the Commission shall specify in its regulations.

(10) If any inspection required under this section is refused, the Court may, by order, compel an immediate inspection of the register.

(11) For the purposes of this section—

(a) any person, in accordance with whose directions or instructions the directors of a company are accustomed to act, is deemed to be a director of the company; and

(b) a director of a company is deemed to hold or to have any interest or right in or over, any share or debenture, if a permanent representative of the body corporate other than the company holds them or has that interest or right in or over them, and either—

(i) that permanent representative is accustomed to act in accordance with his directions or instructions, or

(ii) he is entitled to exercise or control the exercise of one third or more of the voting power at any general meeting of that body corporate.

302. (1) It is the duty of any director of a company to give notice to the company of such matters relating to himself as may be necessary for the purposes of sections 301 and 303 of this Act except so far as it relates to loans made by the company or by any other person under a guarantee from or on a security provided by the company, to an officer.

General duty to give notice, etc.

(2) Any notice given for the purposes of this section, shall be in writing and if it is not given at a meeting of the directors, the director giving it shall do all things reasonably necessary to secure that it is brought up and read at the next meeting of directors after it is given.

(3) Subsection (1) shall, to the extent to which it applies in relation to directors, apply to the like extent for the purposes of —

(a) section 303 of this Act in relation to officers other than directors, and

(b) section 303 of this Act in relation to persons who are or have at any time during the preceding five years been officers of the company.

(4) Any person who makes default in complying with the provisions of this section is liable to a penalty in such amount as the Commission shall specify in its regulations.

303. (1) Subject to the provisions of this section, it is the duty of a director of a company who is in any way, whether directly or indirectly, interested in a transaction or a proposed transaction with the company, to immediately notify the directors of such company in writing, specifying particulars of the director's interest.

Disclosure by directors of interests in contracts.

(2) For the purpose of this section, a general notice given to the directors of a company by a director to the effect that he is a member of a specified company or firm and is to be regarded as interested in any transaction which may, after the date of the notice, be made with that company or firm, shall not be deemed to be a sufficient declaration of interest in relation to any transaction so made unless the particulars of the transaction are also disclosed by that director to the board upon being known to that director, and that the director does all things reasonably necessary to be sure that it is brought up and read at the next meeting of the directors after it is given.

(3) Any director who fails to comply with the provisions of this section commits an offence and is liable to a fine in such amount as the Commission shall specify in its regulations.

(4) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting directors of a company from having any interest in contracts with the company.

304. (1) Every company to which this section applies shall, in all trade circulars, show cards and business letters on or in which the company's name appears and which are issued or sent by the company to any person in Nigeria, state in legible characters with respect to every director —

Particulars with respect to directors in trade catalogues, etc.

(a) his present forename or the initials, and present surname;

(b) any former forename and surname; and

(c) his nationality, if not a Nigerian:

Provided that, if special circumstances exist which the Commission is of the

opinion render it expedient that such an exemption should be granted, the Commission may, subject to such conditions as it may prescribe by notice published in the Federal Government Gazette, exempt a company from the obligations imposed by this subsection.

- (2) This section applies to every company incorporated under this Act, or any enactment repealed by it.
- (3) If a company defaults in complying with this section, every officer of the company is liable to a penalty in such amount as the Commission shall specify in its regulations.
- (4) For the purposes of this section—
  - (a) “initials” includes a recognised abbreviation of a forename;
  - (b) references to a former forename or surname in the case of a married woman do not include the name or surname by which she was known previous to the marriage; and
  - (c) “show cards” means cards containing or exhibiting articles dealt with, or samples or representations.

305. (1) A director of a company stands in a fiduciary relationship towards the company and shall observe utmost good faith towards the company in any transaction with it or on its behalf.

Duties of directors.

(2) A director owes fiduciary relationship with the company where -

- (a) a director is acting as agent of a particular shareholder;  
or
- (b) though, he is not an agent of any shareholder, such a shareholder or other person is dealing with the company's securities.

(3) A director shall act at all times in what he believes to be the best interests of the company as a whole so as to preserve its assets, further its business, and promote the purposes for which it was formed, and in such manner as a faithful, diligent, careful and ordinarily skilful director would act in the circumstances and, in doing so, shall have regard to the impact of the company's operations on the environment in the community where it carries on business operations.

(4) The matters to which a director of a company is to have regard in the performance

of his functions include the interests of the company's employees in general, as well as the interests of its members.

- (5) A director shall exercise his powers for the purpose for which he is specified and shall not do so for a collateral purpose, and the power, if exercised for the right purpose, does not constitute a breach of duty, if it, incidentally, affects a member adversely.
- (6) A director shall not fetter his discretion to vote in a particular way.
- (7) Where a director is allowed to delegate his powers under any provision of this Act, such a director shall not delegate the power in such a way and manner as may amount to an abdication of duty.
- (8) No provision, whether contained in the articles, resolutions of a company, or any contract, shall relieve any director from the duty to act in accordance with this section or relieve him from any liability incurred as a result of any breach of the duties conferred upon him under this section.
- (9) Any duty imposed on a director under this section is enforceable against a director by the company.

306. (1) The personal interest of a director shall not conflict with any of his duties as a director under this Act.

Conflicts of duties and interests.

(2) A director shall not -

(a) in the course of management of affairs of the company,  
or

(b) in the utilisation of the company's property,

make any secret profit or achieve other unnecessary benefits.

- (3) A director is accountable to the company for any secret profit made by him or any benefit derived by him contrary to the provisions of subsection (2).
- (4) The inability or unwillingness of the company to perform any function or duty under its articles and memorandum does not constitute a defence to any breach of duty of a director under this Act.
- (5) The duty not to misuse corporate information does not cease by a director or an officer having resigned from the company, and he is still accountable and can be restrained by an injunction from misusing the information received by virtue of his previous position.

(6) Where a director discloses his interests before the transaction and before the secret profits are made before the general meeting, which may or may not authorise any resulting profits, he may escape liability, but he does not escape liability if he discloses only after he has made the secret profits, and in this case, he shall account for the profits.

307. (1) The fact that a person holds more than one directorship shall not derogate from his fiduciary duties to each company, including a duty not to use the property, opportunity or information obtained in the course of the management of one company for the benefit of the other company, or to his own or other person's advantage.

Multiple directorships.

(2) Subject subsection (3), a person shall not be a director in more than five public companies.

(3) Any person who is a director in more than five public companies shall, at the next annual general meeting of the companies after the expiration of two years from the commencement of this Act, resign from being a director from all but five of the companies.

(4) Any person who acts as a director of a public company in contravention of the provisions of this section is liable to a daily penalty in such amount as the Commission shall specify in its regulations and shall refund to each of the companies every remuneration and allowances paid to him as a director in each of the companies.

308. (1) Every director of a company shall exercise the powers and discharge the duties of his office honestly, in good faith and in the best interests of the company, and shall exercise that degree of care, diligence and skill which a reasonably prudent director would exercise in comparable circumstances.

Duty of care and skill.

(2) Failure to take reasonable care in accordance with the provisions of this section, is a ground for an action for negligence and breach of duty.

(3) Each director is individually responsible for the actions of the board in which he participated, and the absence from the board's deliberations, unless justified, does not relieve a director of such responsibility.

(4) The same standard of care in relation to the director's duties to the company shall be required for both executive and non-executive directors:

Provided that additional liability and benefit may arise under the master and servant law in the case of an executive director if there is an express or implied contract to that effect.

309. (1) Directors are trustees of the company's money, properties and their powers and as such shall account for all the money over which they exercise control, refund any money improperly paid away, and shall exercise their powers honestly in the interest of the company and all the shareholders, and not in their own or sectional interests.

Legal position of directors.

(2) A director may, when acting within his authority and the powers of the company, be regarded as agents of the company under Part III of this Act.

#### PROPERTY TRANSACTIONS BY DIRECTORS

310. (1) Subject to the exceptions provided by section 311 of this Act, a company shall not enter into an arrangement whereby —

Substantial property transactions involving directors, controlling members, etc.

(a) a director or controlling member of a company or its holding company, or a person connected with such a director or controlling member, acquires or is to acquire one or more non-cash assets of the requisite value from the company; or

(b) the company acquires or is to acquire one or more non-cash assets of the requisite value from such a director or controlling member or a person so connected, unless the arrangement is first approved by a resolution of the company in general meeting after being informed of all material facts relating to the transaction and if the director, controlling member or connected person is a director of its holding company or a person connected with such a director or controlling member, by a resolution in general meeting of the holding company after being informed of all material facts relating to the transaction.

(2) For the purpose of subsection (1), a non-cash asset is of the requisite value if, at the time the arrangement in question is entered into, its value is not less than an amount the Commission may by regulation prescribe”.

(3) A person is a controlling member of a company if that person, either alone or in an understanding with other persons, has more than 50% of the voting power to elect or remove directors of the company.

(4) For the purposes of this section and sections 311 and 312 of this Act, a shadow director is treated as a director.

311. (1) No approval shall be required to be given under section 310 of this Act by any body corporate unless it is a company within the meaning of this Act, or if it is a

Exceptions from section 310.

wholly-owned subsidiary of anybody corporate.

(2) Section 309 of this Act does not apply to an arrangement for the acquisition of a non- cash asset if—

(a) the asset is to be acquired by a holding company from any of its wholly- owned subsidiaries or from a holding company by any of its wholly- owned subsidiary of a holding company from another wholly-owned subsidiary of that same holding company; or

(b) the arrangement is entered into by a company which is being wound up, unless the winding up is a member's voluntary winding up.

(3) Section 310 (1) (a) does not apply to an arrangement whereby a person is to acquire an asset from a company of which he is a member, if the arrangement is made with that person in his character as a member.

312. (1) An arrangement entered into by a company in contravention of section 310 of this Act and any transaction entered into in pursuance of the arrangement (whether by the company or any other person), is voidable at the instance of the company or voidable by a court on its decision on a claim by members, unless one or more of the conditions specified in subsection (2) is satisfied.

Liabilities arising from contravention of section 310.

(2) The conditions are that-

(a) restitution of any money or other asset which is the subject-matter of the arrangement or transaction is no longer possible or the company has been indemnified in pursuance of this section by any other person for the loss or damage suffered by it;

(b) any right acquired *bona fide* for value and without actual notice of the contravention by any person who is a party to the arrangement or transaction would be affected by its avoidance; or

(c) the arrangement is, within a reasonable period, ratified and affirmed in full accordance with the requirements for advance approval set out in section 311 of this Act.

(3) If an arrangement is entered into with a company by a director of the company or its holding company or a person connected with him in contravention of section 310 of this Act, that director, controlling member and person so connected, and any other director of the company who authorises the arrangement or any transaction

entered into in pursuance of such an arrangement, commits an offence and liable—

(a) to account to the company for any gain which he has made and any loss or damage suffered by the company, directly or indirectly by the arrangement or transaction,

(b) directly and derivatively to members of the company for any loss or damage suffered by them,

(c) jointly and severally with any other person liable under this subsection, to indemnify the company for any loss or damage resulting from the arrangement or transaction,

where found guilty and convicted of an offence guilty of the offence, disqualified to serve as a director of the company.

(4) In any action referred to in this section the plaintiff has the right to obtain any relevant documents from the defendant and the witnesses at trial, and may request categories of documents from such person without identifying specific documents.

(5) This section is without prejudice to any liability imposed than by this section, and is subject to subsections (6) – (7) and the liability under subsection (3) arises whether or not the arrangement or transaction entered into has been avoided under subsection (1) of this section.

(6) If an arrangement is entered into by a company and a person connected with a director of the company or its holding company in contravention of section 310 of this Act, that director is not liable under subsection (3) if he shows that he took all reasonable steps to secure the company's compliance with that section.

(7) This section has effect with respect to references in sections 310, 311 and 312 of this Act to a person being "connected" with a director of a company, and to a director being "associated with" or "controlling" a body corporate.

(8) A person is connected with another person if he is —

(a) that other person's spouse, child or step-child, including illegitimate child;

(b) a body corporate with which the person is associated;  
or

(c) a person acting in his capacity as trustee of any trust, the beneficiaries of which include—

(i) the director, his spouse, any children or step-children, or

(ii) a body corporate with which he is associated, or of a trust whose terms confer a power on the trustees that may be exercised for the benefit of the person, his spouse or any children or step-children of his, or any such body corporate; or

(d) a person acting in his capacity as partner of that director or of any person who, by virtue of paragraphs (a), (b) or (c), is connected with that director.

313. (1) A director shall not accept a bribe, a gift, or commission either in cash or kind from any person or a share in the profit of that person in respect of any transaction involving his company in order to introduce his company to deal with such a person.

Prohibition of secret benefits.

(2) If a director contravenes the provisions of subsection (1), he commits a breach of duty and the company shall recover from the director the actual gift and sue him and the other person for damages sustained without any deduction in respect of what the director has returned.

(3) Where the gift is made after the transaction has been completed in a form of unsolicited gift as a sign of gratitude, the director may be allowed to keep the gift, provided he declares it before the board and that fact shall also appear in the minutes book of the directors.

(4) In all cases concerning secret benefits, the plea that the company benefited or that the gift was accepted in good faith is not a defence.

#### MISCELLANEOUS MATTERS RELATING TO DIRECTORS

314. (1) In a limited company the liability of the directors, managers or managing director, may, if so provided by the memorandum, be unlimited.

Directors with unlimited liability in respect of a limited company.

(2) In a limited company in which the liability of a director, manager is unlimited, the directors and managers of the company and the member who proposes a person for election or appointment to the office of director or manager, shall add to that proposal a statement that the liability of the person holding that office is unlimited, and before the person accepts the office or acts therein, notice in writing that his liability are unlimited is given to him by the promoters of the company, the directors of the company, any managers of the company and the Secretary of the company.

(3) If any director, manager, or promoter makes default in adding such a statement, or

if any promoter, director, manager or secretary makes default in giving such a notice, he shall be liable to a penalty in such amount as the Commission shall specify in its regulations and is also liable for any damage which the person so elected or appointed may sustain from the default.

315. (1) A limited company, if so authorised by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors or managers, or of any managing director.

Special resolution of limited company making liability of directors unlimited.

(2) Upon the passing of any such special resolution, the provisions of it are as valid as if they had been originally contained in the Memorandum.

316. Where a company—

Personal liability of directors and officers.

(a) receives money by way of loan for specific purpose;

(b) receives money or other property by way of advance payment for the execution of a contract or project; or

(c) with intent to defraud, fails to apply the money or other property for the purpose for which it was received,

every director or other officer of the company who is in default is personally liable to the party from whom the money or property was received for a refund of the money or property so received and not applied for the purpose for which it was received and nothing in this section affects the liability of the company itself.

317. (1) The provisions of this section apply in respect of any term of an agreement where a director's employment with the company of which he is a director or, where he is the director of a holding company, his employment within the group, is to continue or may be continued, than at the instance of the company (whether under the original agreement entered into in pursuance of it or not), for more than five years during which the employment—

Director's contract of employment for more than five years.

(a) cannot be terminated by the company by notice; or

(b) can be so terminated only in specified circumstances.

(2) References in subsection (1) to employment being continued (or its potential to be continued) are references to its being continued (or its potential to be continued) whether under the original agreement concerned or under a new agreement entered into in pursuance of the original agreement concerned prior to the expiration of the original agreement or within 6 months of the expiration of the original agreement.

- (3) A company shall not incorporate, in an agreement, such a term as is mentioned in subsection (1) unless the term is first approved by a resolution of the company in general meeting and in the case of a director of a holding company, by a resolution of that company in general meeting.
- (4) No approval is required to be given under this section by anybody corporate unless it is a company within the meaning of this Act, or if it is a wholly-owned subsidiary of any body corporate.
- (5) A resolution of a company approving such a term as is mentioned in subsection (1), shall not be passed at a general meeting of the company unless a written memorandum setting out the proposed agreement incorporating the term is available for inspection by members of the company both -
  - (a) at the company's registered office for at least 15 days ending with the date of the meeting; and
  - (b) at the meeting itself.
- (6) A term incorporated in an agreement in contravention of this section is to the extent that it contravenes the section, void, and that agreement and in a case where subsection (2) applies, the original agreements is deemed each to contain a term entitling the company to terminate it at any time by the giving of reasonable notice.
- (7) In this section –
  - (a) “employment” includes employment under a contract for services; and
  - (b) “group” in relation to a director of a holding company, means the group which consists of that company and its subsidiaries and for purposes of this section, a shadow director shall be treated as a director.

318. (1) Every company shall keep a register of its directors.

Register of directors.

- (2) The register shall contain the required particulars of each person who is a director of the company.
- (3) The register shall be kept available for inspection at the company's registered office.
- (4) The company shall give notice to the Registrar—
  - (a) of the place at which the register is kept available for inspection, and

(b) of any change in that place, unless it has at all times been kept at the company's registered office.

(5) The Register shall be open to the inspection of any —

(a) member of the company without charge, and

(b) other person on payment of such fee as may be prescribed.

(6) If default is made in complying with subsection (1), (2) or (3) or if default is made for 14 days in complying with subsection (4), or if an inspection required under subsection (5) is refused, the company and each officer of the company is each liable to a penalty in such amount as the Commission shall specify in its regulations.

(7) In the case of a refusal of inspection of the register, the Court may upon application by any person aggrieved, by order compel an immediate inspection of it.

319. (1) A company's register of directors shall contain, in the case of an individual—

Particulars of directors to be registered.

(a) full name and any former name or names;

(b) service address;

(c) nationality;

(d) business occupation (if any);

(e) date of birth;

(f) phone number; and

(g) email address.

(2) For the purposes of this section a "former name" means a name by which the individual was formerly known.

(3) The register contain particulars of a former name where the former name—

(a) was changed or disused before the person attained the age of 18 years, or

(b) has been changed or disused for 20 years or more.

(4) A person's service address may be stated to be the company's registered office.

320. (1) Every company shall keep a register of directors' residential addresses.

Register of directors'  
residential addresses.

(2) The register shall state the usual residential address of each of the company's directors.

(3) If a director's usual residential address is the same as the service address (as stated in the company's register of directors), the register of directors' residential addresses need only contain an entry to that effect provided the service address is not the company's registered office.

(4) If default is made in complying with this section, the company and each officer of the company are each liable to a penalty in such amount as the Commission shall specify in its regulations.

321. (1) A company shall, within 14 days from—

Duty to notify the  
commission of changes.

(a) a person becoming or ceasing to be a director; or

(b) the occurrence of any change in the particulars contained in its register of directors or residential addresses,

give notice to the Commission of the change and of the date on which it occurred.

(2) Notice of a person having become a director of the company shall -

(a) contain a statement of the particulars of the new director that are required to be included in the company's register of directors and its register of directors' residential addresses, and

(b) be accompanied by a consent, by that person, to act in that capacity.

(3) Where—

(a) a company gives notice of a change of a director's service address as stated in the company's register of directors; and

(b) the notice is not accompanied by notice of any resulting change in the particulars contained in the company's

register of directors' residential addresses,

the notice shall be accompanied by a statement that no such change is required.

- (4) If default is made in complying with this section, the company and each officer of the company are liable to a penalty for every day during which the default continues.

#### PARTICULARS OF DIRECTORS TO BE REGISTERED AND NOTIFIED TO THE COMMISSION

322. The Minister may by regulations, vary particulars required to be contained in a company's register of directors and to notify the Commission. Power to make regulations on particulars of directors.

#### RESTRICTION ON USE OR DISCLOSURE OF DIRECTORS' ADDRESSES

323. (1) This Chapter makes provision for protecting, in the case of a company director who is an individual - Protected information.

(a) information as to his usual residential address; and

(b) the information that his service address is his usual residential address.

(2) information in subsection (1) is referred to in this Part as "protected information".

(3) Information does not cease to be protected information on the individual ceasing to be a director of the company, and references in this chapter to a director include, to that extent, a former director.

324. (1) A company shall not use or disclose protected information about any of its directors, except - Restriction on use or disclosure of protected information by company.

(a) for communicating with the director concerned,

(b) in order to comply with any requirement of this Act as to particulars to be sent to the registrar, or

(c) in accordance with section 328.

- (2) Subsection (1) does not prohibit any use or disclosure of protected information with the consent of the director concerned.

325. (1) The Commission shall omit protected information from the material on the register that is available for inspection where—

Protected information:  
restriction on use or  
disclosure by the  
Commission.

(a) it is contained in a document delivered to the director in which such information is required to be stated; and

(b) in the case of a document having more than one part, it is contained in a part of the document in which such information is required to be stated.

(2) The Commission is not obliged -

(a) to check other documents or (as the case may be) other parts of the document to ensure the absence of protected information; or

(b) to omit from the material that is available for public inspection anything registered before this Chapter comes into effect.

(3) The Commission shall not use or disclose protected information except -

(a) as permitted by section 326; or

(b) in accordance with section 327.

326. (1) The Commission may use protected information for communicating with the director in question.

Permitted use or  
disclosure by the  
Commission.

(2) The Commission may disclose protected information—

(a) to a public authority specified for the purposes of this section by regulations made by the Minister; or

(b) to a credit reference agency.

(3) The Minister may make provision by regulations—

(a) specifying conditions for the disclosure of protected information in accordance with this section; and

(b) providing for the charging of fees.

(4) The Minister may make provision by regulations requiring the Commission, on application, to refrain from disclosing protected information relating to a director to a credit reference agency.

(5) Regulations under subsection (4) may make provision as to—

- (a) who may make an application;
- (b) the grounds on which an application may be made;
- (c) the information to be included in and documents to accompany an application; and
- (d) how an application is to be determined.

(6) Provision under subsection (5) (d) may in particular—

- (a) confer a discretion on the Commission; and
- (b) provide for a question to be referred to a person other than the Commission for the purposes of determining the application.

(7) In this section—

- (a) “credit reference agency” means a person carrying on a business comprising the furnishing of information relevant to the financial standing of individuals, being information collected by the agency for that purpose; and
- (b) “public authority” includes any person or body having functions of a public nature.

327. (1) The court may make an order for the disclosure of protected information by the company or by the Commission if – Disclosure under court order.

- (a) there is evidence that service of documents at a service address other than the director’s usual residential address is not effective to bring them to the notice of the director; or
- (b) it is necessary or expedient for the information to be provided in connection with the enforcement of an order or decree of the Court and the Court is satisfied that it is appropriate to make the order.

(2) An order for disclosure by the Commission is to be made only if the company—

- (a) does not have the director’s usual residential address; or

(b) has been dissolved.

(3) The order may be made on the application of a liquidator, creditor or member of the company, or any other person appearing to the court to have a sufficient interest.

(4) The order shall specify the persons to whom, and purposes for which, disclosure is authorised.

328. (1) The Commission may put a director's usual residential address on the public record if –

Circumstances in which commission may put address on the public record.

(a) communications sent by the Commission to the director and requiring a response within a specified period remain unanswered; or

(b) there is evidence that service of documents at a service address provided in place of the director's usual residential address is not effective to bring them to the notice of the director.

(2) The Commission shall give notice of the proposal—

(a) to the director; and

(b) to every company of which the Commission has been notified that the individual is a director.

(3) The notice shall -

(a) state the grounds on which it is proposed to put the director's usual residential address on the public record, and specify a period within which representations may be made before that is done; and

(b) be sent to the director at his usual residential address, unless it appears to the Commission that service at that address may be ineffective to bring it to the director's notice, in which case it may be sent to any service address provided in place of that address.

(4) The Commission shall take account of any representations received within the specified period.

329. (1) The Commission, on deciding that a director's usual residential address is to be put on the public record, shall proceed as if notice of a change of registered particulars had been given –

Putting the address on the public record.

(a) stating that address as the director's service address;  
and

(b) stating that the director's usual residential address is the same as his service address.

(2) The Commission shall give notice of having done so—

(a) to the director; and

(b) to the company.

(3) On receipt of the notice the company shall —

(a) enter the director's usual residential address in its register of directors as his service address; and

(b) state in its register of directors' residential addresses that his usual residential address is the same as his service address.

(4) If the company has been notified by the director in question of a more recent address as his usual residential address, it shall -

(a) enter that address in its register of directors as the director's service address; and

(b) give notice to the registrar as on a change of registered particulars.

(5) If a company fails to comply with subsection (3) or (4), the company and each officer of the company are liable to a penalty for every day during which the default continues in such amount as the Commission shall specify in its regulations.

(6) A director whose usual residential address has been put on the public record by the Commission under this section may not register a service address other than his usual residential address for five years from the date of the Commission's decision.

## CHAPTER 12 – SECRETARIES

330. (1) Except in the case of a small company, every company shall have a secretary.
- (2) Where at the commencement of this Act a public company has not appointed a secretary, the company shall not later than six months after the commencement of this Act appoint a Secretary.
- (3) Anything required or authorised to be done by or of the secretary may, if the office is vacant or there is for any other reason no secretary capable of acting, be done by or of any assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by or of any officer of the company authorised generally or specially by the directors.
- (4) If a public company contravenes the provisions of this section, the company and the directors of the company are liable to a fine in such amount as the Commission shall specify and, in the case of continued contravention, to a daily penalty in such amount as the Commission shall specify.

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

Avoidance of acts done by a person as director and secretary.

332. It is the duty of a director of a company to take all reasonable steps to ensure that the secretary of the company is a person who appears to have the requisite knowledge and experience to discharge the functions of a secretary of a company, and in the case of a public company, he shall be—

Qualification of a Secretary.

- (a) a member of the Institute of Chartered Secretaries and Administrators;
- (b) a legal practitioner within the meaning of the Legal Practitioners Act;
- (c) a member of any professional body of accountants established from time to time by an Act of the National Assembly;
- (d) any person who has held the office of the secretary of a public company for at least three years of the five years immediately preceding his appointment in a public company; or
- (e) a body corporate or firm consisting of members each of whom is qualified under paragraph (a), (b), or (c).

Cap. L11, LFN, 2004.

333. (1) A secretary is appointed by the directors and, subject to the provisions of this section, may be removed by them.

Appointment and removal of a secretary.

(2) Where it is intended to remove the secretary of a public company, the board of directors shall give him notice—

- (a) stating that it is intended to remove him;
- (b) setting out the grounds on which it is intended to remove him;
- (c) giving him a period at least seven working days within which to make his defence; and
- (d) giving him an option to resign his office within seven working days.

(3) Where, following the notice prescribed in subsection (2), the secretary does not within the given period resign his office or make a defence, the board may remove him from office and shall make a report to the next general meeting, but where the secretary, without resigning his office, makes a defence and the board does not consider it sufficient, if the ground—

- (a) on which it is intended to remove him is fraud or serious misconduct, the board may remove him from office and shall report to the next general meeting; and
- (b) is other than fraud or serious misconduct, the board shall not remove him without the approval of the general meeting, but may suspend him and shall report to the next general meeting.

(4) Notwithstanding any provision of law, where a secretary suspended under subsection (3) (b) is removed with the approval of the general meeting, the removal may take effect from such time as the general meeting may determine.

334. A secretary does not owe fiduciary duties to the company, but where he is acting as its agent he owes fiduciary duties to it, and as such is liable to the company where he makes secret profits or lets his duties conflict with his personal interests, or uses confidential information he obtained from the company for his own benefit.

Fiduciary interests of a secretary.

335. (1) The duties of a secretary include —

Duties of a secretary.

- (a) attending the meeting of the company, the board of directors and its committees, rendering all necessary secretarial services in respect of the meeting and

advising on compliance, by the meetings, with the applicable rules and regulations;

- (b) maintaining the registers and other records required to be maintained by the company under this Act;
- (c) rendering proper returns and giving notification to the Commission required under this Act; and
- (d) carrying out such administrative and other secretarial duties as directed by the director or the company.

(2) The secretary shall not, without the authority of the board exercise any power vested in the directors.

336. Every public company shall maintain a register of secretaries which shall contain the particulars set out in section 337 of this Act. Register of secretaries.

337. (1) A company's register of secretaries shall contain the following particulars in the case of an individual – Particulars of Secretaries to be registered: individuals.

- (a) full name and any former name or names;
- (b) address; and
- (c) email address.

(2) For the purposes of this section a “former name” means a name by which the individual was formerly known.

(3) The register may not contain particulars of a former name where the former name—

- (a) was changed or disused before the person attained the age of 18 years; or
- (b) has been changed or disused for 20 years or more.

(4) The address required to be stated in the register is a service address which may be stated to be the company's registered office.

338. (1) A company's register of secretaries shall contain the following particulars in the case of a body corporate, or a firm— Particulars of secretaries to be registered: corporate secretaries and firms.

- (a) corporate or firm name;
- (b) registered or principal office; and

(c) email address.

(2) If all the partners in a firm are joint secretaries it is sufficient to state the particulars that would be required if the firm were a legal person and the firm had been appointed secretary.

339. (1) A company shall, within 14 days, from—

Duty to notify the Commission of changes.

(a) a person becoming or ceasing to be a secretary, or

(b) the occurrence of any change in the particulars contained in its register of secretaries,

give notice to the Commission of the change and of the date on which it occurred.

(2) Notice of a person having become a secretary of the company shall -

(a) contain a statement of the particulars of the new secretary that are required to be included in the company's register of secretaries; and

(b) be accompanied by a consent, by that person, to act in that capacity.

(3) If default is made in complying with this section, the company and each officer of the company are liable to a penalty for every day during which the default continues in such amount as the Commission shall specify in its regulations.

340. The Minister may, by regulations vary particulars required to be contained in a company's register of secretaries and to be notified to the Commission.

Particulars of secretaries to be registered and notified to the commission: power to make regulations.

## CHAPTER 13 - PROTECTION OF MINORITY AGAINST ILLEGAL AND OPPRESSIVE CONDUCT

### ACTION BY OR AGAINST THE COMPANY

341. Subject to the provisions of this Act, where an irregularity is made in the course of a company's affairs or any wrong is done to the company, only the company can sue to remedy that wrong and only the company can ratify the irregular conduct.

Only company may sue for wrong or ratify irregular conduct.

342. (1) For the purposes of this section, "major asset transaction" means a transaction or related series of transactions which includes the -

Procedure for major asset transaction.

- (a) purchase or other acquisition outside the usual course of the company's business; and
- (b) sale or other transfer outside the usual course of the company's business, of the company's property or other rights the value of which, on the date of the company's decision to complete the transaction, is 50% or more of the book value of the company's assets based on the company's most recently compiled balance sheet.

(2) In undertaking a major asset transaction -

- (a) the board of directors of the company shall recommend the transaction and direct that it be submitted for approval to an annual or extraordinary general meeting of members;
- (b) notice of the transaction, stating that a purpose of the meeting is to consider the transaction and including a summary of the transaction and of the recommendation of the board of directors on the transaction, shall be given to all members entitled to notice of or to attend the meeting or to vote on the transaction; and
- (c) at the meeting the members shall approve the transaction by a special resolution, unless the company's memorandum of association provides for its approval by an ordinary resolution, in which case it is approved by an ordinary resolution.

343. Without prejudice to the rights of members under sections 346 – 351 and sections 353 – 355 of this Act or any other provisions of this Act, the Court, on the application of any member, may by injunction or declaration restrain the company or its officers from—

Protection of minority: injunction and declaration in certain cases.

- (a) entering into any transaction which is illegal or ultra vires;
- (b) purporting to do by ordinary resolution any act which by its articles or this Act required to be done by special resolution;
- (c) any act or omission affecting the applicant's individual rights as a member;

- (d) committing fraud on either the company or the minority shareholders where the directors fail to take appropriate action to redress the wrong done;
- (e) where a company meeting cannot be called in time to be of practical use in redressing a wrong done to the company or to minority shareholders;
- (f) where the directors are likely to derive a profit or benefit, or have profited or benefited from their negligence or from their breach of duty; and
- (g) any other act or omission, where the interest of justice so demands.

344. (1) Where a member institutes a personal action to enforce a right due to him personally, or a representative action on behalf of himself and other affected members to enforce any right due to them, he or they are subject to subsection (2), entitled to - Personal and representative action.

- (a) damages for any loss incurred on account of the breach of that right; or
- (b) declaration or injunction to restrain the company or the directors from doing a particular act.

(2) Where, in proceedings brought under this section, the Court finds the directors or any of them liable for any wrongdoing, the erring director is personally liable in damages to the aggrieved member.

(3) Where any member institutes an action under this section, the Court may award costs to him personally whether or not his action succeeds.

(4) In any proceeding by a member under section 343 of this Act, the Court may, if it deems fit, order that the member shall give security for costs.

345. For the purpose of sections 343 and 344 of this Act, “member” includes- Definition of member.

- (a) the personal representative of a deceased member; and
- (b) any person to whom shares have been transferred or transmitted by operation of law.

346. (1) Subject to the provisions of subsection (2), an applicant may apply to the Court for leave to bring an action in the name or on behalf of a company or a company’s Commencing derivative action.

subsidiary, or to intervene in an action to which the company or the company's subsidiary is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the company or the company's subsidiary.

(2) No action may be brought and no intervention may be made under subsection (1), unless the Court is satisfied that—

(a) a cause of action has arisen from an actual or proposed act or omission involving negligence, default, breach of duty or trust by a director or a former director of the company;

(b) the applicant has given reasonable notice to the directors of the company of his intention to apply to the Court under subsection (1);

(c) the directors of the company do not bring, diligently prosecute, defend or discontinue the action;

(d) the notice contains a factual basis for the claim and the actual or potential damage caused to the company;

(e) the applicant is acting in good faith; and

(f) it appears to be in the best interest of the company that the action be brought, prosecuted, defended or discontinued.

(3) An action under this section may be against the director or any other person (or both).

(4) In any action referred to in this section the plaintiff shall have the right to obtain any relevant documents from the defendant and the witnesses at trial, and may in pursuance of that right request categories of documents from such person without identifying specific documents.

347. (1) In connection with an action brought or intervened under section 346 of this Act, the court may, at any time, make any such order or orders as it deems fit. Powers of the court.

(2) The Court may make an order—

(a) authorising the applicant or any other person to control the conduct of the action;

(b) giving directions for the conduct of the action;

(c) directing that any amount adjudged payable by a defendant in the action is paid, in whole or in part, directly to former and present security holders of the company instead of to the company; and

(d) requiring the company to pay reasonable legal fees incurred by the applicant in connection with the proceedings.

348. An application made or an action brought or intervened in under section 6 shall not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or a duty owed to the company has been or may be approved by the shareholders of such company, but evidence of approval by the shareholders may be taken into account by the Court in making an order under section 347. Evidence of shareholders' approval not decisive.
349. An application made or an action brought or intervened in under section 346 shall not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the Court given upon such terms as the Court deems fit and, if the Court determines that the rights of any applicant may be substantially affected by such stay, discontinuance, settlement or dismissal, the Court may order any party to the application or action to give notice to the applicant. Court's approval to discontinue.
350. An applicant shall not be required to give security for costs in any application made or action brought or intervened in under section 346 of this Act. No security for costs.
351. In an application made or an action brought or intervened in under section 346, the court may at any time order the company to pay to the applicant interim costs before the final disposition of the application or action. Interim costs.
352. In sections 346 – 351 of this Act, “applicant” means-
- (a) a registered holder or a beneficial owner and a former registered holder or beneficial owner, of a security of a company;
- (b) a director or an officer or a former director or officer of a company;
- (c) the Commission; or
- (d) any other person who in the discretion of the Court, is a proper person to make an application under section 346. Definition.

RELIEF ON THE GROUNDS OF UNFAIRLY PREJUDICIAL AND OPPRESSIVE  
CONDUCT

353. (1) An application to the Court by petition for an order under section 354 in relation to a company may be made by — Application.

- (a) a member of the company;
- (b) a director or officer, former director or officer of the company;
- (c) a creditor;
- (d) the Commission; or
- (e) any other person who, in the discretion of the Court, is the proper person to make an application under section 354.

(2) In sections 354 and 355 of this Act, “member” includes –

- (a) the personal representative of a deceased member; and
- (b) any person to whom shares have been transferred or transmitted by operation of law.

354. (1) An application for relief on the ground that the affairs of a company are being or have been conducted in an illegal or oppressive manner may be made to the Court by petition. Grounds upon which an application may be made.

(2) An application to the Court by petition for an order under this section in relation to a company may be made by —

- (a) a member of the company who alleges that —
  - (i) the affairs of the company are being or have been conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members, or in a manner that is or has been in disregard of the interests of a member or the members as a whole, or
  - (ii) an act or omission or a proposed act or omission, by or on behalf of the company or a resolution, or a proposed resolution, of a class of members, was, is or would be oppressive or unfairly prejudicial to, or

unfairly discriminatory against, a member or members or was, is or would be in a manner which is in disregard of the interests of a member or the members as a whole; or

(b) any of the persons mentioned under section 353 (1) (b), (c) and (e) who alleges that —

(i) the affairs of the company have been or are being conducted in a manner oppressive or unfairly prejudicial to or discriminatory against or in a manner in disregard of the interests of that person, or

(ii) an act or omission, or a proposed act or omission was, is or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, or was or is in disregard of the interests of that person, or

(c) the Commission in a case where it appears to it in the exercise of its powers under the provisions of this Act or any other enactment that—

(i) the affairs of the company were or are being conducted in a manner that was or is oppressive or unfairly prejudicial to, or unfairly discriminatory against a member or members, or was or is in disregard of the public interest, or

(ii) any actual or proposed act or omission of the company, including an act or omission on its behalf which was, is or would be oppressive, or unfairly prejudicial to, or unfairly discriminatory against a member or members in a manner which was or is in disregard of the public interest.

355. (1) If the Court is satisfied that a petition under sections 353 and 354 is well founded, it may make such order or orders as it deems fit for giving relief in respect of the matter complained of. Powers of the Court.

(2) Without prejudice to the generality of subsection (1), the Court may make an order—

(a) that the company be wound up;

- (b) for regulating the conduct of the affairs of the company in future;
- (c) for the purchase of the shares of any member by other members of the company;
- (d) for the purchase of the shares of any member by the company and for the reduction accordingly of the company's capital;
- (e) directing the company to institute, prosecute, defend or discontinue specific proceedings, or authorising a member or the company to institute, prosecute, defend or discontinue specific proceedings in the name or on behalf of the company;
- (f) varying or setting aside a transaction or contract to which the company is a party and compensating the company or any other party to the transaction or contract;
- (g) directing an investigation to be made by the Commission;
- (h) appointing a receiver or a receiver and manager of property of the company;
- (i) restraining a person from engaging in specific conduct or from doing a specific act or thing; or
- (j) requiring a person to do a specific act or thing.

(3) Where an order that a company be wound up is made under this section, the provisions of this Act relating to winding up of companies shall apply, with such modifications as are necessary, as if the order had been made upon an application duly filed in the Court by the company.

(4) Where an order under this section makes any alteration or addition to the memorandum or articles of a company, notwithstanding anything in any other provision of this Act, but subject to the provisions of the order, the company does not have power, without the leave of the Court, to make any further alteration or addition to the memorandum and articles inconsistent with the provisions of the order but, subject to this subsection, the alteration or addition shall have effect as if it had been made by a resolution of the company.

(5) A certified true copy of an order made under this section altering or giving leave to

alter a company's memorandum or articles shall, within 14 days from the making of the order or such longer period as the Court may allow, be delivered by the company to the Commission for registration, and if the company defaults in so complying, the company and each officer of it are liable to a penalty as the Commission shall specify in its regulations.

356. Any person who contravenes or fails to comply with an order made under section 355 that is applicable to him, commits an offence and is liable to a penalty as the Commission shall specify in its regulations.

Penalty for failure to comply with order of the Court.

357. (1) The Commission may appoint one or more competent inspectors to investigate the affairs of a company and to report on them in such manner as it may direct.

Investigation of a company on its own application or that of its members.

(2) The appointment may be made—

(a) in the case of a company having a share capital, on the application of members holding at least one-tenth of the class of shares issued;

(b) in the case of a company not having a share capital, on the application of at least one-tenth in number of the persons on the company's register of members; and

(c) in any other case, on the application of the company.

(3) The application shall be supported by such evidence as the Commission may require for the purpose of showing that the applicant or applicants have good reason for requiring the investigation.

(4) Where a company's employee, in compliance with an inspector's request, provides the inspector with any information concerning the company's affairs, the company shall protect the employee from any form of discrimination or other unfair treatment.

(5) Any employee relieved of his employment without any just cause, other than for reason of disclosure made pursuant to the provision of this section, is entitled to a compensation which is calculated as if he had attained the maximum age of retirement or had served the maximum period of service, in accordance with his terms of employment or conditions of service to the company.

358. (1) The Commission shall appoint one or more competent inspectors to investigate the affairs of a company and report on them in such manner as it directs, if the Court, by order declares that its affairs ought to be investigated.

Other investigations of company.

(2) Notwithstanding the provisions of sections 357 and subsection (1) of this section, the Commission may appoint one or more competent inspectors to investigate the

affairs of a company and report on them in such manner as it directs, if it appears to it that there are circumstances suggesting that -

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

(3) Subsections (1) and (2) are without prejudice to the powers of the Commission under section 366, and the power conferred by subsection (2) is exercisable with respect to a body corporate, notwithstanding that it is in a course of being voluntarily wound up.

(4) Reference in subsection (2) to a company's member, includes, —

- (a) any of the personal representatives of a deceased member; and
- (b) any person to whom shares have been transferred or transmitted by operation of law.

359. (1) If an Inspector appointed, under section 357 or 358, to investigate the affairs of a company thinks it necessary for the purposes of his investigation to investigate the affairs of another body corporate which is or at any time been the company's subsidiary or holding company, or a subsidiary of its holding company or a holding company of its subsidiary, he shall report on the affairs of the other body corporate so far as he thinks that the results of his investigation of its affairs are relevant to the investigation of the affairs of the company first mentioned above.

Inspectors' powers during investigation.

(2) An inspector appointed under either section 357 or 358 may at any time in the course of his investigation, without the necessity of making an interim report,

inform the Commission of matters coming to his knowledge as a result of the investigation tending to show that an offence has been committed.

360. (1) When an inspector is appointed under section 357 or 358, it is the duty of both past and present officers and agents of the company, and all past and present officers and agents of any other body corporate whose affairs are investigated under section 359, to –

Production of documents and evidence to inspectors.

(a) produce to the inspector all information, books and documents of or relating to the company or, as the case may be, the other body corporate, which are at their disposal, in their custody or power;

(b) appear before the inspector when required to do so; and

(c) give the inspector all assistance in connection with the investigation which he is reasonably able to give.

(2) If the inspector considers that a person other than an officer or agent of the company or other body corporate is or may be in possession of information concerning its affairs, he may require that person to produce to him such information, books or documents at his disposal, under his custody or power relating to the company or other body corporate, to appear before him and give him all assistance in connection with the investigation which he is reasonably able to give, and it is that person's duty to comply with the requirement.

(3) An inspector may examine on oath the officers and agents of the company or other body corporate, and any such person as is mentioned in subsection (2) in relation to the affairs of the company or other body, and administer an oath accordingly.

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

(5) An answer given by a person to a question put to him in exercise of powers conferred by this section (whether as it has effect in relation to an investigation under any of sections 357 - 359 as applied by any other section in this Act) may be used in evidence against him.

(6) Where any officer or agent of the company, or any other person refuses to answer any question put to him by the inspector, or provide any information, books or documents at his disposal, under his custody or power with respect to the affairs of the company, or other body corporate, the inspector may apply to Court for contempt proceedings against the officer, agent or person.

361. (1) If an inspector has reasonable grounds for believing that a director, or past director, of the company or other body corporate whose affairs he is investigating maintains or has maintained a bank account of any description, whether alone or jointly with another person and whether in Nigeria or elsewhere, into or out of which there has been paid –

Power of inspector to call for directors' bank accounts.

(a) the emoluments or part of the emoluments of his office as such director, particulars of which have not been disclosed in the financial statements of the company or other body corporate for any financial year, contrary to the provisions of Part V of the Second Schedule to this Act (in relation to particular in accounts of directors);

Second Schedule.

(b) any money which has resulted from or been used in the financing of an undisclosed transaction, arrangement or agreement; or

(c) any money which has been in any way connected with an act or omission or series of acts or omissions, which on the part of that director constituted misconduct whether fraudulent or not towards the company or body corporate or its members, the inspector may require the director to produce to him all documents in the director's possession, or under his control, relating to that bank account.

(2) For purposes of subsection (1) (b) of this section, an "undisclosed" transaction, arrangement or agreement is one the particulars of which have not been disclosed in the financial statement of any company or in a statement annexed thereto for any financial year, including the disclosure of contracts between companies and their Directors.

362. (1) When an inspector is appointed under section 357 or 358 to investigate the affairs of a company, the following applies in the case of –

Obstruction of inspectors to be treated as contempt of court.

(a) any officer or agent of the company;

(b) any officer or agent of another body corporate whose affairs are investigated under section 359; and

(c) any such person as is mentioned in section 360 (2).

(2) Section 360 (4) applies with regards to references in subsection (1) to an officer or agent.

(3) If that person—

(a) refuses to produce any book or document which it is his duty under section 360 or 361 to produce, or

(b) refuses to appear before the inspector when required to do so,

the inspector may certify the refusal in writing and apply to the Court for contempt proceedings against the person.

(4) The Court may thereupon enquire into the case, and after hearing any witness who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, the Court may punish the offender in like manner as if he had been guilty of contempt of the Court.

363. (1) The inspector may, and if so directed by the Commission shall, make interim reports to the Commission, and on the conclusion of his investigation shall make a final report to it and any such report shall be written or printed, as the Commission may direct.

Inspector's report.

(2) The Commission may direct that a copy of the inspector's report be forwarded to the company at its registered or head office.

(3) Where an inspector is appointed under section 357 in pursuance of an order of the Court, the Commission shall furnish a copy of any of its reports to the Court.

(4) In any other case, the Commission may, if it deems fit—

(a) furnish a copy on request and on payment of the prescribed fee to –

(i) any member of the company or other body corporate which is the subject of the report,

(ii) any person whose conduct is referred to in the report,

(iii) the auditors of that company or body corporate,

(iv) the applicants for the investigation, and

(v) any other person whose financial interests appear to the Commission to be affected by the matters dealt with in the report, whether as creditors of the company or body corporate, or otherwise; and

(b) cause any such report to be printed and published.

364. (1) If, from any report made under section 363, it appears to the Commission that any civil proceeding ought in the public interest to be brought by the company or anybody corporate, the Commission may itself bring such proceedings in the name and on behalf of the company or the body corporate.

Power to bring civil proceedings on company's behalf.

(2) The Commission shall indemnify the body corporate against any costs or expenses incurred by it in or in connection with proceedings brought under this section, and any costs or expenses so incurred shall, if not otherwise recoverable, be defrayed out of the Consolidated Revenue Fund.

365. (1) If, from any report made under section 363, it appears that any person has, in relation to the company or anybody corporate whose affairs have been investigated by virtue of section 359, been guilty of any offence for which he is criminally liable, the report shall be referred to the Attorney-General of the Federation.

Criminal proceedings and other proceedings by the Attorney-General of the Federation.

(2) If the Attorney-General of the Federation considers that the case referred to him is one in which a prosecution ought to be instituted, he shall direct action accordingly, and it is the duty of all past and present officers and agents of the company or other body corporate, (other than the defendant in the proceedings), to give all assistance in connection with the prosecution which they are reasonably able to give.

(3) If, from any report made under section 363, it appears to the Commission that proceedings ought, in the public interest, to be brought by any body corporate dealt with by the report for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation of that body corporate or the management of its affairs, or for the recovery of any property of the body corporate which has been misapplied or wrongfully retained, it may refer the case to the Attorney-General of the Federation for his opinion as to the bringing of proceedings for that purpose in the name of the body corporate and if proceedings are brought, it shall be the duty of all past and present officers and agents of the company or other body corporate (other than the defendants in proceedings), to give him all assistance in connection with the proceedings which they are reasonably able to give.

(4) Costs and expenses incurred by a body corporate in or in connection with any proceedings brought by it under subsection (3) shall, if not otherwise recoverable, be defrayed out of the Consolidated Revenue Fund.

366. If, in the case of any body corporate liable to be wound up under this Act, it appears to the Commission from a report made by an inspector under section 363 that it is expedient in the public interest that the body corporate should be wound up, the Commission may (unless the body corporate is already wound up by the Court)

Power of the Commission to present winding-up petition.

present a petition for it to be wound up if the Court considers it just and equitable to do so.

367. (1) The expenses of, and incidental to, an investigation by an inspector appointed by the Commission under the provisions of this Act, are defrayed in the first instance out of the Consolidated Revenue Fund, but the following persons are, to the extent mentioned, liable to make repayment, –

Expenses of investigation.

(a) any person who is convicted on a prosecution instituted, as a result of the investigation by the Attorney-General of the Federation, or who is ordered to pay damages or restore any property in proceedings brought under section 365 (3), may, in the same proceedings, be ordered to pay the said expenses to such extent as are specified in the order;

(b) any body corporate in whose name proceedings are brought under section 365 (3) is liable to the extent of the amount or value of any sums or property recovered by it as a result of those proceedings; or

(c) unless, as the result of the investigation, a prosecution is instituted by the Attorney-General of the Federation, the applicants for the investigation, where the inspector was appointed under section 357, are liable to such extent, if any, as the Commission may direct, and any amount for which a body corporate is liable under paragraph (b), shall be a first charge on the sums or property mentioned in that paragraph.

(2) For the purposes of this section, any costs or expenses incurred by the Commission in or in connection with proceedings brought by virtue of section 364 (2), is treated as expenses of the investigation giving rise to the proceedings.

(3) Expenses to be defrayed by the Commission under this section are, so far as not recoverable are to be paid out of the Consolidated Revenue Fund.

368. (1) A copy of any report of an inspector appointed under sections 357 and 358, certified by the Commission to be a true copy, is admissible in any legal proceedings as evidence of the opinion of the inspector in relation to any matter contained in the report.

Inspectors' report to be used as evidence in legal proceedings.

(2) A document purporting to be such a certificate as mentioned in subsection (1) shall be received in evidence and be deemed to be such a certificate, unless the contrary is proved.

369. (1) Where it appears to the Commission that there is good reason so to do, it may appoint one or more competent inspectors to investigate and report on the membership of any company, and otherwise with respect to the company, for the purpose of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the company or able to control or materially to influence the policy of the company.

Appointment of inspectors to investigate ownership of a company.

(2) The appointment of an inspector under this section may define the scope of his investigation, whether in respect of the matter or the period to which it is to extend or otherwise, and in particular may limit investigation to matters connected with particular share or debenture.

(3) Where an application for an investigation under this section with respect to particular share or debenture of a company is made to the Commission by members of the company, and the number of applicants or the amount of the shares held by them is not less than that required for an application for the appointment of an inspector under section 357 (2) (a) and (b) -

(a) the Commission shall appoint an inspector to conduct that investigation, unless it is satisfied that the application is vexatious; and

(b) the inspector's appointment is not excluded from the scope of his investigation any matter which the application seeks to include, except in so far as the Commission is satisfied that it is reasonable for the matter to be investigated.

(4) Subject to the terms of an inspector's appointment, his powers shall extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of his investigation.

370. (1) For the purposes of any investigation under section 369, the provisions of sections 359 - 363 apply with the necessary modifications to references to the affairs of the company or those of any body corporate, that —

Provisions applicable to investigation.

(a) the said sections shall apply in relation to all persons who are or have been, or whom the inspector has reasonable cause to believe to be or have been, financially interested in the success or failure or the apparent success or failure of the company or any other body corporate whose membership is investigated with that of the company, or able to control or materially to influence the policy thereof, including persons concerned only on behalf of others, as they apply in

relation to officers and agents of the company or of the other body corporate, as the case may be; and

- (b) the Commission is not bound to furnish the company or any other person with a copy of any report by an inspector appointed under this section or with a complete copy thereof if he is of the opinion that there is good reason for not divulging the contents of the report or any part thereof, but shall keep a copy of any such report, or, the parts of any report, as regards which he is not of that opinion.

- (2) The expenses of any investigation under section 369 shall be defrayed out of the Consolidated Revenue Fund.

371. (1) Where it is made to appear to the Commission that there is good reason to investigate the ownership of any share in or debenture of a company and that it is unnecessary to appoint an inspector for the purpose, the Commission may require any person who it has reasonable cause to believe to —

Power to require information as to persons interested in shares, etc.

- (a) be or to have been interested in those shares or debentures;
- (b) act or to have acted in relation to those shares or debentures as a legal practitioner or an agent of someone interested therein; or
- (c) give to the Commission any information which the person has or might reasonably be expected to obtain as to the present and past interest in those shares or debentures and the names and addresses of the persons interested, and of any persons who act or have acted on their behalf in relation to the shares or debentures.

- (2) For the purposes of this section, a person is deemed to have an interest in a share or debenture if he has any right to acquire or dispose of the share or debenture or any interest therein or to vote in respect thereof, or if his consent is necessary for the exercise of any of the rights of other persons interested therein, or if other persons interested therein can be required or are accustomed to exercise their rights in accordance with his instructions.

- (3) Any person who fails to give any information required of him under this section, or who, in giving any such information, makes any statement which he knows to be false, or recklessly makes any statement which is false commits an offence and liable to a penalty as the Commission shall specify in its regulations.

372. (1) Where, in connection with an investigation under section 369 or 371, it appears to the Commission that there is difficulty in finding out the relevant facts about any share (whether issued or to be issued), and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned, or any of them, to assist the investigation as required by this Act the Commission may in writing direct that the shares shall, until further notice, be subject to the restrictions imposed by this section.

Power to impose restrictions on shares, etc.

(2) If shares are directed to be subject to the restrictions imposed by this section—

- (a) any transfer of those shares, or in case of unissued shares, any transfer of the right to be issued therewith and any issue thereof, is void;
- (b) no voting rights are exercisable in respect of those shares;
- (c) no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder of shares; and
- (d) except in a liquidation, no payment shall be made of any sums due from the company on those shares, whether in respect of capital or otherwise.

(3) Where the Commission directs shares to be subject to restrictions under this section, or refuses to direct that shares shall cease to be subject thereto, any person aggrieved thereby may appeal to the Court, and the Court may, if it deems fit, direct that the shares shall cease to be subject to the said restrictions.

(4) Any direction or order of the Court that shares shall cease to be subject to restrictions under this section, expressed to be made with a view to permitting a transfer of those shares, may continue the restrictions mentioned in subsection (2) (c) and (d), either in whole or in part, so far as they relate to any right acquired or offer made before the transfer.

(5) Any person who—

- (a) exercises or purports to exercise any right to dispose of shares which, to his knowledge, are for the time being subject to restrictions under this section,
- (b) votes in respect of such shares, whether as holder or proxy, or appoints a proxy to vote in respect thereof, or

- (c) being the holder of such shares, fails to notify that they are subject to the said restrictions,

commits an offence and is liable to a penalty as the Commission shall specify in its regulations.

- (6) Where shares in any company are issued in contravention of the said restrictions, the company and each officer of the company who are in default commits an offence and is liable to a penalty as the Commission shall specify in its regulations.
- (7) A prosecution shall not be instituted under this section except by or with the consent of the Attorney-General of the Federation.
- (8) This section applies in relation to debentures as it applies in relation to shares.

373. Nothing in this Part requires disclosure to the Commission or to an inspector appointed by it, by a —

Savings for legal practitioners and bankers.

- (a) legal practitioner of any privileged communication made to him in that capacity, except as regards the name and address of his client; or
- (b) company's banker as such, of any information as to the affairs of any of their customers other than the company.

#### CHAPTER 14 - FINANCIAL STATEMENTS, AUDIT AND ACCOUNTING RECORDS

Companies to keep accounting records.

374. (1) Every company shall cause accounting records to be kept in accordance with this section.

(2) The accounting records are sufficient to show and explain the transactions of the company and as such, are to—

- (a) disclose with reasonable accuracy, at any time, the financial position of the company; and
- (b) enable the directors to ensure that any financial statements prepared under this Part comply with the requirements of this Act as to the form and content of the company's financial statements.

(3) The accounting records shall, in particular, contain—

- (a) entries from day to day of all sums of money received

and expended by the company, and the matters in respect of which the receipt and expenditure took place; and

(b) a record of the assets and liabilities of the company.

(4) If the business of the company involves dealing in goods, the accounting records shall contain—

(a) statements of stocks held by the company at the end of each year of the company;

(b) all statements of stocktakings from which any such statement of stock as is mentioned in paragraph (a) has been or is to be prepared; and

(c) except in the case of goods sold by way of ordinary retail trade, statements of all goods sold and purchased, showing the goods and the buyers and sellers in sufficient detail to enable all these to be identified.

(5) A parent company that has a subsidiary undertaking in relation to which subsection (4) does not apply shall take reasonable steps to secure that the undertaking keeps such accounting records as to enable the directors of the parent company to ensure that any accounts required to be prepared under this Part comply with the requirements of this Act.

(6) Each public company shall keep its audited accounts displayed on its website.

375. (1) The accounting records of a company shall be kept at its registered office or such other place in Nigeria as the directors think fit, and shall at all times be open to inspection by the officers of the company.

Place, duration and form of records.

(2) Subject to any direction with respect to the disposal of records given under winding up rules made under section 732 of this Act, accounting records which a company is required by section 374 of this Act to keep are preserved by it for six years from the date on which they were made.

(3) A company may, in addition to original hard copies, keep electronic copies or registers of any document or record it is obliged to keep or maintain under this Act, and where a company chooses to maintain electronic copies or registers of its documents or records, the company shall give sufficient consideration to the quality of the hardware and software to be used, and technical specifications such as protocol, security, anti-virus protection or encryption.

376. (1) If a company fails to comply with any provision of section 374 or 375 (1), every officer of the company who is in default commits an offence unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on, the default was excusable.

Penalties for non-compliance with sections 374 or 375.

(2) An officer of a company commits an offence if he fails to take all reasonable steps for securing compliance by the company with section 375 of this Act, or has intentionally caused any default by the company under it.

(3) A person who commits an offence under this section, is liable to a penalty as the Commission shall specify in its regulations.

377. (1) In the case of every company, the directors shall, in respect of each year of the company, prepare financial statement for the year.

Directors' duty to prepare annual accounts.

(2) Subject to subsection (3), the financial statements required under subsection (1) shall include—

- (a) statement of the accounting policies;
- (b) the balance sheet or balance sheet as at the last day of the year;
- (c) a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the year;
- (d) notes on the accounts;
- (e) the auditors' report;
- (f) the directors' report;
- (g) a statement of the source and application of fund or statement of cash flow;
- (h) changes in equity;
- (i) a value-added statement for the year;
- (j) a five year financial summary;
- (k) in the case of a holding company, the group financial statements; and
- (l) such other matters as are required in accordance with

the applicable accounting standards.

- (3) The financial statements of a private company need not include the matters stated in subsection (2) (a), (g), (h) and (i).
- (4) The directors shall, at their first meeting after the incorporation of the company, determine what date in each year financial statements is made up, and they shall give notice of the date to the Commission within 14 days of the determination.
- (5) In the case of a holding company, the directors shall ensure that, except where in their opinion there are good reasons against it, the year of each of its subsidiaries shall coincide with the year of the company.

#### FORM AND CONTENT OF COMPANY, INDIVIDUAL AND GROUP FINANCIAL STATEMENTS

378. (1) The financial statements of a company prepared under section 377 of this Act, shall comply with the requirements of the First Schedule to this Act (so far as applicable) with respect to their form and content, and with the accounting standards laid down in the statements of accounting standards issued by the Financial Reporting Council of Nigeria, provided such accounting standards do not conflict with the provisions of this Act or the First Schedule to this Act.

Form and content of individual financial statements.

First Schedule.

- (2) The balance sheet shall give a true and fair view of the state of affairs of the company as at the end of the year, and the profit and loss account shall give a true and fair view of the profit or loss of the company for the year.
- (3) The statement of the source and application of funds shall provide information on the generation and utilisation of funds by the company during the year.
- (4) The value added statement shall report the wealth created by the company during the year and its distribution among various interest groups such as the employees, government, creditors, proprietors and the company.
- (5) The five-year financial summary shall provide a report for a comparison over a period of five years or more of vital financial information.
- (6) Subsection (2) overrides —

(a) the requirements of the First Schedule to this Act; and

First Schedule.

(b) all other requirements of this Act as to the matters to be included in the accounts of a company or in notes to those accounts, and accordingly, the provisions of subsections (7) and (8) shall have effect.

- (7) If the balance sheet or profit and loss account drawn up in accordance with those requirements would not provide sufficient information to comply with subsection (2), any necessary additional information shall be provided in that balance sheet, profit and loss account or in a note to the accounts.
- (8) If, owing to special circumstances in the case of any company, compliance with any such requirement in relation to the balance sheet or profit and loss account would prevent compliance with subsection (2), (even if additional information were provided in accordance with subsection (4)), the directors shall depart from that requirement in preparing the balance sheet or profit and loss account (so far as necessary) in order to comply with subsection (2).
- (9) If the directors depart from any such requirement, particulars of the departure, the reasons for it and its effects shall be given in a note to the accounts.
- (10) Subsections (1) - (9) do not apply to group accounts prepared under section 379 (1) and (2) apply to a company's profit and loss account (or require the notes otherwise required in relation to that account) if—

- (a) the company has subsidiaries; and

- (b) the profit and loss account is framed as a consolidated account dealing with all or any of the subsidiaries of the company as well as the company—

- (i) complies with the requirements of this Act relating to consolidated profit and loss account, and

- (ii) shows how much of the consolidated profit and loss for the year is dealt with in the individual financial statements of the company.

- (11) If group financial statements are prepared and advantage is taken of subsection (7), that fact shall be disclosed in a note to the group financial statements.

379. (1) If, at the end of a year a company has subsidiaries, the directors shall, as well as preparing individual accounts of each subsidiary for that year, also prepare group financial statements being accounts or statements which deal with the state of affairs and profit or loss of the entire company and the subsidiaries.

Group financial statements of holding company.

- (2) The provisions of subsection (1) do not apply in instances exempted under accounting standards issued by the Financial Reporting Council of Nigeria.
- (3) A group financial statement may not deal with a subsidiary, if the directors of the company are of the opinion that—

- (a) it is impracticable, or would be of no real value to the members, in view of the insignificant amounts involved;
- (b) it would involve expense or delay out of proportion to its value to members of the company;
- (c) the result would be misleading, or harmful to the business of the company or any of its subsidiaries; or
- (d) the business of the holding company and that of the subsidiary are so different that they cannot reasonably be treated as a single undertaking.

(4) The group financial statements of a company shall consist of a consolidated—

- (a) balance sheet dealing with the state of affairs of the company and all the subsidiaries of the company; and
- (b) profit and loss account of the company and its subsidiaries.

(5) If the directors are of the opinion that it is better for the purpose of presenting the same or equivalent information about the state of affairs and profit or loss of the company and its subsidiaries, and that to so present it may be readily appreciated by the members of the company, the group financial statements may be prepared in a form not consistent with subsection (1) and in particular the group financial statement may consist of—

- (a) more than one set of consolidated financial statements dealing respectively with the company and one group of subsidiaries and with other groups of subsidiaries;
- (b) separate financial statements dealing with each of the subsidiaries; or
- (c) statements expanding the information about the subsidiaries in individual financial statements of the company, or in any other form.

(6) The group financial statements may be wholly or partly incorporated in the individual balance sheet and profit and loss account of the holding company.

380. (1) The group financial statements of a holding company shall comply with the requirements of the First Schedule to this Act, so far as applicable to group financial statements in the form in which those accounts are prepared with

Form and content of group financial statements.

First Schedule.

respect to the form and content of those statements and any additional information to be provided by way of notes to those accounts.

(2) Group financial statements together with any notes thereon shall give a true and fair view of the state of affairs and profit or loss of the company and the subsidiaries dealt with by those statements as a whole.

(3) Subsection (2) overrides—

(a) the requirements of the First Schedule to this Act; and

(b) all the requirements of this Act as to the matters to be included in group financial statements or in notes to those statements and accordingly subsections (4) and (5) shall have effect.

(4) If group financial statements are not in accordance with the requirements of this Act by not providing sufficient information in compliance with subsection (2), any necessary additional information shall be provided in, or in a note to, the group financial statements.

(5) If, owing to special circumstances in the case of any company, compliance with any such requirements in relation to its group financial statements would prevent the statements from complying with subsection (2), (even if additional information were provided in accordance with subsection (4)), the directors may depart from that requirement in preparing the group financial statements.

381. (1) Subject to subsection (4), a company is for the purposes of this Act deemed to be a subsidiary of another company if the company—

(a) is a member of the company and controls the composition of its board of directors;

(b) holds more than 50% in nominal value of its equity share capital; or

(c) the first-mentioned company is a subsidiary of any company which is that other's subsidiary.

(2) For the purposes of subsection (1), the composition of the board of directors of a company is deemed to be controlled by another company if that other company by the exercise of some power, without the consent or concurrence of any other person, can appoint or remove the holders of all or majority of the directors.

(3) For purposes of subsection (2), the other company is deemed to have power to appoint a director with respect to which any of the following conditions is satisfied

Meaning of holding company, subsidiary and wholly-owned subsidiary.

that—

- (a) a person cannot be appointed to it without the exercise in his favour by the other company of such power as is mentioned in this section;
- (b) the appointment of a person to the directorship follows necessarily from his appointment as director of the other company; or
- (c) the directorship is held by the other company itself or by a subsidiary of it.

(4) In determining whether one company is a subsidiary of another—

- (a) any share held or power exercisable by the other in a fiduciary capacity is treated as not held or exercisable by it;
- (b) subject to paragraphs (c) and (d), any share held or power exercisable –
  - (i) by any person as nominee for the other (except where the other is concerned only in a fiduciary capacity), or
  - (ii) by, or by a nominee for, a subsidiary or the other (not being a subsidiary which is concerned only in a fiduciary capacity), is treated as held or exercisable by the other;
- (c) any share held or power exercisable by any person by virtue of the provisions of any debentures of the first mentioned company or of a trust deed for securing any issue of such debentures are disregarded; and
- (d) any share held or power exercisable by, or by a nominee for, the other or its subsidiary (not being held or exercisable as mentioned in paragraph (c)), shall be treated as not held or exercisable by the other, if the ordinary business of the other or its subsidiary (as the case may be) includes the lending of money and the shares are held or the power is exercisable by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(5) For the purposes of this Act —

- (a) a company is deemed to be the holding company of another, if the other is its subsidiary; and
- (b) a body corporate is deemed to be the wholly-owned subsidiary of another, if it has no member except that other and that other's wholly owned subsidiaries are its or their nominees.

(6) In this section, “company” includes any body corporate.

382. (1) The additional matters contained in the Second Schedule shall be disclosed in the company's financial statements for the year; and in that Schedule, where a thing is required to be stated or shown or information is required to be given, it is construed to mean that the thing shall be stated or shown, or the information is to be given in a note to those statements.

Additional disclosure required in notes to financial statements.  
Second Schedule.

(2) In the Second Schedule to this Act —

- (a) Parts I and II deal respectively with the disclosure of particulars of the subsidiaries of the company and its shareholders;
- (b) Part III deals with the disclosure of financial information relating to subsidiaries;
- (c) Part IV requires a subsidiary company to disclose its ultimate holding company;
- (d) Part V deals with the emoluments of directors, including emoluments waived, pensions of directors and compensation for loss of office to directors and past directors; and
- (e) Part VI deals with disclosure of the number of the employees of the company who are remunerated at higher rates.

(3) Whenever it is stated in the Second Schedule of this Act that this subsection applies to certain particulars or information, the particulars or information is annexed to the annual return first made by the company after copies of its financial statements have been laid before its shareholders in a general meeting and if a company fails to satisfy this obligation, the company and every officer of it are liable to a penalty as the Commission shall specify in its regulations.

- (4) It is the duty of any director of a company to give notice to the company of such matters relating to himself as may be necessary for the purposes of Part V of the Second Schedule to this Act and this applies to persons who are or have at any time in the preceding three years been officers as it applies to directors. Second Schedule.
- (5) A person who makes default in complying with the provisions of subsection (4), is liable to a penalty as the Commission shall specify in its regulations.
383. (1) The group financial statements of a holding company for a year shall comply with Part I of the Third Schedule (so far as applicable) as regards the disclosure of transactions, arrangements and agreements mentioned therein, including loans, quasi loans and other dealings in favour of directors. Disclosure of loans in favour of directors and connected persons.  
Third Schedule.
- (2) In the case of a company other than a holding company, its individual accounts shall comply with Part I of the Third Schedule (so far as applicable) as regards disclosure matters contained in the Schedule. Third Schedule.
- (3) Particulars which are required to be contained in Part I of the Third Schedule in any financial statements are required in respect of shadow directors as well as a director given by way of notes. Third Schedule.
- (4) Where by virtue of section 379 (2) or (3), a company does not prepare group financial statements for a year, it shall disclose such matters in its individual statements as would have been disclosed in group financial statements.
- (5) The requirements of this section apply with such modifications as are necessary to bring them in line with Part I of the Third Schedule to this Act, (including with particulars of exceptions in respect of recognised banks it shall disclose). Third Schedule.
384. (1) The group financial statements of a holding company for a year shall comply with Part II of the Third Schedule to this Act, so far as applicable, as regards transactions, arrangements and agreements made by the company or its subsidiary for persons who at any time during that year were officers of the company but not directors. Disclosure of loans to officers of the company and statements of amounts outstanding.  
Third Schedule.
- (2) In the case of a company other than a holding company, its individual accounts shall comply with Part II of the Third Schedule to this Act so far as applicable, as regards matters contained therein. Third Schedule.
- (3) Subsections (1) and (2) do not apply in relation to any transaction or agreement made by a recognised bank for any of its officers or for any of the officers of its holding company.
- (4) Particulars required by Part II of the Third Schedule to be in any account shall be given by way of notes to the accounts. Third Schedule.

- (5) Where by virtue of 379 (2) or (3), a company does not prepare group financial statements for a year, it shall disclose this fact in its individual financial statements as required by subsection (1).

## DIRECTORS' REPORTS

385. (1) In the case of every company, there shall be prepared in respect of each year, a report by the directors—
- Directors' report.
- (a) containing a fair view of the development of the business of the company and its subsidiaries during the year and of their position at the end of it; and
  - (b) stating the amount, if any, which they recommend should be paid as dividend and the amount (if any) which they propose to carry to reserves.
- (2) The directors' report shall state the names of the persons who, at any time during the year, were directors of the company, and the financial activities of the company and its subsidiaries in the course of the year and any significant change in those activities in the year.
- (3) The report shall also state the matters, and give the particulars, required by Part I of the Fourth Schedule to this Act. Fourth Schedule.
- (4) Part II of the Fourth Schedule to this Act applies as regards the matters to be stated in the report of the directors in the circumstances specified therein. Fourth Schedule.
- (5) Part III of the Fourth Schedule to this Act applies as regards the matters to be stated in the directors' report relative to the employment, training and advancement of disabled persons, the health, safety and welfare at work of the employees of the company and the involvement of employees in the affairs, policy and performance of the company. Fourth Schedule.
- (6) In respect of any failure to comply with the requirements of this Act as to the matters to be stated and the particulars to be given in the directors' report, every person who was a director of the company immediately before the end of the period prescribed for laying and delivering financial statements commits an offence and is liable on conviction to a penalty as the Commission shall specify in its regulations.
- (7) In proceedings for ascertaining guilt under subsection (6), it is a defence for the person to prove that he took all reasonable steps for securing compliance with the requirements in question.

## PROCEDURE ON COMPLETION OF FINANCIAL STATEMENTS

386. (1) A company's balance sheet and every copy of it which is laid before the company in general meeting or delivered to the Commission shall be signed on behalf of the board by two of the directors of the company. Signing of balance sheet and documents to be annexed thereto.
- (2) If a copy of the balance sheet —
- (a) is laid before the company or delivered to the Commission without being signed as required by this section, or
  - (b) not being a copy so laid or delivered, is issued, circulated or published in a case where the balance sheet has not been signed as so required or where (the balance sheet having been so signed) the copy does not include a copy of the signature as the case may be, the company and each officer of it are liable to a penalty as the Commission shall specify in its regulations.
- (3) A company's profit and loss account and, so far as not incorporated in its individual balance sheet or profit and loss account, any group accounts of a holding company, shall be annexed to the balance sheet, and the auditors' report and the directors' report shall also be attached to the balance sheet.
- (4) The balance sheet and the profit and loss account annexed to it shall be approved by the board of directors and signed on their behalf by two directors authorised to do so.
387. (1) In the case of every company, a copy of the company's financial statements for the year shall, at least 21 days before the date of the meeting at which they are to be laid in accordance with section 388 of this Act be sent to the following persons— Persons entitled to receive financial statements as of right.
- (a) every member of the company (whether or not entitled to receive notice of general meetings);
  - (b) every holder of the company's debentures, (whether or not so entitled); and
  - (c) all persons other than members and debenture holders, being persons so entitled.
- (2) In the case of a company not having a share capital, subsection (1) shall not require a copy of the financial statements to be sent to a member of the company who is not entitled to receive notices of general meetings of the company, or to a

holder of the company's debenture who is not so entitled.

(3) Subsection (1) shall not require copies of the financial statements to be sent to—

- (a) a member of the company or a debenture holder, a person who is not entitled to receive notices of general meetings, and of whose address the company is unaware;
- (b) more than one of the joint holders of shares or debentures none of whom are entitled to receive such notices; or
- (c) those who are not entitled in the case of joint holders of shares or debentures, some of whom are not entitled to receive such notices.

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

(5) If default is made in complying with subsection (1), the company and each officer of it are liable to a penalty as the Commission shall specify in its regulations.

388. (1) In respect of each year, the directors shall, at a date not later than 18 months after incorporation of the company and subsequently once at least in every year, lay before the company in general meeting copies of the financial statements of the company made up to a date not exceeding nine months previous to the date of the meeting.

Directors' duty to lay and deliver financial statements.

(2) The auditors' report shall be read before the company in general meeting, and be open to the inspection of any member of the company.

(3) In respect of each year, the directors shall deliver with the annual return to the Commission a copy of the balance sheet, the profit and loss account and the notes on the statements which were laid before the general meeting as required by this section.

(4) In the case of an unlimited company, the directors are not required by subsection (3) to deliver a copy of the accounts if—

- (a) at no time during the accounting reference period has the company been, to its knowledge, the subsidiary of a company that was then limited and at no such time, to its knowledge, have there been held or been exercisable, by or on behalf of two or more companies that were

then limited, shares or powers which, if they had been held or been exercisable by one of them, would have made the company its subsidiary; and

(b) at no such time has the company been the holding company of a company which was then limited.

(5) References in this section to a company that was limited at a particular time are to a body corporate (under whatever law incorporated) the liability of whose members was at that time limited.

389. (1) If in a year any of the requirements of section 388 (1) or (3) are not complied with by any company, every person who immediately before the end of that period was a director of the company, in respect of each of those subsections which is not so complied with, is liable to a penalty as the Commission shall specify in its regulations.

Penalty for non-compliance with section 388.

(2) If a person is charged with an offence in respect of any of the requirements of section 384 (1) or (3), it is a defence for him to prove that he took all reasonable steps for securing that those requirements be complied with before the end of the period allowed for laying and delivering accounts.

(3) In proceedings under this section with respect to a requirement to lay a copy of a document before a company in general meeting, or to deliver a copy of a document to the Commission, it is not a defence to prove that the document in question was not in fact prepared as required by this Part of this Act.

390. (1) If—

Default order in case of non-compliance.

(a) in respect of a year, any of the requirements of section 388 (1) and (3) of this Act has not been complied with by a company before the end of the period allowed for laying and delivering financial statements, and

(b) the directors of the company fail to make good the default within 14 days after the service of a notice on them requiring compliance,

the court may on application by any member or creditor of the company or by the Commission make an order directing the directors (or any of them) to make good the default within such time as may be specified in the order.

(2) The court order may provide that all costs of and incidental to the application be borne by the directors.

(3) Nothing in this section affects the provisions of section 389 of this Act.

391. (1) If any financial statements of a company (other than its group financial statement) of which a copy is laid before the shareholders in general meeting or delivered to the Commission do not comply with the requirement of this Act as to the matters to be included in, or in a note to, those financial statements, every person who at the time when the copy is laid or delivered is a director of the company is, in respect of each contravention, liable to a penalty as the Commission shall specify in its regulations
- (2) If any group financial statements of which a copy is laid before a company in a general meeting or delivered to the Commission do not comply with section 388 (4) and (5) or section 389 and with the other requirements of this Act as to the matters to be included in or in a note to those financial statements, each person who at the time when the copy was so laid or delivered was a director of the company is liable to a penalty as the Commission shall specify in its regulations.
- (3) In proceedings against a person for an offence under this section, it is a defence for him to prove that he took all reasonable steps for securing compliance with the requirements in question.

Penalty for laying or delivering defective financial statements.

392. (1) Any member of a company, whether or not entitled to have copies of the company's financial statements sent to him, and any holder of the company's debentures (whether or not so entitled) is entitled to be furnished on demand and without charge with a copy of the company's last financial statements.
- (2) If, when a person makes a demand for a document with which he is entitled by this section to be furnished, default is made in complying with the demand within seven days after its making, the company and each officer are liable to a penalty as the Commission shall specify in its regulations, unless it is proved that the person has already made a demand for, and been furnished with, a copy of the documents.

Shareholders' right to obtain copies of financial statements.

#### MODIFIED FINANCIAL STATEMENTS

393. (1) In certain cases a company's directors may, in accordance with Part 1 of the Sixth Schedule to this Act, deliver modified financial statements in respect of a year as a small company.
- (2) For the purposes of sections 395 - 397 and the Sixth Schedule to this Act, "deliver" means deliver to the Commission.
394. (1) A company qualifies as small in relation to its first financial year if the qualifying conditions are met in that year.
- (2) A company qualifies as small in relation to a subsequent financial year if the

Entitlement to deliver financial statements in modified form.

Sixth Schedule.

Sixth Schedule.

Qualification of a small company.

qualifying conditions —

- (a) are met in that year and the preceding financial year;
- (b) are met in that year and the company qualified as small in relation to the preceding financial year; or
- (c) were met in the preceding financial year and the company qualified as small in relation to that year.

(3) The qualifying conditions are met by a company in a year in which it satisfies the following requirements—

- (a) it is a private company;
- (b) its turnover is not more than ₦120,000,000 or such amount as may be fixed by the Commission from time to time;
- (c) its net assets value is not more than ₦60,000,000 or such amount as may be fixed by the Commission from time to time;
- (d) none of its members is an alien;
- (e) none of its members is a government, government corporation or agency or its nominee; and
- (f) in the case of a company having share capital, the directors between themselves hold at least 51% of its equity share capital.

(4) For a period that is a company's financial year but not in fact a year the maximum figures for turnover shall be proportionately adjusted.

(5) The "balance sheet total" means the aggregate of the amounts shown as assets in the company's balance sheet.

(6) The "number of employees" means the average number of persons employed by the company in that year, determined as follows —

- (a) find for each month in the financial year the number of persons employed under contracts of service by the company in that month (whether throughout the month or not),

(b) add together the monthly totals, and

(c) divide by the number of months in the financial year.

(7) This section is subject to section 393.

395. (1) A parent company qualifies as a small company in relation to a financial year only if the group headed by it qualifies as a small group.

Companies qualifying as small: parent companies.

(2) A group qualifies as small in relation to the parent company's first financial year if the qualifying conditions are met in that year.

(3) A group qualifies as small in relation to a subsequent financial year of the parent company if the qualifying conditions —

(a) are met in that year and the preceding financial year;

(b) are met in that year and the group qualified as small in relation to the preceding financial year; or

(c) were met in the preceding financial year and the group qualified as small in relation to that year.

(4) The qualifying conditions are met by a group in a year in which it satisfies the following requirements—

(a) it is a private company;

(b) its turnover is not more than ₦120,000,000 or such amount as may be fixed by the Commission from time to time;

(c) its net assets value is not more than ₦60,000,000 or such amount as may be fixed by the Commission;

(d) none of its members is an alien;

(e) none of its members is a government or government corporation or agency or its nominee; and

(f) in the case of a company having share capital, the directors between themselves hold at least 51% of its equity share capital.

(5) The aggregate figures are ascertained by aggregating the relevant figures determined in accordance with section 394 for each member of the group.

(6) The figures for each subsidiary undertaking are those included in its individual accounts for the relevant financial year, if—

- (a) its financial year ends with that of the parent company, that financial year;
- (b) not, its financial year ending last before the end of the financial year of the parent company; and
- (c) those figures cannot be obtained without disproportionate expense or undue delay, the latest available figures shall be taken.

396. (1) The directors of a company may (subject to section 397 where the company has subsidiaries) deliver individual financial statements modified as for a small company in the cases specified in subsections (2) and (3), and Part 1 of the Sixth Schedule apply with respect to the delivery of financial statements so modified.

Modified individual financial statements.

Sixth Schedule.

(2) In respect of the company's first year the directors may deliver financial statements modified as for a small company, if in that year it qualifies as small.

(3) The directors may in respect of a company's year subsequent to the first deliver financial statements modified as for a small company, —

- (a) if the company qualifies as small and it also so qualified in the preceding year;
- (b) although not qualifying in that year as small, if in the preceding year it so qualified and the directors were entitled to deliver financial statements so modified in respect of that year; or
- (c) if, in that year the company qualifies as small and the directors were entitled under paragraph (b) to deliver financial statements so modified for the preceding year (although the company did not in that year qualify as small).

397. (1) This section applies to a holding company where in respect of a year section 379 requires the preparation of group financial statements for the company and its subsidiaries.

Modified financial statements of holding company.

(2) The directors of the holding company may not under section 396 of this Act deliver financial statements modified as for a small company, unless the group (that is to say, the holding company and its subsidiaries together) is in that year a small group and the group is small if it qualifies under section 394 of this Act

(applying that section as provided under subsections (3) and (4), as if it were all one company).

(3) The figures to be taken into account in determining whether the group is small are the group account figures, that is—

(a) where the group financial statements are prepared as consolidated financial statements, the figures for turnover and balance sheet total; and

(b) where the group financial statements are not prepared as consolidated financial statements, the corresponding figures given in the group financial statements, with such adjustment as would have been made if the statements had been prepared in consolidated form, and aggregated in either case with the relevant figures for the subsidiaries (if any) omitted from the group accounts (excepting those for any subsidiary omitted under section 379 (3) (a) on the ground of impracticability).

(4) In the case of each subsidiary omitted from the group financial statements, the figures relevant as regards turnover, and balance sheet total are those which are included in the financial statements of that subsidiary prepared in respect of its relevant year (with such adjustment as would have been made if those figures had been included in group financial statements prepared in consolidated form).

(5) For the purposes of subsection (4), the relevant year of the subsidiary is —

(a) if its year ends with that of the holding company to which the group financial statements relate, that year; and

(b) if not, the subsidiary's year ending last before the end of the year of the holding company.

(6) If the directors are entitled to deliver modified financial statements, they may also deliver modified group financial statements, and such group financial statements if —

(a) consolidated, may be in accordance with Part II of the Sixth Schedule (while otherwise comprising or corresponding with group financial statements prepared under section 379 of this Act); and

(b) not consolidated, may be such as (together with any

Sixth Schedule.

notes) give the same or equivalent information as required by paragraph (a), and Part III to the Sixth Schedule to this Act applies to modified group financial statements whether consolidated or not.

#### PUBLICATION OF FINANCIAL STATEMENTS

398. (1) This section applies to the publication by a company of full individual or group financial statements, required by section 388 to be laid before the company in general meeting and delivered to the Commission, including the directors' report, unless dispensed with under paragraph 3 of the Fourth Schedule to this Act, but does not apply to interim financial statements. Publication by a company of full individual or group financial statements. Fourth Schedule.
- (2) If a company publishes individual financial statements (modified or otherwise) for a year, it shall publish with them the relevant auditors' report.
- (3) If a company required by section 379 to this Act to prepare group financial statements for a year, publishes individual financial statements for that year, it shall also publish with them its group financial statements (which may be modified financial statements but only if the individual financial statements are modified).
- (4) If a company publishes group financial statements (modified or not) without its individual financial statements, it shall publish with them the relevant auditors' report.
- (5) References in this section to the relevant auditor's report are to the auditors' report under section 404 or, in the case of modified financial statements (individual or group), the auditors' special report under paragraph 10 of the Fourth Schedule to this Act. Fourth Schedule.
- (6) If default is made in complying with any provision of this section, the company and each officer of the company are liable to a penalty as the Commission shall specify in its regulations.
399. (1) This section applies to the publication by a company of abridged financial statements, that is to say, any balance sheet or profit and loss account relating to a year of the company or purporting to deal with any such year, otherwise than as part of full financial statements (individual or group) to which section 398 of this Act applies. Publication of abridged financial statements.
- (2) The reference in subsection (1) to a balance sheet or profit and loss account, in relation to financial statements published by a holding company, includes, "an account in any form purporting to be a balance sheet or profit and loss account for the group consisting of the holding company and its subsidiaries".

(3) If the company publishes abridged financial statements, it shall publish with those statements, a statement indicating—

(a) that the statements are not full financial statements;

(b) whether full individual or full group financial statements according as the abridged statements deal solely with the company's own affairs or with the affairs of the company and any subsidiaries have been delivered to the Commission or, in the case of an unlimited company exempted under section 388 (4), from the requirement to deliver financial statements, that the company is so exempted;

(c) whether the company's auditors have made a report under section 404 on the company's financial statements for any year with which the abridged financial statements purport to deal; and

(d) whether any report so made was unqualified (meaning that it was a report, without qualification, to the effect that in the opinion of the person making it, the company's financial statements had been properly prepared).

(4) Where a company publishes abridged financial statements, it shall not publish with those statements any such report of the auditors as is mentioned in subsection (3) (c).

(5) If default is made in complying with any provision of this section, the company and each officer of the company are liable to a penalty as the Commission shall specify in its regulations.

#### SUPPLEMENTARY

400. The Minister may after consultation with the Financial Reporting Council of Nigeria by regulations in a statutory instrument—

Power to alter accounting requirements.

(a) add to the classes of documents to be —

(i) comprised in a company's financial statements for a year to be laid before the company in general meeting as required by section 388, or

(ii) delivered to the Commission under that section, and make provision as to the matters to be

included in any document to be added to either class; or

- (b) modify the requirements of this Act as to the matters to be stated in a document of any such class, or reduce the classes of documents to be delivered to the Commission under section 386.

#### CHAPTER 15 – AUDIT

401. (1) Every company shall at each annual general meeting appoint an auditor or auditors to audit the financial statements of the company, and to hold office from the conclusion of that, until the conclusion of the next, annual general meeting. Appointment of auditors.

(2) At any annual general meeting a retiring auditor, however appointed, shall be re-appointed without any resolution being passed unless—

- (a) he is not qualified for re-appointment;
- (b) a resolution has been passed at that meeting appointing some other person instead of him or providing expressly that he shall not be re-appointed; or
- (c) he has given the company notice in writing of his unwillingness to be re-appointed:

Provided that where notice is given of an intended resolution to appoint some person or persons in place of a retiring auditor, and by reason of the death, incapacity or disqualification of that person or of all those persons, as the case may be, the resolution cannot be proceeded with, the retiring auditor shall not be automatically re-appointed by virtue of this subsection.

- (3) Where at an annual general meeting, no auditors are appointed or re-appointed, the directors may appoint a person to fill the vacancy.
- (4) The company shall, within one week of the power of the directors under subsection (3) becoming exercisable, give notice of that fact to the Commission; and if a company fails to give notice as required by this subsection, the company and every officer of the company shall be liable to a penalty as the Commission shall specify in its regulations.
- (5) Subject to paragraphs (a) and (b), the first auditors of a company may be appointed by the directors at any time before the company is entitled to commence business and auditors so appointed hold office until the conclusion of the next annual general meeting, provided that—

- (a) the company may at a general meeting remove any such auditors and appoint in their place any other person who has been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company at least 14 days before the date of the meeting; and
- (b) if the directors fail to exercise their powers under this subsection, the company may, in a general meeting convened for that purpose, appoint the first auditors and thereupon the said powers of the directors ceases.

(6) The directors may fill any casual vacancy in the office of auditor but while any such vacancy continues, the surviving or continuing auditor or auditors, if any, may act.

402. (1) A company is exempt from the requirements of this Act relating to the audit of accounts in respect of a financial year if- Exemption from audit requirement.

- (a) it has not carried on any business since its incorporation; or
- (b) it is a small company within the meaning of section 394.

(2) A company is not entitled to an exemption under subsection (1) if it was at any time within the financial year in question an insurance company, a bank or any other company as may be prescribed by the Commission.

403. (1) The provisions of any Act establishing a body of accountants shall have effect in relation to any investigation or audit for the purpose of this Act and none of the following persons is qualified for appointment as auditor of a company,— Qualification of Auditors.

- (a) an officer or servant of the company,
- (b) a person who is a partner of or in the employment of an officer or servant of the company, or
- (c) a body corporate.

(2) References in subsection (1) to an officer or servant shall be construed as not including references to an auditor.

(3) In the application of subsection (1), the disqualification extends and applies to persons who in respect of any period of an audit were in the employment of the company or were connected therewith in any manner.

(4) A person does not qualify for appointment as an auditor of a company if he is -

- (a) disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company;
- (b) a debtor to the company or to a company that is deemed to be related to the company by virtue of interest in shares, in an amount exceeding ₦500,000;
- (c) a shareholder or spouse of a shareholder of a company whose employee is an officer of the company;
- (d) a person who is or whose partner, employee or employer is responsible for the keeping of the register of holders of debentures of the company;
- (e) an employee of or consultant to the company who has been engaged for more than one year in the maintenance of any of the company's financial records or preparation of any of its financial statements; or
- (f) under subsection (6), disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company.

(5) Notwithstanding subsections (1), (3) and (4), a firm is qualified for appointment as auditor of a company if, all the partners are qualified for appointment as auditors of the company.

(6) A person shall not act as auditor of a company when he knows that he is disqualified for appointment to that office and if an auditor of a company, to his knowledge, becomes so disqualified during his term of office, he shall thereupon vacate his office and give notice in writing to the company that he has vacated it by reason of that disqualification.

(7) A person who acts as auditor in contravention of subsection (6), or fails without reasonable excuse to give notice of vacating his office as required by that subsection commits an offence and is liable to a penalty as the Commission shall specify in its regulations.

404. (1) The auditors of a company shall make a report to its members on the accounts examined by them, and on every balance sheet and profit and loss account, and on all group financial statements, copies of which are to be laid before the company in a general meeting during the auditors' tenure of office. Auditors' report and audit committee.
- (2) The auditors' report shall state the matters set out in the Fifth Schedule in addition to the report made under subsection (1), and the auditor shall in the case of a public company, make a report to an audit committee which shall be established by the public company. Fifth Schedule.
- (3) The audit committee referred to in subsection (2) shall consist of five members comprising of three members and two non-executive directors, the members of the audit committee are not entitled to remuneration, and are subject to election annually.
- (4) The audit committee shall examine the auditors' report and make recommendations thereon to the annual general meeting as it may deem fit.
- (5) All members of the audit committee shall be financially literate, and at least one member shall be a member of a professional accounting body in Nigeria established by an Act of the National Assembly.
- (6) Any member may nominate another member of the company to the audit committee by giving written notice of such nomination to the secretary of the company at least 21 days before the annual general meeting and any nomination not received prior to the meeting as stipulated is invalid.
- (7) Subject to such other additional functions and powers that the company's articles may stipulate, the objectives and functions of the audit committee are to—
- (a) ascertain whether the accounting and reporting policies of the company are in accordance with legal requirements and agreed ethical practices;
  - (b) review the scope and planning of audit requirements;
  - (c) review the findings on management matters in conjunction with the external auditor and departmental responses thereon;
  - (d) keep under review the effectiveness of the company's system of accounting and internal control;
  - (e) make recommendations to the board with regard to the

appointment, removal and remuneration of the external auditors of the company; and

- (f) authorise the internal auditor to carry out investigations into any activities of the company which may be of interest or concern to the committee.

405. (1) The chief executive officer and chief financial officer of a company other than a small company or persons performing similar functions shall certify in each audited financial statement that the -

Corporate responsibility  
for financial reports.

- (a) officer who signed the audited financial statements has reviewed them, and based on the officer's knowledge the -

- (i) audited financial statements do not contain any untrue statement of material fact or omit to state a material fact, which would make the statements misleading, in the light of the circumstances under which such statement was made, and

- (ii) audited financial statements and all other financial information included in the statements fairly present, in all material respects, the financial condition and results of operation of the company as of and for, the periods covered by the audited financial statements;

- (b) officer who signed the audited financial statements—

- (i) is responsible for establishing and maintaining internal controls and has designed such internal controls to ensure that material information relating to the company and its subsidiaries is made known to the officer by other officers of the companies, particularly during the period in which the audited financial statement report is being prepared,

- (ii) has evaluated the effectiveness of the company's internal controls within 90 days prior to the date of its audited financial statements, and

- (iii) certifies that the company's internal controls are effective as of that date;

- (c) officer who signed the audited financial statements

disclosed to the company's auditors and audit committee –

(i) all significant deficiencies in the design or operation of internal controls which could adversely affect the company's ability to record, process, summarise and report financial data, and has identified for the company's auditors any material weaknesses in internal controls, and

(ii) whether or not, there is any fraud that involves management or other employees who have a significant role in the company's internal control; and

(d) officer who signed the report, has indicated in the report, whether or not, there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

(2) Where a managing director, chief financial officer or person performing similar functions fails to discharge the duty imposed on him under this section, he commits an offence and is liable on conviction to a penalty as the Commission shall specify in its regulations.

406. (1) It shall be an offence for any officer, insider, director of a company, or any other person acting under the direction of such officer, insider or director, to take any action to influence, coerce, manipulate or mislead any external auditor engaged in the performance of an audit of the financial statements of that company for the purpose of rendering such financial statements misleading.

Improper influence on conduct of audit.

(2) A person who commits an offence under subsection (1) is liable on conviction to a penalty as the Commission shall specify in its regulations.

(3) For the purposes of this Act, "Insider" shall have the meaning given to it under the Investments and Securities Act, or any subsequent amendments thereto.

Cap. I24, LFN, 2004.

407. (1) The company's auditors shall, in preparing their report to carry out such investigations as may enable them to form an opinion whether –

Auditors' duties and powers.

(a) proper accounting records have been kept by the company and proper returns adequate for their audit have been received from branches not visited by them;

or

(b) the company's balance sheet and (if not consolidated) its profit and loss account are in agreement with the accounting records and returns.

(2) If the auditors are of the opinion that proper accounting records have not been received from branches not visited by them, or if the balance sheet and (if not consolidated) the profit and loss account are not in agreement with the accounting records and returns, the auditors shall state that fact in their report.

(3) Every auditor of a company has a right of access at all times to the company's books, accounts and vouchers, and be entitled to require from the company's office such information and explanations as he thinks necessary for the performance of the auditor's duties.

(4) If the requirements of Part V and VI of the Second Schedule and Parts I and II of the Third Schedule to this Act are not complied with in the accounts, it is the auditors' duty to include in their report, so far as they are reasonably able to do so, a statement giving the required particulars.

Second Schedule.

Third Schedule.

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

408. (1) The remuneration of the auditors of a company—

Remuneration of auditors.

(a) in the case of an auditor appointed by the directors, may be fixed by the directors; or

(b) shall, subject to paragraph (a), be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

(2) For the purposes of subsection (7), "remuneration" includes sums paid by the company in respect of the auditors' expenses.

409. (1) A company may by ordinary resolution remove an auditor before the expiration of his term of office, notwithstanding anything in any agreement between it and him.

Removal of auditors.

(2) Where a resolution removing an auditor is passed at a general meeting of a company, the company shall within 14 days give notice of that fact in the prescribed form to the Commission and if a company fails to give the notice required by this subsection, the company and each officer of the company are liable to a penalty as the Commission shall specify in its regulations.

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

410. (1) A company's auditors are entitled to attend any general meeting of the company and to receive all notices of and other communications relating to any general meeting which a member of the company is entitled to receive and to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditor.

Auditors' right to attend company's meetings.

(2) An auditor of a company who has been removed is entitled to attend—

(a) the general meeting at which his term of office would otherwise have expired; and

(b) any general meeting at which it is proposed to fill the vacancy caused by his removal, and to receive all notices of, and other communications relating to, any such meeting which any member of the company is entitled to receive, and to be heard at any such meeting which he attends on any part of the business of the meeting which concerns him as former auditor of the company.

411. (1) A special notice is required for a resolution at a general meeting of a company—

Supplementary provisions relating to auditors.

(a) appointing as auditor a person other than a retiring auditor;

(b) filling a casual vacancy in the office of auditor;

(c) re-appointing as auditor a retiring auditor who was appointed by the directors to fill a casual vacancy; or

(d) removing an auditor before the expiration of his term of office.

(2) On receipt of notice of such an intended resolution as is mentioned in subsection (1), the company shall forthwith send a copy of it—

(a) to the person proposed to be appointed or removed;

(b) in a case within subsection (1) (a), to the retiring auditors; and

(c) in a case within subsection (1) (b) or (c), the casual vacancy was caused by the resignation of an auditor, to the auditor who resigned.

(3) Where notice is given of such a resolution as is mentioned in subsection (1) (a) or (d) and the retiring auditor (or, the auditor proposed to be removed) makes, with respect to the intended resolution, representations in writing to the company not exceeding a reasonable length, and requests their notification to members of the company, the company shall (unless the representations are received by it too late for it to do so)—

(a) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and

(b) send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent.

(4) If a copy of any such representations is not sent out as required by subsection (3) because they were received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representations be read out at the meeting.

(5) Copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person claiming to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter, and the Court may order the company's costs on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

412. (1) An auditor of a company may resign his office by depositing a notice in writing to that effect at the company's registered office, and such notice operates to bring his term of office to an end on the date of which the notice is deposited, or on such later date as may be specified.

Resignation of auditors.

(2) An auditor's notice of resignation is not effective unless it contains either—

(a) a statement to the effect that there are no circumstances connected with his resignation which he considers should be brought to the notice of the members or creditors of the company; or

(b) a statement of any such circumstances as are mentioned above.

(3) Where a notice under this section is deposited at a company's registered office, the company shall within 14 days send a copy of the notice—

(a) to the Commission; and

(b) if the notice contained a statement under subsection (2) (b), to every person who under section 387 of this Act is entitled to be sent copies of the financial statements.

(4) The company or any person claiming to be aggrieved may, within 14 days of the receipt by the company of a notice containing a statement under subsection (2) (b), apply to the Court for an order under subsection (5).

(5) If on such an application the Court is satisfied that the auditor is using the notice to secure needless publicity for defamatory matter, it may, by order, direct that copies of the notice need not be sent out, and the Court may further order the company's costs on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

(6) The company shall, within 14 days of the Court's decision, send to the persons mentioned in subsection (3) —

(a) if the Court makes an order under subsection (5), a statement setting out the effect of the order; and

(b) if not, a copy of the notice containing the statement under subsection (2) (b).

(7) If default is made in complying with the provisions of subsection (3) or (6), the company and each officer of the company are liable to a penalty as the Commission shall specify in its regulations.

413. (1) Where an auditor's notice of resignation contains a statement under section 412 (2) (b), there may be deposited with the notice a requisition signed by the auditor calling on the directors of the company forthwith to convene an extraordinary general meeting of the company for the purpose of receiving and considering such explanation of the circumstances connected with his resignation as he may wish to place before the meeting.

Right of resigning auditor to requisition company meeting.

(2) Where an auditor's notice of resignation contains such a statement, the auditor may request the company to circulate to its members before—

(a) the general meeting at which his term of office would otherwise have expired; or

- (b) any general meeting at which it is proposed to fill the vacancy caused by his resignation or convened on his requisition, a statement in writing (not exceeding a reasonable length) of the circumstances connected with his resignation.
- (3) If a resigning auditor requests the circulation of a statement by virtue of subsection (2), the company shall (unless the statement is received by it too late for it to comply)—
  - (a) in any notice of the meeting given to members of the company, state the fact of the statement having been made; and
  - (b) send a copy of the statement to every member of the company to whom notice of the meeting is or has been sent.
- (4) If the directors do not within 21 days from the date of the deposit of a requisition under this section proceed to convene a meeting for a day not more than 28 days after the date on which the notice convening the meeting is given, every director is liable to a penalty as the Commission shall specify in its regulations.
- (5) If a copy of the statement mentioned in subsection (2) is not sent out as required by subsection (3) because it was received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the statement be read out at the meeting.
- (6) Copies of a statement need not be sent out and the statement need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter, and the Court may order the company's costs on such an application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.
- (7) An auditor who has resigned his office is entitled to attend any such meeting as is mentioned in subsection (2) (a) or (b) and to receive all notices of and other communications relating to any such meeting which any member of the company is entitled to receive, and to be heard at any such meeting which concerns him as former auditor of the company.

414. (1) Where a company has a subsidiary, then—

- (a) if the subsidiary is a body corporate, incorporated in Nigeria, it is the duty of the subsidiaries and its auditors to give the auditors of the holding company such

Powers of auditors in relation to subsidiaries.

information and explanation as those auditors may reasonably require for the purposes of their duties as auditors of the holding company; and

(b) in any other case, it is the duty of the holding company, if required by its auditors to do so, to take all such steps as are reasonably open to it to obtain from the subsidiary such information and explanation mentioned in paragraph (a).

(2) If a subsidiary or holding company fails to comply with the provisions of subsection (1), the subsidiary or holding company, and each officer are liable to a penalty as the Commission shall specify in its regulations, and if an auditor fails without reasonable excuse to comply with subsection (1) (a), he is so liable.

415. (1) A company's auditor shall in the performance of his duties exercise all such care, diligence and skill as is reasonably necessary in each particular circumstance.

Liability of auditors for negligence.

(2) Where a company suffers loss or damage as a result of the failure of its auditor to discharge the fiduciary duty imposed on him by subsection (1), the auditor is liable for negligence and the directors may institute an action for negligence against him in the Court.

(3) If the directors fail to institute an action against the auditor under subsection (2) of this section, any member may do so after the expiration of 30 days' notice to the company of his intention to institute such action.

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

False statements to auditors.

(a) conveys or purports to convey any information or explanation which the auditors require, or are entitled to require, as auditors of the company; and

(b) is misleading, false or deceptive in a material particular.

(2) A person who commits an offence under this section is liable to a penalty as the Commission shall specify in its regulations.

## CHAPTER 16 - ANNUAL RETURNS

417. Every company shall, once at least in every year, make and deliver to the Commission an annual return in the form, and containing the matters specified in sections 418, 419 or 420 as may be applicable:

Annual return by company limited by shares or guarantee.

Provided that a company need not make a return under this section either in the year of its incorporation or, if it is not required by section 237 to hold an annual general meeting during the following year, in that year.

418. (1) The annual return by a company having shares other than a small company shall contain with respect to the registered office of the company, registers of members and debenture holders, shares and debentures, indebtedness, past and present members, directors and secretary, the matters specified in Part I of the Seventh Schedule to this Act, and the return shall be in the form set out in Part II of that Schedule or as near to it as circumstances admit. Annual return by company having shares other than small company. Seventh Schedule.
- (2) Where the company has converted any of its shares into stock and given notice of the conversion to the Commission, the list referred to in paragraph 5 of Part I of the Seventh Schedule to this Act shall state the amount of stock held by each of the existing members instead of the number of shares and the particulars relating to shares required by that paragraph. Seventh Schedule.
- (3) The return may, in any year, if the return for either of the two immediately preceding years has given, as at the date of that return, the full particulars required by the paragraph 5 of the Seventh Schedule to this Act, give only such particulars required by that paragraph as relate to persons ceasing to be or becoming members since the date of the last return and to shares transferred since that date in the amount of stock held by a member. Seventh Schedule.
419. The annual return by a small company shall contain the matters specified in Part I of the Eighth Schedule to this Act and the return shall be in the form set out in Part II of that Schedule or as near to it as circumstances admit. Annual return by small company. Eighth Schedule.
420. (1) The annual return by a company limited by guarantee shall be in the form prescribed in the Ninth Schedule or as near to it as circumstances admit. Annual return by company limited by guarantee. Ninth Schedule.
- (2) There shall be annexed to the return a statement containing particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Commission under this Act.
421. (1) The annual return shall be completed, signed by a director and the secretary, and delivered to the Commission not later than 42 days after the annual general meeting for the year, whether or not that meeting is the first or only general meeting of the company in that year, but the company may apply to the Commission for extension of time within which to file its annual return for any given calendar year. Time for completion and delivery of annual return.
- (2) This section does not apply to companies with only one member.
422. (1) Subject to the provisions of section 424 of this Act, there shall be annexed to the annual return— Documents to be annexed to annual return.

- (a) a written copy, certified both by a director and the Secretary of the company to be a true copy, of every balance sheet and profit and loss account laid before the company in general meeting held in the year to which the return relates (including every document required by law to be annexed to the balance sheet); and
- (b) a copy, certified in accordance with paragraph (a), of the report of the auditors on, and of the report of the directors accompanying, each such balance sheet.

(2) If any such balance sheet as mentioned in subsection (1), or document required by law to be annexed does not comply with the requirement of the law in force at the date of the audit with respect to the form of balance sheet or the documents, there shall be made such additions to and corrections in the copy as would have been required to be made in the balance sheet or document in order to comply with the requirements, and the fact that the copy has been amended shall be stated on it.

(3) Any document required to be annexed to the annual return may be delivered to the Commission either in hard copy or through electronic communications.

423. (1) A private company shall send with the annual return required by sections 418, 419 or 420 of this Act a certificate signed both by a director and the secretary of the company that the company has not, since the date of the last return, or, in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for shares or debentures of the company, and, where the annual return discloses the fact that the number of members of the company exceeds 50, also a certificate so signed that the excess consists wholly of persons who under section 22 (3) of this Act are not included in reckoning the number of 50.

Certificate by private company and small company in annual return.

(2) A small company shall in addition to the certificate required under subsection (1), send with the annual return a certificate signed by a director and the secretary that—

- (a) it is a private company limited by shares;
- (b) the amount of its turn-over for that year is not more than ₦120,000,000 or such amount as may be fixed by the Commission;
- (c) its net assets value is not more than ₦60,000,000 or such amount as may be fixed by the Commission;
- (d) none of its members is an alien;

(e) none of its members is a government, a government agent or nominee; and

(f) the directors among them hold at least 51% of the equity share capital of the company.

424. (1) An unlimited company shall be exempted from the requirements of section 422 of this Act as to documents to be annexed to the annual return if, —

Exception in certain cases of unlimited companies and small companies from requirements of section 422.

(a) at no time during the period to which the return relates has it been, to its knowledge, the subsidiary of a company that was then limited and at no such time, to its knowledge, have there been held or exercisable by or on behalf of two or more companies that were limited, shares or powers which, had they been held or exercisable by one of them, would have made the company its subsidiary; and

(b) at no such time has it been the holding company of a company that was then limited.

(2) A small company is exempted from the requirements imposed by section 422 provided that it complies with the provision of section 394 of this Act.

425. (1) If a company required to comply with any of the provisions of sections 417 - 423 fails to do so, the company and every director or officer of the company are liable to a penalty as may be prescribed by the Commission.

Penalty for non-compliance with sections 417 - 423.

(2) For the purposes of subsection (1), “officer” includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

(3) Failure to file annual returns for a consecutive period of 10 years is a ground for striking the name of a company off the companies’ register.

426. (1) A company may, in general meeting, declare dividends in respect of any year or other period only on the recommendation of the directors.

Declaration of dividends and payment of interim dividend.

(2) The company may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

(3) The general meeting has power to decrease the amount of dividend recommended by the directors, but has no power to increase the recommended amount.

(4) Where the recommendation of the directors of a company with respect to the

declaration of a dividend is varied in accordance with subsection (3) by the company in general meeting, a statement to that effect shall be included in the relevant annual return.

(5) Subject to the provisions of this Act, dividends is payable to the shareholders only out of the distributable profits of the company.

427. (1) A company may pay dividends only out of profits available for the purpose. Distributable profits.

(2) The profits of a company available for payment of dividends are its accumulated, realised profits (so far as not previously utilised by distribution or capitalisation), less - its accumulated, realised losses (so far as not previously written off in a lawfully made reduction or reorganisation of capital).

428. A company shall not declare or pay dividend if there are reasonable grounds for believing that the company is or would be, after the payment, unable to pay its liabilities as they become due. Restriction on declaration and payment of dividends.

429. (1) Where dividends paid by a company remain unclaimed, the company shall publish in two national newspapers, a list of the unclaimed dividends and the names of the persons entitled to the dividends, and attach the list, as published in the national newspapers, to the notice that is sent to the members of the company for each subsequent annual general meeting of the company. Unclaimed dividends.

(2) After the expiration of three months of the publication and notice referred to in subsection (1), the company may invest the unclaimed dividend for its own benefit in investments outside the company and no interest shall accrue on the dividends against the company.

(3) Where dividends have been sent to members and there is an omission to send to some members due to the fault of the company, the dividends shall earn interest at the current bank rate from three months after the date on which they ought to have been posted.

(4) For the purpose of liability, the date of posting the dividend warrant is deemed to be the date of payment and proof of whether it has been sent is a question of fact.

430. (1) The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the company may be properly applied, and pending such application may, at the discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors think fit, and the directors may without placing the same to reserve, carry forward any profits which they may think prudent not to distribute. Reserve and capitalisation.

- (2) The company in general meeting may upon the recommendation of the directors resolve that it is desirable to capitalise any part of the amount, for the time being, standing to the credit of any of the company's reserve accounts or to the credit of the profit and loss account or available for distribution.
- (3) Such sum may be set free for distribution among the members who would have been entitled to dividends in the same proportions on condition that the same be not paid in cash but be applied either on or towards paying up any amount unpaid on any shares held by such members respectively or paying up in full unissued shares or debentures of the company to be allotted and distributed to creditors as fully paid up.
- (4) The company may decide by a resolution, what part shall be distributed in cash or in shares and the directors shall give effect to such resolution.
- (5) Share premium account and a capital redemption reserve fund may, for the purposes of this subsection, only be applied in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares.
- (6) Where a resolution under subsections (2) - (5) is passed, the directors shall make all appropriations and applications of the undivided profits resolved to be capitalised thereby, and all allotments and issues of fully-paid shares or debentures, if any, and generally do all acts and things required to give effect to it.
- (7) The directors shall have power to make such provision by the issue of fractional certificates or by payment in cash or otherwise as they think fit in the case of shares or debentures becoming distributable in fractions.
- (8) Any person may be authorised by the directors to enter on behalf of all the members entitled under this section into an agreement with the company to provide for the allotment to them respectively, credited as fully paid up, of any further shares or debentures to which they may be entitled upon such capitalisation, or (as the case may require) for the payment by the company on their behalf, of the amount or any part of the amount remaining unpaid on their existing shares, and any agreement made under such authority is effective and binding on all such members.

431. If under his contract of service, an employee is entitled to share in the profits of the company as an incentive, he is entitled to share in the profits of the company, whether or not dividends have been declared.

Employees' shares and profit sharing.

432. (1) Dividends are special debts due to and recoverable by shareholders within 12 years, and actionable only when declared.

Right of the shareholders to sue for dividends.

(2) Dividends that are unclaimed after 12 years should be included in the profits that should be distributed to the other shareholders of the company.

433. (1) All directors who knowingly pay, or are party to the payment of dividend out of capital or in contravention of this Part, are personally liable jointly and severally to refund to the company any amount so paid. Liability for paying dividend out of capital.
- (2) Such directors shall have the right to recover the dividend from shareholders who receive it with knowledge that the company had no power to pay it.

#### CHAPTER 17 - COMPANY VOLUNTARY ARRANGEMENTS

434. (1) The directors of a company may make a proposal under this Part to its creditors for a composition in satisfaction of its debts or a scheme of arrangement of its affairs (in this Act referred to in either case, as a "voluntary arrangement"). Those who may propose an arrangement.
- (2) A proposal under this Part is one which provides for some person ("the nominee") to act in relation to the voluntary arrangement either as trustee or otherwise for the purpose of supervising its implementation, and the nominee shall be a person who is qualified to act as an insolvency practitioner in relation to the company.
- (3) Such a proposal may be made where —
- (a) an administration order is in force in relation to the company, by the administrator; and
  - (b) the company is being wound up, by the liquidator.
435. (1) This section applies where the nominee under section 434 is not the liquidator or administrator of the company. Procedure where nominee is not the liquidator or administrator.
- (2) The nominee shall, within 28 days (or such longer period as the Court may allow) after he is given notice of the proposal for a voluntary arrangement, submit a report to the Court stating-
- (a) whether, in his opinion, meetings of the company and of its creditors should be summoned to consider the proposal; and
  - (b) if, in his opinion, such meetings should be summoned, the date on which, and time and place at which, he proposes the meetings to be held.
- (3) For the purposes of enabling the nominee to prepare his report, the person intending to make the proposal shall submit to the nominee -
- (a) a document setting out the terms of the proposed

voluntary arrangement, and

(b) a statement of the company's affairs containing -

(i) particulars of its creditors, its debts and other liabilities and of its assets as may be prescribed, and

(ii) other information as may be prescribed.

(4) The Court may, on an application made by the person intending to make the proposal, in a case where the nominee failed to submit the report required by this section, direct that the nominee be replaced as such by another person qualified to act as an insolvency practitioner in relation to the company.

436. (1) A proposal may also be made where the nominee is —

Summoning of meetings.

(a) not the liquidator or administrator, and it has been reported to the Court that such meetings should be summoned, the person making the report shall (unless the Court otherwise directs) summon those meetings for the time, date and place proposed in the report, and

(b) the liquidator or administrator, he shall summon meetings of the company and of its creditors to consider the proposal for such a time, date and place as he thinks fit.

(2) The persons to be summoned to a creditors' meeting under this section are every creditor of the company of whose claim and address the person summoning the meeting is aware.

#### CONSIDERATION AND IMPLEMENTATION OF PROPOSAL

437. (1) The meetings summoned shall decide whether to approve the proposed voluntary arrangement with or without modifications.

Decisions of meetings.

(2) The modifications may include conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner in relation to the company but shall not include any modification by virtue of which the proposal ceases to be a proposal such as is mentioned in section 434.

(3) A meeting so summoned shall not approve any proposal or modification which affects the right of a secured creditor of the company to enforce his security, except with the concurrence of the creditor concerned.

(4) A meeting so summoned shall not approve any proposal or modification under which -

(a) any preferential debt of the company is to be paid otherwise than in priority to such of its debts as are not preferential debts, or

(b) a preferential creditor of the company is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt provided that the meeting may approve such a proposal or modification with the concurrence of the preferential creditor concerned.

(5) Subject to the provisions of this section, each of the meetings shall be conducted in accordance with the rules.

(6) After the conclusion of either meeting in accordance with the rules, the chairman of the meeting shall report the result of the meeting to the Court, and, immediately after reporting to the Court, shall give notice of the result of the meeting to such persons as may be prescribed.

438. (1) This section applies to a decision, under section 437, with respect to the approval of a proposed voluntary arrangement. Approval of arrangement.

(2) The decision has effect if, in accordance with the rules—  
(a) it has been taken by both meetings summoned under section 436; or

(b) subject to any order made under subsection (4) it has been taken by the creditors' meeting summoned under that section.

(3) If the decision taken by the creditors' meeting differs from that taken by the company meeting, a member of the company may apply to the Court.

(4) An application under subsection (3) shall not be made after the end of 28 days beginning with—

(a) the day on which the decision was taken by the creditors' meeting; or

(b) where the decision of the company meeting was taken on a later day, that day.

- (5) On an application under subsection (3), the Court may—
- (a) order the decision of the company meeting to have effect instead of the decision of the creditors' meeting;  
or
  - (b) make such other order as it deems fit.

439. (1) This section applies where a decision approving a voluntary arrangement has effect under section 437. Effect of approval.

(2) The order of the Court that the decision of the company meeting should have effect instead of the decision of the creditors' meeting—

- (a) takes effect as if made by the company at the creditors' meeting; and
- (b) binds every person who, in accordance with the rules—
  - (i) was entitled to vote at that meeting (whether or not he was present or represented at it), or
  - (ii) would have been so entitled if he had had notice of it, as if he were a party to the voluntary arrangement.

(3) Where the arrangement —

- (a) ceases to have effect, any amount payable, under the arrangement to a person bound by virtue of subsection (2) (b) (ii) has not been paid, and
- (b) did not come to an end prematurely,

the company shall at that time become liable to pay to that person the amount payable under the arrangement.

(4) Where the company is being wound up or is in administration, the Court may —

- (a) by order, stay all proceedings in the winding up or provide for the appointment of the administrator to cease to have effect; or
- (b) give such directions with respect to the conduct of the winding up or the administration as it considers

appropriate for facilitating the implementation of the order of the Court that the decision of the company meeting should have effect instead of the decision of the creditors' meeting on the voluntary arrangement.

(5) The Court shall not make an order under subsection (4) (a)—

- (a) at any time before the end of 28 days beginning with the first day on which each of the reports required by section 435 (2) has been made to the Court; or
- (b) at any time when an application under section 435 (3) or an appeal in respect of such an application is pending, or at any time in the period within which such an appeal may be brought.

440. (1) Subject to this section, an application to the Court may be made, by any of the persons specified in subsection (2), on the ground that - Challenge of decisions.

- (a) a voluntary arrangement which has effect under section 437 unfairly prejudices the interests of a creditor, member or contributory of the company; or
- (b) there has been some material irregularity at or in relation to either of the meetings.

(2) The persons who may apply under subsection (1) are -

- (a) persons entitled, in accordance with the rules, to vote at either of the meetings;
- (b) persons who would have been entitled, in accordance with the rules, to vote at the creditors' meeting if they had had notice of it;
- (c) the nominees or persons who replaced them under section 435 (4) or 437 (2); and
- (d) if the company is being wound up or is in administration, the liquidator or administrator.

(3) An application under this section shall not be made -

- (a) after the end of 28 days beginning with the first day on which each of the reports required under section 435 (2) has been made to the Court, or

(b) on which each of the reports required by section 435 (2) has been made to the Court but (subject to that), an application made by a person within subsection (3) on the ground that the voluntary arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it came to an end prematurely.

(4) Where on such an application the Court is satisfied as to either of the grounds mentioned in subsection (1), it may —

(a) revoke or suspend any decision approving the voluntary arrangement which has effect under section 437 or, in a case falling within subsection (1) (b), any decision taken by the meeting in question which has effect under that section; or

(b) give a direction to any person for the summoning of further meetings to consider any revised proposal, the person who made the original proposal may make or, in the case falling within subsection (1) (b), a further company or creditors' meeting to reconsider the original proposal.

(5) Where after giving a direction under subsection (4) (b) for the summoning of meetings to consider a revised proposal the Court is satisfied that the person who made the original proposal does not intend to submit a revised proposal, the Court shall revoke the direction and revoke or suspend any decision approving the voluntary arrangement which has effect under section 437.

(6) Where the Court, on an application under this section with respect to any meeting—

(a) gives a direction under subsection (4) (b), or

(b) revokes or suspends an approval under subsection (4) (a) or (5),

the Court may give such supplemental directions as it deems fit and, in particular, directions with respect to things done under the voluntary arrangement since it took effect.

(7) Except as provided in this section, a decision taken at a meeting summoned under section 436 is not invalidated by any irregularity at or in relation to the meeting.

441. (1) If, for the purpose of obtaining the approval of the members or creditors of a company to a proposal for a voluntary arrangement, a person who is an officer of the company— A false representation, etc.

- (a) makes any false representation, or
- (b) fraudulently does, or omits to do anything,

he commits an offence.

(2) A person who contravenes subsection (1), commits an offence and is liable on conviction to imprisonment for a term of one year or a fine as the Court deems fit or both.

442. (1) This section applies where a voluntary arrangement approved by the meetings summoned under section 436 has taken effect. Implementation of proposal.

(2) The person who performs, in relation to the voluntary arrangement, the functions conferred by virtue of -

- (a) the approval on the nominee, or
- (b) section 435 (4) or 437 (3) on a person other than the nominee,

shall be known as the supervisor of the voluntary arrangement.

(3) If any of the company's creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the Court, and, on the application, the Court may-

- (a) confirm, reverse or modify any act or decision of the supervisor;
- (b) give him directions; or
- (c) make such other order as it deems fit.

(4) The supervisor may apply to the Court for directions in relation to any particular matter arising under the voluntary arrangement, and is included among the persons who may apply to the Court for the winding up of the company or for an administration order to be made in relation to it.

(5) The Court may, whenever it is -

- (a) expedient to appoint a person to perform the functions of the supervisor, and

- (b) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the Court,

make an order appointing a person who is qualified to act as an insolvency practitioner in relation to the company, either in substitution for the existing supervisor or to fill a vacancy.

- (6) The power conferred by subsection (5) is exercisable so as to increase the number of persons performing the functions of supervisor or, where there is more than one person performing those functions, so as to replace one or more of those persons.

## CHAPTER 18 - ADMINISTRATION OF COMPANIES

### NATURE OF ADMINISTRATION

443. (1) A person may be appointed as administrator of a company by-

Appointment of administrator.

- (a) an administration order of the Court under section 449 of this Act;
- (b) the holder of a floating charge under section 452 of this Act; or
- (c) the company or its directors under section 459 of this Act.

(2) Where an administrator is appointed out of Court, if it is an administration that has a cross-border element, an application shall be made *ex parte* to the Court for approval.

(3) An *extra curia* administrator appointed under subsection (1) (b) may, in addition to statutory notice to the Court under section 457, also request, in an accompanying *ex parte* application to the Court, a formal court order.

444. (1) The administrator of a company may do all such things as may be necessary for the management of the affairs, business and property of the company, and shall perform his functions with the objective of-

Purpose of administration.

- (a) rescuing the company, the whole or any part of its undertaking, as a going concern;
- (b) achieving a better result for the company's creditors as a whole than would be likely if the company were wound up, without first being in administration; or
- (c) realising property in order to make a distribution to one or more secured or preferential creditors.

- (2) Notwithstanding subsection (1) (b) and (c), the rescue of the company is the primary objective of the administrator in the performance of his functions, except where he is of the opinion that it is not reasonably practicable or a better result can be achieved for the company's creditors by pursuing some other course in order of priority as specified in that subsection.
- (3) Subject to subsection (5), the administrator of a company shall perform his functions in the interests of the company's creditors as a whole.
- (4) The administrator shall perform his functions with the objective specified in subsection (1) (a) unless he is of the opinion that-
  - (a) it is not reasonably practicable to achieve that objective; or
  - (b) the objective specified in subsection (1) (b) would achieve a better result for the company's creditors as a whole.
- (5) The administrator may perform his functions with the objective specified in subsection (1) (c) only if he —
  - (a) is of the opinion that it is not reasonably practicable to achieve either of the objectives specified in subsection (1) (a) and (b); and
  - (b) does not unnecessarily harm the interests of the creditors of the company as a whole.
- (6) The administrator shall, within 60 days of his appointment prepare a detailed schedule of assets and submit a copy to the person by whom he was appointed.

- 445. The administrator of a company shall perform his functions as quickly and efficiently as is reasonably practicable. Standard of performance of administrator.
- 446. An Administrator is an officer of the Court, whether or not he is appointed by the Court. Status of administrator.
- 447. (1) A person may be appointed as administrator of a company only if he is qualified to act as an insolvency practitioner in relation to the company. General restrictions on appointment of administrator.
  - (2) A person shall only be appointed as administrator of a company which is in administration, subject to the provisions of sections 525 - 534 and 537 - 541 of this Act about replacement and additional administrators.
  - (3) A person shall not be appointed as administrator of a company which is in

liquidation by virtue of-

- (a) a resolution for voluntary winding-up, subject to section 475 (3) (b) of this Act; or
- (b) a winding-up order, subject to sections 474 and 475 of this Act.

(4) A person shall not be appointed as administrator of a company which-

- (a) has as a liability in respect of a deposit which it accepted in accordance with relevant banking laws; and
- (b) is not an authorised deposit taker within the meaning of banking laws and regulations.

(5) A person shall not be appointed as administrator of a company which effects or carries out contracts of insurance except with the leave of the insurance regulator.

#### APPOINTMENT OF ADMINISTRATOR BY COURT

448. An administration order is an order appointing a person as the administrator of a company. Administration order.

449. A Court may make an administration order in relation to a company, where it is satisfied that the- Conditions for making order.

- (a) company is or is likely to become unable to pay its debts; and
- (b) administration order is likely to achieve the purpose of administration.

450. (1) An application to the Court for an administration order in respect of a company (in this Act referred to as an “administration application”) may be made by— Application to Court for administration order.

- (a) the company;
- (b) the directors of the company;
- (c) one or more creditors of the company;
- (d) the designated officer of the Federal High Court appointed to act as a receiver under this Act or any other law; or

(e) a combination of the persons listed in paragraphs (a) - (d).

(2) As soon as is reasonably practicable after the making of an administration application, the applicant shall notify—

(a) any Court that has appointed a receiver and any person who has appointed a receiver of the company;

(b) a person who has, who is or who may be entitled to appoint a receiver of the company;

(c) a person who is or may be entitled to appoint an administrator of the company under section 452 of this Act; and

(d) such other persons as may be prescribed.

(3) An administration application shall not be withdrawn without the permission of the Court.

(4) In subsection (1), “creditor” includes a contingent creditor and a prospective creditor.

451. (1) On hearing an administration application, the Court may—

Powers of Court.

(a) make the administration order sought;

(b) dismiss the application;

(c) adjourn the hearing conditionally or unconditionally;

(d) make an interim order;

(e) treat the application as a winding-up petition and make any order which the Court could make under section 574 of this Act; or

(f) make any other order which the Court deems appropriate.

(2) An appointment of an administrator by an administration order takes effect—

(a) at a time appointed by the order; or

(b) where no time is appointed by the order, when the

order is made.

(3) An interim order under subsection (1) (d) may, in particular—

- (a) restrict the exercise of a power of the directors or the company; or
- (b) make provision conferring a discretion on the Court or on a person qualified to act as an insolvency practitioner in relation to the company.

(4) This section is subject to section 573 of this Act.

452. (1) Subject to section 450 of this Act, the holder of a floating charge in respect of a company's property may appoint an administrator of the company.

Power to appoint by holder of floating charge.

(2) For the purposes of subsection (1), a floating charge qualifies if it is created by an instrument which—

- (a) states that this section applies to the floating charge;
- (b) purports to empower the holder of the floating charge to appoint an administrator of the company; or
- (c) purports to empower the holder of the floating charge to appoint a receiver within the meaning of this Part or where this Part is not applicable, the relevant provisions of this Act.

(3) For the purposes of subsection (1), a person is the holder of a floating charge in respect of a company's property if he holds one or more debentures of the company secured by—

- (a) a floating charge which relates to the whole or substantially the whole of the company's property;
- (b) a number of floating charges which together relate to the whole or substantially the whole of the company's property; or
- (c) charges and other forms of security which together relate to the whole or substantially the whole of the company's property and at least one of which is a floating charge.

(4) Without prejudice to the specific terms of the instrument creating a charge, any

contrary or conflicting provision of this Act or other enactments, the appointment of a receiver or manager by the holder of a floating charge is to all intents and purpose equivalent to the appointment of an administrator, and the provisions of this Part are applicable to the person qualified to act as an insolvency practitioner and appointed under the relevant instrument by the holder of a floating charge.

453. (1) A person shall not appoint an administrator under section 452 of this Act unless— Restrictions on power to appoint.

- (a) he has given at least two working days' written notice to the holder of any prior floating charge which satisfies section 452 (2) of this Act; or
- (b) the holder of any prior floating charge which satisfies section 452 (2) of this Act has consented in writing to the making of the appointment.

(2) One floating charge is prior to another for the purposes of subsection (1) if it—

- (a) was created first; or
- (b) is to be treated as having priority in accordance with an agreement to which the holder of each floating charge was party.

454. An administrator shall not be appointed under section 452 of this Act if - When not to appoint administrator.

- (a) a floating charge on which the appointment relies is not enforceable, a holder of the unenforceable charge may apply or join as a mere creditor in an administration application under section 450 of this Act;
- (b) a provisional liquidator of the company has been appointed under section 585 of this Act; or
- (c) prior to the commencement of this Act and the coming into effect of this Chapter, a receiver or manager of the company is in office.

455. (1) A person who appoints an administrator of a company under section 452 of this Act shall file with the Commission- Notice of appointment.

- (a) a notice of appointment; and
- (b) such other documents as may be prescribed.

(2) The notice of appointment shall include a statutory declaration by or on behalf of the person who makes the appointment that—

- (a) the person is the holder of a floating charge in respect of the company's property;
- (b) each floating charge relied on in making the appointment is or was enforceable on the date of the appointment; and
- (c) the appointment is in accordance with this Chapter and generally with this Act.

(3) The notice of appointment shall identify the administrator and be accompanied by a statement by the administrator—

- (a) that he consents to the appointment;
- (b) that in his opinion, the purpose of administration is likely to be achieved; and
- (c) giving such other information and opinions as may be prescribed.

(4) The administrator may at his discretion elect to apply for further discretion or relief.

(5) For the purpose of a statement under subsection (3), an administrator may rely on information supplied by directors of the company, unless he has reason to doubt its accuracy.

(6) The notice of appointment and any document accompanying it shall be in the prescribed form.

(7) A statutory declaration under subsection (2) shall be made during the prescribed period.

(8) A person commits an offence, if in a statutory declaration under subsection (2), he makes a statement which-

- (a) is false; and
- (b) he does not reasonably believe to be true.

456. The appointment of an administrator under section 450 of this Act takes effect when the requirements of section 447 of this Act are satisfied.

Commencement of appointment of administrator under

section 450.

457. (1) A person who appoints an administrator under section 450 of this Act shall notify the administrator and such other persons as may be prescribed as soon as is reasonably practicable after the requirements of section 447 of this Act are satisfied.
- (2) A person who fails, without reasonable excuse, to comply with subsection (1), commits an offence.

Notification of appointment.

458. (1) This section applies where-

Invalid appointment and indemnity.

(a) a person purports to appoint an administrator under section 452 of this Act; and

(b) the appointment is discovered to be invalid.

- (2) The Court may order the person who purported to make the appointment to indemnify the person appointed against liability which arises solely by reason of the invalidity of the appointment.

#### APPOINTMENT OF ADMINISTRATOR BY COMPANY OR DIRECTORS OUT OF COURT

459. (1) A company may appoint an administrator out of Court.

Power to appoint by company or directors.

(2) The directors of a company may also appoint an administrator out of Court.

460. (1) This section applies where an administrator of a company is appointed—

Restrictions on power to appoint.

(a) under section 450 of this Act; or

(b) on an administration application made by the company or its directors.

- (2) An administrator of the company shall not be appointed under section 449 of this Act within 12 months beginning with the date on which the appointment referred to in subsection (1) ceases to have effect.

461. (1) If a moratorium for a company under this Part and any supportive schedule ends on a date when no voluntary arrangement is in effect in respect of the company, this section applies for the period of 12 months beginning with that date.

Effect of moratorium on the appointment of administrator.

- (2) This section also applies for the period of 12 months beginning with the date on which a voluntary arrangement in respect of a company ends, where the arrangement-

(a) was made during a moratorium for the company under this Part; and

(b) ends prematurely.

(3) While this section applies, an administrator of the company shall not be appointed under section 450 of this Act.

462. An administrator of a company shall not be appointed under section 459 of this Act where-

Effect of non-disposal of winding-up petition on appointment of administrator.

(a) a petition for the winding-up of the company has been presented and is not yet disposed of;

(b) an administration application has been made and is not yet disposed of; or

(c) a receiver of the company is in office.

463. (1) Except where there is no secured creditor who has, or might have the right to appoint an administrator under section 452 of this Act or a receiver or any other person as envisaged under subsection (2), a person who proposes to make an appointment under section 469 of this Act shall give at least three working days' written notice by post, personal delivery, hand delivered mail, or email to any person who is or may be entitled to appoint -

Notice of intention to appoint.

(a) a receiver of the company; and

(b) an administrator of the company under section 450 of this Act.

(2) A person who proposes to make an appointment under this section shall also give such notice as may be prescribed to such other persons as may be prescribed.

(3) A notice under this section shall-

(a) identify the proposed administrator; and

(b) be in the prescribed form.

464. (1) A person who gives notice of intention to appoint under section 458 shall file with the Commission as soon as is reasonably practicable a copy of-

Filing of notice of intention to appoint.

(a) the notice; and

(b) any document accompanying it.

(2) The copy filed under subsection (1) shall be accompanied by a statutory declaration made by or on behalf of the person who proposes to make the appointment -

(a) that the company is or is likely to become unable to pay its debts;

(b) that the company is not in liquidation;

(c) that so far as the person making the statement is able to ascertain, the appointment is not prevented by sections 453 and 454 of this Act, and

(d) to such additional effect, and giving such information, as may be prescribed.

(3) A statutory declaration under subsection (2) shall be—

(a) in the prescribed form; and

(b) made during the prescribed period.

(4) A person commits an offence if, in a statutory declaration under subsection (2), he makes a statement which—

(a) is false; and

(b) he does not reasonably believe to be true.

465. (1) An appointment shall not be made under section 459 of this Act unless the person who makes the appointment has complied with any requirement of sections 462 and 463 of this Act –

Requirements of sections 463 and 464 to be complied with.

(a) the period of notice specified in section 463 (1) of this Act has expired; or

(b) each person to whom notice has been given under section 463 (1) of this Act has consented in writing to the making of the appointment.

(2) An appointment shall not be made under section 460 after the period of 10 working days beginning with the date on which the notice of intention to appoint is filed under section 463 (1) of this Act.

466. (1) A person who appoints an administrator of a company under section 459 of this Act shall file with the Court—

Filing of notice of appointment.

- (a) a notice of appointment; and
- (b) such other documents as may be prescribed.

(2) The notice of appointment shall include a statutory declaration by or on behalf of the person who makes the appointment that—

- (a) the person is entitled to make an appointment under section 459 of this Act;
- (b) the appointment is in accordance with this Part; and
- (c) so far as the person making the statement is able to ascertain, the statements made and information given in the statutory declaration filed with the notice of intention to appoint remain accurate.

(3) The notice of appointment shall identify the administrator and be accompanied by a statement by the administrator—

- (a) that he consents to the appointment;
- (b) that in his opinion the purpose of administration is likely to be achieved; and
- (c) giving such other information and opinions as may be prescribed.

(4) For the purpose of a statement under subsection (3), an administrator may rely on information supplied by directors of the company unless he has reason to doubt its accuracy.

(5) The notice of appointment and any document accompanying it shall be in the prescribed form.

(6) A statutory declaration under subsection (2) shall be made during the prescribed period.

467. A person commits an offence if, in a statutory declaration under section 464 (2), he makes a statement which—

Offence in relation to section 464.

- (a) is false; or

(b) he does not reasonably believe to be true.

468. Where a person is not entitled to notice of intention to appoint under section 455 (1), and section 457 of this Act, shall not apply-

Where person not entitled to notice of intention to appoint.

(a) the statutory declaration accompanying the notice of appointment shall include the statements and information required under section 464 (2) of this Act; and

(b) section 464 (2) (c) of this Act shall also not apply.

469. The appointment of an administrator under section 459 of this Act takes effect when the requirements of section 464 of this Act are satisfied.

Commencement of appointment under section 459.

470. A person who appoints an administrator under section 459 of this Act –

Notification of administrator of his appointment.

(a) shall notify the administrator and such other persons as may be prescribed as soon as is reasonably practicable after the requirements of section 464 are satisfied; and

(b) commits an offence if he fails, without reasonable excuse, to comply with paragraph (a).

471. Where, before the requirements of section 464 of this Act are satisfied, the company enters administration by virtue of an administration order or an appointment under section 450 of this Act –

Effect of administration order on appointment.

(a) the appointment under section 459 of this Act shall not take effect; and

(b) section 467 of this Act shall not apply.

#### ADMINISTRATION APPLICATION – SPECIAL CASES

472. (1) This section applies where an administration application in respect of a company—

Application by holder of floating charge.

(a) is made by the holder of a floating charge in respect of the company's property; and

(b) includes a statement that the application is made in reliance on this section.

(2) The Court may make an administration order—

(a) whether or not satisfied that the company is or is likely

to become unable to pay its debts; and

- (b) only if satisfied that the applicant could appoint an administrator under section 450 of this Act.

473. (1) This section applies where—

Intervention by holder of floating charge.

- (a) an administration application in respect of a company is made by a person who is not the holder of a floating charge in respect of the company's property; and
- (b) the holder of a floating charge in respect of the company's property applies to the Court to have a specified person appointed as administrator and not the person specified by the administration applicant.

- (2) The Court shall grant an application under subsection (1) (b) unless the Court deems it right to refuse the application because of the particular circumstances of the case.

474. (1) This section applies where the holder of a floating charge in respect of a company's property could appoint an administrator under section 452 of this Act but for section 452 (3) (b) of this Act.

Application where company in liquidation.

- (2) The holder of the floating charge may make an administration application.
- (3) If the Court makes an administration order on hearing an application made by virtue of subsection (2), the Court —
  - (a) shall discharge the winding-up order;
  - (b) shall make provision for such matters as may be prescribed;
  - (c) may make other consequential provision; and
  - (d) shall specify which of the powers under this Chapter and Eleventh Schedule are to be exercisable by the administrator.

Eleventh Schedule.

(4) This Part shall have effect with such modifications as the Court may direct.

475. (1) The liquidator of a company may make an administration application.

Administration application by liquidator.

- (2) If the Court makes an administration order on hearing an application made by virtue of subsection (1), the Court—

- (a) shall discharge any winding-up order in respect of the company;
- (b) shall make provision for such matters as may be prescribed;
- (c) may make other consequential provision; and
- (d) shall specify which of the powers under this Chapter and Tenth Schedule are to be exercisable by the administrator.

Tenth Schedule.

(3) This Chapter shall have effect with such modifications as the Court may direct.

476. (1) Where there is a receiver of a company based on appointment by a holder of a fixed charge, the Court shall dismiss an administration application in respect of the company unless—

Effect of receivership based on appointment by a holder of a fixed charge.

- (a) the person by or on behalf of whom the receiver was appointed consents to the making of the administration order;
- (b) the Court considers that the security by virtue of which the receiver was appointed would be liable to be released or discharged under section 232 or 233 of this Act if an administration order were made; or
- (c) the Court considers that the security by virtue of which the receiver was appointed would be challengeable under section 558 or 559 of this Act.

(2) Subsection (1) applies whether or not the receiver is appointed before the making of the administration application.

#### EFFECT OF ADMINISTRATION

477. (1) A petition for the winding-up of a company shall be—

Dismissal of pending winding-up petition.

- (a) dismissed on the making of an administration order in respect of the company; and
- (b) suspended while the company is in administration following an appointment under section 475 of this Act.

(2) The provision of subsection (1) (b) does not apply to a petition presented under grounds of public interest as may be prescribed from time to time by the Chief Judge or under an enactment.

(3) Except with the leave of the Court, subsection (1) (a) and (b) does not apply to a petition presented under special banking provisions of the Banks and Other Financial Institutions Act, Nigerian Deposit Insurance Corporation Act or any law or rule by a financial services and markets regulator.

Cap. B3, LFN, 2004.

Cap. N102, LFN, 2004.

478. (1) When an administration order takes effect in respect of a company, a receiver of the company appointed by a holder of a floating charge or by the Court shall vacate office.

Vacation of office by receiver.

(2) Without prejudice to priority rules under this Act, where a company is in administration, any receiver of part of the company's property appointed by a secured creditor shall vacate office if the administrator requires him to.

(3) Where a receiver vacates office under this section-

(a) his remuneration shall be charged on and paid out of any property of the company which was in his custody or under his control immediately before he vacated office; and

(b) he need not take any further steps under section 561 or 562.

(4) In the application of subsection (3) (a) —

(a) "remuneration" includes expenses properly incurred and any indemnity to which the receiver is entitled out of the assets of the company;

(b) the charge imposed takes priority over security held by the person by whom or on whose behalf the receiver was appointed; and

(c) the provision for payment is subject to section 558.

479. (1) This section applies to a company in administration.

Company in administration.

(2) Where a company is in administration, no-

(a) resolution shall be passed for the winding-up of the company; and

(b) order shall be made for the winding-up of the company.

(3) Subsection (2) (b) does not apply to an order made on a petition presented under—

(a) grounds of public interest as may be prescribed from time to time by the Chief Judge or under any enactment; or

(b) special banking and financial provisions of the Banks and Other Financial Institutions Act, the Nigerian Deposit Insurance Corporation Act, or any other financial services and markets related Acts.

Cap. B3, LFN, 2004.

Cap. N102, LFN, 2004.

(4) If a petition presented under a provision referred to in subsection (3) comes to the attention of the administrator, he shall apply to the Court for directions under section 500.

480. (1) This section applies to a company in administration.

Moratorium on other legal process.

(2) Where a company is in administration, no step shall be taken to-

(a) enforce security over the company's property except with—

(i) the consent of the administrator, or

(ii) the permission of the Court; or

(b) repossess goods in the company's possession under a hire purchase agreement except with the —

(i) consent of the administrator, or

(ii) permission of the Court.

(3) A landlord shall not exercise a right of forfeiture by peaceable re-entry in relation to premises let to the company except with the —

(a) consent of the administrator; or

(b) permission of the Court.

(4) No legal process, including legal proceedings, execution, distress and diligence shall be instituted or continued against the company or property of the company

except with the —

(a) consent of the administrator; or

(b) permission of the Court.

(5) Where the Court gives permission for a transaction under this section, it may impose a condition on or a requirement in connection with the transaction.

(6) In this section, “landlord” includes a person to whom rent is payable.

481. (1) This section applies where an administration application in respect of a company has been made and the application has—

Where administration application or administration order not yet granted.

(a) not yet been granted or dismissed; or

(b) been granted but the administration order has not yet taken effect.

(2) This section also applies when a copy of a notice in the prescribed form, of intention to appoint an administrator under section 464 of this Act is filed with the Court, until—

(a) the appointment of the administrator takes effect; or

(b) the period of three business days beginning with the date of filing expires without an administrator having been appointed.

(3) This section also applies when a copy, in the prescribed form, of notice of intention to appoint an administrator is filed with the court under section 464 (1) of this Act, until—

(a) the appointment of the administrator takes effect; or

(b) the period specified in subsection (2) expires without an administrator having been appointed.

(4) The provisions of sections 475 and 476 of this Act shall apply, without regard to any reference to the consent of the administrator.

(5) If there is a receiver of the company appointed by the holder of a floating charge when the administration application is made, the provisions of sections 480 and 481 of this Act shall not apply until the person by or on behalf of whom the receiver was appointed consents to the making of the administration order.

(6) This section does not prevent or require the permission of the Court for the-

- (a) presentation of a petition for the winding-up of the company under section 451 of this Act;
- (b) appointment of an Administrator under section 452 of this Act;
- (c) appointment of a receiver of the company by the holder of a floating charge; or
- (d) performing by such a receiver, whenever appointed, of his functions.

482. (1) If a company is in administration, every business document issued by or on behalf of the company or the administrator, and all the company's websites, shall state-

Details to be stated on documents.

- (a) the name of the administrator; and
- (b) that the affairs, business and property of the company are being managed by the administrator.

(2) An administrator, officer of the company or the company who, without reasonable excuse, authorises or permits a contravention of subsection (1), commits an offence.

(3) In subsection (1), "business document" includes-

- (a) an invoice;
- (b) an order for goods or services;
- (c) a business letter; and
- (d) an order form, whether in hard copy, electronic or any other form.

## PROCESS OF ADMINISTRATION

483. (1) This section applies where a person becomes the administrator of a company.

Announcement of administrator's appointment.

(2) The administrator shall not later than 14 days -

- (a) send a notice of his appointment to the company;

(b) publish a notice of his appointment in the prescribed manner;

(c) obtain a list of the company's creditors; and

(d) send a notice of his appointment to each creditor whose claim and address he is aware of.

(3) The administrator shall send a notice of his appointment to the Commission, publicising the notice before the end of 14 working days beginning with the date specified in subsection (5).

(4) The administrator shall send a notice of his appointment to such persons as may be prescribed before the end of the prescribed period beginning with the date specified in subsection (5).

(5) The date, for the purpose of subsections (3) and (4) is, in the case of an administrator appointed —

(a) by administration order, the date of the order;

(b) under section 452 of this Act, the date on which he receives notice under section 453 and 455 of this Act; and

(c) under section 458 of this Act, the date on which he receives notice under section 463 and 465 of this Act.

(6) The Court may direct that subsection (2) (d) or (4) —

(a) shall not apply; or

(b) shall apply with the substitution of a different period.

(7) A notice under this section shall-

(a) contain the prescribed information; and

(b) be in the prescribed form.

(8) An administrator commits an offence if he fails, without reasonable excuse, to comply with a requirement of this section.

484. (1) As soon as is reasonably practicable after appointment, the administrator of a company shall, by notice in the prescribed form, require one or more relevant persons to provide the administrator with a statement of the affairs of the

Administrator to be provided with statement of affairs of company.

company.

(2) The statement shall-

- (a) be verified by a statement on oath;
- (b) be in the prescribed form;
- (c) give particulars of the company's property, debts and liabilities;
- (d) give the names and addresses of the company's creditors;
- (e) specify the security held by each creditor;
- (f) give the date on which each security was granted; and
- (g) contain such other information as may be prescribed.

(3) In subsection (1), "relevant person" means a person-

- (a) who is or has been an officer of the company;
- (b) who took part in the formation of the company during the period of one year ending with the date on which the company enters administration;
- (c) employed by the company during that period; and
- (d) who is or has, during the period of one year ending with the date on which the company enters administration, been an officer or employee of a company.

(4) For the purpose of subsection (3), a reference to employment is a reference to employment through a contract of employment or a contract for services.

(5) A person commits an offence if he fails, without reasonable excuse, to comply with a requirement of this section.

485. (1) A person required to submit a statement of affairs shall do so before the end of 11 working days beginning with the day on which he receives notice of the requirement.

Period within which to submit statement of affairs.

(2) The administrator may-

(a) revoke a requirement under section 484 (2) of this Act;  
or

(b) extend the period specified in subsection (1), before or  
after expiration of the period.

(3) If the administrator refuses a request to act under subsection (2) (b)—

(a) the person whose request is refused may apply to the  
Court; and

(b) the Court may take action as specified in subsection  
(2).

486. (1) The administrator of a company shall make a statement setting out proposals for achieving the purpose of the administration. Administrator's proposals.

(2) A statement under subsection (1) shall, in particular-

(a) deal with such matters as may be prescribed; and

(b) where applicable, explain why the administrator thinks  
that the objective mentioned in section 444 (1) (a) or  
(b) of this Act cannot be achieved.

(3) Proposals under this section may include-

(a) a proposal for a voluntary arrangement under Chapter  
17 of this Act, but this section is without prejudice to  
section 435 of this Act; and

(b) a proposal for a scheme of arrangement and  
compromise or reconstruction to be sanctioned under  
relevant Parts of this Act.

(4) The administrator shall send a copy of the statement of his proposals to-

(a) the Commission;

(b) every creditor of the company of whose claim and  
address he is aware; and

(c) every member of the company of whose address he is  
aware.

- (5) The administrator shall comply with subsection (4) before the end of 30 days beginning with the day on which the company enters administration.
- (6) The administrator is deemed to comply with subsection (4) (c) if he publishes in the prescribed manner, a notice undertaking to provide a copy of the statement of proposals free of charge to any member of the company who applies in writing to a specified address.
- (7) An administrator commits an offence if he fails, without reasonable excuse, to comply with subsection (5).
- (8) A period specified in this section may be varied in accordance with section 546 of this Act.

487. (1) Subject to this Part, the administrator shall summon a meeting of the creditors of the company to be known as “creditors’ meeting”- Creditors’ meeting.

(a) in the prescribed manner; and

(b) giving the prescribed period of notice to every creditor of the company of whose claim and address he is aware.

(2) A period prescribed under subsection (1) (b) may be varied in accordance with section 546 of this Act.

(3) A creditors’ meeting shall be conducted in accordance with the prescribed rules.

488. (1) Each copy of an administrator’s statement of proposals sent to a creditor under section 486 (4) (b) of this Act shall be accompanied by an invitation to creditors’ meeting (an “initial creditors’ meeting”). Requirement for initial creditors’ meeting.

(2) The date set for an initial creditors’ meeting is 42 days beginning with the date on which the company enters administration.

(3) An administrator shall present a copy of his statement of proposals to an initial creditors’ meeting.

(4) A period specified in this section may be varied in accordance with section 546.

(5) An administrator commits an offence if he fails, without reasonable excuse, to comply with a requirement of this section.

489. (1) Section 487 (1) of this Act does not apply where the statement of proposals states that the administrator thinks that- Restrictions on summoning of initial creditors’ meeting.

(a) the company has sufficient property to enable each

creditor of the company to be paid in full;

(b) the company has insufficient property to enable a distribution to be made to unsecured creditors other than by virtue of the provisions of this Act; or

(c) neither of the objectives specified in section 444 (1) (a) and (b) of this Act shall be achieved.

(2) The Administrator shall summon an initial creditors' meeting if it is requested—

(a) by creditors of the company whose debts amount to at least 10% of the total debts of the company;

(b) in the prescribed manner; and

(c) within the prescribed period.

(3) A meeting requested under subsection (2), shall be summoned for a date within the prescribed period.

(4) The period prescribed under subsection (3), may be varied in accordance with section 545 of this Act.

490. (1) An initial creditors' meeting to which an administrator's proposals are presented shall consider them and may approve them-

Business and result of initial creditors' meeting.

(a) without modification; or

(b) with modification to which the administrator consents.

(2) After the conclusion of an initial creditors' meeting the administrator shall, as soon as is reasonably practicable, report any decision taken to-

(a) the Court;

(b) the Commission; and

(c) such other persons as may be prescribed by the Minister.

(3) An administrator commits an offence if he fails, without reasonable excuse, to comply with subsection (2).

491. (1) This section applies where-

Revision of administrator's proposal.

- (a) an administrator's proposals have been approved with or without modification at an initial creditors' meeting;
- (b) the administrator proposes a revision to the proposals; and
- (c) the administrator thinks that the proposed revision is substantial.

(2) The administrator shall-

- (a) summon a creditors' meeting;
- (b) send a statement in the prescribed form of the proposed revision with the notice of the meeting sent to each creditor;
- (c) send a copy of the statement, within the prescribed period, to each member of the company of whose address he is aware; and
- (d) present a copy of the statement to the meeting.

(3) The administrator is deemed to have complied with subsection (2) (c) if he publishes a notice undertaking to provide a copy of the statement free of charge to any member of the company who applies in writing to a specified address.

(4) A notice under subsection (3) shall be published-

- (a) in the prescribed manner; and
- (b) within the prescribed period.

(5) A creditors' meeting to which a proposed revision is presented shall consider it and may approve it -

- (a) without modification; or
- (b) with modification to which the administrator consents.

(6) After the conclusion of a creditors' meeting, the administrator shall, as soon as is reasonably practicable, report any decision taken to-

- (a) the Court;
- (b) the Commission; and

(c) such other persons as may be prescribed by the Minister.

(7) An administrator commits an offence if he fails, without reasonable excuse, to comply with subsection (6).

492. (1) This section applies where an administrator reports to the Court that-

(a) an initial creditors' meeting has failed to approve the administrator's proposals presented to it; or

(b) a creditors' meeting has failed to approve a revision of the administrator's proposals presented to it.

Failure to obtain approval of administrator's proposals.

(2) The Court may-

(a) provide that the appointment of an administrator shall cease to have effect from a specified time;

(b) adjourn the hearing conditionally or unconditionally;

(c) make an interim order;

(d) make an order on a petition for winding-up suspended by virtue of section 462 (1) (b) of this Act; or

(e) make any other order, including an order making consequential provision, that the Court deems appropriate.

493. (1) The administrator shall summon further creditors' meeting if-

(a) it is requested in the prescribed manner by creditors of the company whose debts amount to at least 10% of the total debts of the company; or

(b) he is directed by the Court to summon a creditors' meeting.

Further creditors' meetings.

(2) An administrator commits an offence if he fails, without reasonable excuse, to summon a creditors' meeting as required by this section.

494. (1) A creditors' meeting may establish a Creditors' Committee.

Creditors' Committee.

(2) A Creditors' Committee shall perform functions conferred on it under this Act.

(3) A Creditors' Committee may require the administrator to-

(a) attend on the Committee at any reasonable time of which he is given at least seven days' notice; and

(b) provide the Committee with information about the exercise of his functions.

495. (1) Anything which is required or permitted by or under this Chapter to be done at a creditors' meeting may be done by correspondence between the administrator and creditors-

Correspondence instead of creditors' meeting.

(a) in accordance with the prescribed rules; and

(b) subject to any prescribed condition.

(2) A reference in this Chapter to anything done at a creditors' meeting includes a reference to anything done in the course of correspondence in accordance with subsection (1).

(3) A requirement to hold a creditors' meeting is satisfied by correspondence in accordance with this section.

#### FUNCTIONS OF ADMINISTRATOR

496. (1) The administrator of a company may do anything necessary or expedient for the management of the affairs, business and property of the company.

General powers.

(2) Any provision of this Chapter which expressly permits the administrator to do a specified thing is without prejudice to subsection (1).

(3) A person who deals with the administrator of a company in good faith and for value need not inquire whether the administrator is acting within his powers.

497. The Administrator of a company shall exercise the additional powers specified in Eleventh Schedule to this Act.

Additional powers of administrator.

Eleventh Schedule.

498. The administrator of a company may remove or appoint a director of the company, whether or not the appointment is to fill a vacancy.

Power to remove or appoint director.

499. The administrator of a company may call a meeting of members or creditors of the company.

Power to call meetings of members and creditors.

500. The administrator of a company may apply to the Court for directions in connection with his functions.

Application for direction of Court.

501. (1) A company in administration or an officer of a company in administration shall not exercise a management power without the consent of the administrator. Management power not to be exercised without consent of administrator.
- (2) For the purpose of subsection (1) -
- (a) “management power” means a power which could be exercised so as to interfere with the exercise of the administrator’s powers;
  - (b) it is immaterial whether the power is conferred by an enactment or an instrument; and
  - (c) consent may be general or specific.
502. (1) The administrator of a company may make a distribution to a creditor of the company. Distribution.
- (2) Section 643 applies in relation to a distribution under this section as it applies in relation to a winding-up.
- (3) A payment shall not be made by way of distribution under this section to a creditor of the company who is neither secured nor preferential unless the Court gives permission.
503. The administrator may make a payment other than in accordance with section 497 or subparagraph (m) of the Eleventh Schedule to this Act if he thinks it likely to assist achievement of the purpose of administration. Payments likely to achieve purpose of administration.  
Eleventh Schedule.
504. The administrator of a company shall, on his appointment take custody or control of all the property to which he thinks the company is entitled. Custody and control of property.
505. (1) Subject to subsection (2), the administrator of a company shall manage its affairs, business and property in accordance with any - Management of affairs of company.
- (a) proposal approved under section 492;
  - (b) revision of those proposals which is made by him and which he does not consider substantial; and
  - (c) revision of those proposals approved under section 489.
- (2) If the Court gives directions to the administrator of a company in connection with any aspect of his management of the company’s affairs, business or property, the

administrator shall comply with the directions.

- (3) The Court may give directions under subsection (2) only if-
- (a) no proposal has been approved under section 492 of this Act;
  - (b) the directions are consistent with any proposal or revision approved under section 486 or 491 of this Act;
  - (c) the Court considers that the directions are required in order to reflect a change in circumstances since the approval of proposals or a revision under section 486 or 491 of this Act; or
  - (d) the Court considers that the directions are desirable because of a misunderstanding about proposals or a revision approved under section 486 or 491 of this Act.

506. In performing his functions under this Part, the administrator of a company acts as its agent. Administrator as agent of company.

507. (1) The administrator of a company may dispose of or take action relating to property which is subject to a floating charge as if it were not subject to the charge. Charged property: floating charge.

(2) Where property is disposed of in accordance with subsection (1), the holder of the floating charge shall have the same priority in respect of acquired property as he had in respect of the property disposed of.

(3) In subsection (2), “acquired property” means property of the company which directly or indirectly represents the property disposed of.

508. (1) The Court may by order enable the administrator of a company to dispose of property which is subject to a security other than a floating charge as if it were not subject to the security. Charged property: non-floating charge.

(2) An order under subsection (1) may be made only-

(a) on the application of the administrator; and

(b) where the Court considers that disposal of the property would likely promote the purpose of administration in respect of the company.

(3) An order under this section is subject to the condition that there shall be applied towards discharging the sums secured by the security-

(a) the net proceeds of disposal of the property; and

(b) any additional money required to be added to the net proceeds so as to produce the amount determined by the Court as the net amount which would be realised on a sale of the property at market value.

(4) If an order under this section relates to more than one security, application of money under subsection (3) shall be in the order of the priorities of the securities.

(5) An administrator who makes a successful application for an order under this section shall send a copy of the order to the Commission before the end of 14 days starting with the date of the order.

(6) An administrator commits an offence if he fails, without reasonable excuse, to comply with subsection (5).

509. (1) The Court may by order enable the administrator of a company to dispose of goods which are in the possession of the company under a hire-purchase agreement as if all the rights of the owner under the agreement were vested in the company. Hire-purchase property.

(2) An order under subsection (1) may be made only-

(a) on the application of the administrator; and

(b) where the Court considers that disposal of the goods would be likely to promote the purpose of administration in respect of the company.

(3) An order under this section is subject to the condition that there shall be applied towards discharging the sums payable under the hire-purchase agreement-

(a) the net proceeds of disposal of the goods; and

(b) any additional money required to be added to the net proceeds so as to produce the amount determined by the Court as the net amount which would be realized on a sale of the goods at market value.

(4) An administrator who makes a successful application for an order under this section shall send a copy of the order to the Commission before the end of 14 days starting with the date of the order.

(5) An administrator commits an offence if he fails, without reasonable excuse, to

comply with subsection (4).

510. (1) An administrator's statement of proposals under section 486 of this Act does not include any action which— Protection for secured or preferential creditor.

(a) affects the right of a secured creditor of the company to enforce his security;

(b) would result in a preferential debt of the company being paid otherwise than in priority to its non-preferential debts; or

(c) would result in one preferential creditor of the company being paid a smaller proportion of his debt than another.

(2) Subsection (1) does not apply to—

(a) action to which the relevant creditor consents;

(b) a proposal for a voluntary arrangement under this Part, but without prejudice to section 714 of this Act;

(c) a proposal for a scheme of arrangement and compromise or reconstruction to be sanctioned under relevant Parts of the Act; or

(d) a proposal for a cross-border merger within the meaning of relevant legislation, including but not limited to the Investments and Securities Act .

Cap. I24, LFN, 2004.

(3) The reference to a statement of proposals in subsection (1) includes a reference to a statement as revised or modified.

511. (1) A creditor or member of a company in administration may apply to the Court claiming that the administrator— Challenge to administrator's conduct of company.

(a) is acting or has acted so unfairly as to harm the interests of the applicant, whether alone or in common with some or all other members or creditors; or

(b) proposes to act in a way which would unfairly harm the interests of the applicant, whether alone or in common with some or all other members or creditors.

(2) A creditor or member of a company in administration may apply to the Court claiming that the administrator is not performing his functions as quickly or as efficiently as is reasonably practicable.

(3) The Court may—

- (a) grant a relief;
- (b) dismiss the application;
- (c) adjourn the hearing conditionally or unconditionally;
- (d) make an interim order; or
- (e) make any other order it considers appropriate.

(4) In particular, an order under this section may -

- (a) regulate the administrator's exercise of his functions;
- (b) require the administrator to do or not do a specified thing;
- (c) require a creditors' meeting to be held for a specified purpose;
- (d) provide for the appointment of an administrator to cease to have effect; or
- (e) make consequential provision.

(5) An order may be made on a claim under subsection (1) whether or not the action complained of -

- (a) is within the administrator's powers under Tenth Schedule to this Act; or
- (b) was taken in reliance on an order under section 505 or 506 of this Act.

Tenth Schedule.

(6) An order shall not be made under this section if it would impede or prevent the implementation of—

- (a) a voluntary arrangement approved under Chapter 17 of Part B;

(b) a proposal for a scheme of arrangement and compromise or reconstruction to be sanctioned under relevant Parts of this Act;

(c) a proposal for a cross-border merger within the meaning of relevant legislation, including but not limited to the Investments and Securities Act; or

Cap. 124, LFN, 2004.

(d) proposals or a revision approved under section 491 or 492 of this Act more than 28 days before the day on which the application for the order under this section is made.

512. (1) The Court may examine the conduct of a person who—

Misfeasance.

(a) is, or purports to be, the administrator of a company; or

(b) has been, or has purported to be, the administrator of a company.

(2) An examination under this section may be held only on the application of—

(a) the official receiver;

(b) the administrator of the company;

(c) the liquidator of the company;

(d) a creditor of the company; or

(e) a contributory of the company.

(3) An application under subsection (2) shall allege that the administrator has—

(a) misapplied or retained money or other property of the company;

(b) become accountable for money or other property of the company;

(c) breached a fiduciary or other duty in relation to the company; or

(d) been guilty of misfeasance.

(4) On an examination under this section into a person's conduct, the Court may order him to—

(a) repay, restore or account for money or property;

(b) pay interest; or

(c) contribute a sum to the company's property by way of compensation for breach of duty or misfeasance.

(5) An application under subsection (2) may be made in respect of an administrator who has been discharged under section 523 of this Act only with the permission of the Court.

(6) In subsection (3), "administrator" includes a person who purports or has purported to be an administrator of a company.

#### CESSATION OF ADMINISTRATION

513. (1) Subject to subsection (2) the appointment of an administrator shall cease to have effect at the end of the period of one year beginning with the date on which it takes effect.

Automatic cessation of administration.

(2) The term of office of an administrator may be extended for -

(a) a specified period, by an order of the Court on the application of the administrator; or

(b) a period not exceeding six months, by consent.

514. (1) An order of the Court under section 513 of this Act -

When to make order under section 513 of this Act.

(a) may be made in respect of an administrator whose term of office has already been extended by order or by consent; and

(b) shall not be made after the expiry of the administrator's term of office.

(2) Where an order is made under section 513 of this Act, the administrator shall, as soon as is reasonably practicable, notify the Commission of the order.

(3) An administrator who fails, without reasonable excuse, to comply with subsection (2) commits an offence.

515. (1) In section 513 (2) (b) of this Act, “consent” means consent of—

Meaning of consent for purposes of section 513 (2) (b) of this Act.

- (a) each secured creditor of the company; and
- (b) if the company has unsecured debts, creditors whose debts amount to more than 50% of the company’s unsecured debts, without regard to the debts of any creditor who does not respond to an invitation to give or withhold consent.

(2) Where the Administrator has made a statement under section 486 of this Act, “consent”, in section 513 (2) (b) of this Act, means—

- (a) consent of each secured creditor of the company; or
- (b) if the administrator thinks that a distribution may be made to preferential creditors, consent of—
  - (i) each secured creditor of the company, and
  - (ii) preferential creditors whose debts amount to more than 50% of the preferential debts of the company, without regard to the debts of any creditor who does not respond to an invitation to give or withhold consent.

516. (1) Consent, for the purposes of section 513 (2) (b) of this Act, may be—

Form and extent of consent.

- (a) written; or
- (b) signified at a creditors’ meeting.

(2) An administrator’s term of office may be extended by consent only once, provided that it shall not be extended by consent after -

- (a) expiry; and
- (b) extension by order of the Court.

(3) Where an administrator’s term of office is extended by consent, he shall, as soon as is reasonably practicable—

- (a) file notice of the extension with the Court; and
- (b) notify the Commission.

- (4) An administrator who fails, without reasonable excuse, to comply with subsection (3) commits an offence.

517. (1) On the application of the administrator of a company, the Court may provide for the appointment of an administrator of the company to cease to have effect from a specified time.

Cessation of administration by Court on application of administrator.

(2) The administrator of a company shall make an application under this section if—

- (a) he thinks the purpose of administration cannot be achieved in relation to the company;
- (b) he thinks the company should not have entered administration; or
- (c) a creditors' meeting requires him to make an application under this section.

(3) The administrator of a company shall make an application under this section if the

- (a) administration is pursuant to an administration order; and
- (b) administrator thinks that the purpose of administration has been sufficiently achieved in relation to the company.

(4) On an application under this section the Court may—

- (a) adjourn the hearing conditionally or unconditionally;
- (b) dismiss the application;
- (c) make an interim order; or
- (d) make any order it considers appropriate, whether in addition to, in consequence of or in place of the order applied for.

518. (1) This section applies where an administrator of a company is appointed under section 443 or 448 of this Act.

Termination of administration where objective is achieved.

(2) If the Administrator thinks that the purpose of administration has been sufficiently achieved in relation to the company he may file a notice in the prescribed form with the —

(a) Court; and

(b) Commission.

(3) The administrator's appointment ceases to have effect when the requirements of subsection (2) are satisfied.

(4) Where the administrator files a notice, he shall, within the prescribed period, send a copy to every creditor of the company of whose claim and address he is aware.

(5) The prescribed rules may provide that the administrator is taken to have complied with subsection (4) if, before the end of the prescribed period, he publishes, in the prescribed manner, a notice undertaking to provide a copy of the notice under subsection (2) to any creditor of the company who applies in writing to a specified address.

(6) An administrator who fails, without reasonable excuse, to comply with subsection (4) commits an offence.

519. (1) On the application of a creditor of a company, the Court may provide for the appointment of an administrator of the company to cease to have effect at a specified time.

Cessation of administration by Court on application of creditors.

(2) An application under this section shall allege an improper motive—

(a) in the case of an administrator appointed by administration order, on the part of the applicant for the order; or

(b) in any other case, on the part of the person who appointed the administrator.

(3) On an application under this section, the Court may—

(a) adjourn the hearing conditionally or unconditionally;

(b) dismiss the application;

(c) make an interim order; or

(d) make any order it considers appropriate, whether in addition to, in consequence of or instead of the order applied for.

520. (1) This section applies where a winding-up order is made for the winding-up of a company in administration on a petition presented under—

Public interest winding-up.

(a) grounds of public interest as may be prescribed by the Chief Judge or under an enactment; or

(b) the Banks and Other Financial Institutions Act, Nigeria Deposit Insurance Corporation Act or any other financial services and markets related Act.

Cap. B3, LFN, 2004.

Cap. N102, LFN, 2004.

(2) This section also applies where a provisional liquidator of a company in administration is appointed following the presentation of a petition under any of the provisions in subsection (1).

(3) The Court shall order that the appointment of the administrator ceases to have effect or continue to have effect.

(4) Where the Court makes an order under subsection (3) (b) of this section it may also—

(a) specify which of the powers under the Tenth Schedule to this Act are to be exercisable by the administrator; and

(b) order that this Part shall have effect in relation to the administrator with specified modifications.

Tenth Schedule.

521. (1) This section applies where the administrator of a company thinks that—

(a) the total amount which each secured creditor of the company is likely to receive has been paid to him or set aside for him; and

(b) a distribution is made to unsecured creditors of the company, if there are any.

Moving from administration to creditors' voluntary liquidation.

(2) The administrator may send to the Commission a notice that this section applies.

(3) On receipt of a notice under subsection (2), the Commission shall register the notice.

(4) After an administrator has sent a notice under subsection (2), he shall, as soon as is reasonably practicable—

(a) file a copy of the notice with the Court; and

(b) send a copy of the notice to each creditor of whose claim and address he is aware.

(5) On the registration of a notice under subsection (3) the —

- (a) appointment of an administrator in respect of the company ceases to have effect; and
- (b) company shall be wound up as if a resolution for voluntary winding-up under section 620 of this Act were passed on the day on which the notice is registered.

(6) The liquidator, for the purposes of the winding-up, shall be—

- (a) a person nominated by the creditors of the company in the prescribed manner and within the prescribed period; or
- (b) the administrator, if no person is nominated under paragraph (a).

(7) In the application of this Chapter to a winding-up by virtue of this section—

- (a) section 520 of this Act shall not apply;
- (b) this section applies as if the reference to the time of the passing of the resolution for voluntary winding-up were a reference to the beginning of the date of registration of the notice under subsection (3);
- (c) sections 523, 532, 533 and 534 shall not apply;
- (d) subsection (5) (b) shall apply as if the reference to the time of the passing of the resolution for voluntary winding-up were a reference to the beginning of the date of registration of the notice under subsection (3); and
- (e) any creditors' committee which is in existence immediately before the company ceases to be in administration shall continue in existence after that time as if appointed as a liquidation committee by the creditors at the creditors' meeting for the purpose of the winding-up.

522. (1) If the administrator of a company thinks that the company has no property which might permit distribution to its creditors, he shall send a notice to that effect to the Commission.

Moving from  
administration to  
dissolution.

- (2) The Court may on the application of the administrator of a company, discontinue the application of subsection (1) in respect of the company.
- (3) On receipt of a notice under subsection (1) the Commission shall register the notice.
- (4) On the registration of a notice in respect of a company under subsection (3) the appointment of an administrator of the company ceases to have effect.
- (5) If an administrator sends a notice under subsection (1), he shall, as soon as is reasonably practicable—
  - (a) file a copy of the notice with the Court; and
  - (b) send a copy of the notice to each creditor of whose claim and address he is aware.
- (6) At the end of three months beginning with the date of registration of a notice in respect of a company under subsection (3) the company is deemed to be dissolved.
- (7) On an application in respect of a company by the administrator or another interested person, the Court may—
  - (a) extend the period specified in subsection (6);
  - (b) suspend that period; or
  - (c) discontinue the application of subsection (6).
- (8) Where an order is made under subsection (7) in respect of a company the administrator shall, as soon as is reasonably practicable, notify the Commission.
- (9) An administrator commits an offence if he fails, without reasonable excuse, to comply with subsection (5).

523. (1) This section applies where—

- (a) the Court makes an order under this Chapter providing for the appointment of an administrator of a company to cease to have effect; and
- (b) the administrator was appointed by administration order.

Discharge of  
administration order on  
cessation of  
administration.

(2) The Court shall discharge the administration order.

524. (1) This section applies where the Court makes an order under this Chapter providing for the appointment of an administrator to cease to have effect.

Notice to the Commission on cessation of administration.

(2) The administrator shall send a copy of the order to the Commission within 14 days beginning with the date of the order.

(3) An administrator who fails, without reasonable excuse, to comply with subsection (2) commits an offence.

### REPLACEMENT OF ADMINISTRATOR

525. (1) An administrator may resign only in prescribed circumstances.

Resignation of administrator.

(2) An administrator may resign only where he is appointed—

(a) by administration order, by notice in writing to the Court;

(b) under section 452 of this Act, by notice in writing to the holder of the floating charge by virtue of which the appointment was made;

(c) under section 459 (1) of this Act, by notice in writing to the company; or

(d) under section 459 (2) of this Act, by notice in writing to the directors of the company.

526. The Court may by order remove an administrator from office.

Removal of administrator from office.

527. (1) The administrator of a company shall vacate office if he ceases to be qualified to act as an insolvency practitioner in relation to the company.

Administrator ceasing to be qualified.

(2) Where an administrator vacates office by virtue of subsection (1) he shall give notice in writing, in the case of an administrator appointed—

(a) by administration order, to the Court;

(b) under section 452 of this Act, to the holder of the floating charge by virtue of which the appointment was made;

(c) under section 459 (1) of this Act, to the company; or

(d) under section 459 (2) of this Act, to the directors of the company.

(3) An administrator who fails, without reasonable excuse, to comply with subsection (2) commits an offence.

528. Sections 529 - 535 of this Act shall apply where an administrator—

Supplying vacancy in office of administrator.

(a) dies;

(b) resigns;

(c) is removed from office under section 524 of this Act; or

(d) vacates office under section 523 of this Act.

529. (1) Where the administrator was appointed by administration order, the Court may replace the administrator on an application under this subsection made by—

Replacement of administrator appointed by Court order.

(a) a Creditors' Committee of the company;

(b) the company;

(c) the directors of the company;

(d) one or more creditors of the company; or

(e) where more than one person was appointed to act jointly or concurrently as the administrator or any of those persons who remains in office.

(2) An application may be made in reliance on subsection (1) (b) - (d) only where —

(a) there is no Creditors' Committee of the company;

(b) the Court is satisfied that the Creditors' Committee or a remaining administrator is not taking reasonable steps to make a replacement; or

(c) the Court is satisfied that for another reason it is right for the application to be made.

530. An administrator appointed under section 452 of this Act may be replaced by the holder of the floating charge by virtue of which the appointment was made.

Replacement of administrator appointed by holder of floating charge.

531. (1) An administrator appointed under section 459 (1) of this Act, may be replaced by the company. Replacement of administrator appointed by company.
- (2) A replacement under this section may be made only—
- (a) with the consent of each person who is the holder of a floating charge in respect of the company's property; or
  - (b) where consent is withheld, with the permission of the Court.
532. (1) An administrator appointed under section 459 (2) of this Act, may be replaced by the directors of the company. Replacement of administrator appointed by directors.
- (2) A replacement under this section may be made only—
- (a) with the consent of each person who is the holder of a floating charge in respect of the company's property; or
  - (b) where consent is withheld, with the permission of the Court.
533. The Court may replace an administrator on the application of a person listed in section 529 (1) of this Act if the Court is satisfied that— Replacement of administrator appointed by administration order.
- (a) a person who is entitled to replace the administrator under sections 525 – 527 of this Act is not taking reasonable steps to make a replacement; or
  - (b) for any other reason which, in the opinion of the Court, it is proper to make the replacement.
534. (1) This section applies where an administrator of a company is appointed under section 452 of this Act by the holder of a floating charge in respect of the company's property. Substitution of administrator by a competing floating charge-holder.
- (2) The holder of a prior floating charge in respect of the company's property may apply to the court for the administrator to be replaced by an administrator nominated by the holder of the prior floating charge.
- (3) A floating charge is prior to another for the purposes of this section if it —
- (a) was first registered with the Commission or, in default of registration, it was first created; or
  - (b) is to be treated as having priority in accordance with an agreement to which the holder of each floating charge

was a party.

535. (1) This section applies where—

- (a) an administrator of a company is appointed by a company or directors under section 459 of this Act; and
- (b) there is no holder of a floating charge in respect of the company's property.

Substitution of administrator appointed by company or directors by creditors' meeting.

(2) A creditors' meeting may replace the administrator.

(3) A creditors' meeting may act under subsection (2) only if the new administrator's written consent to act is presented to the meeting before the replacement is made.

536. (1) Where a person ceases to be the administrator of a company because-

- (a) he vacates office by reason of resignation, death or otherwise,
- (b) he is removed from office, or
- (c) his appointment ceases to have effect,

Discharge from liability on vacation of office.

he is discharged from liability in respect of any of his actions as Administrator.

(2) The discharge provided by subsection (1) takes effect in —

- (a) the case of an administrator who dies, on the filing with the court of notice of his death;
- (b) the case of an administrator appointed under section 450 or 457 of this Act, at a time appointed by resolution of the creditors' committee or, if there is no committee, by resolution of the creditors; or
- (c) any other case, at a time specified by the Court.

(3) For the purpose of the application of subsection (2) (b) in a case where the Administrator has made a statement under section 488 of this Act, a resolution is taken as passed if it is passed with the approval —

- (a) each secured creditor of the company;
- (b) each secured creditor of the company; and

- (c) preferential creditors whose debts amount to more than 50% of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval, where the administrator has made a distribution to preferential creditors or thinks that a distribution may be made to preferential creditors.

(4) In this section, “discharge”—

- (a) applies to liability accrued before the discharge takes effect; and
- (b) does not prevent the exercise of the court’s powers under section 500.

537. (1) This section applies where a person ceases to be the administrator of a company, whether by reason of resignation, removal from office, cessation of appointment, death or otherwise.

Charges and liabilities on vacation of office.

(2) The former administrator’s remuneration and expenses shall be—

- (a) charged on and payable out of property of which he had custody or control immediately before cessation; and
- (b) payable in priority to any security to which section 510 of this Act applies.

(3) A sum payable in respect of a debt or liability arising out of a contract, including a contract for post-commencement financing, entered into by the former Administrator or a predecessor before cessation shall be—

- (a) charged on and payable out of property of which the former Administrator had custody or control immediately before cessation; and
- (b) payable in priority to any charge arising under subsection (2).

(4) In this section—

- (a) “cessation” means the time when he ceases to be the company’s Administrator;
- (b) “former Administrator” means the person referred to in

subsection (1);

(c) subsection (3) applies to a liability arising under a contract of employment which was adopted by the former administrator or a predecessor before cessation; and for that purpose—

(i) action taken within 14 days after an Administrator's appointment shall not be taken to amount or contribute to the adoption of a contract,

(ii) no account shall be taken of a liability which arises, by reference to anything which is done or which occurs before the adoption of the contract of employment, and

(iii) no account shall be taken of a liability to make a payment other than wages or salary.

(5) In subsection (4) (c) (iii), "wages or salary" includes—

(a) a sum payable in respect of a period of holiday, for which purpose, the sum shall be treated as relating to the period by reference to which the entitlement to holiday accrued;

(b) a sum payable in respect of a period of absence through illness or other good cause;

(c) a sum payable in lieu of holiday;

(d) in respect of a period, a sum which would be treated as earnings for that period for the purposes of an enactment on social security; and

(e) a contribution to an occupational pension scheme.

## GENERAL

538. (1) In this Chapter a reference to the appointment of —

(a) an administrator of a company includes a reference to

Joint and concurrent administrators.

the appointment of a number of persons to act jointly or concurrently as the Administrator of a company; and

(b) a person as administrator of a company includes a reference to the appointment of a person as one of a number of persons to act jointly or concurrently as the administrator of a company.

(2) The appointment of a number of persons to act as administrator of a company shall specify which functions, if any, are to be performed by—

(a) the persons appointed acting jointly; and

(b) any or all of the persons appointed.

539. (1) This section applies where two or more persons are appointed to act jointly as the administrator of a company. Joint Administrators.

(2) A reference to the administrator of the company is a reference to those persons acting jointly.

(3) A reference to the administrator of a company in sections 523 - 534 of this Act is a reference to any or all of the persons appointed to act jointly.

(4) Where an offence of omission is committed by the administrator, each of the persons appointed to act jointly—

(a) commits the offence; and

(b) may be proceeded against and punished individually.

(5) The reference in section 482 (1) (a) of this Act to the name of the administrator is a reference to the name of each of the persons appointed to act jointly.

(6) Where persons are appointed to act jointly in respect of only some of the functions of the administrator of a company, this section applies only in relation to those functions.

540. (1) This section applies where two or more persons are appointed to act concurrently as the administrator of a company. Concurrent administrators.

(2) A reference to the administrator of a company in this Chapter is a reference to any of the persons appointed or any combination of them.

541. (1) Where a company is in administration, a person may be appointed to act as administrator jointly or concurrently with the person or persons acting as the Joint and concurrent administrators acting with administrator of

administrator of the company.

company.

- (2) Where a company entered administration by administration order, an appointment under subsection (1) shall be made by the Court on the application of—
  - (a) a person or group listed in section 450 (1) (a) - (e) of this Act; or
  - (b) the person or persons acting as the administrator of the company.
- (3) Where a company entered administration as a result of appointment under section 443 of this Act, an appointment under subsection (1) shall be made by the —
  - (a) holder of the floating charge by virtue of which the appointment was made; or
  - (b) Court on the application of the person or persons acting as the administrator of the company.
- (4) Where a company entered administration by virtue of an appointment under section 447 of this Act, an appointment under subsection (1) shall be made either by the Court on the application of the person or persons acting as the administrator of the company or—
  - (a) by the company; and
  - (b) with the consent of each person who is the holder of a floating charge in respect of the company's property or, where consent is withheld, with the permission of the Court.
- (5) Where a company entered administration by virtue of an appointment under section 452 (2) of this Act, an appointment under subsection (1) shall be made either by the Court on the application of the person or persons acting as the Administrator of the company or—
  - (a) by the directors of the company; and
  - (b) with the consent of each person who is the holder of a floating charge in respect of the company's property or, where consent is withheld, with the permission of the Court.
- (6) An appointment under subsection (1) may be made only with the consent of the person or persons acting as the administrator of the company.

542. An act of the administrator of a company is valid in spite of a defect in his appointment or qualification. Presumption of validity.

543. A reference in this Chapter to something done by the directors of a company includes a reference to the same thing done by a majority of the directors of a company. Majority decision of directors.

544. (1) Unless otherwise provided, a person who commits an offence under this Chapter is liable on conviction to a fine of at least N200,000. Penalties.

(2) A person who commits an offence under -

(a) section 455,

(b) section 467,

(c) section 470,

(d) section 482,

(e) section 483,

(f) section 484,

(g) section 486,

(h) section 488,

(i) section 493,

(j) section 491,

(k) section 508,

(l) section 509,

(m) section 514,

(n) section 516,

(o) section 518,

(p) section 522,

(q) section 524, and

(r) section 527,

is liable on conviction to a daily default fine of not less than N5,000.

545. (1) Where a provision of this Part provides that a period may be varied in accordance with this section, the period may be varied in respect of a company— Extension of time limit.

(a) by the Court; and

(b) on the application of the administrator.

(2) A time period may be extended in respect of a company under this section—

(a) more than once; and

(b) after expiry.

546. (1) A period specified in sections 483 (5), 487 (1) (b), or 488 (2) of this Act may be varied in respect of a company by the administrator with consent. Variation of time.

(2) In subsection (1), “consent” means consent of—

(a) each secured creditor of the company; and

(b) creditors whose debts amount to more than 50% of the company’s unsecured debts, if the company has unsecured debts, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.

(3) Where the administrator has made a statement under section 487 of this Act –

“consent” means—

(a) consent of each secured creditor of the company; or

(b) if the Administrator thinks that a distribution may be made to preferential creditors, consent of—

(i) each secured creditor of the company, and

(ii) preferential creditors whose debts amount to more than 50% of the total preferential debts of

the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.

(4) Consent for the purposes of subsection (1) may be—

- (a) written; or
- (b) signified at a creditors' meeting.

(5) The power to extend under subsection (1)—

- (a) may be exercised in respect of a period only once;
- (b) shall not be used to extend a period by more than 28 days;
- (c) shall not be used to extend a period which has been extended by the Court; and
- (d) shall not be used to extend a period after expiry.

547. Where a period is extended under section 545 or 546, a reference to the period shall be taken as a reference to the period as extended. Period extended under sections 545 or 546.

548. (1) The Chief Judge of the Federal High Court may by order amend a provision of this Chapter which— Amendment of provision about time.

- (a) requires anything to be done within a specified period of time;
- (b) prevents anything from being done after a specified time; or
- (c) requires a specified minimum period of notice to be given.

(2) The Chief Judge shall make procedural rules relating to administration.

(3) An order or rule under this section shall be made by statutory instrument published in the Federal Government Gazette.

549. (1) In this Chapter — Interpretation of this Chapter.

“administrator” of a company means a person appointed under any of the means under this Chapter to manage the company’s affairs, business and property;

“company” means—

- (a) a company registered under this Act or any other special legislation relating to companies; or
- (b) any other corporate entity which is recognised under rules or order made by the Minister;

“correspondence” includes correspondence by telephonic or other electronic means;

“creditors’ meeting” has the meaning given under section 487 of this Act;

“enters administration” has the meaning given to it under subsection (2) (a);

“floating charge” means a charge which is a floating charge on its creation;

“in administration” has the meaning given to under subsection (2) (b);

“hire-purchase agreement” includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement;

“holder of a floating charge” in respect of a company’s property has the meaning given under section 452 of this Act;

“market value” means the amount which would be realised on a sale of property in the open market by a willing vendor;

“purpose of administration” means an objective specified in section 444 of this Act; and

“unable to pay its debts” has the meaning given by section 572 of this Act.

(2) For the purposes of this Chapter -

- (a) a company “enters administration” when the appointment of an administrator takes effect;
- (b) a company is “in administration” while the appointment of an Administrator of the company has effect;
- (c) a company ceases to be in administration when the appointment of an administrator of the company ceases to have effect, and
- (d) a company does not cease to be in administration merely because an administrator vacates office (by reason of resignation, death or otherwise) or is removed from

office.

(3) In this Chapter, a reference to-

- (a) a thing in writing includes a reference to a thing in electronic form; and
- (b) action includes a reference to inaction.

CHAPTER 19 — RECEIVERS AND MANAGERS,  
APPOINTMENT OF RECEIVERS AND MANAGERS

550. (1) The following persons shall not be appointed or act as receivers or managers of any property or undertaking of any company —

Disqualification for appointment as a receiver or manager.

- (a) an infant;
- (b) any person found by a competent Court to be of unsound mind;
- (c) a body corporate;
- (d) an undischarged bankrupt, unless he is given leave to act as a receiver or manager of the property or undertaking of the company by the Court by which he was adjudged bankrupt;
- (e) a director or auditor of the company; and
- (f) any person convicted of any offence involving fraud, dishonesty, official corruption or moral turpitude or who is disqualified under section 280 of this Act.

(2) Any appointment made in contravention of the provisions of subsection (1) is void and if any of the persons named in paragraphs (c), (d), (e) and (f) acts as a receiver or manager, he commits an offence and is liable to a fine in such amount as the Commission shall specify in its regulations, and in the case of a body corporate or, in the case of an individual, to imprisonment for a term not exceeding six months or a fine as the Court deems fit.

(3) Where any of the persons mentioned in subsection (1) is at the commencement of this Act acting as a receiver or manager, he may be removed by a Court on an application by a person interested.

551. Where an application is made to the Court to appoint a receiver on behalf of the debenture holder or other creditors of a company which is being wound up by a court, an official receiver may be appointed.

Power of the court to appoint official receiver for debenture holders and other creditors.

552. (1) Notwithstanding the provisions of section 233 (1) (d) the Court may, on the application of a person interested, appoint a receiver or a receiver and manager of the property or undertaking of a company if the —

Appointment of receivers and managers by the Court.

(a) principal money borrowed by the company or the interest is in arrears; or

(b) security or property of the company is in jeopardy.

(2) A receiver or manager of any property or undertaking of a company appointed by the Court is 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.

553. (1) A receiver or manager of any property or undertaking of a company appointed out of Court under a power contained in any instrument is, subject to section 554 of this Act, 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 is deemed to stand in a fiduciary relationship to the company and observe the utmost good faith towards it in any transaction with it or on its behalf.

Receivers and managers appointed out of Court.

(2) Such a manager —

(a) shall act at all times in what he believes to be the best interests of the company as a whole so as to preserve its assets, further its business, and promote the purposes for which it was formed, and in such manner as a faithful, diligent, careful and ordinarily skillful manager would act in the circumstances; and

(b) in considering whether a particular transaction or course of action is in the best interest of the company as a whole, may have regard to the interests of the employees, as well as the members of the company, and, when appointed by, or as a representative of, a special class of members or creditors may give special, but not exclusive, consideration to the interests of that class.

(3) Nothing contained in the articles, or in any contract, or in any resolution of a company, shall relieve any manager from the duty to act in accordance with subsection (2) or relieve him from any liability incurred as a result of any breach of such duty.

554. A receiver or manager of the property of a company appointed under a power contained in any instrument, or the persons by whom or on whose behalf a receiver or manager has been so appointed may apply to the Court for directions in relation to any particular matter arising in connection with the performance of his functions, and on any such application the Court may give such directions or make such order declaring the rights of persons before the Court or otherwise, as it deems just.

Power of a receiver or manager appointed out of Court to apply to the Court for directions.

555. (1) Where a receiver or manager of the property of a company has been appointed, the receiver or manager shall within 14 days give notice of his appointment to the Commission indicating the terms of and remuneration for the appointment, and every invoice, order for goods or business letter issued by or on behalf of the company, receiver, manager or liquidator of the company, being a document on or in which the company's name appears, shall contain a statement that a receiver or manager has been appointed.

Notification to the Commission that a receiver or manager has been appointed.

(2) If default is made in complying with this section, the receiver, manager, liquidator or any officer of the company who is in default, authorises or permits the default as the case may be, commits an offence and is liable to a penalty for every day during which the default continues in such amount as the Commission shall specify in its regulations.

## DUTIES, POWERS AND LIABILITIES OF RECEIVERS AND MANAGERS

556. (1) A person appointed as a receiver of any property of a company shall, subject to the rights of prior encumbrances, take possession of and protect the property, receive rents and profits and discharge all out-goings in respect thereof and realise the security for the benefit of those on whose behalf he is appointed, but unless he is an appointed manager, he does not have power to carry on any business or undertaking.

Duties and powers of receivers and managers.

(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 realisation of the security of those on whose behalf he is appointed.

(3) Without prejudice to subsection (1) or (2), where a receiver or manager is appointed for the whole or substantially the whole of a company's property, the powers conferred on him by the debentures by virtue of which he was appointed are deemed to include (except they are inconsistent with any of the provisions of those debentures) the powers specified in the Eleventh Schedule to this Act.

Eleventh Schedule.

(4) From the date of appointment of a receiver or manager, the powers of the directors or liquidators in a members' voluntary winding up to deal with the

property or undertaking over which he is appointed, shall cease, unless the receiver or manager is discharged or the security is realised.

- (5) If, on the appointment of a receiver or manager, the company is being wound up under the provision relating to creditors' voluntary winding up, or the property concerned is in the hands of some other officer of the Court, the liquidator or officer shall not be bound to relinquish control of such property to the receiver or manager except under the order of the Court.

557. (1) A receiver or manager of any property or undertaking of a company is personally liable on any contract entered into by him except in so far as the contract otherwise expressly provides.

Liabilities of receivers and managers on contracts.

- (2) As regards contracts entered into by a receiver or manager in the proper performance of his functions, such receiver or manager is, subject to the rights of any prior encumbrance, entitled to an indemnity in respect of liability thereon out of the property over which he has been appointed to act as a receiver or manager.

- (3) A receiver or manager appointed out of Court under a power contained in any instrument is also 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).

558. (1) The Court may, on the application of the company or the liquidator, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as a receiver or manager of the property of the company.

Power of the Court to fix remuneration on application of liquidator.

- (2) The powers of the Court under subsection (1) shall, where no previous order is made under that subsection —

- (a) extend to fixing the remuneration for any period before the making of the order or the application;
- (b) be exercisable notwithstanding that the receiver or manager has died or ceased to act before the making of the order or the application; and
- (c) extend, where the receiver or manager has been paid or has retained as his remuneration for any period before the making of the order any amount in excess of that so fixed for that period, to requiring him or his personal representatives to account for the excess or such part 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 exercised.

- (3) The Court may, on an application made by the company, liquidator or by the receiver or manager, vary or amend an order made under subsection (1).
- (4) This section applies whether the receiver or manager has been appointed before or after the commencement of this Act.

#### PROCEDURE AFTER APPOINTMENT

559. (1) Where a receiver or manager of the whole or substantially the whole of the property of a company (in this section and in section 560 of this Act referred to as "the receiver") has been appointed on behalf of the holders of any debentures of the company secured by a floating charge, then, subject to the provisions of this section and of section 560 of this Act —

Information where receiver or manager appointed in respect of a floating charge.

- (a) the receiver shall immediately send notice to the company of his appointment and the terms;
- (b) there shall, within 14 days after receipt of the notice, or such longer period as may be allowed by the Court or by the receiver, be made out and submitted to the receiver in accordance with section 560 of this Act, a statement in the prescribed form as to the affairs of the company; and
- (c) the receiver shall, within two months after receipt of the statements, send to —
  - (i) the Commission or Court a copy of the statement and of any comments he sees fit to make thereon and in the case of the Commission also a summary of the statement and of his comments, if any,
  - (ii) the company a copy of any comments or if he does not think fit to make any comment, a notice to that effect, and
  - (iii) any trustees for the debenture holders on whose behalf he has been appointed and, so far as he is aware of their addresses, to all such

debenture holders, a copy of the said summary.

- (2) The receiver shall within two months, or such longer period as the Court may allow after the expiration of the period of 12 months from the date of his appointment and of every subsequent period of 12 months, and within two months, or such longer period as the Court may allow after he ceases to act as receiver or manager of the property of the company, send to the Commission, any trustee for the debenture holders of the company on whose behalf he was appointed, the company and (if he is aware of their addresses) all debenture holders (if he is aware of their addresses), an abstract in the prescribed form showing his receipts and payments during that period of 12 months, or, where he ceases to act, during the period from the end of the period to which the last preceding abstract relates up to the date of his so ceasing, and the aggregate amounts of his receipts and payments during all preceding periods since his appointment.
- (3) Where the receiver is appointed under the powers contained in any instrument, this section has effect with the —
  - (a) omission of the references to the Court in subsection (1); and
  - (b) substitution for the references to the Court in subsection (2), of references to the Commission and in any other case references to the Court shall be taken as referring to the Court by which the receiver was appointed.
- (4) Subsection (1) does not apply in relation to the appointment of a receiver or manager to act with an existing receiver or manager or in place of a receiver or manager dying or ceasing to act, except that, where that subsection applies to a receiver or manager who dies or ceases to act before it has been fully complied with, the references in paragraphs (b) and (c) to the receiver shall, subject to subsection (5), include references to his successor and to any continuing receiver or manager and nothing in this subsection shall be taken as limiting the meaning of the expression "the receiver" where used in, or in relation to, subsection (2).
- (5) This section and section 560 of this Act, where the company is being wound up, apply notwithstanding that the receiver or manager and the liquidator are the same person.
- (6) Nothing in subsection (2) shall be taken to prejudice the duty of the receiver to render proper accounts of his receipts and payments to the persons to whom, and at the times at which, he may be required to do so apart from that sub-section.
- (7) If the receiver makes default in complying with the requirements of this section,

he is liable to a penalty for every day during which the default continues in such amount as the Commission shall specify in its regulations.

560. (1) The statements as to the affairs of a company required by section 559, to be submitted to the receiver (or his successor) shall, show as at the date of the receiver's appointment -

Special provisions as to statement submitted to receiver.

- (a) the particulars of the company's assets, debts and liabilities;
- (b) the names, residences and occupations of its creditors;
- (c) the securities held by the directors respectively;
- (d) the dates when the securities were respectively given; and
- (e) such further or other information as may be prescribed.

(2) The statement shall be submitted, and verified by affidavit of one or more of the persons who are, at the date of the receiver's appointment, the directors and by the person who is, at that date, the secretary of the company, or by the receiver or his successor, subject to the direction of the court, may require to submit and verify the statement of who —

- (a) are or have been officers of the company;
- (b) have taken part in the formation of the company at any time within one year before the date of the receiver's appointment;
- (c) are in the employment of the company, or have been in the employment of the company within the year, and are in the opinion of the receiver capable of giving the information required; or
- (d) are or have been within the said year officers of or in the employment of a company which is, or within the said year was, an officer of the company to which the statement relates.

(3) A person making the statement and affidavit is allowed, and shall be paid by the receiver (or his successor) out of his receipts, such costs and expenses incurred in the preparation and making of the statement and affidavit as the receiver or

his successor may consider reasonable, subject to an appeal to the Court.

- (4) Where the receiver is appointed under the powers contained in any instrument, this section has effect with the substitution for references to the Court of references to the Commission and references to an affidavit, of references to a statutory declaration and in any other case references to the Court is taken as referring to the Court by which the receiver was appointed.
- (5) If any person without reasonable excuse makes default in complying with the requirements of this section, he is liable to a penalty as may be prescribed by the Regulation for every day during which the default continues.
- (6) References in this section to the receiver's successor include a continuing receiver or manager.

#### ACCOUNTS BY RECEIVER OR MANAGER

561. (1) Except where section 559 (2) of this Act applies, every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument shall, within one month or such longer periods as the Commission may allow, after the expiration of the period of six months from the date of his appointment, and of every subsequent period of six months, and within one month after he ceases to act as receiver or manager, deliver to the Commission for registration an abstract in the prescribed form showing his receipts and his payments during that period of six months, or where he ceases to act, during the period from the end of the period to which the last preceding abstract relates, up to the date of his ceasing, and the aggregate amount of his receipts and of his payments during all preceding periods since his appointment.
- Delivery to  
Commission of  
accounts of receivers  
and managers.
- (2) Every receiver or manager who makes default in complying with the provisions of this section is liable to a penalty as may be prescribed in the regulation for every day during which the default continues.

#### DUTY AS TO RETURNS

562. (1) If any receiver or manager of the property of a company having —
- Enforcement of duty of  
receivers and managers  
to make returns, etc.
- (a) made default in filing, delivering or making any returns, account or other document, or in giving any notice which a receiver or manager is by law required to file, delivers, makes, gives or fails to make good the default within 14 days after the service on him of a notice requiring him to do so, or
  - (b) been appointed under the powers contained in any

instrument has, after being required at any time by the liquidator of the company so to do, fails to render proper accounts of his receipts and payment and to vouch the same and to pay over to the liquidator the amount properly payable to him,

the Court may, on an application made for that purpose, make an order directing the receiver or manager, as the case may be to make good the default within such time as may be specified in the order.

- (2) In the case of any default under subsection (1) (a), an application may be made by any member or by the Commission, and in the case of any default under subsection (1) (b), the application shall be made by the liquidator, and in either case the order may provide that all costs shall be borne by the receiver or manager.
- (3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on receivers in respect of any default mentioned in subsection (1).

#### CONSTRUCTION OF REFERENCES

563. Any reference in this Act to—

Construction of references to receivers and managers.

- (a) a receiver or manager of the property of a company, or to a receiver thereof, includes a reference to a receiver or manager, or to a receiver of part only of that property and to a receiver only of the income arising from that property or from part thereof; and
- (b) the appointment of a receiver or manager under powers contained in any instrument, includes a reference to an appointment made under powers which, by virtue of any enactment, are implied in and have effect as if contained in an instrument.

#### CHAPTER 20 — WINDING UP OF COMPANIES

##### MODES OF WINDING UP

564. (1) The winding up of a company may be effected —

Modes of winding up.

- (a) by the Court;
- (b) voluntarily; or

(c) subject to the supervision of the Court.

(2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company by any of those modes.

## CONTRIBUTORIES

565. In the event of a company being wound up, every present and past member is liable to contribute to the assets of the company as provided in section 117 of this Act. Liability as contributories of present and past members.
566. The term, "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings prior to the final determination of the persons who are to be deemed contributories, the expression includes any person alleged to be a contributory. Definition of contributory.
567. (1) The liability of a contributory creates a debt of the nature of an ordinary contract debt accruing and due from him at the time when his liability commenced, but payable at the time when calls are made for enforcing the liability. Nature of liability of contributory.
- (2) An action to recover a debt created by this section shall not be brought after the expiration of six years from the date on which the cause of action accrued.
568. (1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives, heirs and devisees, are liable in due course of administration to contribute to the assets of the company in discharge of his liability and they are contributories accordingly. Contributories in case of death of member.
- (2) Where the personal representatives are placed on the list of contributories, the heirs or devisees need not be added but they may be added as and when the Court deems fit.
- (3) If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the whole or any part of the estate of the deceased contributory, and for compelling payment out of it of the money due.
569. (1) If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories, then — Contributories in case of bankruptcy of member.
- (a) his trustee in bankruptcy shall represent him for the purposes of the winding-up, and shall be a contributory accordingly, and may be called —
- (i) on to admit to proof against the estate of the

bankrupt, or

(ii) to allow to be paid out of his assets, any money due from the bankrupt in respect of his liability to contribute to the assets of the company; and

(b) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

(2) The provisions of this section extend and apply with all necessary changes to the case of an insolvent person.

## CHAPTER 21 — WINDING UP BY THE COURT

### JURISDICTION

570. (1) The Court having jurisdiction to wind up a company is the Federal High Court within whose area of jurisdiction the registered office or head office of the company is situate.

Jurisdiction as to winding up.

(2) For the purpose of this section, "registered office" or "head office" means the place which has longest been the principal place of business of the company during the six months immediately preceding the presentation of the petition for winding up.

### CASES IN WHICH COMPANY MAY BE WOUND UP BY COURT

571. A company may be wound up by the court if —

Circumstances in which companies may be wound up by Court.

(a) the company has by special resolution resolved that the company be wound up by the Court;

(b) default is made in delivering the statutory report to the Commission or in holding the statutory meeting;

(c) the number of members is reduced below two in the case of companies with more than one shareholder;

(d) the company is unable to pay its debts;

(e) the condition precedent to the operation of the company has ceased to exist; or

(f) the Court is of opinion that it is just and equitable that the company should be wound up.

572. A company is deemed to be unable to pay its debts if —

Definition of inability to pay debts.

- (a) a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding ₦200,000, then due, has served on the company, by leaving it at its registered office or head office, a demand under his hand requiring the company to pay the sum due, and the company has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor;
- (b) execution or other process issued on a judgment, act or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
- (c) the Court, after taking into account any contingent or prospective liability of the company, is satisfied that the company is unable to pay its debts.

#### PETITIONS FOR WINDING UP AND ITS EFFECTS

573. (1) An application to the court for the winding up of a company shall be by petition presented subject to the provisions of this section, by —

Provisions as to application for winding up.

- (a) the company or a director;
- (b) a creditor, including a contingent or prospective creditor of the company;
- (c) the official receiver;
- (d) a contributory;
- (e) a trustee in bankruptcy to, or a personal representative of, a creditor or contributory;
- (f) the Commission under section 366 of this Act;
- (g) a receiver, if authorised by the instrument under which he was appointed; or
- (h) by all or any of those parties, together or separately.

(2) Notwithstanding anything in subsection (1) —

(a) a contributory is not entitled to present a petition for winding up a company unless the —

(i) number of members is reduced below two in the case of companies with more than one shareholder, or

(ii) shares in respect of which he is contributory or some of them, were originally allotted to him or have been held by him, and registered in his name, for at least six months during the 18 months before the commencement of the winding up, or have devolved on him through the death of a former holder;

(b) a winding-up petition shall not, if the ground of the petition is default in delivering the statutory report to the Commission or in holding the statutory meeting, be presented by any person except a shareholder, or before the expiration of 14 days after the last day on which the meeting should have been held; and

(c) the Court shall not hear a winding-up petition presented by a contingent or prospective creditor until sufficient security for costs has been given, and a *prima facie* case for winding up has been established to its satisfaction.

(3) Where a company is being wound up voluntarily or subject to supervision, a winding-up petition may be presented by the official receiver attached to the Court, as well as by any other person authorised under the other provisions of this section, but the Court shall not make a winding-up order on any such petition unless it is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

(4) A contributory is entitled to present a winding-up petition notwithstanding that there may not be assets available on the winding up for distribution to contributories.

574. (1) On hearing a winding-up petition, the Court may dismiss it, adjourn the hearing conditionally or unconditionally or make any interim order, or any other order that it deems fit, but the Court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the

Powers of Court on hearing petition.

company has no assets.

- (2) Unless it appears to the Court that some other remedies are available and that the petitioners are acting unreasonably in seeking a winding-up order instead of pursuing those remedies, the Court, on hearing a petition by contributory members of a company for relief by winding up on the ground that it would be just and equitable so to do, shall make the order as prayed if it is of the opinion that the petitioners are entitled to the relief sought.
- (3) Where a petition is presented on the ground of default in delivering the statutory report to the Commission or in holding the statutory meeting, the Court, instead of making a winding-up order, may direct the delivery of the statutory report or the holding of a meeting, and order the costs to be paid by the persons who, in the opinion of the Court, are responsible for the default.

575. Where a winding-up petition has been presented and an action or other proceeding against a company is instituted or pending in any Court (in this section referred to as "the Court concerned"), the company or any creditor or contributory may, before the making of the winding-up order, apply to the Court concerned for an order staying proceedings and the Court concerned may, with or without imposing terms, stay or restrain proceedings, or if it deems fit, refer the case to the Court hearing the winding-up petition.

Power to stay or restrain proceedings against company.

576. In a winding up by the Court, any disposition of the property of the company, including things in action and any transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding up shall, unless the Court otherwise orders, be void.

Avoidance of dispositions of property after commencement of winding up.

577. Where a company is being wound up by the Court, any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding up is void:

Avoidance of attachments.

Provided the provisions of this section do not apply to a fixed charge or any other validly created and perfected security interest other than a floating charge.

#### COMMENCEMENT OF WINDING-UP

578. (1) Where, before the presentation of a petition for the winding up of a company by the Court, a resolution has been passed by the company for voluntary winding up, the winding up of the company is deemed to have commenced at the time of the passing of the resolution, and unless the Court, on proof of fraud or mistake, deems it fit to direct otherwise, all proceedings taken in the voluntary winding up are deemed to have been validly taken.

Commencement of a winding-up by the Court.

(2) In any other case, the winding up of a company by the court is deemed to commence at the time of the presentation of the petition for the winding up.

## CONSEQUENCES OF WINDING-UP ORDER

579. On the making of a winding-up order, a copy of the order shall immediately be forwarded by the company, or otherwise as may be prescribed, to the Commission, which shall make a minute thereof in its books relating to the company. Copy of order to be forwarded to Commission.
580. If a winding-up order is made or a provisional liquidator is appointed, no action or proceeding shall proceed with or commence against the company except by leave of the Court given on such terms as the Court may impose. Actions stayed on winding-up order.
581. An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory. Effect of winding-up order.

### OFFICIAL RECEIVER

582. (1) For the purpose of this Act and so far as it relates to the winding up of companies by the Court, "official receiver" means the Deputy Chief Registrar of the Federal High Court or an officer designated for that purpose by the Chief Judge of the Court. Definition of official receiver.
- (2) Any such officer shall, for the purpose of his duties under this Act, be called "the official receiver"
583. (1) Where the Court has made a winding-up order or appointed a provisional liquidator there shall, unless the court deems fit to order otherwise and so orders, be made out and submitted to the official receiver a statement of affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts and liabilities, the names, residences and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, the list of members and the list of charges and such further or other information as may be prescribed or as the official receiver may require. Statement of company's affairs to be submitted to the official receiver.
- (2) The statement shall be submitted and verified by one or more of the persons who are, at the relevant date, the directors and the person who is at that date the secretary of the company, or by the persons mentioned in this subsection as the official receiver, subject to the direction of the Court, may require to submit and verify the statement, of persons who —
- (a) are or have been officers of the company;
  - (b) have taken part in the formation of the company at any time within one year before the relevant date;

(c) have been or are in the employment of the company within the said year, and are in the opinion of the official receiver capable of giving the information required;

(d) are or have been within the said year officers of or in the employment of a company which is, or within the said year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within 14 days from the relevant date or within such extended time as the official receiver or the Court may, for special reasons, appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed and shall be paid by the official receiver or provisional liquidator, as the case may be, out of the assets of the company such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official receiver may consider reasonable, subject to an appeal to the Court.

(5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he commits an offence and is liable to a fine of ₦100 for every day during which the default continues.

(6) Any person stating himself in writing to be a creditor or contributory of the company is entitled by himself or by his agent at all reasonable times, on a payment of the prescribed fee to inspect the statement submitted under this section, and to a copy of or extract from it.

(7) Any person who falsely states that he is a creditor or contributory is guilty of contempt of court and shall, on the application of the liquidator or of the official receiver, be punished accordingly.

(8) In this section, the expression "the relevant date" means, in a case where a provisional liquidator is appointed, the date of his appointment and in a case where no appointment is made, the date of the winding-up order.

584. (1) If a winding-up order is made, the official receiver shall as soon as practicable after receipt of the statement to be submitted under section 583 of this Act or where the Court orders that no statement be submitted, as soon as practicable after the date of the order, submit a preliminary report to the Court —

Report by official receiver.

(a) as to the amount of capital issued, subscribed and paid up, and the estimated amount of assets and liabilities;

- (b) if the company has failed, as to the causes of the failure; and
  - (c) whether, in his opinion, further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company.
- (2) The official receiver may, if he thinks fit, make further reports stating the manner in which the company was formed and whether, in his opinion, fraud has been committed by any person in its promotion or formation, or by any officer of the company in relation to the company since its formation and the reports may include any other matters which, in his opinion, is desirable to bring to the notice of the court.
- (3) If any further report under this section indicates the commission of fraud, the Court shall have the further powers provided in section 613 of this Act (which confers authority to order public examination of certain officials).

### LIQUIDATORS

585. (1) The Court may appoint a liquidator or liquidators for the purpose of conducting the proceedings in winding up a company and performing such duties in reference to it as the court may impose and where there is a vacancy, the official receiver shall by virtue of his office, act as liquidator until such time as the vacancy is filled.
- (2) At any time after the presentation of a petition and before the making of a winding-up order, the appointment shall be provisional and the Court making the appointment may limit and restrict the powers of the liquidator by the order appointing him.
- (3) In the application of this section —
- (a) if a provisional liquidator is to be appointed before the making of a winding-up order, the official receiver, or any other fit person, may be so appointed;
  - (b) on the making of a winding-up order, if no liquidator is appointed, the official receiver shall by virtue of his office become the liquidator;
  - (c) the official receiver in his capacity as provisional liquidator shall, and in any other case may, summon meetings of creditors and contributories of the company to be held separately for the purpose of

Appointment, remuneration and title of liquidators.

determining whether or not an application is to be made to the court for appointing a liquidator in place of the official receiver; or

(d) if a person other than the official receiver is appointed liquidator, he is not capable of acting in that capacity until he has notified his appointment to the Commission and given security in the prescribed manner to the satisfaction of the Court.

(4) If more than one liquidator of a company is appointed by the Court, the Court shall declare whether anything by this Act required or authorised to be done by a liquidator is to be done by all or any one or more of them.

(5) A liquidator appointed by the Court may resign, or, on cause shown, be removed by the Court and any vacancy in the office of a liquidator so appointed shall be filled by the Court.

(6) Where a person other than the official receiver is appointed a liquidator, he shall receive salary in an amount, or remuneration by way of percentage or otherwise, as the Court may direct and, if more than one person is appointed as a liquidator, their remuneration shall be distributed among them in such proportions as the Court directs.

(7) Where a liquidator of a company is appointed, he shall, after his individual name —

(a) if he is the official receiver, be described as "official receiver and liquidator of (add here name of the company)"; and

(b) in any other case be described as "liquidator of (add here name of the company)".

(8) The acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

(9) If a liquidator is appointed under this section, all the powers of the directors shall cease, except so far as the Court may by order sanction the continuance thereof.

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

Custody of company's property.

587. Where a company is being wound up by the Court, the Court may, on the application of the liquidator, by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name, and thereupon, but subject to the requirements of registration under any particular enactment, the property to which the order relates shall vest accordingly and the liquidator may, after giving such indemnity, if any, as the Court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

Vesting of property of company in liquidator.

588. (1) The liquidator in a winding up by the Court shall have power, with the sanction either of the court or of the committee of inspection to —

Powers of liquidator.

- (a) bring or defend any action or other legal proceeding in the name and on behalf of the company;
- (b) carry on the business of the company so far as may be necessary for its beneficial winding up;
- (c) appoint a legal practitioner or any other relevant professional to assist him in the performance of his duties;
- (d) pay any classes of creditors in full;
- (e) make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable; and
- (f) compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.

(2) The liquidator in winding-up by the Court shall have power to —

- (a) sell the property of the company of whatever nature by public auction or private contract, with power to transfer the whole thereof to any person or company or to sell the same in parcels;
- (b) do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the company's seal (where the company has a seal);
- (c) prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance as a separate debt due from the bankrupt or insolvent, and ratably with the other separate creditors;
- (d) draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business;
- (e) raise on the security of the assets of the company any money requisite;
- (f) take out in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself;
- (g) appoint an agent to do any business which the liquidator is unable to do himself; and
- (h) do all other things as may be necessary for winding up the affairs of the company and distributing its

assets.

- (3) The exercise by the liquidator in a winding up by the Court of the powers conferred by this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

589. If during the winding-up of a company by the court a person other than the official receiver is appointed liquidator, he shall give the official receiver such information and access to and facilities for inspecting the books and documents of the company, and generally any aid requisite or necessary for enabling that officer to perform his duties under this Act. Liquidator to give information, to official receiver.
590. (1) Subject to the provisions of this Act, the liquidator of a company being wound up by the Court shall, in the administration and distribution of the assets of the company among its creditors, have regard to directions given by resolution of the creditors or contributories at any general meeting, or by the Committee of Inspection and directions given by the creditors or contributories at any general meeting shall, in case of conflict, override directions given by the Committee of Inspection. Exercise and control of liquidator's powers.
- (2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories by resolution either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one tenth in value of the creditors or contributories, as the case maybe.
  - (3) The liquidator may apply to the Court in the manner prescribed for directions in relation to any particular matter arising under the winding up.
  - (4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.
  - (5) Any person aggrieved by an act or decision of the liquidator, may apply to the Court for such order as it deems just and the Court may confirm, reverse, or modify the act or decision.
591. (1) Every liquidator of a company being wound up by the Court shall, in such manner and at such times as the Commission directs, pay moneys received by him into the public fund of the Federation kept by the Commission for the purposes of this Act known as "the Companies Liquidation Account", and the Accountant-General of the Federation shall furnish him with a certificate of receipt for the money so paid. Payments by liquidator into companies' liquidation account.

(2) If the Committee of Inspection satisfies the Commission that for the purpose of carrying on the business of the company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any bank, the Commission shall, on the application of the Committee of Inspection, authorise the liquidator to make his payments into and out of such bank in Nigeria as the committee may select, and thereupon those payments shall be made in the prescribed manner.

(3) If the liquidator of a company being wound up, at any time retains for more than 10 days an amount in excess of either ₦50,000 or such other amount as the Commission may approve, and fails to satisfy the Commission as to the need for the retention of that amount beyond that time, the liquidator shall pay interest on the amount so retained in excess, at the rate of 20% per annum, and shall be liable to —

(a) disallowance of the whole or such part of his remuneration as the Commission deems fit; and

(b) removal from office, and in addition, he shall be liable to pay any expenses occasioned by the retention.

(4) A liquidator of a company which is being wound up by the Court shall not pay any sums received by him as liquidator into his private banking account.

592. (1) Every liquidator of a company being wound up by the Court shall, at such times as may be prescribed, but not less than twice in each year during his tenure of office, send to the Commission an account of his receipts and payments as liquidator.

Audit of liquidator's account.

(2) The account shall be in duplicate in the prescribed form, and shall be verified by a statutory declaration in the prescribed form.

(3) The Commission shall cause the account to be audited, and for the purpose of the audit, the liquidator shall furnish the Commission with such vouchers and information as the Commission may require, and the Commission may at any time require the production of, and may inspect, any book or account kept by the liquidator.

(4) When the account has been audited, one copy shall be filed and kept by the Commission, and the other copy shall be with the Court and each shall be open to inspection by any creditor or other person interested, on payment of the prescribed fee.

(5) The Commission shall cause the account when audited, or a summary of it, to be printed, and shall send a printed copy of the account or summary by post to

every creditor and contributory.

593. Every liquidator of a company which is being wound up by the Court shall, in the manner prescribed, keep proper books in which he shall cause to be made entries or minutes of proceedings at meetings and of other matters as may be prescribed, and a creditor or contributory may, subject to the control of the Court, personally or by his agent inspect the books.

Books to be kept by liquidator.

594. (1) Where the liquidator of a company being wound up by the Court has realised all the property of the company, or so much of it as may, in his opinion, be realised without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, has resigned, or has been removed from his office, the Commission shall, on the application of the liquidator, cause a report on the accounts of the liquidator to be prepared.

Release of liquidator.

(2) The Commission shall consider the report referred to in subsection (1) together with any objection that may be raised by a creditor, contributory, or person interested against the release of the liquidator, and may grant or withhold the release as it deems fit subject to an appeal to the Court.

(3) If the release of a liquidator is withheld, the Court may, on the application of any creditor, contributory, or person interested, make such order as it deems just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(4) An order of the Commission releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, and the order may be revoked on proof that it was obtained by fraud, suppression or concealment of any material fact.

(5) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal from his office.

595. (1) The Commission shall take cognisance of the conduct of liquidators of companies which are being wound up by the Court and if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by any enactment, or otherwise with respect to the performance of his duties, or if any complaint is made to the Commission by a creditor or contributory in that regard, the Commission shall inquire into the matter, and may take such action thereon as it deems fit, including the direction of a local investigation of the books and vouchers of the liquidator.

Control over liquidators.

- (2) The Commission may, at any time, require the liquidator of a company being wound up by the Court to answer any inquiry in relation to any winding up in which he is engaged and if the Commission deems fit, it may apply to the Court to examine the liquidator or any other person on oath concerning the winding-up.

#### COMMITTEE OF INSPECTION, SPECIAL MANAGER

596. (1) Where a winding-up order is made by the Court, the separate meetings of creditors and contributories summoned for the purpose of determining whether or not to apply to the court for an order appointing a liquidator in place of the official receiver, shall determine whether or not an application should be made to the court for the appointment of a Committee of Inspection to act with the liquidator, and to determine who are to be members of the Committee, if the appointment is made.

Power to appoint committee of inspection after meeting of creditors and others.

- (2) The Court may make any appointment and order required to give effect to any determination under this section and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matters aforesaid, the court shall decide the difference and make any order it deems necessary.

597. (1) A Committee of Inspection appointed under this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in the proportions as may be agreed on by the meetings of creditors and contributories or as, in case of difference, may be determined by the Court.

Powers, etc. of committee of inspection.

- (2) A Committee of Inspection shall meet at the time appointed, and there shall be a meeting at least once in every month during its existence, but the liquidator or any member of the Committee may convene a meeting as and when necessary.

- (3) A meeting of a Committee of Inspection shall be deemed convened if a majority of members are present, and at the meeting of the Committee of Inspection may act by a majority of the members present.

- (4) A member of the Committee of Inspection may resign by notice in writing signed by him and delivered to the liquidator.

- (5) If a member of the Committee of Inspection becomes bankrupt, compounds or arranges with his creditors, is absent from five consecutive meetings of the Committee of Inspection without leave of those members who, together with himself, represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) A member of the Committee of Inspection may be removed by an ordinary resolution at a meeting of creditors if he represents creditors, or of contributories if he represents contributories, of which seven days' notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the Committee of Inspection, the liquidator shall immediately summon a meeting of creditors or contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, reappoint the same or appoint another creditor or contributory to fill the vacancy:

Provided that if the liquidator, having regard to the position in the winding up, is of the opinion that it is unnecessary for the vacancy to be filled he may apply to the court and the Court may make an order that the vacancy shall not be filled, or shall be filled in the circumstances as may be specified in the order.

(8) The continuing members of the Committee of Inspection, if not less than two, may act notwithstanding any vacancy in the Committee of Inspection.

598. Where, in the case of winding up, there is no Committee of Inspection, the Commission may, on the application of the liquidator, if it deems fit, do any thing or give any direction or permission which is by this Act authorised or required to be done or given by the Committee of Inspection.

Powers where no committee of inspection is appointed.

599. (1) Where the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the Court for an order appointing a special manager to act during such time as the Court may direct, with the powers, including those of a receiver or manager, as may be entrusted to him by the Court and the Court may make any order necessary.

Power to appoint special manager.

(2) A special manager appointed under this section shall receive remuneration as fixed by the Court and shall give security and account in such manner as the Commission directs.

600. Where application is made to the Court to appoint a receiver on behalf of the debenture holders or other creditors of a company being wound up by the Court, the official receiver may be so appointed.

Official receiver as receiver for debenture holders.

#### GENERAL POWERS OF COURT IN CASE OF WINDING UP BY COURT

601. (1) The Court may, at any time after an order for winding-up, on the application either of a liquidator, the official receiver or a creditor or contributory and on proof to the satisfaction of the Court that all proceedings in relation to the

Power to stay winding-up.

winding-up ought to be stayed, make an order staying the proceedings either altogether or for a limited time, on such terms and conditions as the Court deems fit.

- (2) The Court may, at any time after an order for winding up, on the application either of the liquidator or a creditor, and after having regard to the wishes of the creditors and contributories, make an order directing that the winding up, ordered by the Court, shall be conducted as a creditors' voluntary winding up, and if the Court does so, the winding up shall be so conducted.
- (3) On any application under this section, the Court may, before making an order, require the official receiver to furnish to the Court a report with respect to any facts or matters which are in his opinion relevant to the application.
- (4) A copy of every order made under this section shall immediately be forwarded by the company, or otherwise as may be prescribed, to the Commission which shall make a minute of the order in its books relating to the company.
- (5) If default is made in lodging a copy of an order made under this section with the Commission as required by subsection (4), every officer of the company or other person who authorises or permits the default shall be liable to a penalty as may be prescribed by regulation.

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

Settlement of list of contributories and application of assets.

(2) Where it appears to the Court that it will not be necessary to make calls on or adjust the rights of contributories, the Court may dispense with the settlement of a list of contributories.

(3) In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

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

Delivery of property to liquidator.

604. (1) The Court may, at any time after making a winding-up order, make an order on any contributory for the time being on the list of contributories to pay, in the manner directed by the order any money due from him or from the estate of

Payments by contributory to company and set-off allowance.

the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call under this Act.

(2) The Court making an order under this section in the case of —

(a) an unlimited company, may allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company of any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and

(b) a limited company, may make to any director or manager whose liability is unlimited or to his estate, the allowances in paragraph (a).

(3) In the case of any company, limited or unlimited, when all the creditors are paid in full, the money due on any account to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

605. (1) The Court may, at any time after making a winding-up order and either before or after it has ascertained the sufficiency of the assets of the company, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company, the costs, charges and expenses of winding up, the adjustment of the rights of the contributories among themselves, and make an order for payment of the calls made.

Power of the Court to make calls.

(2) In making a call under this section, the Court shall take into consideration the probability that some of the contributories may fail, wholly or partially to pay for the call.

606. (1) The Court may order any contributory, purchaser or other person from whom money is due to the company to pay it into the company's liquidation account referred to in section 591 of this Act to the account of the liquidator instead of directly to the liquidator and the order may be enforced in the same manner as if it had directed payment to the liquidator.

Power to order payment into companies' liquidation account.

(2) Moneys and securities paid or delivered into the company's liquidation account in the event of a winding up by the Court shall be subject in all respects to any relevant order of the Court.

607. (1) An order made by the Court on a contributory shall, subject to any right of appeal, be conclusive evidence that money, if any thereby appearing to be due

Order on contributory to be conclusive evidence.

or ordered to be paid, is due.

- (2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings, except proceedings against the land of a deceased contributory, when the order shall be only *prima facie* evidence for the purpose of charging his land, unless his heirs or devisees were on the list of contributories at the time the order was made.

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

Power to exclude creditors not proving in time.

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

Adjustments of rights of contributories.

610. (1) The Court may, at any time after making a winding-up order, make such order for inspection of the books and papers of the company by creditors and contributories as the Court deems just, and books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

Inspection of books by creditors and contributories.

- (2) Nothing in this section shall be taken as excluding or restricting any statutory rights of a government department or person acting under the authority of a government department.

611. The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding up in such order of priority as the Court deems just.

Power to order costs of winding-up to be paid out of assets.

612. (1) The Court may, at any time after the appointment of a provisional liquidator or the making of a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person who the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company.

Power to summon persons suspected of having property of company, etc.

- (2) The Court may examine on oath any person summoned concerning the matters under subsection (1) either by word of mouth or on written interrogatories, reduce his answers to writing and require him to sign them.

- (3) The Court may require any person summoned under subsection (1), to produce books and papers in his custody or power relating to the company but, where the person claims a lien on books or papers produced by him, the production is without prejudice to the lien, and the court shall have jurisdiction in the winding up to determine all questions relating to that lien.

- (4) If a person summoned under subsection (1), after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, not having lawful impediment (made known to the Court at the time of its sitting and allowed by it), the Court may cause him to be apprehended and brought before the Court for examination.

613. (1) Where an order is made for winding up a company by the Court and the official receiver makes a further report under this Act stating that in his opinion a fraud has been committed by a person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the Court may, after consideration of the report, direct that a person who has taken part in the promotion or formation of the company, or has been a director or officer of the company, shall attend before the Court on a day appointed by the court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealing as director or officer thereof.
- (2) The official receiver shall take part in the examination, and for that purpose may, if specially authorised by the Commission in that behalf, employ a legal practitioner.
  - (3) The liquidator, where the official receiver is not the liquidator, and a creditor or contributory, may also take part in the examination, either personally or by a legal practitioner.
  - (4) The Court may put such questions to the person examined as the Court deems fit.
  - (5) The person examined shall be examined on oath, and shall answer all such questions as the Court may put or allow to be put to him.
  - (6) A person ordered to be examined under this section shall, at his own cost, before his examination, be furnished with a copy of the official receiver's report, and may, at his own cost, employ a legal practitioner who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him:

Power to order public examination of promoters, etc.

Provided that the person applies to the Court to be exculpated from charges made or suggested against him, the official receiver shall appear on the hearing of the application and call the attention of the Court to any matters which appear to the official receiver to be relevant, and if the Court after hearing any evidence given or witnesses called by the official receiver, grants the application, the Court may allow the applicant such costs as in its discretion it may deem fit.

(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined and may, thereafter be used in evidence against him and shall be open to the inspection of any creditor or contributory at all reasonable times.

(8) The Court may, if it deems fit, adjourn the examination.

(9) An examination under this section may, if the Court directs, and subject to general rules made under section 616 of this Act, be held before any magistrate, and the powers of the court under this section as to the conduct of the examination but not as to costs, may be exercised by the magistrate before whom the examination is held.

614. The Court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit Nigeria or otherwise abscond, remove or conceal any of his property for the purpose of evading payment of calls, or of avoiding examination with respect to the affairs of the company, may cause the contributory to be arrested, and his books, papers and movable personal property, to be seized, and him and them to be kept safely until the time which the Court may order.

Power to arrest absconding contributory.

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

Powers of Court cumulative.

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

Delegation to liquidator of certain powers of Court.

(a) holding and conducting of meetings to ascertain the wishes of creditors and contributories;

(b) settling of lists of contributories and the rectifying of the register of members where required, and the collecting and applying of the assets;

(c) requiring delivery of property or documents to the liquidator;

(d) making of calls; and

(e) fixing of a time within which debts and claims shall

be proved.

- (2) Nothing in this section shall authorise the liquidator, without the special leave of the Court, to rectify the register of members, or, without either the special leave of the Court or the sanction of the Committee of Inspection, to make any call.

617. (1) If the affairs of a company have been fully wound up and the liquidator makes an application in that behalf, the court shall order the dissolution of the company and the company shall be dissolved accordingly from the date of the order. Dissolution of company.
- (2) A copy of the order shall, within 14 days from the date when made, be forwarded by the liquidator to the Commission who shall make in its books a minute of the dissolution of the company.
- (3) If the liquidator makes default in complying with the requirements of this section, he shall be liable to a penalty as may be prescribed by the Regulation for every day during which he is in default.

#### ENFORCEMENT OF AND APPEALS FROM ORDERS

618. An order made by a court under this Act may be enforced in the same manner as orders made in any action pending therein. Power to enforce orders.
619. Subject to rules of Court, an appeal from any order or decision made or given in the winding up of a company by the Court under this Act, shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the court in cases within its ordinary jurisdiction. Appeals from orders.

#### CHAPTER 22 — VOLUNTARY WINDING UP

##### RESOLUTIONS FOR AND COMMENCEMENT OF VOLUNTARY WINDING UP

620. (1) Any company may be wound up voluntarily — Circumstances in which company may be wound-up voluntarily.
- (a) when the period, if any, fixed for the duration of the company by the articles expires, or the event, if any, occurs, on occurrence of which the articles provided that the company is to be dissolved and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;
- (b) if the company resolves by special resolution that the company be wound up.

(2) References in this Act to a "resolution for voluntary winding up" means a resolution passed under any of the paragraphs of this section.

621. (1) If a company passes a resolution for voluntary winding up it shall, within 14 days after the passing of the resolution, give notice of the resolution by advertisement in the Federal Government Gazette or two daily newspapers and to the Commission.

Notice of resolution to wind-up voluntarily.

(2) If default is made in complying with this section, the company and each officer of the company who is in default is liable to a penalty in such amount as the Commission may specify in its regulations and for the purposes of this subsection the liquidator of the company shall be deemed to be an officer of the company.

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

Commencement of voluntary winding-up.

623. In case of voluntary winding up, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof:

Effect of voluntary winding-up on business of company.

Provided that the corporate state and powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

624. A transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding up, shall be void.

Avoidance of transfer, etc, after commencement of voluntary winding-up.

#### DECLARATION OF SOLVENCY

625. (1) Where on or after the commencement of this Act, it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors, may at a meeting of the directors make a statutory declaration to the effect that they have made a full inquiry into the affairs of the company and that, having done so, they have formed the opinion that the company will be able to pay its debts in full within a period, not exceeding 12 months from the commencement of the winding up, as is specified in the declaration.

Statutory declaration of solvency where proposal to wind-up voluntarily.

(2) A declaration made under subsection (1) does not have effect for the purposes of this Act unless it —

(a) is made within the five weeks immediately preceding the date of the passing of the resolution for winding-up the company and the statutory declaration and resolution are delivered to the Commission for

registration within 15 days after passing the resolution; and

(b) embodies a statement of the company's assets and liabilities as at the latest practicable date before the making the declaration.

(3) A director of a company making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration, commits an offence and is liable on conviction to a fine as the Court deems fit or to imprisonment for a term of three months, or to both, and if the company is wound-up under a resolution passed within the period of five weeks after making the declaration, and if its debts are not paid or provided for in full within the period stated in the declaration, it is presumed, until the contrary is shown, that the director did not have reasonable grounds for his opinion.

(4) A winding-up in any case where a declaration has been made and delivered in accordance with this section, shall in this Act be referred to as "a members' voluntary winding-up" and a winding up in any case where a declaration has not been made and delivered as aforesaid shall in this Act be referred to as "a creditors' voluntary winding up".

(5) Subsections (1) - (3) shall not apply to a winding up commenced before the commencement of this Act.

#### PROVISIONS APPLICABLE TO A MEMBERS' VOLUNTARY WINDING-UP

626. Sections 627 - 633 of this Act, subject to the alternative provision in section 632 of this Act, apply in relation to a members' voluntary winding up.

Provisions applicable to a members' voluntary winding-up.

627. (1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.

Power to appoint liquidators.

(2) If a liquidator is appointed under this section, all the powers of the directors shall cease, except so far as the company in general meeting or the liquidator sanctions the continuance thereof.

628. (1) If a vacancy occurs by death, resignation or otherwise in the office of a liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy and for that purpose a general meeting may be convened by a contributory or, if there were more liquidators than one, by the continuing liquidators.

Power to fill vacancy in office of liquidators.

(2) The general meeting shall be held in the manner provided by this Act or by the

articles, or in such manner as may, on application by a contributory or by the continuing liquidators, be determined by the Court.

629. (1) If, in the case of a winding-up commenced after the commencement of this Act, the liquidator is, at any time, of the opinion that the company will not be able to pay its debts in full within the period stated in the declaration under section 625 of this Act, he shall immediately summon a meeting of the creditors, and lay before the meeting a statement of the assets and liabilities of the company.
- Liquidator to call creditors' meeting on insolvency.
- (2) If the liquidator fails to comply with this section, he is liable to a penalty in such amount as the Commission shall specify in its regulations.
630. (1) Subject to the provisions of section 632 of this Act, in the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within three months from the end of the year or such longer period as the Commission may allow, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year: Provided that the account shall be sent to all the members of the company not later than 14 days before the date of the meeting.
- Liquidator to call general meeting at end of each year.
- (2) If the liquidator fails to comply with this section, he is liable to a penalty in such amount as the Commission shall specify in its regulations.
631. (1) Subject to the provisions of section 632 of this Act, as soon as the affairs of the company are fully wound up, the liquidator shall prepare an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of and when the account is prepared, he shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.
- Final meeting and dissolution.
- (2) The meeting shall be called by notice published in the Federal Government Gazette and in two newspapers printed in Nigeria and circulating in the locality where the meeting is being called, specifying the time, place and object of, and published at least one month before the meeting.
- (3) Within seven days after the meeting, the liquidator shall send to the Commission a copy of the account, and shall make a return to it of the holding of the meeting, its date and if the copy is not sent or the return is not made in accordance with this subsection, the liquidator is liable to a penalty in such amount as the Commission shall specify in its regulations for every day during which the default continues:

Provided that if a quorum is not present at the meeting, the liquidator shall, in

lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present and upon such a return being made, the provisions of this subsection as to the making of the return shall be deemed to have been complied with.

- (4) The Commission, on receiving the account and the appropriate return, shall forthwith register them, and on the expiration of three months from the registration of the return, the company is deemed dissolved:

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court deems fit.

- (5) The person on whose application an order of the Court under this section is made shall, within seven days after the order is made, deliver to the Commission a certified true copy of the order for registration, and if that person fails to do so, he is liable to a penalty for every day during which the default continues in such amount as the Commission shall specify in its regulations.
- (6) If the liquidator fails to call a general meeting of the company as required by this section, he is liable to a penalty in such amount as the Commission shall specify in its regulations.

632. Where section 629 of this Act has effect, sections 640 and 641 shall apply to the winding up to the exclusion of the two last foregoing sections, as if the winding up were a creditors' voluntary winding up and not a members' voluntary winding up:

Alternative provisions as to annual and final meetings in insolvency cases.

Provided that the liquidator shall not be required to summon a meeting of creditors under section 640 of this Act at the end of the first year from the commencement of the winding up, unless the meeting held under section 629 of this Act is held more than three months before the end of that year.

633. (1) The liquidator in a members' voluntary winding up shall –

Books and accounts during members' voluntary winding-up.

(a) keep –

- (i) proper records and books of account with respect to his acts and dealings, the conduct of the winding up, and
- (iii) all receipts and payments by him; and

(b) if he carries on the business of the company, keep a distinct account of the trading.

- (2) In the event of the winding up continuing for more than a year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up and of each succeeding year, or at the first convenient date within three months of the end of the year or such longer period as the Commission may allow, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year and of the trading during such time as the business of the company has been carried on, and within 28 days thereafter shall send a copy of such accounts to the Commission for registration.
- (3) As soon as the affairs of the company are fully wound up, the liquidator shall prepare and send to every member of the company final accounts of the winding up showing how the winding up has been conducted, the result of the trading during such time as the business of the company has been carried on, and how the property of the company has been disposed of, and thereupon shall convene a general meeting of the company for the purpose of laying before it such accounts and of giving an explanation thereof.
- (4) Within 28 days after the meeting referred to in the immediately preceding subsection, the liquidator shall send to the Commission for registration copies of the accounts laid before the meeting and a statement of the holding of the meeting and of its date:

Provided that if a quorum was not present at the meeting the liquidator, in lieu of the statement hereinbefore mentioned, shall send a statement that the meeting was duly convened and that no quorum was present thereat.

- (5) The records, books and accounts referred to in this section shall be in such form, if any, as the Commission may prescribe and shall give a true and fair view of the matters therein recorded and of the administration of the company's affairs and of the winding up.
- (6) The accounts referred to in subsections (2) and (3), shall be audited by the auditor of the company prior to being laid before the company in general meeting in accordance with such subsections and the auditors shall state in a report annexed thereto whether, in their opinion and to the best of their information —
- (a) they have obtained all the information and explanations necessary for the purpose of their audit; and
  - (b) proper books and records have been maintained by

the liquidator in accordance with this Act, and such accounts are in accordance with the books and records and give all the information required by this Act in the manner therein required and give a true and fair view of the matters stated in such accounts:

Provided that such audit and auditors' report shall not be required if —

- (i) the liquidator, or one of the liquidators if more than one, is duly qualified under the provisions of this Act for appointment as auditor of a public company, and
- (ii) on or after his appointment as liquidator, the company resolved by special resolution that the accounts shall not be audited in accordance with this subsection.

- (7) Meetings required to be convened under this section or subsection (6), shall be convened and held, in accordance with the provisions of this Act and the regulations of the company relating to general meetings.
- (8) The liquidator shall preserve the books and papers of the company and of the liquidator for five years from the dissolution of the company but thereafter may destroy such books and papers unless the Commission shall otherwise direct, in which event he shall not destroy the same until the Commission consents in writing.
- (9) If a liquidator fail to comply with any of the provisions of this section, he is liable to a penalty for each in such amount as the Commission shall specify in its regulations.

#### PROVISIONS APPLICABLE TO A CREDITORS' VOLUNTARY WINDING-UP

634. The provisions of sections 635 - 641 of this Act apply in relation to a creditors' voluntary winding up.

Provisions applicable to creditors' winding-up voluntarily.

635. (1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meetings of the company.

Meeting of creditors.

(2) The company shall cause notice of the meeting of the creditors to be published once in the Federal Government Gazette and once at least in two daily

newspapers printed in Nigeria and circulating in the district where the registered office or principal place of business of the company is situate.

(3) The directors of the company shall —

(a) cause a full statement of the position of the company's affairs, including -

(i) particulars of the company's assets,

(ii) debts and liabilities together with a list of the creditors of the company, and

(iii) the estimated amount of their claims to be forwarded to each creditor not later than 14 days before the date of the meeting to be held directors and at which the statement shall be laid; and

(b) appoint one of them to preside at the meeting.

(4) It is the duty of the director so appointed to attend and preside over the meeting.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed, is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held under subsection (1) shall have effect as if it had been passed immediately after the passing of the resolution for winding up of the company.

(6) If default is made by —

(a) the company in complying with subsection (1) or (2);

(b) the directors of the company in complying with subsection (3);

(c) any director of the company appointed to preside, in complying with subsection (4),

the company, directors or director, as the case may be, shall be liable to a penalty in such amount as the Commission shall specify in its regulations and in the case of default by the company, each officer of the company is liable to the like penalty.

636. (1) The creditors and the company at their respective meetings mentioned in section 635 of this Act may nominate a person to be liquidator for the

Appointment of liquidator and cesser of directors' powers.

purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person if any, nominated by the company, shall be liquidator:

Provided that in the case of different persons being nominated, any director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the Court for an order directing that the persons nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors.

- (2) On the appointment of a liquidator, all the powers of the directors shall cease, except there is a Committee of Inspection, or if there is no such committee, the creditors shall sanction the continuance.

637. (1) The creditors, at the meeting to be held under section 635 of this Act or at any subsequent meeting, may, if they think fit, set up a Committee of Inspection consisting of not more than five persons, and if such a committee is set up, the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number:

Appointment of committee of inspection.

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company shall not be members of the Committee of Inspection, and if the creditors so resolve, the persons mentioned in the resolution shall not, unless the Court otherwise directs, be qualified to act as members of the committee, and on any application to the Court under this provision the Court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

- (2) Subject to the provisions of this section and to general rules made under this Act, the provisions of section 597 of this Act (except subsection (1)), shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a Committee of Inspection appointed in a winding up by the Court.

638. The Committee of Inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

Fixing of liquidators' remuneration.

639. If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by the direction of the Court, the creditors may fill the vacancy.

Power to fill vacancy in the office of liquidator.

640. (1) Where the winding up continues for more than one year, the liquidator shall summon a general meeting of the company and a meeting of the creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within three months from the end of year, or such longer period as the Commission may allow, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.

Liquidator to call meetings of company and others at the end of each year.

(2) If the liquidator fails to comply with the provisions of this section, he is liable to a penalty in such amount as the Commission shall specify in its regulations.

641. (1) As soon as the affairs of the company are fully wound up, the liquidator shall prepare an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon he shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving any explanation thereof.

Final meeting and dissolution.

(2) Each such meeting shall be called by notice published in the Federal Government Gazette and in two daily newspapers printed in Nigeria and circulating in the locality of the registered office of the company, specifying the time, place and object thereof, and published one month at least before the meeting.

(3) Within seven days after the date of the meeting, or if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the Commission a copy of the account, and shall make a return to it of the holding of the meetings and of their dates, and if the copy is not sent or the return is not made in accordance with this subsection, the liquidator shall be liable to a penalty for every day during which the default continues in such amount as the Commission shall specify in its regulations:

Provided that, if a quorum is not formed at either such meetings the liquidator shall, in lieu of the return, make a return that the meeting was duly summoned and that no quorum was present; and upon such a return being made the provisions of this subsection as to the making of the return are, in respect of that meeting, deemed to have been complied with.

(4) The Commission, on receiving the account, and, in respect of each such meeting, either of the returns mentioned above, shall forthwith register them, and on the expiration of three months from the registration thereof, the company shall be deemed to be dissolved:

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as

the Court thinks fit.

- (5) A person on whose application an order of the Court under this section is made shall, within seven days after the making of the order, deliver to the Commission a certified true copy of the order for registration, and if that person fails to do so he is liable to a penalty as prescribed in the regulation for every day during which the default continues.
- (6) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this section, he is liable to a penalty as prescribed in the regulation.

#### PROVISIONS APPLICABLE TO EVERY VOLUNTARY WINDING -UP

642. The provisions of sections 643 - 648 of this Act, apply to every voluntary winding up, whether a members' or a creditors' winding up. Provisions applicable to every voluntary winding-up.
643. Subject to the provisions of this Act as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu* and, subject to such application shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company. Distribution of property of company.
644. (1) The liquidator may — Powers of liquidator in every voluntary winding-up.
- (a) in the case of a members' voluntary winding up, with the sanction of special resolution of the company, and, in the case of a creditors' voluntary winding up, with the sanction of the court or, the committee of inspection or if there is no such committee, a meeting of the creditors, exercise any of the powers given by section 588 (1) (d), (e) and (f) of this Act to a liquidator in a winding up by the Court;
  - (b) without sanction, exercise any of the other powers given by this Act to the liquidator in a winding up by the Court;
  - (c) exercise the power of the Court under this Act of settling a list of contributories, and the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories;
  - (d) exercise the Court's power of making calls;
  - (e) summon general meetings of the company for the

purpose of obtaining the sanction of the company by special resolution or for any other purpose he may think fit.

- (2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.
- (3) Where several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined by any number not less than two of the liquidators.

645. If, in any voluntary winding up, there is no liquidator acting, the Court may appoint a liquidator and in any case the Court may, on cause shown, remove a liquidator and appoint another liquidator.

Power of Court to appoint and remove liquidator.

646. (1) The liquidator or any contributory or creditor may apply to the Court to determine any question arising in the winding up of a company, to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court.

Power to apply to Court to determine questions or exercise powers.

(2) If the Court is satisfied that the determination of the question or the required exercise of power is just and beneficial, it may give effect wholly or partially to the application on such terms and conditions as it deems fit, or make such other order as the case may require.

(3) A copy of an order made under this section staying the proceedings in the winding up, shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Commission, which shall make a minute of the order in its books relating to the company.

647. All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

Costs of voluntary winding-up.

648. The voluntary winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the Court, but where the applicant for winding up is a contributory, an order shall not be made unless the Court is satisfied that the rights of contributories shall be prejudiced by the members' or creditors' voluntary winding up, as the case may be.

Saving of rights of creditors and contributories.

## CHAPTER 23 — WINDING UP SUBJECT TO SUPERVISION OF COURT

649. If a company passes a resolution for voluntary winding up, the Court may on petition order that the voluntary winding up shall continue but subject to such supervision of the Court, and with such liberty for creditors, contributories, or

Power to order winding-up subject to supervision.

others to apply to the Court, and generally on such terms and conditions, as the court deems fit.

650. A petition for the continuance of a voluntary winding up subject to the supervision of the Court shall, for the purpose of giving jurisdiction to the Court over actions, be deemed to be a petition for winding up by the Court. Effect of petition for winding-up subject to supervision.
651. A winding up subject to the supervision of the court shall, for the purposes of sections 576 and 577 of this Act, be deemed to be a winding up by the Court. Application of sections 576 and 577.
652. (1) Where an order is made for a winding up subject to supervision, the Court may, by the same or any subsequent order, appoint an additional liquidator. Power of Court to appoint and remove liquidators.
- (2) A liquidator appointed by the Court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position, as if he had been duly appointed in accordance with the provisions of this Act with respect to the appointment of liquidators in a voluntary winding up.
- (3) The Court may remove any liquidator so appointed by the Court or any liquidator continued under the supervision order, and may fill any vacancy occasioned by the removal, or by death or resignation.
653. (1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the Court, exercise all his powers, without the sanction or intervention of the Court, in the same manner as if the company were being wound up voluntarily: Effect of supervision order.
- Provided that the powers specified in section 588 (1) (d), (e) and (f) of this Act shall not be exercised by the liquidator except with the sanction of the Court or, in a case where before the order the winding up was a creditors' voluntary winding up, with the sanction of the Court or the committee of inspection, or (if there is no such committee) a meeting of the creditors.
- (2) A winding up subject to the supervision of the Court shall not amount to a winding up by the Court for the purpose of the provisions of this Act as specified in the Twelveth Schedule to this Act (dealing with provisions which do not apply in the case of winding up subject to the supervision of the Court) but, subject to this, an order for a winding up subject to supervision shall for all purposes be an order for winding up by the Court: Twelveth Schedule.
- Provided that where the order for winding up subject to supervision of the Court was made in relation to a creditors' voluntary winding up in which a Committee of Inspection had been appointed, the order shall be deemed to be an order for winding up by the Court for the purposes of section 597 of this Act, (except subsection (1) of that section) unless the operation of that section is excluded in a voluntary winding up by general rules made under this Act.

CHAPTER 24 — PROVISIONS APPLICABLE TO EVERY MODE OF  
WINDING-UP

654. (1) The liquidator shall, within 14 days after his appointment, publish in the Federal Government Gazette or in two daily newspapers and deliver to the Commission for registration a notice of his appointment in such form as the Commission may from time to time approve. Liquidator to give notice of appointment.
- (2) If the liquidator fails to comply with the requirements of subsection (1), he is liable to a penalty as prescribed by the Commission in the regulation.
655. In every winding up (subject, in the case of insolvent companies, to the application in accordance with the provisions of this Act of the law of bankruptcy), all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reasons do not bear a certain value. Debts of all descriptions may be proved.
656. In the winding up of an insolvent company registered in Nigeria, the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy in Nigeria with respect to the estates of persons adjudged bankrupt, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up and make such claims against the company as they respectively are entitled to by virtue of this section: Application of bankruptcy rules in certain cases.
- Provided that nothing in this section shall affect the power of any secured creditor to realise or otherwise deal with his security during the winding up of an insolvent company registered in Nigeria.
657. (1) In a winding up, there shall be paid in priority to all other debts — Preferential payments.
- (a) all local rates and charges due from the company at the relevant date, and having become due and payable within 12 months immediately before that date, and all pay-as-you-earn tax deductions and other assessed taxes, property or income tax assessed on or due from the company up to the annual day of assessment next before the relevant date, and in the case of pay-as-you-earn tax deductions not exceeding deductions made in respect of one year of assessment

and, in any other case, not exceeding in one year's assessment;

(b) deductions made from the remuneration of employees and contributions of the company under the Pension Reform Act;

Act No. 4, 2014.

(c) contributions and obligations of the company under the Employees' Compensation Act;

Act No. 13, 2010.

(d) all wages or salaries of any clerk or servant in respect of services rendered to the company;

(e) all wages of any workman or labourer, whether payable for time or for piece of work, in respect of services rendered to the company; and

(f) all accrued holiday remuneration becoming payable to any clerk, servant, workman or labourer (or in the case of his death to any other person in his rights) on the termination of his employment before or by the effect of the winding up order or resolution.

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(2) Where any compensation under the Employees' Compensation Act is a weekly payment, the amount due in respect thereof shall, for the purpose of subsection (1) (e), be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed, if the employer made an application for that purpose under the Act.

Act No. 13, 2010.

(3) Where any payment on account of wages or salaries has been made to any clerk, servant, workman or labourer in the employment of a company out of the money advanced by some persons for that purpose, that person shall in a winding up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which that clerk, servant, workman or labourer would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

(4) The debts shall —

(a) rank equally among themselves after the expenses of the winding up and shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and

(b) if the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company and be paid accordingly out of any property comprised in or subject to that charge.

(5) Subject to the retention of such sums as may be necessary to discharge the costs and expenses of the winding up, the debts shall be discharged immediately if the assets of the company are sufficient to meet them.

(6) Notwithstanding the foregoing and any other provisions of this Act and any other law applicable in Nigeria where it relates to settlement of claims in the winding up of a company, claims of -

(a) secured creditors, as defined under this Act, shall rank in priority to all other claims, including any preferential payment under this Act or any other debts inclusive of expenses of winding up; and

(b) the equity holders shall rank last.

(7) In this section, "the relevant date" means —

(a) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding-up order; and

(b) in any other case, the date of the commencement of the winding up.

#### EFFECT OF WINDING UP AND ADMINISTRATION ON ANTECEDENT AND OTHER TRANSACTIONS

658. (1) Where a company at any time within the period defined in subsection (6), does anything or procures anything to be done which has the effect of putting a person, being one of the company's creditors or a surety or guarantor undue advantage shall be deemed a preference of that person, and be invalid accordingly. Fraudulent preference.

(2) Notwithstanding subsection (1), a preference given to any person is not invalid unless the company which gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in sub-section (1).

- (3) A company which has given a preference to a person connected with the company (otherwise than by reason only of being its employee) at the time the preference was given is presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in subsection (2).
- (4) The fact that something has been done in pursuance of the order of a Court does not, without more, prevent the doing or procuring of that thing from constituting the giving of a preference.
- (5) Any conveyance or assignment by a company of all its property to trustees in furtherance of the preference for the benefit of all its creditors is void.
- (6) In the case of a preference which is given to a person who is connected with the company (otherwise than by reason only of being its employee), the relevant time is the period of years ending with the onset of insolvency (which expression is defined below), and in any other case, the relevant time is the period of three months ending with the onset of insolvency.
- (7) For the purpose of this section, the onset of insolvency refers to the time of the presentation of a petition for winding up in the case of a winding up by or subject to the supervision of the Court or, the passing of a resolution for winding up in the case of a voluntary winding up.
- (8) This section applies in the case of a company where —
  - (a) the company enters administration, or
  - (b) the company goes into liquidation.

659. (1) This section applies in the case of a company where —

Transactions at an undervalue.

- (a) the company enters administration; or
  - (b) the company goes into liquidation.
- (2) Where the company has at a relevant time entered into a transaction with any person at an undervalue, the liquidator or administrator may apply to the Court for an order under this section.
  - (3) The Court shall, on such an application, make such order as it deems fit for restoring the position to what it would have been if the company had not entered into that transaction.
  - (4) For the purposes of this section, a company enters into a transaction with a person at an undervalue if the company —

- (a) makes a gift to that person or enters into a transaction with that person on terms that provide for the company to receive no consideration, or
- (b) enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the company.

(5) The Court shall not make an order under this section in respect of a transaction at an undervalue if it is satisfied —

- (a) that the company which entered into the transaction did so in good faith and for the purpose of carrying on its business; and
- (b) that at the time it did so there were reasonable grounds for believing that the transaction would benefit the company.

(6) Subject to subsection (7), the time at which a company enters into a transaction at an undervalue is a relevant time if the transaction is entered into —

- (a) within two years ending with the onset of insolvency as defined in subsection (8);
- (b) between the making of an administration application in respect of the company and the making of an administration order on that application; and
- (c) between the filing with the Court of a copy of notice of intention to appoint an administrator under sections 456 or 464 of this Act and the making of an appointment under this paragraph.

(7) Where a company enters into a transaction at an undervalue at a time mentioned in subsection (6) (a), that time is not a relevant time for the purposes of this section unless the company —

- (a) is at that time unable to pay its debts within the meaning of section 572; or
- (b) becomes unable to pay its debts within the meaning of that section in consequence of the transaction or

preference,

but the requirements of this subsection are presumed to be satisfied, unless the contrary is shown, in relation to any transaction at an undervalue which is entered into by a company with a person who is connected with the company.

(8) For the purposes of subsection (6), the onset of insolvency is, in a case where this section applies by reason of —

- (a) an administrator of a company being appointed by administration order, the date on which the administration application is made;
- (b) an administrator of a company being appointed under section 456 or 464 of this Act following filing with the Court of a copy of a notice of intention to appoint under that section, the date on which the copy of the notice is filed;
- (c) an administrator of a company being appointed otherwise than as mentioned in paragraph (a) or (b), the date on which the appointment takes effect;
- (d) a company going into liquidation either following conversion of administration into winding up or at the time when the appointment of an administrator ceases to have effect, the date on which the company entered administration (or, if relevant, the date on which the application for the administration order was made or a copy of the notice of intention to appoint was filed); and
- (e) a company going into liquidation at any other time, the date of the commencement of the winding up.

660. (1) Where anything made or done after the commencement of this Act is void under this Chapter as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, the person preferred shall, without prejudice to any liabilities or rights arising apart from this provision, be subject to the same liabilities, and have the same rights, as if he had undertaken to be personally liable as surety for the debt, to the extent of the charge on the property or the value of his interest, whichever is the less, and the value of the said person's interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all encumbrances other than those to which the charge for the company's debt was the subject.

Liabilities and rights of certain fraudulently preferred persons.

(2) Where for the purposes of this section, application is made to the Court with respect to any payment on the ground that the payment was fraudulent preference of a surety or guarantor, the court shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor, and to grant relief in respect thereof, though it is not necessary to do so for the purposes of the winding up, and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of an action for the recovery of the sum paid.

(3) Subsection (2) applies, with the necessary modifications, in relation to transactions other than the payment of money, as it applies in relation to payments.

661. Where a company is being wound up subject to the supervision of the Court, any attachment, sequestration or execution put in force against the estate or effects of the company after the commencement of the winding up, is void.

Avoidance of attachments, on winding-up subject to supervision of the Court.

662. Where a company is being wound up, a floating charge on the undertaking or property of the company created within three months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the current bank rate.

Effect of floating charge.

663. (1) Where any part of the property of a company which is being wound up consists of -

Disclaimer of onerous property.

(a) unprofitable contracts; or

(b) any other property that is unsaleable, or not readily saleable, or is such that it may give rise to the performance of any onerous act or a liability for the payment of any sum of money,

the liquidator, notwithstanding that he has endeavoured to sell it or has taken possession of the property or exercised any act of ownership in relation thereto, may, with the leave of the Court, and subject to the provisions of this section, in writing signed by him, within 12 months after the commencement of the winding up or such extended period as may be allowed by the Court, disclaim the property:

Provided that, where the property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the

power under this section of disclaiming the property may be exercised at any time within 12 months after he has become aware thereof or such extended period as may be allowed by the Court.

- (2) A disclaimer under this section shall operate to determine, as from the date of the disclaimer, the rights, interest and liabilities of the company, in or in respect of the property disclaimed, but shall not, except it is necessary for the purpose of releasing the company from any liability, affect the rights or liabilities of any other person.
- (3) The Court, before or on granting leave to disclaim under subsection (1), may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the Court deems just.
- (4) The liquidator is not entitled to disclaim any property under this section in any case where an application in writing has been made to him by any person interested in the property requiring him to decide whether or not he will disclaim, and the liquidator has not, within 28 days after the receipt of the application or such further period as may be allowed by the Court, give notice to the applicant that he intends to apply to the Court for leave to disclaim, and, in the case of a contract, if the liquidator, after such an application, does not within that period or further period disclaim the contract, the company is deemed to have adopted it.
- (5) The Court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract on such terms as to payment by or to either party, of damages for the non-performance of the contract, or otherwise as the Court deems just, and any damages payable under the order to that person may be proved by him as a debt in the winding up.
- (6) The Court may, on an application by any person who claims any interest in any property disclaimed under this section, or is under any liability not discharged by this Act in respect of any disclaimed property, and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any persons entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability, or a trustee for him, and on such terms as the Court deems just and on any such vesting order being made, the property comprised therein shall vest in the person therein named in that behalf without any conveyance or assignment for the purpose.
- (7) Where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of any person claiming under the company, whether as an under-lessee or as a mortgagee by demise, a mortgage by way of legal charge or mortgage, as the case may be, except upon the terms of making that person —

- (a) object to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or
- (b) if the Court deems fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

and in either event if the case so requires, as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and if there is no person claiming under the company who is willing to accept an order upon such terms, the Court shall have power to vest the estate and interest of the company in the property in any person liable, either personally or in a representative character, and either alone or jointly with the company, to perform the lessee's covenants in the lease, freed and discharged from all estates, encumbrances and interests created therein by the company.

664. Any person injured by the operation of a disclaimer under section 663 is deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.

Persons injured.

665. (1) This section applies in the case of a company where —

Supplies of gas, water, electricity, etc.

- (a) the company enters administration;
- (b) a company voluntary arrangement approved under Chapter 17 has taken effect;
- (c) the company goes into liquidation; or
- (d) a provisional liquidator is appointed.

(2) If a request is made by or with the concurrence of the officeholder for the giving, after the effective date, of any of the supplies mentioned in the next subsection, the supplier —

- (a) may make it a condition of the giving of the supply that the office-holder personally guarantees the payment of any charges in respect of the supply;
- (b) shall not make it a condition of the giving of the supply, or do anything which has the effect of making

it a condition of the giving of the supply, that any outstanding charges in respect of a supply given to the company before the effective date are paid.

(3) For the purpose of subsection (2), "the officeholder" means the administrator, the nominee, the supervisor, the liquidator or the provisional liquidator, as the case may be.

(4) The supplies referred to in subsection (2) are a supply of —

- (a) gas by a gas supplier within the meaning of legislation regulating the provision of gas, if applicable;
- (b) electricity by an electricity supplier within the meaning of legislation dealing with the provision of electricity;
- (c) water by a water provider refer to legislation if applicable; and
- (d) communications services by a provider of a public electronic communications service.

(5) The "effective date" for the purposes of this section, is the date on which the —

- (a) company entered administration;
- (b) voluntary arrangement took effect;
- (c) company went into liquidation; or
- (d) provisional liquidator was appointed.

(6) In subsection (3), the term, "communications services" does not include electronic communications services to the extent that they are used to broadcast or otherwise transmit programme services within the meaning of the Nigerian Communications Commission Act.

Cap. N97, LFN, 2004.

666. (1) Where a creditor issues execution against any goods or land of a company, or attaches any debt due to the company, and the company is subsequently wound up, the creditor shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the company, unless he has completed the execution or attachment before the commencement of the winding up:

Restriction of rights of creditor as to execution, etc., on winding-up of company.

Provided that —

- (a) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice shall, for the purposes of subsection (1), be substituted for the date of the commencement of the winding up,
- (b) if a person purchases in good faith under a sale by the sheriff any goods of a company on which an execution has been levied, he shall acquire a good title to them against the liquidator, and
- (c) the rights conferred by this subsection on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the court deems fit.

(2) For the purposes of this section, an execution against goods shall be taken to be completed by seizure and sale, and an attachment of a debt is deemed to be completed by receipt of the debt, and an execution against land is deemed to be completed by seizure and, in the case of an equitable interest, by the appointment of a receiver.

667. (1) Subject to the provisions of subsection (3), where any goods of a company are taken in execution and before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the sheriff that a provisional liquidator has been appointed or that a winding-up order has been made or that a resolution for voluntary winding up has been passed, the sheriff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.

Duty of sheriff as to goods taken in execution.

(2) Subject to the provisions of subsection (3), where under an execution in respect of a judgment for a sum exceeding ₦100,000, the goods of a company are sold or money is paid in order to avoid the sale, the sheriff shall deduct the costs of the execution from the proceeds of the sale or the money paid, and retain the balance for 14 days and if within that time notice is served on him of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up of the company and an order is made or a resolution is passed, as the case may be, for the winding up of the company, the sheriff shall pay the balance to the liquidator, who shall be entitled to retain it as against the

execution creditor.

(3) The rights conferred by this section on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court deems fit.

(4) In this section and section 666 of this Act —

(a) "goods" includes chattels personal; and

(b) "sheriff" includes any officer responsible for the execution of a writ or other process.

#### OFFENCES ANTECEDENT TO OR IN COURSE OF WINDING UP

668. (1) If any person, being a past or present officer of a company which at the time of the commission of the alleged offence is being wound up, whether by or under the supervision of the Court or voluntarily, or is subsequently ordered to be wound up by the Court or subsequently passes a resolution for voluntary winding up —

Offences by officers of company in liquidation.

(a) does not, to the best of his knowledge and belief, fully and truly discover or deliver to the liquidator all the property, landed and personal, of the company, and how and to whom, for what consideration and when, the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company;

(b) does not deliver up to the liquidator, or as he directs, all such part of the real and personal property of the company as is in his custody or under his control, which he is required by law to deliver up;

(c) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company which he is required by law to deliver up;

(d) within 12 months immediately preceding the commencement of the winding up or at any time thereafter, conceals any part of the property of the company to the value of ₦100,000 or upwards, or conceals any debt due to or from the company;

(e) within 12 months immediately preceding the

commencement of the winding up or at any time thereafter, fraudulently removes any part of the property of the company to the value of ₦100,000 or upwards;

- (f) makes any material omission in any statement relating to the affairs of the company;
- (g) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of one month to inform the liquidator thereof;
- (h) after the commencement of the winding up, prevents the production of any book or paper affecting or relating to the property or affairs of the company;
- (i) within 12 months immediately preceding the commencement of the winding up or at any time thereafter;
- (j) conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of the book or paper affecting or relating to the property or affairs of the company -
  - (i) makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company,
  - (ii) fraudulently parts with, alters or makes any omission in, or is privy to the fraudulently parting with, altering or making any omission in any document affecting or relating to the property or affairs of the company,
  - (iii) at any meeting of the creditors of the company, attempts to account for any part of the property of the company by fictitious losses or expenses,
  - (iv) makes false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for,

- (v) under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company any property which the company does not subsequently pay for, or
- (vi) pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging, or disposing is in the ordinary way of the business of the company; or
- (k) makes any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up,

commits an offence and is –

- (i) in the case of the offences mentioned respectively in sub-paragraphs (iv), (v) and (vi), liable on conviction to imprisonment for a term of 12 months, and
- (ii) in the case of any other offence under this subsection, is liable on conviction to imprisonment for a term of two years:

Provided it is a good defence to a charge under any of paragraphs (a), (b), (c), (d), (f) and (i) (v) and (vi) of this subsection, if the accused proves that he had no intent to defraud, and to a charge under any of paragraphs (h), (i) and (j), if he proves he had no intention to conceal the state of affairs of the company or to defeat the law.

- (2) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under subsection (1) (j) (i) and (vi), every person who takes in pawn or pledge, or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances, commits an offence and is liable on conviction to be punished in the same way as if he had received the property knowing it to have been obtained in circumstances amounting to an offence.

(3) For the purposes of this section, "officer" includes any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

669. An officer or contributory of any company being wound up who destroys, mutilates, alters or falsifies books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the company with intent to defraud or deceive any person, commits an offence and is liable on conviction to imprisonment for a term of two years or a fine as the Court deems fit.

Falsification of books.

670. A person who, being at the time of the commission of the alleged offence is an officer, of a company which is subsequently ordered to be wound up by the Court, or subsequently passes a resolution for voluntary winding up —

Fraud by officers of companies in liquidation.

(a) has by false pretence or by means of any other fraud induced any person to give credit to the company;

(b) with intent to defraud creditors of the company, made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against the property of the company; or

(c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company, or within two months before the date of any unsatisfied judgment or order for payment of money obtained against the company,

he commits an offence and is liable on conviction to imprisonment for a term of two years.

671. (1) If, where a company is wound up, it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up or the period between the incorporation of this company and commencement of the winding up, whichever is the shorter, each officer of the company who is in default, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on the default was excusable, commits an offence and is liable on conviction to a fine as prescribed by the Commission in the regulation.

Liability where proper accounts not kept.

(2) For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of any company if there have not been kept such books of accounts as are necessary to exhibit and explain the transactions and

financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid and, where the trade or business has involved dealing in goods, statements of the annual stock takings and (except in case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers in sufficient details to enable those goods and those buyers and sellers to be identified.

672. (1) If, in the course of the winding up of a company, it appears that any business of the company has been carried on in a reckless manner or with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, the Court, on the application of the official receiver, or the liquidator or any creditor or contributory of the company, may, if it deems proper to do so, declare that persons who were knowingly parties to the carrying on of the business in that manner, is personally responsible, without any limitation of liability for all or any of the debts or other liabilities of the company as the Court may direct.
- (2) Where the Court makes a declaration as to responsibility for debts or liabilities under subsection (1), it may give any direction it deems proper for the purpose of giving effect to that declaration, and in particular the Court may make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage, charge or interest in any mortgage, or charge or assets of the company held by or vested in him, or any company or person on his behalf, or any person claiming as assignee from or through the person liable or any company or person acting on his behalf, and may make any further order necessary for enforcing any charge imposed under this subsection.
- (3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in subsection (1) (other than recklessly), every person who was knowingly a party to the carrying on of the business in that manner, commits an offence, and is liable on conviction to a fine as the Court deems fit or to imprisonment for a term of two years or both.
- (4) In its operation, this section shall have effect, so that —
- (a) a declaration may be made notwithstanding that the person concerned may be criminally liable in respect of matters which are grounds for the declaration and a declaration, if made, is deemed to be a final judgment of the Court;
  - (b) the official receiver or the liquidator, as the case may be, on the hearing of an application to the Court, may himself give evidence or call witnesses;

Responsibility for  
fraudulent trading.

(c) the expression "assignee" includes any person to whom or in whose favour by the direction of the person liable, the debt, obligation, mortgage, or charge was created, issued or transferred, or the interest created, other than any person being an assignee for valuable consideration given in good faith and without notice of any of the matters on the ground of which the declaration is made; and

(d) "valuable consideration" shall not include consideration by way of marriage.

673. (1) Subject to subsection (3), if, in the course of the winding up of a company, it appears that subsection (2) applies in relation to a person who is or has been a director of the company, the Court, on the application of the liquidator, may declare that that person is to be liable to make such contribution (if any) to the company's assets as the Court deems proper. Wrongful trading.

(2) This subsection applies in relation to a person if —

(a) the company has gone into insolvent liquidation,

(b) at some time before the commencement of the winding up of the company, that person knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation, and

(c) that person was a director of the company at that time.

(3) The Court shall not make a declaration under this section with respect to any person if it is satisfied that after the condition specified in subsection (2) (b) was first satisfied in relation to him, that person took every step with a view to minimising the potential loss to the company's creditors as (assuming him to have known that there was no reasonable prospect that the company would avoid going into insolvent liquidation) he ought to have taken.

(4) For the purposes of subsections (2) and (3), the facts which a director of a company ought to know or ascertain, the conclusions which he ought to reach and the steps which he ought to take are those which would be known or ascertained, or reached or taken, by a reasonably diligent person having both —

(a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the

same functions as are carried out by that director in relation to the company; and

(b) the general knowledge, skill and experience that that director has.

(5) The reference in subsection (4) to the functions performed in relation to a company by a director of the company includes any function which he does not perform but which has been entrusted to him.

(6) For the purposes of this section, a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.

674. (1) If, in the course of winding up a company, it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager or liquidator, or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of duty in relation to the company which would involve civil liability at the suit of the company, the Court may, on the application of the official receiver, liquidator, creditor or contributory, examine into the conduct of the promoter, director, liquidator or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rates as the Court deems just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the Court deems just.

Power of court to assess damages against delinquent directors.

(2) The provisions of this section extend to any receiver of the property of a company, and, shall, in any case, have effect notwithstanding that the offence is one for which the offender may be criminally liable.

(3) Where an order for payment of money is made under this section, the order is deemed to be a final judgment of the Court.

#### PROSECUTION OF DELINQUENT OFFICERS AND MEMBERS OF A COMPANY

675. (1) If it appears to the Court, in the course of winding up by, or subject to the supervision of the Court, that any past or present officer, or any member of the company has been guilty of any offence in relation to the company for which he is criminally liable, the Court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator to refer the matter to the Attorney-General of the Federation.

Prosecution of delinquent officers and members of a company.

(2) If it appears to the liquidator, in the course of a voluntary winding up, that any past or present officer, or any member of the company has been guilty of any

offence in relation to the company for which he is criminally liable, he shall report the matter to the Attorney-General of the Federation and shall furnish him such information and give to him such access to and facilities for inspecting and taking copies of any document, being information or document in the possession or under the control of the liquidator and relating to the matter in question, as he may require.

(3) Where any report is made under subsection (2) to the Attorney-General of the Federation, he may, if he thinks fit, apply to the Court for –

(a) an order conferring on him or any person designated by him for the purpose with respect to the company concerned;

(b) all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the Court.

(4) If it appears to the Court, in the course of a voluntary winding up, that any past or present officer, or any member of the company has been guilty, and that no report with respect to the matter has been made by the liquidator to the Attorney-General of the Federation under subsection (2), the Court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly, the provisions of this section shall have effect as though the report had been made under subsection (2).

(5) If, any matter is reported or referred to the Attorney-General of the Federation under this section, and he considers that the case is one in which a prosecution ought to be instituted, the Attorney-General of the Federation shall institute proceedings accordingly, and it is the duty of the liquidator and of every other officer and agent of the company past and present (other than the defendant in the proceedings) to give him all assistance in connection with the prosecution which he is reasonably able to give.

(6) For the purposes of subsection (5), the word, "agent" in relation to a company includes any –

(a) banker or solicitor of the company; and

(b) person employed by the company as auditor, whether that person is or is not an officer of the company.

(7) If a person fails or neglects to give assistance in the manner required by subsection (5), the Court may, on the application of the Attorney-General of the Federation, direct that person to comply with the requirements of the

subsection (5), and where any such application is made with respect to a liquidator, the Court, may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him to do so, direct that the costs of the application shall be borne by the liquidator personally.

#### SUPPLEMENTARY PROVISIONS AS TO WINDING UP

676. (1) The following persons shall not be competent to be appointed or to act as liquidator of a company, whether in a winding up by, or under the supervision of the Court, or in a voluntary winding up-
- Disqualifications for appointment as liquidator.
- (a) an infant;
  - (b) anyone found by the Court to be of unsound mind;
  - (c) a body corporate;
  - (d) an undischarged bankrupt;
  - (e) any director of the company under liquidation;
  - (f) any person convicted of any offence involving fraud, dishonesty, official corruption or moral turpitude and in respect of whom there is a subsisting order under section 672 and 280 of this Act.
- (2) Any appointment made that is contrary to subsection (1) is void and if any of the persons named in subsection (1) (c) - (f) act as a liquidator of the company, he commits an offence and is liable to a fine as prescribed by the Commission in the Regulations in the case of a body corporate or, in the case of an individual, to imprisonment for a term not exceeding six months or to a fine as the Court deems fit or both.
677. Any person who gives, agrees or offers to give to any member or creditor of a company any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of a person other than himself as the company's liquidator, commits an offence and is liable to a fine as the Court deems fit.
- Corrupt inducement affecting appointment as liquidator.
678. (1) If a liquidator makes default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, and fails to make good the default within 14 days after the service on him of a notice requiring him to do so, the Court may, on an application made to the Court by any contributory or creditor of the company or by the Commission, make an order directing the liquidator to make good
- Enforcement of duty of liquidator to make returns.

the default within such time as is specified in the order.

- (2) Any order under this section may provide that the costs of any expenses incidental to the application shall be borne by the liquidator, and nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a liquidator in respect of any such default.

679. (1) Where a company is being wound up, whether by, or under the supervision of, the Court or voluntarily, every invoice, order for goods or business letter issued by, or on behalf of, the company or a liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

Notification that a company is in liquidation.

(2) If default is made in complying with the provisions of this section –

- (a) the company,
- (b) any officer of the company,
- (c) any liquidator of the company, and
- (d) any receiver or manager,

are liable to a penalty as prescribed by the Commission in the regulations.

680. (1) In the case of a winding up by the Court or a creditors' voluntary winding up

Exemption from stamp duty.

- (a) every assurance relating to any property of the company, or to any mortgage, charge or other encumbrance or any right or interest in any property, in any event forming part of the assets of the company and which, after the execution of the assurance, either at law or in equity is, or remains part of the assets of the company; and
- (b) every power of attorney, proxy paper, writ, order, certificate, affidavit, bond or other instrument or writing relating solely to the property of any company which is being so wound up, or to any proceeding under any such winding up, shall be exempted from duties chargeable under any law or enactment relating to stamp duties.

(2) In this section, "assurance" includes any deed, conveyance, instrument,

discharge, assignment or surrender.

681. Where a company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purported to be recorded. Books of company to be evidence.
682. (1) Where a company is being wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of in the following manner - Disposal of books and other papers of company.
- (a) in the case of a winding up by, or under the supervision of, the Court in such way as the Court directs;
  - (b) in the case of a members' voluntary winding up, in such a way as the company by special resolution directs;
  - (c) in the case of a creditors' voluntary winding up, in such way as the Committee of Inspection or, if there is no such committee, as the creditors of the company, may direct.
- (2) After five years from the dissolution of the company no responsibility shall rest on the company, the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.
- (3) Provisions may be made by general rules for enabling the Commission to prevent, for such period (not exceeding five years from the dissolution of the company) as it may consider proper, the destruction of the books and papers of a company which has been wound up, and for enabling any creditor or contributory of the company to make representations to it and to appeal to the Court from any direction which may be given by it in the matter.
- (4) A person who acts in contravention of any general rule made for the purposes of this section or any direction of the Commission, is liable to a penalty as prescribed by the Commission in the Regulations.
683. (1) Where a company is being wound up, and the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed until the winding up is concluded, send to the Commission a statement in the prescribed form containing the prescribed particulars with respect to the proceedings in, and position of, the liquidation. Information as to pending liquidations and disposal of unclaimed assets.
- (2) Any person stating himself in writing to be a creditor or contributory of the

company is entitled, by himself or his agent, at all reasonable times and on payment of the prescribed fee, to inspect the statement, and receive a copy or extract of the statement, but a person who falsely states himself to be creditor or contributory is liable to contempt of Court, and is punishable on the application of the liquidator or official receiver.

- (3) If a liquidator fails to comply with the requirements of this section, he is liable to a penalty as prescribed by the Commission in the Regulations.
- (4) If it appears from any such statement or otherwise that a liquidator has in his custody or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt, the liquidator shall immediately pay the same to the companies liquidation account mentioned in section 591 of this Act and is entitled to a certificate of receipt in the prescribed form for the money so paid, which is an effectual discharge to him.
- (5) For the purposes of ascertaining and getting in any money payable into the companies liquidation account under this section —
  - (a) the Commission may at any time order any such liquidator to submit to it an account verified by affidavit of the sums received and paid by him under or in pursuance of the liquidation, and may direct and enforce an audit of the account and if the liquidator fails to submit the account within such reasonable time as the Commission directs, he shall be liable to contempt of Court and may, on the application of the Commission to the Court made for the purpose, be punished accordingly; and
  - (b) the Court may, if default is made in submitting the account referred to under this section —
    - (i) by warrant addressed to any police officer, cause the liquidator to be arrested, and all books, papers and money or goods, relating to the liquidation in his possession to be seized and him and them to be safely kept until such time as the Court may order,
    - (ii) at any time by order addressed to the Postmaster-General of the Nigerian Postal Service require that, for a period of not more than three months, letters addressed to the liquidator and sent through the post, be in course of post,

redirected, sent or delivered to or at any place or places mentioned in the order,

- (iii) summon the liquidator or his wife, or any person known or suspected to have in his possession any book or paper relating to the liquidation, and any money or goods belonging to the liquidator or representing any unclaimed or undistributed assets of the company, or summon any person whom the Court deems capable of giving information respecting any book, paper, money, goods or other asset, and require any person summoned under this paragraph to produce documents in his custody or under his control relating to the liquidator's dealings with the property of the company,
- (iv) where any person on examination before it admits that he is indebted to the company, by order made on the application of the official receiver or liquidator, direct payment to the official receiver or liquidator, as the case may be, of the amount admitted, or any part, either in full discharge of the whole amount in question or not at such time and in such manner as the Court deems fit, with or without costs of the examination,
- (v) examine on oath, either by word of mouth or written interrogatories, any person so brought before it concerning the liquidator and his dealings with the property of the company, and
- (vi) if any person on examination before the Court admits that he has in his possession any money properly payable into the company's liquidation account under this section, order him to pay any such money into that account.

(6) A person claiming to be entitled to money paid into the company's liquidation account under this section may apply to the Commission for payment, and the Commission, if the liquidator certifies the claim, may make an order for payment accordingly.

(7) An appeal shall lie to the Court by any person claiming to be dissatisfied with the decision of the Commission in respect of any claim made under this section.

684. Where a resolution is passed at an adjourned meeting of creditors or contributories of a company, the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and is not deemed to have been passed on any earlier date.

Resolutions passed at adjourned meetings of creditors.

685. (1) On the winding up of a company, whether by the Court or voluntarily, the liquidator may, subject to subsections (2) –(4), make any payment which the company has, before the commencement of the winding up, decided to make under section 745 of this Act.

Power to make over assets to employees.

(2) The power which a company may exercise by virtue of section 745 of this Act may be exercised by the liquidator after the winding up has commenced if, after the company's liabilities have been fully satisfied and provision has been made for the costs of the winding up, the exercise of that power has been sanctioned by such resolution of the company as would be required of the company itself by section 745 (3) of this Act before that commencement, as if paragraph (b) of that subsection were omitted and any other requirement applicable to its exercise by the company had been met.

(3) Any payment which may be made by a company under this section may be made out of the company's assets which are available to the members on the winding up.

(4) On a winding up by the Court, the exercise by the liquidator of his powers under this section shall be subject to the Court's control and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of the power.

(5) Subsections (1) and (2) shall have effect notwithstanding any other rule or law.

#### SUPPLEMENTARY POWERS OF COURT

686. (1) The Court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any sufficient evidence, and may, if it deems fit, for the purposes of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs and may appoint a person to act as chairman of any such meeting and to report the result to the Court.

Meetings to ascertain wishes of creditors and others.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or the articles.

687. In all proceedings under this Part of this Act, all Courts, Judges, and persons judicially acting, and all officers, judicial or ministerial, of any Court or employed in enforcing the process of any Court, shall take judicial notice of the signature of any officer of Court and also of the official seal or stamp of a Court appended to or impressed on any document made, issued or signed under this Part of this Act, or on any official copy of any such document.

Judicial notice of signatures of officers of Court.

688. (1) Documents purporting to be orders or certificates made or issued by the Attorney-General of the Federation or the Commission for the purposes of this Act and to be signed by the Attorney-General of the Federation or the Accountant-General of the Federation, or under the seal of the Commission or signed by any person authorised in that behalf by them, and, in proper case, to be sealed where necessary, shall be received in evidence and deemed to be such orders, or certificates without further proof, unless the contrary is shown.

Judicial notice of signatures of certain government officials.

(2) A certificate signed by the Attorney-General for the Federation, Accountant-General of the Federation or under the seal of the Commission that any order made, certificate issued, or act done, is the order, certificate or act of the Attorney-General of the Federation, Accountant-General of the Federation or the Commission, as the case may be, shall be conclusive of the fact so certified.

689. (1) Where a company is in course of being wound up, all magistrates shall be commissioners for the purpose of taking evidence under this Act and the Court may refer the whole or any part of the examination of any witnesses under this Act to any person appointed commissioner.

Special commissioners for receiving evidence.

(2) Every commissioner shall, in addition to any power which he might lawfully exercise as a magistrate, have in the matter so referred to him the same powers as the Court, of –

(a) summoning and examining witnesses;

(b) requiring the production or delivery of documents;

(c) punishing defaults by witnesses; and

(d) allowing costs and expenses to witnesses.

(3) The examination so taken shall be returned or reported to the Court in such manner as that Court directs.

690. An affidavit required to be sworn under the provisions or for the purposes of this Part of this Act may be sworn in Nigeria or elsewhere in accordance with the provisions of the Oaths Act or under any other enactment or law providing for the administration of oaths and all Courts, Judges, commissioners, and persons acting judicially shall take judicial notice of the seal or stamp or signatures, as the case may be, of any Court, Judge, person, consul, or vice-consul, attached, appended, or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part of this Act.

Affidavits in Nigeria and elsewhere.

Cap. N1, LFN, 2004.

#### PROVISIONS AS TO DISSOLUTION

691. (1) Where a company has been dissolved, the Court may, at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the Court to be interested, make an order, upon such terms as the Court may deem fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

Power of Court to void dissolution of company.

(2) A person on whose application the order was made, shall, within seven days after the making of the order or such further time as the Court may allow, deliver to the Commission for registration an office copy of the order, and if that person fails to do so he is liable to a penalty as prescribed by the Commission in the regulations.

692. (1) The Commission may strike off the name of a company from the register of companies if —

Power of Commission to strike off defunct company.

- (a) a special resolution has been passed by the company that the name of the company be struck off the register;
- (b) an application has been made to the Commission that the name of the company be struck off the register;
- (c) advertisement has been made in three national daily newspapers within 28 days of passing the resolution, calling for objections, if any, to the application; and
- (d) the Commission is satisfied that —
  - (i) the reasons given for the application are sufficient to justify the striking off,
  - (ii) the company has not commenced business and has no undischarged obligations, and

(iii) no reasonable objection has been received within 28 days of the publication of the advertisement mentioned in subsection (1) (c).

- (2) Any person aggrieved by the striking off of the name of the company under this subsection may apply to the Court, at any time before the expiration of two years from the date of the striking off, and if the Court is satisfied that it is just to restore it to the register, the Court may order the name of the company to be so restored.
- (3) Where the Commission observes or has reasonable cause to believe that a company is not carrying on business or has not been in operation for 10 years or has not complied with provisions of this Act for a consecutive period of 10 years, the Commission may cause to be published, in at least three national daily newspapers, a notice of its intention to strike off the company from the register.
- (4) Where the Commission does not, within 90 days of the last publication, receive any response from the company that it is carrying on business or in operation, it may strike off the name of the company.
- (5) Where a company has been struck off in accordance with the provisions of this section, the Commission shall cause to be published in at least three national daily newspapers, the name and date of the striking off of the company, provided that —
- (a) the liability, if any, of every director, managing officer and member of the company shall continue and may be enforced as if the company has not been struck off; and
  - (b) nothing in this subsection shall affect the power of the Court to wind up a company the name of which has been struck off the register.
- (6) Any company, member or creditor aggrieved by the striking off from the register under subsection (4) may apply to the Court, at any time before the expiration of 10 years from the publication of the notice under subsection (5), for an order restoring the company to the register, and if the Court is satisfied that, at the time of the striking off, the company was carrying on business or in operation, or that otherwise it is just to restore it to the register, the Court may order the name of the company to be restored to the register, and an order under this subsection may include any directions, the Court deems fit, and provision may be made therein for placing the company and all other persons in the same position, as nearly as may be, as if the name of the company had

not been struck off the register, and upon delivery of an office copy to the Commission for registration, the order shall have effect according to its tenor, and may be registered accordingly.

- (7) Any notice to a liquidator to be sent under this section may be addressed to the liquidator at his last known place of business, and any letter or notice to be sent under this section to a company may be addressed to the company at its registered or head office.

693. Where a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution, including leasehold property (but not including property held by the company on trust for any other person) shall, subject and without prejudice to any order which may at any time be made by the Court under section 691 or 692 of this Act, be deemed to be vested in the State without further assurance, as *bona vacantia*.

Property of dissolved company to be declared as *bona vacantia*.

### CENTRAL ACCOUNTS

694. (1) There shall continue to be an account called the Companies Liquidation Account, kept on behalf of the Commission by the Accountant-General of the Federation, into which shall be paid all money received by the Commission in respect of proceedings under this Act in connection with the winding up of companies.

Companies liquidation account defined.

- (2) All payments out of money standing to the credit of the Commission in the Companies Liquidation Account shall be made by the Accountant-General in the prescribed manner.

695. (1) If the cash balance standing to the credit of the Companies Liquidation Account is in excess of the amount which in the opinion of the Commission is required for the time being to answer demands in respect of companies' estates, the Commission shall notify the excess to the Accountant-General of the Federation and the Accountant-General of the Federation, may invest the excess or any part thereof, in Government securities, to be placed to the credit of such account as he may deem fit in the circumstances.

Investment of surplus funds in Government securities.

- (2) If any part of the money so invested is, in the opinion of the Commission, required to answer any demand in respect of companies' estates, the Commission shall notify the Accountant-General of the Federation the amount so required, and the Accountant-General of the Federation shall thereupon repay to the Commission such sum as may be required to the credit of the Companies Liquidation Account, and for that purpose may direct the sale of such part of the securities as may be necessary.

- (3) The dividends on investments under this section shall be paid to such account as the Accountant-General of the Federation may direct, and regard shall be

had to the amount thus derived in fixing the fees payable in respect of proceedings in the winding up of companies.

696. (1) The Commission shall keep an account of the receipts and payments in the winding up of each company, and, when the cash balance standing to the credit of the account of any company is in excess of the amount which, in the opinion of the Committee of Inspection, is required for the time being to answer demands in respect of that company's estate, the Commission shall, on the request of the committee, invest the amount not so required in Government securities, to be placed to the credit of the said account for the benefit of the company.
- (2) If any part of the money so invested is, in the opinion of the Committee of Inspection, required to answer any demands in respect of the estate of the company, the Commission shall, on the request of that committee, raise such sum as may be required by the sale of such part of the said securities as may be necessary.
- (3) The dividends on investments under this section shall be paid to the credit of the company.
- (4) Where the balance at the credit of any company's account in the hands of the Commission exceeds ₦1,000,000 and the liquidator gives notice to the Commission that the excess is not required for the purposes of the liquidation, the company is entitled to interest on the excess at the current bank rate.

Separate accounts of particular estates.

#### RETURNS BY OFFICERS OF COURT

697. The officers of the Courts acting in the winding up of companies shall make to the Commission such returns of the business of their respective Courts and offices, at such times, and in such manner and form as may be prescribed, and from those returns the Commission shall cause books to be prepared which shall be opened for public information and searches.

Returns by officers in winding-up.

#### ACCOUNTS TO BE PREPARED ANNUALLY

698. (1) The Commission and every officer by whom fees are taken under this Act in relation to the winding up of companies, shall make returns and give information to the Accountant-General of the Federation in such form as he may require and the accounts of the Commission relating to the winding up of companies shall be audited at the end of each year in the manner prescribed by the Constitution.
- (2) The Accountant-General of the Federation shall, before the end of each year in which the audit is made, prepare for submission to the President an account of the winding up of companies, as audited by the Accountant-General for the

Annual accounts of company winding-up and disposal.

Cap. C23, LFN, 2004.

Federation, showing in respect of such winding up, the receipts and expenditure during the previous year, and any other matter which the President or the Minister, as the case may be, may require.

## CHAPTER 25 — WINDING UP OF UNREGISTERED COMPANIES

699. Subject to the provisions of this Part of this Act, an unregistered company may be wound up under this Act and all the provisions of this Act, with respect to winding up shall apply to an unregistered company, with the following exceptions —

Winding-up of  
unregistered company.

- (a) the principal place of business of an unregistered company shall, for all the purposes of the winding up, be deemed to be the registered office of the company;
- (b) an unregistered company shall not be wound up under this Act voluntarily or subject to supervision;
- (c) an unregistered company may be wound up if —
  - (i) the company is dissolved, or has ceased to carry on business or is carrying on business only for the purpose of winding up its affairs,
  - (ii) the company is unable to pay its debts, or
  - (iii) the Court is of opinion that it is just and equitable that the company should be wound up; or
- (d) an unregistered company shall, for purposes of this Act, be deemed to be unable to pay its debts if —
  - (i) a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding ₦100,000 then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary or some director, manager, or principal officer of the company, or by otherwise serving in such manner as the Court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for 21 days after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor,

(ii) any action or other proceedings has been instituted against any member for any debt or demand due from the company, or from him in his capacity as a member, and notice in writing of the institution of the action or proceeding having been served on the company by leaving it at its principal place of business, or by delivering it to the secretary, or some director, manager, or principal officer of the company, or by otherwise serving the notice in such manner as the court may approve or direct, the company has not within 28 days after service of the notice secured or compounded for the debt or demand or procured the action or proceeding to be stayed, or within that period has not indemnified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same, or

(iii) execution or other process issued on a judgment, act or order obtained in any Court in favour of a creditor against the company, or any of its members or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied and it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

700. (1) In the event of an unregistered company being wound up –

- (a) every person is deemed to be a contributory, who is liable to pay or contribute to the payment of –
  - (i) any debt or liability of the company
  - (ii) any sum for the adjustment of the rights of the members among themselves,
  - (iii) the costs and expenses of winding up the company, and
- (b) every contributory is liable to contribute to the assets of the company all sums due from him in respect of any such liability.

Contributories in winding-up unregistered company.

(2) In the event of the death, bankruptcy, or insolvency of any contributory, the provisions of this Act with respect to the personal representatives, heirs, and devisees of deceased contributories, and the trustees of bankrupt or insolvent contributories, as the case may be, shall apply.

701. The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company. Power of Court to stay or restrain proceedings.
702. Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company except by leave of the Court, and subject to such terms as the Court may impose. Action stayed on winding-up order.
703. The provisions of this Chapter of this Act with respect to unregistered companies shall be in addition to and not in restriction of any provision under this Act, contained with respect to winding up companies by the Court, and the Court or liquidator may exercise any power to do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Act, but an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Chapter of this Act. Provisions of this Part to be cumulative.

#### CHAPTER 26 — MISCELLANEOUS PROVISIONS APPLYING TO COMPANIES WHICH ARE INSOLVENT

704. A person acts as an insolvency practitioner in relation to a company by acting as its — Acting as insolvency practitioner.
- (a) liquidator, provisional liquidator or official receiver;
  - (b) administrator or administrative receiver; or
  - (c) receiver and manager, or as nominee or supervisor of a company's voluntary arrangement.
705. (1) A person is only qualified to act as an insolvency practitioner where he — Qualification of insolvency practitioner.
- (a) has obtained a degree in law, accountancy or such other relevant discipline from any recognised University or Polytechnic;
  - (b) has a minimum of five years post qualification

experience in matters relating to insolvency;

(c) is authorised to so act by virtue of a certificate of membership issued by Business Recovery and Insolvency Practitioners Association of Nigeria (BRIPAN), or his membership of any other professional body recognised by the Commission, being permitted to act by or under the rules of that body; and

(d) holds an authorisation granted by the Commission.

(2) The Commission may prescribe in its regulations such other additional qualifications as may be considered necessary.

706. (1) The Commission may, by an instrument or order, declare a body which appears to it to fall within subsection (2), to be a recognised professional body for the purposes of this section.

Recognition of professional body by the Commission.

(2) A body may be recognised if it regulates the practice of a profession and maintains and enforces rules for securing that its members –

(a) are permitted by or under the rules to act as insolvency practitioners;

(b) are fit and proper persons to act; and

(c) meet acceptable requirements as to education and practical training and experience.

(3) References to members of a recognised professional body are to persons who, whether members of that body or not, are subject to its rules in the practice of the profession in question.

(4) An instrument or order made under subsection (1) in relation to a professional body may be revoked by a further order if it appears to the Commission that the body no longer falls within subsection (2).

707. (1) Application may be made to the Commission for authorisation to act as an insolvency practitioner, and the application shall —

Application for authorisation to act as insolvency practitioner.

(a) be made in such manner as the Commission may specify;

(b) contain or be accompanied with a certificate of membership issued by BRIPAN or any other

professional body approved by the Commission and such information as the Commission may reasonably require for the purpose of determining the application; and

(c) be accompanied by the prescribed fee in the regulations issued by the Commission.

(2) At any time after receiving the application and before determining it, the Commission may require the applicant to furnish additional information.

(3) An application may be withdrawn before it is granted or refused.

708. (1) The Commission may, on an application duly made and after being furnished with all such information as it may require, grant or refuse the application.

Commission to notify the party of the refusal or withdrawal of authorisation.

(2) The Commission shall grant the application if it appears to it from the information furnished by the Applicant and having regard to such other information, if any, that the Applicant —

(a) is a fit and proper person to act as an insolvency practitioner, and

(b) meets the prescribed requirements with respect to education and practical training and experience.

(3) An authorisation granted pursuant to the application shall take effect from the date of grant by the Commission.

(4) Authorisation granted may be withdrawn by the Commission if it appears to it that the holder of the authorisation is no longer a fit and proper person to act as an insolvency practitioner.

(5) An authorisation granted may be withdrawn by the Commission at the request or with the consent of the holder of the authorisation.

709. (1) Where the Commission refuses an application or withdraws an authorisation it shall within seven days notify the party in writing stating the reasons for the refusal or withdrawal of the authorisation, and the party affected within 21 days of the receipt of the notification may apply by summons on notice to the Court having jurisdiction in insolvency matter, for a review of the decision of the Commission and the Court, upon hearing the summons, may refuse or grant the summons on such terms as it deems fit.

Review of Commission's decision.

(2) An appeal from the decision of the Court shall lie to the Court of Appeal and the decision of the Court of Appeal is final.

## CHAPTER 27 — ARRANGEMENTS AND COMPROMISE

710. In this Chapter, the word "arrangement" means any change in the rights or liabilities of members, debenture holders or creditors of a company or any class of them or in the regulation of a company, other than a change effected under any other provision of this Act or by the unanimous agreement of all parties affected.

Definition of arrangement.

711. (1) Where under a scheme proposed for a compromise, arrangement or reconstruction between two or more companies or the merger of any two or more companies, the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as "the transfer of company") is to be transferred to another company, the Court may, on the application in summary of any of the companies to be affected, order separate meetings of the companies to be summoned in such manner as the Court may direct.

Arrangement or compromise between two or more companies.

(2) If a majority representing at least three-quarter in value of the share of members being present and voting either in person or by proxy at each of the separate meetings, agree to the scheme, an application may be made to the Court by one or more of the companies, and the Court shall sanction the scheme.

(3) When the scheme is sanctioned by the Court, it becomes binding on the companies, and the Court may, by the order sanctioning the scheme or by any subsequent order, make provision for —

(a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;

(b) the allotting or appropriation by the transferee company of shares, debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;

(c) the continuation by or against the transferee company of 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 in such manner as the court may direct, dissent from the compromise or arrangement; and

(f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or merger shall be fully and effectively carried out.

(4) An order under subsection (3) (d) shall not be made unless —

(a) the whole of the undertaking and the property, assets and liabilities of the transferor company are being transferred into the transferee company; and

(b) the Court is satisfied that adequate provision by way of compensation or otherwise have been made with respect to the employees of the company to be dissolved.

(5) Where an order under this section provides for the transfer of property or liabilities, that property or liabilities shall, by virtue of the order, be transferred to and become the property or 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 compromise or arrangement to cease to have effect.

(6) Where an order is made under this section, every company in relation to which the order is made shall cause an office copy of the order to be delivered to the Commission for registration within seven days after the making of the order, and a notice of the order shall be published in the Federal Government Gazette and in at least one national newspaper and if in default shall be liable to a fine in such amount as may be prescribed by the Commission in its regulations.

(7) In this section —

(a) "property" includes property rights and powers of every description;

(b) "liabilities" includes rights, powers and duties of every description notwithstanding that such rights, powers and duties are of a personal character which could not generally be assigned or performed vicariously; and

(c) "company" where used in this section does not include any company other than a company within the meaning of this Act.

712. (1) Where a scheme or contract, not being a take-over bid under the Investment and Securities Act involving the transfer of shares or any class of shares in a company (in this section referred to as “the transfer of company”) to another company, whether a company within the meaning of this Act or not (in this section referred to as 'the transferee company') has, within four months after the making of the offer in that behalf by the transferee company been approved by the holders of at least nine-tenth in value of the shares of the company (other than shares already held at the date of the offer by a nominee for the transferee company, or its subsidiary), the transferee company may at any time within two months after the expiration of the said four months give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares.

Provisions applicable to schemes or contract involving transfer of shares in a company.

Cap. 124, LFN, 2004.

(2) When a notice under subsection (1) is given, the transferee company is, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given, unless the Court deems fit to order otherwise, entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company.

(3) Where shares in the transferor company of the said class or classes as the shares whose transfer is involved are already held as specified in subsection (1) to a value greater than one-tenth of the aggregate of their value and that of the share (other than those already held as specified in that subsection) whose transfer is involved, the provisions of this section do not apply unless —

(a) the transferee company offers the same terms to all holders of the shares (other than those already held) whose transfer is involved, or where those shares include shares of different classes, of each class of them; and

(b) the holders who approve the scheme or contracts besides holding at least nine-tenth in value of the shares (other than those already held as aforesaid) whose transfer is involved, shall be at least three-quarters in number of the holders of those shares.

(4) Where a notice has been given by the transferee company under subsection (1) and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall —

(a) on the expiration of one month from the date on which the notice has been given or if an application to the Court by the dissenting shareholder 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 behalf by the transferee company; and

(b) pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.

(5) Any sum received by the transferor company under this section shall be paid into a separate bank account, and such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sums or other consideration, were respectively received.

(6) In this section, "dissenting shareholder" includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer to the transferee company in accordance with the scheme or contract.

713. (1) This section applies where, in pursuance of any such scheme or contract, shares in a company are transferred to another 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 its subsidiary at the date of the transfer comprise or include nine-tenth in value of the shares in the first mentioned company or of a class of those shares.

Provisions applicable to dissenting shareholders.

(2) The transferee company shall, within one month from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement), give notice of that fact in the prescribed manner to the holder of the remaining shares or of the remaining shares of that class, as the case may be, who have not assented to the scheme or contract.

(3) A holder may, within three months from the giving of the notice to him, require the transferee company to acquire the shares in question.

(4) If a shareholder gives notice under subsection (3) with respect to any share, the transferee company is entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to it, or on such other terms as may be agreed on

as the Court hearing the application of either the transferee company or the shareholder deems fit.

714. (1) With a view to effecting any arrangement, a company may by special resolution resolve that the company be put into members' voluntary winding up and that the liquidator be authorised to sell the whole or part of its undertaking or assets to another body corporate, whether a company within the meaning of this Act or not (in this section called "the transferee company") in consideration or part consideration of fully paid shares, and to distribute the same in specie among the members of the company in accordance with their rights in the liquidation.

Arrangement on sale of company's property during members' voluntary winding-up.

(2) Any sale or distribution in pursuance of a special resolution under this section is binding on the company and all its members and each member shall be deemed to have agreed with the transferee company to accept the fully paid shares, debentures, policies, cash or other like interests to which he is entitled under such distribution:

Provided that if —

(a) within one year from the date of the passing of any special resolution as is referred to in subsection (1), an order is made under sections 353 - 355 of this Act dealing with relief on the grounds of unfairly prejudicial and oppressive conduct or for the winding up of the company under a creditors' voluntary winding up, the arrangement for the sale and distribution shall not be valid unless sanctioned by the Court; or

(b) any member of the company, by writing addressed to the liquidator and left at the registered office or head office of the company, within 30 days after the passing of the resolution, dissents in respect of any of the shares held by him, the liquidator shall either abstain from carrying the resolution into effect or shall purchase such shares at a price to be determined in the manner provided by subsection (4).

(3) Any member who fails to signify his dissent in accordance with subsection (2) is deemed to have accepted the resolution.

(3) If the liquidator elects to purchase the shares of any member who has expressed his dissent in accordance with subsection (2), the price payable shall be determined by agreement in the case of a private company in which aliens do not participate, and in the case of a public company or a private company in which

aliens participate, by the Securities and Exchange Commission:

Provided that in the case of a private company in which no aliens participate —

(a) such price is determined by estimating what the member concerned would have received had the whole of the undertaking of the company been sold as a going concern for cash to a willing buyer and the proceeds, less the cost of winding up, been divided amongst the members in accordance with their rights; and

(b) the purchase money is paid by the company before the company is dissolved and be raised by the liquidator or, in default of any direction in the special resolution, in such manner as he may think fit as part of the expenses of the winding up.

(5) Nothing contained in this section authorises any variation or abrogation of the rights of any creditor of the company.

(6) If any company, otherwise than under this section, sells or resolves to sell the whole or part of its undertaking or assets to another body corporate in consideration or part consideration of any shares, debentures, policies or other like interest in that body corporate, and resolves to distribute the same in specie among members of the company (whether in liquidation or by way of dividend), any member of the company may by notice in writing addressed to the company and left at the registered office or head office of the company within 30 days after the passing of the resolution authorising such distribution, require the company either to abstain from carrying the resolution into effect or to purchase any of his shares at a price to be determined in the manner provided by subsection (4).

(7) Nothing contained in subsection (6) authorises any company to purchase its own shares or make any distributions to its shareholders except in accordance with the provisions of this Act.

715. (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, the Court may, on the application, in a summary way, of the company or any of its creditors or members or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company, or class of members, as the case may be, to be summoned in such a manner as the Court directs.

Power to compromise with creditors and members.

(2) If a majority representing at least three quarters in value of the shares of

members or class of members, or of the interest of creditors or class of creditors, as the case may be, being present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement may be referred by the Court to the Securities and Exchange Commission which shall appoint one or more inspectors to investigate the fairness of the compromise or arrangement and to make a written report on it to the Court within a time specified by the Court.

- (3) If the Court is satisfied as to the fairness of the compromise or arrangement, it shall sanction the same and the compromise or arrangement shall be binding on all the creditors or the class of creditors or on the members or the class of members as the case may be, and also the company or in the case of a company in the course of being wound up, on the liquidator and contributories of the company.
- (4) An order made under subsection (3) shall have no effect until a certified true copy of the order has been delivered by the company to the Commission for registration and a copy of every order shall be annexed to every copy of the memorandum of the company issued after the order has been made.
- (5) If a company defaults in complying with subsection (4), the company and each officer of the company is liable to a penalty as prescribed by the Commission in the regulations.
- (6) In this section and section 716 of this Act, "company" means any company liable to be wound up under this Act.

716. (1) Where a meeting of creditors or any class of creditors or of members or any class of members is summoned under section 715 of this Act, there shall —

Information as to  
compromise with  
creditors and members.

- (a) with every notice summoning the meeting which is sent to a creditor or member, be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors of the company, whether as directors or as members or as creditors of the company or otherwise, and the effect of the compromise or arrangement in so far as it is different from the effect on the like interest of other persons; and
- (b) in every notice summoning the meeting which is given by advertisement, be included such a statement, or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement.

- (2) Where the compromise or arrangement affects the rights of debenture holders of the company, the statement shall give the like explanation as respects the trustees of any deed for securing the issue of the debenture as it is required to give as respects the company's directors.
- (3) Where a notice given by advertisement includes a notification that copies of a statement explaining the effects of the compromise or arrangement proposed can be obtained by creditors or members entitled to attend the meeting, every such creditor or member shall, on making application in the manner indicated by the notice, be furnished by the company free of charge with a copy of the statement.
- (4) Where a company makes default in complying with any requirement of this section, the company and every officer of the company are liable to a penalty as prescribed by the Commission in the regulations and for the purpose of this subsection any liquidator of the company and any trustee of a deed for securing the issue of debentures of the company shall be deemed to be an officer of the company:

Provided that a person is not liable under this subsection, if that person shows that the default was due to refusal of any other person, being a director or trustee for debenture holders, to supply the necessary particulars as to his interests.

- (5) A director of the company and any trustee for debenture holders of the company shall give notice to the company of such matters relating to himself as may be necessary for the purpose of this section, and any person who defaults in complying with this subsection is liable to a penalty as prescribed by the Commission in the regulations.

717. (1) No winding up petition or enforcement action by a creditor (secured or unsecured) shall be entertained against any company or its assets that has commenced a process of arrangement and compromise with its creditors for six months from the time that the company by way of affidavit provides the following documents to the Court:

Moratorium on creditors voluntary winding up in a scheme of arrangement.

- (a) a document setting out the terms intended to be proposed to the creditors in an arrangement or compromise;
- (b) a statement of the company's affairs containing the particulars of the company's creditors and its debts and other liabilities and of its assets;
- (c) such other information as the Court may require; and

- (d) a statement that the company desires a protection from a winding up process pending the completion of the arrangement or compromise.
- (2) Notwithstanding the provisions of subsection (1), a secured creditor may, by application to the Court filed within 30 days of notice of the arrangement and compromise, discharge the six months moratorium period provided in subsection (1) if -
- (a) the asset of the company sought to be enforced by the creditor does not form part of the company's pool of assets to be considered under the arrangement and compromise proceeding;
  - (b) the asset sought to be enforced by the creditor is a perishable goods or commodities which may depreciate or dissipate before expiration of the six months moratorium period;
  - (c) the secured creditor enforces its security over the assets before receiving notice of the company's proposed arrangement and compromise; or
  - (d) the company consents in writing for a secured creditor to enforce its right over the company's asset within the six months moratorium period:

Provided that the company, upon the approval or consent shall file a further affidavit updating the Court of the dissipation of the said asset.

## CHAPTER 28 — NETTING

718. In this Chapter -

"financial regulatory authority" means -

- (a) the Central Bank of Nigeria;
- (b) the Securities and Exchange Commission;
- (c) the National Insurance Commission;
- (d) the National Pension Commission; and
- (e) any other financial regulatory authority established

Definition of applicable concepts.

by an Act of the National Assembly;

"cash" means money credited to an account in any currency or a similar claim for repayment of money, such as a money market deposit;

"collateral" means any -

- (a) cash in any currency;
- (b) securities of any kind, including debt and equity securities;
- (c) guarantees, letters of credit and obligations to reimburse; and
- (d) any asset commonly used as collateral in Nigeria;

"collateral arrangement" means any margin, collateral, security arrangement or other credit enhancement related to or forming part of a netting agreement or one or more qualified financial contracts entered into thereunder, including -

- (a) a pledge, charge or any other form of security interest in collateral, whether possessory or non-possessory;
- (b) a title transfer collateral arrangement;
- (c) a security interest collateral arrangement; and
- (d) any guarantee, letter of credit or reimbursement obligation by or to a party to one or more qualified financial contracts, in respect of those qualified financial contracts;

"insolvent party" means the party in relation to which an insolvency proceeding under the laws of Nigeria has been instituted;

"liquidator" means the liquidator, administrator, nominee, supervisor, receiver, trustee, conservator or other individual, person or entity which administers the affairs of an insolvent party during an insolvency proceeding under the laws of Nigeria;

"netting" means the occurrence of the following -

- (a) termination, liquidation or acceleration of any payment or delivery obligation or entitlement under one or more qualified financial contracts entered into under a netting agreement;

- (b) calculation or estimation of a close-out value, market value, liquidation value or replacement value in respect of each obligation or entitlement or group of obligations or entitlements terminated, liquidated or accelerated under paragraph (a);
- (d) paragraph conversion of any values calculated or estimated under paragraph (b) into a single currency; and
- (d) determination of the net balance of the values calculated under paragraph (b), as converted under paragraph (c), whether by operation of set-off or otherwise;

"netting agreement" means any –

- (a) agreement between two parties that provides for netting of present or future payment or delivery obligations or entitlements arising under or in connection with one or more qualified financial contracts entered into under the agreement by the parties to the agreement (a "master netting agreement");
- (b) master agreement between two parties that provides for netting of the amounts due under two or more master netting agreements (a "master-master netting agreement"); and
- (c) collateral arrangement related to or forming part of one or more of the foregoing;

"non-insolvent party" means the party other than the insolvent party;

"party" means a person constituting one of the parties to a netting agreement;

"person" includes partnerships, companies, regulated entities such as banks, insurance companies and pension fund administrators, or any other body corporate (including statutory corporations or statutory bodies) whether organised under the laws of Nigeria or under the laws of any other jurisdiction, and any international or regional development bank or other international or regional organisation;

"qualified financial contract" means any financial agreement, contract or transaction, including any terms and conditions incorporated by reference in any financial

agreement, contract or transaction, pursuant to which payment or delivery obligations are due to be performed at a certain time or within a certain period of time and whether or not subject to any condition or contingency and includes -

- (a) a currency, cross-currency or interest rate swap;
- (b) a basis swap;
- (c) a spot, future, forward or other foreign exchange transaction;
- (d) a cap, collar or floor transaction;
- (e) a commodity swap;
- (f) a forward rate agreement;
- (g) a currency or interest rate future;
- (h) a currency or interest rate option;
- (i) an equity derivative, such as an equity or equity index swap, equity forward, equity option or equity index option;
- (j) a derivative relating to bonds or other debt securities or to a bond or debt security index, such as a total return swap, index swap, forward, option or index option;
- (k) a credit derivative, such as a credit default swap, credit default basket swap, total return swap or credit default option;
- (l) an energy derivative, such as an electricity derivative, oil derivative, coal derivative or gas derivative;
- (m) a weather derivative, such as a weather swap or weather option;
- (n) a bandwidth derivative;
- (o) a freight derivative;
- (p) an emissions derivative, such as an emissions allowance or emissions reduction transaction;

- (q) an economic statistics derivative, such as an inflation derivative;
- (r) a property index derivative;
- (s) a spot, future, forward or other securities or commodities transaction;
- (t) a securities contract, including a margin loan and an agreement to buy, sell, borrow or lend securities, such as a securities repurchase or reverse repurchase agreement, a securities lending agreement or a securities buy or sell back agreement, including any such contract or agreement relating to mortgage loans, interests in mortgage loans or mortgage-related securities;
- (u) a commodities contract, including an agreement to buy, sell, borrow or lend commodities, such as a commodities repurchase or reverse repurchase agreement, a commodities lending agreement or a commodities buy or sell back agreement;
- (v) a collateral arrangement;
- (w) an agreement to clear or settle securities transactions or to act as a depository for securities;
- (x) any other agreement, contract or transaction similar to any agreement, contract or transaction referred to in paragraphs (a) - (w) with respect to one or more reference items or indices relating to interest rates, currencies, commodities, energy products, electricity, equities, weather, bonds and other debt instruments, precious metals, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial or economic consequence, or economic or financial indices or measures of economic or financial risk or value;
- (y) any swap, forward, option, contract for differences or other derivative in respect of, or combination of, one or more agreements or contracts referred to in paragraphs (a) - (x); and

- (z) any agreement, contract or transaction designated as such by the financial regulatory authority under this Act;

"security interest collateral arrangement" means "security financial collateral arrangement" as defined in Chapter 9 (Debentures) of this Act and includes charges; and

"title transfer collateral arrangement" means a margin, collateral or security arrangement related to a netting agreement based on the transfer of title to collateral, whether by outright sale or by way of security, including a sale and repurchase agreement, securities lending agreement, or securities buy or sell-back agreement.

719. A financial regulatory authority may, in relation to the relevant sector it regulates, by notice issued under this section, designate as "qualified financial contracts" any agreement, contract or transaction, or type of agreement, contract or transaction, in addition to those listed in this section.

Powers of a financial regulatory authority.

720. A qualified financial contract shall not be and shall be deemed never to have been void or unenforceable by reason of the Gaming Machines (Prohibition) Act or any other laws relating to games, gaming, gambling, wagering or lotteries.

Enforceability of a qualified financial contract.

Cap. G1 LFN, 2004.

721. (1) The provisions of a netting agreement is enforceable in accordance with their terms, including against an insolvent party, and, where applicable, against a guarantor or other person providing security for a party and shall not be stayed, avoided or otherwise limited by -

Enforceability of netting agreements.

- (a) any action of the liquidator;

- (b) any other provision of law relating to bankruptcy, reorganisation, composition with creditors, receivership or any other insolvency proceeding an insolvent party may be subject to; or

- (c) any other provision of law that may be applicable to an insolvent party, subject to the conditions contained in the applicable netting agreement.

(2) After commencement of insolvency proceedings in relation to a party, the only obligation, if any, of either party to make payment or delivery under a netting agreement shall be equal to its net obligation to the other party as determined in accordance with the terms of the applicable netting agreement.

(3) After commencement of insolvency proceedings in relation to a party, the only

right, if any, of either party to receive payment or delivery under a netting agreement shall be equal to its net entitlement with respect to the other party as determined in accordance with the terms of the applicable netting agreement.

- (4) Any power of the liquidator to assume or repudiate individual contracts or transactions will not prevent the termination, liquidation or acceleration of all payment or delivery obligations or entitlements under one or more qualified financial contracts entered into under or in connection with a netting agreement, and applies, if at all, only to the net amount due in respect of all of such qualified financial contracts in accordance with the terms of such netting agreement.
- (5) The provisions of a netting agreement which provide for the determination of a net balance of the close-out values, market values, liquidation values or replacement values calculated in respect of accelerated or terminated payment or delivery obligations or entitlements under one or more qualified financial contracts entered into is not affected by any applicable insolvency law limiting the rights to set off, offset or net out obligations, payment amounts or termination values owed between an insolvent party and another party.
- (6) The liquidator of an insolvent party may not avoid -
  - (a) any transfer, substitution or exchange of cash, collateral or any other interests under or in connection with a netting agreement from the insolvent party to the non-insolvent party; or
  - (b) any payment or delivery obligation incurred by the insolvent party and owing to the non-insolvent party under or in connection with a netting agreement on the grounds of it constituting a preference by the insolvent party to the non-insolvent party,

unless there is clear and convincing evidence that the non-insolvent party -

- (i) made such transfer,
  - (ii) incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the insolvent party was indebted or became indebted, on or after the date that such transfer was made or such obligation was incurred.
- (7) Reasonable notice to interested parties, individuals, persons or entities shall be required for the realisation, appropriation or liquidation of collateral under a collateral arrangement unless otherwise agreed by the parties:

Provided that this subsection is without prejudice to any applicable provision of law requiring that realisation, appropriation or liquidation of collateral is conducted in a commercially reasonable manner.

(8) For the purposes of this section —

- (a) a netting agreement is deemed to be a netting agreement notwithstanding the fact that the netting agreement may contain provisions relating to agreements, contracts or transactions that are not qualified financial contracts defined in section 718, provided, however, that, for the purposes of this section, such netting agreement shall be deemed to be a netting agreement only with respect to those agreements, contracts or transactions that fall within the definition of "qualified financial contract" in this Chapter;
- (b) a collateral arrangement is deemed to be a collateral arrangement notwithstanding the fact that such collateral arrangement may contain provisions relating to agreements, contracts or transactions that are not a netting agreement or qualified financial contracts as defined in section 718 of this Act, provided, however, that, for the purposes of this section, such collateral arrangement shall be deemed to be a collateral arrangement only with respect to those agreements, contracts or transactions that fall within the definition of "netting agreement" or "qualified financial contract" as defined in section 718 of this Act; and
- (c) a netting agreement and all qualified financial contracts entered into shall constitute a single agreement.

## CHAPTER 29 — MISCELLANEOUS AND SUPPLEMENTAL

### APPLICATION OF THIS PART

722. (1) Except as otherwise provided, Part B of this Act, applies to —

Application of this Part.

- (a) all companies formed and registered under this Act;
- (b) all existing companies;

(c) all companies incorporated, formed or registered under other enactments; and

(d) unregistered companies.

(2) This Act does not apply to unions of workers or of employers.

723. (1) Except as otherwise expressly provided in this Act —

Act to override memorandum and articles.

(a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed, by it, or in any resolution passed by the company in general meeting or by its board of directors whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act; and

(b) any provision contained in the memorandum or articles, agreement or resolution as in paragraph (a) shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.

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

724. In its application to existing companies, this Act shall apply in the same manner

Application of Act to companies registered under former enactments.

(a) in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by shares;

(b) in the case of a company limited by guarantee, as if the company has been formed and registered under this Act as a company limited by guarantee; and

(c) in the case of a company, other than a limited company, as if the company had been formed and registered under this Act as an unlimited company:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Companies Act, 1912 as the first Nigerian enactment in respect of companies, or as the case may be, any enactment relating to companies thereafter in force in Nigeria before the commencement of this Act.

725. This Act applies to every company registered but not formed under the Companies Act, 1912 referred to in section 724 of this Act or, as the case may be, any enactment relating to companies in force in Nigeria before the commencement of this Act:

Application of Act to companies registered but not formed.

Cap. C20, LFN, 2004.

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the enactment in force in Nigeria at the date when it was registered.

726. This Act applies to every unlimited company registered as a limited company under section 52 of the Companies and Allied Matters Act, 1990 or of any enactment replaced by that section, as the case may be, in the same manner as it applies to an unlimited company registered under this Act as a limited company:

Application of Act to unlimited companies registered under former enactments.

Cap. C20, LFN, 2004.

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered as a limited company under section 52 of the 1990 Act or any enactment replaced by that section, as the case may be.

727. (1) The provisions of this Act specified in the Second Column of the Thirteenth Schedule to this Act (which respectively related to all bodies corporate, incorporated in and having a principal place of business in Nigeria, other than those mentioned in subsection (2) as if they were companies registered under this Act, but subject to any limitations mentioned in relation to those provisions respectively in the Third Column of that Schedule and to such adaptation and modifications (if any) as may be specified by order made by the Minister and published in the Federal Government Gazette.

Restricted in this Schedule application of Act to unregistered companies.

Thirteenth Schedule.

(2) The provisions of subsection (1) shall not apply by virtue of this section to any body —

- (a) incorporated under any enactment other than this Act;
- (b) not formed for the purpose of carrying on a business which has for its objects the acquisition of gain by the body or by the individual members thereof; and
- (c) for the time being exempted by the direction of the Minister.

- (3) This section does not repeal or revoke in whole or in part any enactment or other instrument constituting or regulating any body in relation to which the said provisions are applied by virtue of this section, but in relation to any such body, the operation of any such enactment or instrument shall be suspended in so far as it is inconsistent with any of the said provisions as they apply for the time being to that body.

#### ADMINISTRATION

728. (1) The address of the registered or head office of a company given to the Commission in accordance with section 36 (2) (b) of this Act or any change in the address made in accordance with the provisions of this section, shall be the office to which all communications and notices to the company may be addressed.

Registered and head office of company.

- (2) Notice of any change in the address of the registered or head office of the company shall be given within 14 days of the change to the Commission which shall record the same:

Provided that a postal box address or a private mailbag address shall not be accepted by the Commission as the registered or head office.

- (3) If a company carries on business without complying with subsection (2), the company and each officer of the company shall be liable to a penalty prescribed in the regulations every day during which the company so carries on business.
- (4) The fact that a change in the address of a company is included in its annual return shall not be taken to satisfy the obligation imposed by this section.
- (5) Where a company incorporated before the commencement of this Act has provided an address not in accordance with this section or section 36 of this Act, as the case may be, it shall within 14 days after such commencement comply with the requirements of this section and the failure shall be an offence liable to a penalty as prescribed in the regulations.

729. (1) Every company, after incorporation, shall —

Publication of name by company.

- (a) paint or affix, and keep painted or affixed, its name and registration number on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible;
- (b) have its name engraved in legible characters on its seal, where the company has a seal; and

(c) have its name and registration number mentioned in legible characters in all business letters of the company and in all notices, advertisements, and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills or parcels, invoices, receipts, and letters of credit of the company.

(2) If a company makes default in complying with subsection (1), it is liable to a penalty prescribed in the Regulations for everyday during which the default continues and every director and manager of the company are liable to the like penalty.

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

(a) uses or authorises the use of any seal purporting to be a seal of the company where on its name is not so engraved,

(b) issues or authorises the issue of any business letter of the company or any notice, or other official publication of the company, or signs or authorises to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque or order for money or goods wherein its name is not mentioned in that manner, or

(c) or issues or authorises to be issued any bill or parcel, invoice, receipt, or letter of credit of the company, wherein its name is not mentioned in the manner,

he is liable to a penalty prescribed in the Regulations and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless it is duly paid by the company.

730. (1) Any fee paid to the Commission before the commencement of this Act, is deemed to have been validly paid under this Act. Fees.

(2) All fees paid to the Commission, and not otherwise directed by this Act for payment into a particular account, shall be paid into the Consolidated Revenue Fund of the Federation.

731. (1) Any register, record, index, minute book or book of account required by this Act to be made and kept by a company may be made by making entries in bound books or in loose leaves, whether pasted or not, or in a photographic film form, or may be entered or recorded by any information storage device that is capable of reproducing the required information in intelligible written form within a reasonable time, or by recording the matters in question in any other manner in accordance with accepted commercial usage.

Form of register.

(2) Where any such register, record, index, minute book or book of account is not kept by making entries in a bound book, but by some other means including electronic means, adequate precautions shall be taken for guarding against falsification and for facilitating its discovery and where default is made in complying with the provisions of this subsection, the company and each officer of the company is liable to a penalty prescribed in the regulations and where the offence is a continuing one, it shall, in addition be liable to a fine to be prescribed in the regulations for every day during which the default continues.

(3) The power conferred on a company by subsection (1) to keep a register, or other record by recording the matters in question otherwise than by making entries in bound books, includes power to keep the register or other record by recording those matters otherwise than in legible form, so long as the recording is capable of being reproduced in a legible form.

(4) If any such register or other record of a company as is mentioned in subsection (2) or a register of holders of a company's debentures, is kept by the company by recording the matters in question otherwise than in a legible form, the duty imposed on the company by this Act to allow inspection of or to furnish a copy of the register or other record or any part of it, shall be treated as a duty to allow inspection of, or to furnish a reproduction of the recording or of the relevant part of it in a legible form.

732. (1) The Chief Judge of the Federal High Court or of any Court designated by an Act of the National Assembly as being vested with the jurisdiction to hear cases arising out of this Act may make rules of court for carrying into effect the objects of this Act so far as they relate to the winding up of companies or generally in respect of other applications to a court under this Act.

Rules of Court for winding-up of companies.

(2) For the purpose of this section, rules made for the purpose of any enactment passed or made on or before, or to have effect on or after, the commencement of this Act shall, on its commencement, ensure and have effect where they are not inconsistent with rules of court made or deemed to have been made, under this section.

733. (1) Every banking company, insurance company or a deposit, provident or benefit society shall, before it commences business, and also on the first Monday in February and the first Tuesday in August in every year during which it carries

Certain companies to publish statement in prescribed form.

Fourteenth Schedule.

on business, submit to the Commission a statement in the form in the Fourteenth Schedule to this Act or as near thereto as circumstances may admit.

- (2) A copy of the statement shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.
- (3) Every member or creditor of the company is entitled to a copy of the statement, on payment of a sum prescribed in the regulation.
- (4) If default, is made in complying with this section, the company and every director and manager of the company is liable to a penalty prescribed in the regulation for everyday during which the default continues.
- (5) For the purposes of this Act, a company that carries on the business of insurance in common with any other business or businesses is deemed to be an insurance company.

#### LEGAL PROCEEDINGS, ETC

734. (1) All offences under this Act may be tried by a court of competent jurisdiction in the place where the offence is alleged to have been committed. Prosecution of offences.
- (2) Where provision is made in this Act for a criminal sanction to be imposed in case of an act, omission or default without reference to the default being an offence, or without reference to conviction in a court, as the case may be, the –
- (a) reference to the act, omission or default shall be construed as referable to an offence; and
  - (b) expression "offences" as used in this section shall have effect in relation to any such act, omission or default.
735. (1) If, on application made to a Judge of the Federal High Court in Chambers by the Attorney-General of the Federation, there is shown to be reasonable cause to believe that a person has, while an officer of a company, committed an offence in connection with the management of the company's affairs and that evidence of the commission of the offence is to be found in any document in the possession or under the control of the company, an order may be made — Production of documents where offences suspected.
- (a) authorising any person named in the order to inspect the documents or any of them for the purpose of investigating and obtaining evidence of the offence;

or

(b) requiring the secretary or any other officer of the company as may be named in the order to produce the said documents, to a person and at a place named in the order.

(2) The provisions of subsection (1) shall apply also in relation to any document of a person carrying on the business of banking if they relate to the company's affairs, as it applies to any document in the possession or under the control of the company, except that no such order as is referred to in subsection (1) (b) shall be made by virtue of this subsection.

(3) In this section, "document" includes an instrument on which information is recorded by means of letters, figures or marks.

736. Where a limited company is the plaintiff in an action or other legal proceedings, a judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company may be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs and may stay all proceedings until the security is given. Costs in actions by certain limited companies.
737. Where proceedings are instituted under this Act against any person by the Attorney-General of the Federation, nothing in this Act shall be taken to require any person who has acted as legal practitioner for the defendant to disclose any privileged communication made to him in that capacity. Saving for privileged communications.
738. (1) If in any proceeding for negligence, default or breach of duty or trust against an officer of a company or a person employed by a company as auditor, it appears to the Court hearing the case that the officer or person is or may be liable but that he has acted honestly and reasonably and that, having regard to all the circumstances of the case, including those connected with his appointment he ought fairly to be excused, the Court may relieve him, either wholly or partly, from liability on such terms as it may deem fit. Power of Court to grant relief in certain cases.
- (2) When any such officer or person has reasonable apprehension that a claim may be made against him in respect of any negligence, default, breach of duty or trust, he may apply to the Court for relief, and the Court on the application shall have the same power to relieve him as under this section it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.
739. Where a person trades or carries on business under any name or title of which the last word or words are "Unlimited", "Limited", "Public Limited Company" or "Limited by Guarantee" or their abbreviations, he is, unless duly incorporated as an unlimited company, a private company limited by shares, a public company Penalty for improper use of certain words.

limited by shares, or a company limited by guarantee, respectively, liable to a penalty prescribed in the Regulation for every day during which the name or title is used.

740. The provisions of section 672 (3) of this Act which imposes a penalty for certain offences connected with fraudulent trading discovered on the winding up of a company shall extend and apply to cases where fraudulent trading is discovered in circumstances other than on the winding up of a company. Extended effect of penalty for offence of fraudulent trading.
741. A court imposing a fine under this Act may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings, or in or towards rewarding the person on whose information or at whose suit the fine is recovered and subject to the direction, all fines under this Act shall, notwithstanding anything in any other enactment, be paid into the Consolidated Revenue Fund. Application of fines.
742. (1) The Commission may apply to the Court for directions in respect of any matter concerning its duties, powers and functions under this Act and, on any such application, the Court may give directions and make further order as it deems fit in the circumstances. Application by the Commission to the Court for directions.
- (2) Notwithstanding the provision of subsection (1), the Commission may conduct enquiries with respect to the compliance with the provisions of this Act by any person or company.

#### MISCELLANEOUS

743. (1) The Commission may, with the approval of the Minister, by regulation or order, published in the Federal Government Gazette, add to, delete from or otherwise alter the whole or any part of any of the Schedules, Tables or Forms prescribed or under this Act. Alteration and application of Schedules, tables and forms.
- (2) Until regulations, rules or orders are made under, and for the purpose of this Act prescribing forms for use, the forms in force at the commencement of this Act shall be deemed to have been made under it and shall have effect accordingly.

744. (1) If a company, having made default in complying with any provision of this Act requiring it to file with, deliver or send to the Commission any return, account or other document, or to give notice to it of any matter, fails to make good the default within 14 days after the service of a notice on the company requiring it to do so, the Court may, on the application of any member or creditor of the company or of the Commission, order the company and any officer to make good the default within the time as may be specified in the order.

Enforcement of duty of company to make returns to Commission.

(2) Any order under this section may provide that all costs of or incidental to the application shall be borne by the company or by any officer of the company responsible for the default.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default.

745. (1) The powers of a company include if they would not otherwise do so apart from this section power to make for the benefit of persons employed or formerly employed by the company or any of its subsidiaries provision in connection with the cessation or the transfer to any person of the whole or part of the undertaking of the company or subsidiary.

Power of company to provide for employees on cessation or transfer of business.

(2) The power conferred under subsection (1) is exercisable even if its exercise is not in the best interest of the company.

(3) The power which a company may exercise under subsection (1) is exercised by the company if sanctioned-

(a) in a case not falling within paragraph (b) or (c), by a resolution of the company;

(b) if so authorised by the memorandum or articles, a resolution of the directors; or

(c) if the memorandum or articles require the exercise of the power to be sanctioned by a resolution other than a simple resolution of the company, with the sanction of that other resolution.

(4) Any payment which may be made by a company under this section may, if made before the commencement of any winding up of the company, be made out of profits of the company which are available for dividend.

## PART C: THE LIMITED LIABILITY PARTNERSHIP

### CHAPTER 1 — NATURE OF LIMITED LIABILITY PARTNERSHIP

746. (1) A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from the partners. Limited liability partnership to be body corporate.
- (2) A limited liability partnership shall have perpetual succession.
- (3) Any change in the partners of a limited liability partnership does not affect the existence, rights or liabilities of the limited liability partnership.
747. Any individual or body corporate may be a partner in a limited liability partnership provided that an individual shall not be capable of becoming a partner of a limited liability partnership, if he is — Partners.
- (a) of unsound mind and has been so found by a court in Nigeria or elsewhere;
- (b) an undischarged bankrupt.
748. (1) Every limited liability partnership shall have at least two partners. Minimum number of partners.
- (2) If at any time the number of partners of a limited liability partnership is reduced below two and the limited liability partnership carries on business for more than six months while the number is so reduced, the person, who is the only partner of the limited liability partnership during the time that it carries on business after those six months and has the knowledge of the fact that it is carrying on business with him alone, is liable personally for the obligations of the limited liability partnership incurred during that period.
749. (1) Every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be resident in Nigeria: Designated partner.
- Provided that in case of a limited liability partnership in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of the limited liability partnership or nominees of the bodies corporate shall act as designated partners.
- (2) Subject to the provisions of subsection (1) —
- (a) if the incorporation document —
- (i) specifies who are to be designated partners, the persons is designated partners on incorporation,

or

(ii) states that each of the partners of a limited liability partnership is to be designated partner, every such partner is a designated partner; or

(b) any partner may become a designated partner in accordance with the limited liability partnership agreement and a partner may cease to be a designated partner in accordance with the limited liability partnership agreement.

(3) An individual does not become a designated partner in any limited liability partnership unless he has given his prior written consent to act as such to the limited liability partnership.

(4) Every limited liability partnership shall file with the Commission the particulars of every individual who has given his consent to act as designated partner within 30 days of his appointment.

(5) A person ceases to be a designated partner if he ceases to be a partner.

750. Unless expressly provided otherwise in this Act, a designated partner is —

Liabilities of designated partners.

(a) responsible for the doing of all acts, matters and things as are required to be done by the limited liability partnership in respect of compliance of the provisions of this Act including filing of any document, return, statement and other report under this Act and as may be specified in the limited liability partnership agreement; and

(b) liable to all penalties imposed on the limited liability partnership for any contravention of those provisions.

751. A limited liability partnership shall appoint a designated partner within 30 days of a vacancy arising for any reason and the provisions of section 749 (4) shall apply in respect of such new designated partner:

Changes in designated partners.

Provided that if no designated partner is appointed, or if at any time there is only one designated partner, each partner is deemed to be a designated partner.

752. If default is made in complying with the provisions of sections 749 - 751 the limited liability partnership and each of its partners is liable to a penalty in the amount as the Commission shall specify in its regulation.

Penalty for contravention of sections 749 - 751.

## CHAPTER 2 — INCORPORATION OF LIMITED LIABILITY PARTNERSHIP AND INCIDENTAL MATTERS

753. (1) For a limited liability partnership to be incorporated —

- (a) two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document; and
- (b) the incorporation documents shall be filed in the manner and with the fees, as may be prescribed by the Commission from time to time.

(2) The incorporation documents shall be in the form as prescribed by the Commission and shall —

- (a) state the name of the limited liability partnership;
- (b) state the proposed business of the limited liability partnership;
- (c) state the address of the registered office of the limited liability partnership;
- (d) state the name and address of each of the persons who partners of the limited liability partnership on incorporation;
- (e) state the name and address of the persons who are to be designated partners of the limited liability partnership on incorporation;
- (f) contain other information concerning the proposed limited liability partnership as the Commission may prescribe.

(3) If a person knowingly makes a statement under subsection (2) which is false, he commits an offence and is liable on conviction to imprisonment for a term of three months or a fine as the Court deems fit or both.

754. (1) When the requirements imposed under section 753 (1) and (2) have been complied with, the Commission shall, within 14 days —

- (a) register the incorporation document; and
- (b) give a certificate that the limited liability partnership is incorporated by the name specified in the certificate.

- (2) The Commission may accept the statement delivered under section 753 (2) (c) as sufficient evidence that the requirement imposed under section 753 (1) (a) has been complied with.
- (3) The certificate issued under subsection (1) (b) shall be signed by the Commission and authenticated by its official seal.
- (4) The certificate shall state —
  - (a) the name of the limited liability partnership given in the incorporation document;
  - (b) the limited liability partnership's registration number;
  - (c) the date of registration; and
  - (d) that the limited liability partnership is incorporated as a limited liability partnership under this Act.
- (5) The certificate shall be *prima facie* evidence that the limited liability partnership is incorporated by the name specified in it.

755. (1) Every limited liability partnership shall have a registered office to which all communications and notices may be addressed and where they shall be received.
- (2) A document may be served on a limited liability partnership, partner or designated partner of the partnership by sending it by post under a certificate of posting, registered post or by any other manner as may be prescribed, at the registered office or any other address specifically declared by the limited liability partnership for the purpose in such form and manner as may be prescribed.
  - (3) A limited liability partnership may by resolution change the place of its registered office.
  - (4) Where a limited liability partnership changes the place of its registered address, the change shall not take effect unless notice of the change has been delivered to the Commission not later than 14 days after the passing of the resolution.
  - (5) Where a limited liability partnership makes default in complying with the provisions of this section, the limited liability partnership and each partner shall each be liable to a penalty for every day that the default continues and the penalty shall be in the amount as the Commission shall specify in the regulations.

Registered office of limited liability partnership and change therein.

756. On registration, a limited liability partnership may — Effect of registration.
- (a) sue and be sued in its name
  - (b) acquire, own, hold and develop or dispose of property, whether movable or immovable, tangible or intangible;
  - (c) if it decides to have one, have a common seal,; and
  - (d) do and suffer such other acts and things as bodies corporate may lawfully do and suffer.
757. (1) Every limited liability partnership shall have either the words, "limited liability partnership" or the acronym, "LLP" as the last words of its name. Name.
- (2) A limited liability partnership shall not be registered by a name which, in the opinion of the Commission is —
- (a) undesirable; or
  - (b) identical or too nearly resembles that of any other partnership, business name, limited liability partnership, body corporate, or a registered trade mark.
758. The provisions of sections 30 and 31 of this Act are applicable in relation to the reservation of name or change of name of a limited liability partnership. Reservation and change of name.
759. Where a person carries on business under a name or title of which the words "Limited Liability Partnership" or "LLP" or any contraction or imitation is or are the last word or words, that person or each of those persons shall, unless duly incorporated as limited liability partnership, be liable to a penalty in the amount as the Commission shall specify in the regulation. Penalty for improper use of words, limited liability partnership or LLP.
760. (1) Every limited liability partnership shall ensure that its invoices, official correspondence and publications bear — Publication of name of limited liability partnership.
- (a) the name, address of its registered office and registration number of the limited liability partnership; and
  - (b) a statement that it is registered with limited liability.
- (2) Where a limited liability partnership makes default in complying with the provisions of this section, the limited liability partnership and every partner

shall each be liable to a penalty for every day the default continues in the amount as the Commission shall specify in the regulation.

### CHAPTER 3 — PARTNERS AND THEIR RELATIONS

761. On the incorporation of a limited liability partnership, the persons who subscribed their names to the incorporation documents shall be its partners and any other person may become a partner of the limited liability partnership in accordance with the limited liability partnership agreement. Eligibility to be partners.
762. (1) Except as otherwise provided by this Act, the mutual rights and duties of the partners of a limited liability partnership, and the mutual rights and duties of a limited liability partnership and its partners, shall be governed by the limited liability partnership agreement between the partners, or between the limited liability partnership and its partners. Relationship of the partners.
- (2) The limited liability partnership agreement and any changes, made in it shall be –
- (a) filed with the Commission in the form and manner;  
and
  - (b) accompanied by the fees as may be prescribed.
- (3) An agreement in writing made before the incorporation of a limited liability partnership between the persons who subscribe their names to the incorporation documents may impose obligations on the limited liability partnership if that agreement is ratified by all the partners after the incorporation of the limited liability partnership.
- (4) In the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and the partners shall be determined by the provisions relating to that matter as are set out in the Fifteenth Schedule. Fifteenth Schedule.
763. (1) A person may cease to be a partner of a limited liability partnership in accordance with an agreement with the other partners or, in the absence of agreement with the other partners as to cessation of being a partner, by giving a notice in writing of at least 30 days to the other partners of his intention to resign as partner. Cessation of partnership interest.
- (2) A person shall cease to be a partner of a limited liability partnership —
- (a) on his death or dissolution of the limited liability partnership; or

(b) if he is declared to be of unsound mind by a competent court; or

(c) if he has applied to be adjudged or declared as an insolvent.

(3) Where a person has ceased to be a partner of a limited liability partnership (in this Act referred to as "former partner"), the former partner is to be regarded, in relation to any person dealing with the limited liability partnership as still being a partner of the limited liability partnership unless —

(a) the person has notice that the former partner has ceased to be a partner of the limited liability partnership; or

(b) notice that the former partner has ceased to be a partner of the limited liability partnership has been delivered to the Commission.

(4) The cessation of a partner from the limited liability partnership does not by itself discharge the partner from any obligation to the limited liability partnership, the other partners or any other person which he incurred while being a partner.

(5) Where a partner of a limited liability partnership ceases to be a partner, unless otherwise provided in the limited liability partnership agreement, the former partner or a person entitled to his share as a result of death or insolvency of the former partner, is entitled to receive from the limited liability partnership —

(a) an amount equal to the capital contribution the former partner actually made to the limited liability partnership; and

(b) his right to share in the accumulated profits of the limited liability partnership, after the deduction of accumulated losses of the limited liability partnership, determined as at the date the former partner ceased to be a partner.

(6) A former partner or a person entitled to his share as a result of death or insolvency of the former partner shall not have any right to interfere in the management of the limited liability partnership.

764. (1) Every partner shall inform the limited liability partnership of any change in his name or address within 15 days of the change.

Registration of change in particulars of partners.

(2) A limited liability partnership shall —

- (a) where a person becomes or ceases to be a partner, file a notice with the Commission within 30 days from the date he becomes or ceases to be a partner; and
- (b) where there is a change in the name or address of a partner, file a notice with the Commission within 30 days of the change.

(3) A notice filed with the Commission under subsection (2) —

- (a) shall be in such form and accompanied by such fees as may be prescribed;
- (b) shall be signed by the designated partner of the limited liability partnership; and
- (c) if it relates to an incoming partner, shall contain a statement by the partner that he consents to becoming a partner and signed by him.

(4) Where default is made by any limited liability partnership in complying with subsection (2), the limited liability partnership and every designated partner of the limited liability partnership shall each be liable to a penalty for each day the default continues in the amount as the Commission shall specify in its regulations.

(5) If any partner contravenes the provisions of subsection (1), the partner shall be liable to a penalty in such amount as the Commission shall specify in its regulations.

(6) A person who ceases to be a partner of a limited liability partnership may himself file with the Commission the notice referred to in subsection (3) if he has reasonable cause to believe that the limited liability partnership may not file the notice with the Commission and in case of any such notice filed by a partner, the Commission shall obtain a confirmation to this effect from the limited liability partnership unless the limited liability partnership has also filed such notice.

(7) Where no confirmation is given by the limited liability partnership within 15 days, the Commission shall register the notice made by a person ceasing to be a partner under this section.

CHAPTER 4 — EXTENT AND LIMITATION OF LIABILITY OF LIMITED LIABILITY PARTNERSHIP AND PARTNERS

765. A partner of a limited liability partnership is, for the purpose of the business of the limited liability partnership, the agent of the limited liability partnership, but not of other partners. Partner as agent.
766. (1) A limited liability partnership is not bound by anything done by a partner in dealing with a person if the —
- (a) partner in fact has no authority to act for the limited liability partnership in doing a particular act; and
  - (b) person knows that he has no authority, does not know or believe him to be a partner of the limited liability partnership.
- (2) A limited liability partnership is liable if a partner of the limited liability partnership is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the limited liability partnership or with its authority.
- (3) An obligation of the limited liability partnership whether arising in contract or otherwise, shall be solely the obligation of the limited liability partnership.
- (4) The liabilities of a limited liability partnership shall be met out of the property of the limited liability partnership.
767. (1) A partner is not personally liable, directly or indirectly for an obligation referred to in section 766 (3) solely by reason of being a partner of the limited liability partnership. Extent of liability of partner.
- (2) The provisions of section 766 (3) and subsection (1) of this section shall not affect the personal liability of a partner for his own wrongful act or omission, and a partner shall not be personally liable for the wrongful act or omission of any other partner of the limited liability partnership.
768. (1) A person who by words spoken or written or by conduct, represents himself, or knowingly permits himself to be represented to be a partner in a limited liability partnership is liable to any person who has on the faith of the representation given credit to the limited liability partnership, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person giving credit: Holding out.
- Provided that where any credit is received by the limited liability partnership as a result of representation in subsection (1), the limited liability partnership

shall, without prejudice to the liability of the person so representing himself or represented to be a partner, be liable to the extent of credit received by it or any financial benefit derived thereon.

- (2) Where after a partner's death the business is continued in the same limited liability partnership name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the limited liability partnership done after his death.

769. (1) In the event of an act carried out by a limited liability partnership, or any of its partners, with intent to defraud creditors of the limited liability partnership or any other person, or for any fraudulent purpose, the liability of the limited liability partnership and partners who acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the limited liability partnership:

Unlimited liability in case of fraud.

Provided that where any act is carried out by a partner, the limited liability partnership is liable to the same extent as the partner unless it is established by the limited liability partnership that the act was carried out without the knowledge or the authority of the limited liability partnership.

- (2) Where any business is carried on with such intent or for such purpose as mentioned in subsection (1), every person who was knowingly a party to the carrying on of the business in the manner stated commits an offence and is liable on conviction to imprisonment for a term which may extend to two years or a fine as the court deems fit or to both.
- (3) Where a limited liability partnership or any partner or designated partner or employee of the limited liability partnership has conducted the affairs of the limited liability partnership in a fraudulent manner, then without prejudice to any criminal proceedings which may arise under any law for the time being in force, the limited liability partnership and any such partner or designated partner or employee shall be liable to pay compensation to any person who has suffered any loss or damage by reason of the conduct,

but the limited liability partnership shall not be liable if any such partner or designated partner or employee has acted fraudulently without the knowledge of the limited liability partnership.

## CHAPTER 5 — CONTRIBUTIONS

770. (1) A partner's contribution may consist of tangible, intangible, movable, immovable or property or other benefit to the limited liability partnership, including money, promissory notes, other agreements to contribute cash or property, and contracts for services performed or to be performed.

Form of contribution.

- (2) The monetary value of contribution of each partner shall be accounted for and disclosed in the accounts of the limited liability partnership in the manner as may be prescribed.

771. (1) A obligation of a partner to contribute money, property or other benefit or to perform services for a limited liability partnership shall be in accordance with the limited liability partnership agreement.

Obligation to contribute.

- (2) A creditor of a limited liability partnership, which extends credit or otherwise acts in reliance on an obligation described in that agreement, without notice of any compromise between partners, may enforce the original obligation against such partner.

## CHAPTER 6 — FINANCIAL DISCLOSURES

772. (1) The limited liability partnership shall maintain such proper books of account as may be prescribed relating to its affairs for each year of its existence on cash basis or accrual basis and according to double entry system of accounting and shall maintain the same at its registered office for such period as may be prescribed.

Maintenance of books of accounts, other records and audit, etc

- (2) Every limited liability partnership shall, within six months from the end of each financial year, prepare a statement of account and solvency for the financial year as at the last day of the financial year in such form as may be prescribed, and the statement shall be signed by the designated partners of the limited liability partnership.

- (3) A limited liability partnership shall file within the prescribed time, the Statement of Account and Solvency prepared under subsection (2) with the Commission every year in the form and manner and accompanied by the fees as may be prescribed.

- (4) The accounts of limited liability partnerships shall be audited in accordance with such rules as may be prescribed and the Minister may, by regulation, exempt any class or classes of limited liability partnerships from the requirements of this subsection.

- (5) Where default is made in complying with the provisions of this section, the limited liability partnership and each designated partner of the limited liability partnership shall each be liable to a penalty in such amount as the Commission shall specify in its regulations.

773. (1) A limited liability partnership shall file an annual return with the Commission within 60 days of closure of its financial year in the form and manner and accompanied by such fee as may be prescribed.

Annual return.

- (2) Where default is made in complying with the provisions of this section, the limited liability partnership and each designated partner of the limited liability partnership shall each be liable to a penalty in such amount as the Commission shall specify in its regulations.

#### CHAPTER 7 — ASSIGNMENT AND TRANSFER OF PARTNERSHIP RIGHTS

774. (1) Unless otherwise provided in the limited liability partnership agreement, the rights of a partner to a share of the profits and losses of a limited liability partnership and to receive distributions in accordance with the limited liability partnership agreement are transferable either wholly or in part. Partner's transferable interest.
- (2) The transfer of any right by any partner under subsection (1) does not by itself cause the disassociation of the partner or a dissolution and winding up of the limited liability partnership.
- (3) The transfer of a right under this section does not, by itself, entitle the transferee or assignee to participate in the management or conduct of the activities of the limited liability partnership, or grant access to information concerning the transactions of the limited liability partnership.

#### CHAPTER 8 — INVESTIGATION

775. (1) Where a court, by order, declares that the affairs of a limited liability partnership ought to be investigated, the Commission shall appoint one or more competent persons as inspectors to investigate the affairs of a limited liability partnership and to report thereon in such manner as it may direct. Investigation of the affairs of limited liability partnership.
- (2) Notwithstanding the provisions of subsection (1), the Commission may appoint one or more competent persons as inspectors to investigate the affairs of a limited liability partnership and to report on them in such manner as it may direct.
- (3) The appointment of inspectors under subsection (2) may only be made if —
- (a) at least one-fifth of the total number of partners of the limited liability partnership make an application along with supporting evidence and security amount as may be prescribed;
  - (b) the limited liability partnership makes an application that the affairs of the limited liability partnership ought to be investigated; or
  - (c) in the opinion of the Commission, there are

circumstances suggesting —

- (i) that the business of the limited liability partnership is being or has been conducted with an intent to defraud its creditors, partners or any other person, or otherwise for a fraudulent or unlawful purpose,
- (ii) that the business of the limited liability partnership is being or has been conducted in a manner oppressive or unfairly prejudicial to some or any of its partners, or that the limited liability partnership was formed for any fraudulent or unlawful purpose,
- (iii) that the affairs of the limited liability partnership are not being conducted in line with the provisions of this Act, or
- (iv) that, on receipt of a report of the Commission or any other investigating or regulatory agency, there are sufficient reasons to show that the affairs of the limited liability partnership ought to be investigated.

776. An application by the partners of the limited liability partnership under section 775 (3) shall be supported by such evidence as the Commission may require for the purpose of showing that the applicants have good reason for requiring the investigation and the Commission may, before appointing an inspector, require the applicants to give security, of such amount as may be prescribed, for payment of costs of the investigation.

Application by partners for investigation.

777. No firm, body corporate or other association shall be appointed as an inspector.

Firm, body corporate or association not to be appointed as inspector.

778. (1) If an inspector appointed by the Commission to investigate the affairs of a limited liability partnership thinks it necessary for the purposes of his investigation to also investigate the affairs of an entity which has been associated in the past or is presently associated with the limited liability partnership or any present or former partner or designated partner of the limited liability partnership, the inspector shall have the power to do so and shall report on the affairs of the other entity or partner or designated partner, so far as he thinks that the results of his investigation are relevant to the investigation of the affairs of the limited liability partnership.

Power of inspectors to carry out investigation into affairs of related entities, etc.

(2) In the case of any entity or partner or designated partner referred to in

subsection (1), the inspector shall not exercise the power of investigating into, and reporting on, its or his affairs without obtaining the prior approval of the Commission.

- (3) Before giving approval under this subsection, the Commission shall give the entity, partner or designated partner a reasonable opportunity to show cause why the approval should not be accorded.

779. (1) The designated partner and partners of the limited liability partnership shall —

Production of documents and evidence.

(a) preserve and produce before an inspector or any person authorised by him in that behalf with the or approval of the Commission, all books and papers of, or relating to, the limited liability partnership or the other entity, as the case may be, which are in their custody or power; and

(b) give the inspector all assistance in connection with the investigation which they are reasonably able to give.

- (2) The inspector may, with the previous approval of the Commission, require any entity, other than an entity referred to in subsection (1), to furnish such information to, or produce such books and papers before him or any person authorised by him in that behalf, with the previous approval of the Commission, as he may consider necessary, if the furnishing of such information or the production of such books and papers is relevant or necessary for the purposes of his investigation.

- (3) The inspector may keep in his custody any books and papers produced under subsections (1) or (2) for 30 days and thereafter shall return the same to the limited liability partnership, other entity or individual by whom or on whose behalf the books and papers are produced:

Provided that the inspector may call for the books and papers if they are needed again and that if certified copies of the books and papers produced under subsection (2) are furnished to the inspector, he shall return those books and papers to the entity or person concerned.

- (4) An inspector may -

(a) examine on oath —

(i) any of the persons referred to in subsection (1),

(ii) with the prior approval of the Commission, any other person in relation to the affairs of the

limited liability partnership or any other entity, as the case may be; and

- (b) administer an oath accordingly and for that purpose may require any of those persons to appear before him personally;
- (c) if any person fails without reasonable cause or refuses to —
  - (i) produce before an inspector or any person authorised by him in that behalf, with the prior approval of the Commission, any book or paper which it is his duty under subsections (1) or (2) to produce,
  - (ii) furnish any information which is his duty under subsection (2) to furnish,
  - (iii) appear before the inspector personally when required to do so under sub-section (4) or to answer any question which is put to him by the inspector under that subsection, or
  - (iv) to sign the notes of any examination,

the inspector shall certify the refusal in writing and apply to the Court for contempt proceedings against the person, the Court may thereupon enquire into the case, and after hearing any witnesses who may be produced against or on behalf of the alleged offender or any statement which may be offered in defence, the Court may punish the offender in like manner as if he had been guilty of contempt of the court.

- (5) The notes of any examination under subsection (4) shall be written and signed by the person whose examination was made on oath and a copy of such notes shall be given to the person so examined on oath and thereafter be used as evidence by the inspector.

780. (1) Where in the course of investigation, the inspector has reasonable ground to believe that the books and papers of, or relating to, the limited liability partnership, other entity, partner or designated partner of such limited liability partnership may be destroyed, mutilated, altered, falsified or secreted, the

Seizure of documents  
by inspector.

inspector may make an application to the Court having jurisdiction, for an order for the seizure of such books and papers.

(2) After considering the application and hearing the inspector, if necessary, the court may, by order, authorise the inspector to —

(a) enter, with such assistance, as may be required, the place or places where such books and papers are kept;

(b) search that place or those places in the manner specified in the order; and

(c) seize books and papers which the inspector considers necessary for the purposes of his investigation.

(3) The inspector shall keep in his custody the books and papers seized under this section for such period not later than the conclusion of the investigation as he considers necessary and thereafter shall return the same to the concerned entity or person from whose custody or power they were seized and inform the court of such return, provided the books and papers shall not be seized for a continuous period of more than six months and the inspector may, before returning the books and papers as, place identification marks on them or any part thereof.

781. (1) The Inspector may, and if so directed by the Commission, make interim reports to the Commission, and shall, on the conclusion of the investigation, make a final report to the Commission and any such report shall be printed.

Inspector's report.

(2) The Commission —

(a) shall forward a copy of any report other than an interim report, made by the inspectors to the limited liability partnership at its registered office, and also to any other entity or person dealt with or related to the report; and

(b) may, if it deems fit, furnish a copy of the report, on request and on payment of the prescribed fee, to any person or entity related to or affected by the report.

782. (1) If, from any report made under section 781 of this Act, it appears to the Commission that any civil proceedings ought in the public interest to be brought by the limited liability partnership or anybody corporate, the Commission may itself bring such proceedings in the name and on behalf of the limited liability partnership or the body corporate.

Power to bring civil proceedings on limited liability partnership's behalf.

(2) The Commission shall indemnify the body corporate against any cost or

expenses incurred by it in or in connection with proceedings brought under this section, and any cost or expenses so incurred shall, if not otherwise recoverable, be defrayed out of the Consolidated Revenue Fund.

783. (1) If, from any report made under section 781 of this Act, it appears that a person has been convicted of an offence for which he is criminally liable, the report shall be referred to the Attorney-General of the Federation.

Criminal proceedings and other proceedings by the Attorney-General of the Federation.

(2) Where the Attorney-General of the Federation considers that the case referred to him is one in which a prosecution ought to be instituted, he shall direct action accordingly, and all past and present officers and agents of the limited liability partnership or other body corporate, as the case may be, other than the defendant in the proceedings, shall give all assistance in connection with the prosecution which they are reasonably able to give.

(3) Where, from any report made under section 781 of this Act, it appears to the Commission that proceedings ought, in the public interest, to be brought by any body corporate dealt with by the report for the recovery of damages, in respect of fraud, misfeasance or other misconduct in connection with the promotion or formation of that body corporate or the management of its affairs, or for the recovery of any property of the body corporate which has been misapplied or wrongfully retained, it may refer the case to the Attorney-General of the Federation for his opinion as to the bringing of proceedings for that purpose in the name of the body corporate if proceedings are brought, all past and present officers and agents of the limited liability partnership or other body corporate as the case may be, other than the defendants in proceedings, to give him all assistance in connection with the proceedings which they are reasonably able to give.

(4) Cost and expenses incurred by a body corporate in or in connection with any proceedings brought by it under subsection (3) shall, if not otherwise recoverable, be defrayed out of the Consolidated Revenue Fund.

784. If, in the case of a body corporate liable to be wound up under this Act, it appears to the Commission from a report made by an inspector under section 781 of this Act that it is expedient in the public interest that the body corporate should be wound up, the Commission may, unless the body corporate is already wound up by the court present a petition for it to be wound up if the Court deems it just and equitable to do so.

Power of Commission to present winding-up petition.

785. (1) The expenses of, and incidental to, an investigation by an inspector appointed by the Commission under the foregoing provisions of this Act, shall be defrayed in the first instance out of the Consolidated Revenue Fund, but the following persons shall, to the extent mentioned, be liable to repay —

Expenses of investigation.

(a) any person who is convicted in a prosecution

instituted, as a result of the investigation report by the Attorney-General of the Federation, or who is ordered to pay damages or restore any property in proceedings brought by virtue of section 783 (3) of this Act, may in the same proceedings be ordered to pay the said expenses to such extent as specified in the order;

(b) a body corporate in whose name proceedings are brought as aforesaid is liable to the extent of the amount or value of any sums or property recovered by it as a result of those proceedings;

(c) unless as the result of the investigation a prosecution is instituted by the Attorney-General of the Federation, the applicants for the investigation, where the inspector was appointed under section 775 (3) of this Act, shall be liable to such extent, if any, as the Commission may direct, and any amount for which a body corporate is liable by virtue of paragraph (b), shall be a first charge on the sums or property mentioned in that paragraph.

(2) For the purposes of this section, any costs or expenses incurred by the Commission in or in connection with proceedings brought by virtue of section 781 (2) of this Act, shall be treated as expenses of the investigation giving rise to the proceedings.

(3) Expenses to be defrayed by the Commission under this section shall, so far as not recovered thereunder, be paid out of the Consolidated Revenue Fund.

786. Where a limited liability partnership is liable to be wound up under this Act or any other law for the time being in force, it appears to the Commission from a report under section 781 that it is expedient to do so, the Commission may, unless the limited liability partnership is already being wound up by the court, cause to be presented to the court by any person authorised by the Commission in that behalf, a petition for the winding up of the limited liability partnership on the ground that it is just and equitable that it should be wound up.

Application for winding up of limited liability partnership.

787. A copy of the report of any inspector or inspectors appointed under the provisions of this Act, authenticated in such manner, as may be prescribed shall be admissible in any legal proceeding as evidence in relation to any matter contained in the report.

Inspector's report to be evidence.

## CHAPTER 9 — FOREIGN LIMITED LIABILITY PARTNERSHIP

788. (1) A foreign limited liability partnership which before or after the

Foreign limited liability partnerships.

commencement of this Act was incorporated outside Nigeria, and having the intention of carrying on business in Nigeria, shall take all steps necessary to be incorporated as a separate entity in Nigeria for that purpose, but until so incorporated, the foreign limited liability partnership shall not carry on business in Nigeria or exercise any of the powers of a corporate body registered under this Act and shall not have a place of business or an address for service of documents or processes in Nigeria for any purpose other than the receipt of notices and other documents, as matters preliminary to incorporation under this Act.

- (2) The Minister may, by regulation, exempt a foreign limited liability partnership from the requirement of incorporation under subsection (1).

#### CHAPTER 10 — WINDING UP AND DISSOLUTION

789. The winding up of a limited liability partnership may be either voluntary or by the Court and limited liability partnership, so wound up may be dissolved. Winding up and dissolution.

790. A limited liability partnership may be wound up by the Court if — Circumstances in which limited liability partnership may be wound up by the Court.

- (a) all the partners decide that the limited liability partnership be so wound up by the Court;
- (b) for a period of more than six months, the number of partners of the limited liability partnership falls below two;
- (c) the limited liability partnership is unable to pay its debts;
- (d) the limited liability partnership has acted against the interests of the sovereignty and integrity of Nigeria or against her security or public order;
- (e) the limited liability partnership has made a default in filing with the Commission, the Statement of Account and Solvency or annual return for any 10 consecutive financial years; or
- (f) the Court is of the opinion that it is just and equitable that the limited liability partnership be wound up.

#### CHAPTER 11 — MISCELLANEOUS

791. (1) A person with significant control over a limited liability partnership shall within seven days of becoming such a person, indicate to the limited liability Disclosure of significant control in a limited liability

partnership in writing the particulars of such control.

partnership.

- (2) A limited liability partnership after receiving or coming into possession of the information required under subsection (1), shall, not later than one month from the receipt of the information or any change therein, notify the Commission of that information, provided that a company shall in every annual return, disclose the information required under subsection (1) in respect of the year for which the return is made.
- (3) The Commission shall maintain a register of persons with significant control in which it shall enter the information received from the limited liability partnership or any change therein under subsection (2).
- (4) A limited liability partnership shall inscribe against the name of every member in the register of members, the information received in pursuance of the requirements of this section.
- (5) If default is made by any person or limited liability partnership in complying with subsections (1), (2) and (4), the person or limited liability partnership and each officer of the limited liability partnership is liable to such fines as the Commission may prescribe by regulation for every day during which the default continues.
- (6) If default is made by any partner in complying with subsection (1) or in purported compliance, makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false, he commits an offence and is liable to a term of imprisonment for six months or a fine as the court deems fit.
- (7) If default is made by any limited liability partnership in complying with subsection (3), the limited liability partnership and each officer of the limited liability partnership is liable to a penalty in such amount as the Commission shall specify in its regulations for every day during which the default continues.

792. A partner may lend money to and transact other business with the limited liability partnership and has the same rights and obligations with respect to the loan or other transactions as a person who is not a partner.

Business transactions of partner with limited liability partnership.

793. Where the Commission has reasonable cause to believe that a limited liability partnership is not carrying on business or operation, in accordance with the provisions of this Act, the name of limited liability partnership may be struck off the register of limited liability partnerships in accordance with the procedures provided under section 692 of this Act.

Power of Commission to strike defunct limited liability partnership off register.

794. The Commission may make rules or regulations concerning any of the following

Power to make rules.

matters —

- (a) the fees to be paid to the Commission under this Part;
- (b) the duties or additional duties to be performed by the Commission for the purposes of this Part;
- (c) the forms to be used for the purposes of this Part; and
- (d) generally the conduct and regulation of registration under this Part and any matter incidental thereto.

## PART D — THE LIMITED PARTNERSHIP

### CHAPTER 1 — NATURE OF LIMITED PARTNERSHIP

795. (1) Limited partnerships may be formed in the manner and subject to the conditions set out in this Part. Constitution of limited partnerships.
- (2) A limited partnership shall not consist of more than 20 persons.
- (3) A limited partnership shall consist of one or more persons called general partners, who shall be liable for all debts and obligations of the firm, and one or more persons called limited partners.
- (4) Each limited partner shall at the time of entering into the partnership contribute, or agree to contribute, thereto a sum or sums as capital or property valued at a stated amount and shall not be liable for the debts or obligations of the firm, beyond the amount so contributed or agreed to be contributed:
- Provided that a limited partner shall is not under obligation to contribute any capital or property to the partnership where the partners have so agreed in writing.
- (5) Unless otherwise agreed in writing by the partners, a limited partner shall not, during the continuance of the partnership, either directly or indirectly, draw out or receive back any part of his contribution and if he draws, out or receives back any such part, is liable for the debts and obligations of the partnership up to the amount so drawn out or received back.
796. An individual or body corporate may be a partner in a limited partnership: Partners in a limited partnership.  
Provided that an individual shall not become a partner of a limited partnership, if he is —
- (a) of unsound mind and has been so found by a court in Nigeria or elsewhere; or

(b) an undischarged bankrupt.

## CHAPTER 2 — REGISTRATION OF LIMITED PARTNERSHIP AND INCIDENTAL MATTERS

797. (1) A partnership carrying on business as a limited partnership must be registered as such in accordance with the provisions of this Part. Limited partnership to be registered.
- (2) A partnership not registered as prescribed in subsection (1) shall be deemed to be a general partnership and every limited partner shall be deemed to be a general partner.
798. (1) An application for registration as a limited partnership shall be in the form as prescribed by the Commission and shall — Application for registration.
- (a) specify the name under which the limited partnership is to be registered;
  - (b) be signed or otherwise authenticated by or on behalf of each partner, and
  - (c) include a statement containing the details listed in subsection (2).
- (2) The application for registration of a limited partnership shall include a statement signed by the partners which shall contain —
- (a) the name of the limited partnership;
  - (b) the general nature of the business;
  - (c) the principal place of business;
  - (d) the full name and address of each general partner
  - (e) the full name and address of each limited partner;
  - (f) the term if any, for which the partnership is entered into and the date of its commencement;
  - (g) a statement that the partnership is limited and the description of every limited partner as such; and
  - (h) the sum contributed, or agreed to be contributed by each limited partner and whether paid, or to be paid in

cash or in another specified form.

799. (1) When the requirements imposed by section 798 (1) and (2) have been complied with, the Commission shall, — Certificate of registration.

(a) register the limited partnership; and

(b) issue a certificate of registration.

(2) The certificate shall be signed by the Commission and authenticated by his official seal.

(3) The certificate shall state —

(a) the name of the limited partnership given in the application for registration;

(b) the limited partnership's registration number;

(c) the date of registration; and

(d) that the limited partnership is registered as a limited partnership under this Act.

(4) The certificate shall be *prima facie* evidence that a limited partnership came into existence on the date of registration.

800. (1) If during the continuance of a limited partnership any change is made or occurs in the — Registration of changes in partnership.

(a) firm,

(b) general nature of the business,

(c) principal place of business,

(d) partners or the name of any partner,

(e) terms or character of the partnership,

(f) sum contributed or to be contributed by any limited partner, or

(g) liability of any partner by reason of his becoming a

limited partner instead of a general partner or a  
general partner instead of a limited partner,

a statement signed by the firm specifying the nature of the change shall within seven days be delivered to the Commission.

(2) If default is made in compliance with the requirements of this section, each of the general partners is liable to a fine as shall be prescribed by the Commission in its regulations.

801. (1) Notice of any arrangement or transaction under which a person will cease to be a general partner in a firm and will become a limited partner in that firm or under which the share of a limited partner in a firm will be assigned to any person shall, be filed with the Commission within five days of such change.

Notice of change in status of general partner or assignment of share of limited partner.

(2) Until the notice of the arrangement or transaction referred to in subsection (1) is filed with the Commission, the arrangement or transaction shall for the purposes of this Part, be deemed to be of no effect.

(3) If default is made in compliance with the requirements of subsection (1), each of the general partners is liable to a fine as shall be prescribed by the Commission in its Regulations.

802. The name of a limited partnership must end with the words "limited partnership" (upper or lower case, or any combination), or the abbreviation "LP" (upper or lower case, or any combination, with or without punctuation).

Name of limited partnership.

803. The provisions of section 30 (Change of Name) and Section 31 (reservation of name) of this Act shall be applicable in relation to the reservation of name and change of name of a limited partnership.

Reservation of name and change of name of limited partnership.

804. Where any person or persons carry on business under any name or title of which the words "Limited Partnership" or "LP" or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly registered as limited partnership, be liable to a penalty in such amount as the Commission shall specify in its regulations.

Penalty for improper use of words "limited partnership" or "LP".

805. The Commission shall keep at the registry, in proper books to be provided for the purpose, a register and index of all the limited partnerships registered and of all statements registered in relation to such partnerships.

Commission to keep register.

806. (1) A limited partner shall not take part in the management of the partnership business and shall not have power to bind the firm provided that –

Modification of general law in case of limited partnerships.

(a) a limited partner may by himself or his agent, at any time inspect the books of the firm and examine the

state and prospects of the partnership business and advise with the partners thereon; and

(b) if a limited partner takes part in the management of the partnership business, he is liable for all debts and obligations of the firm incurred while he takes part in the management, as though he were a general partner.

(2) A limited partnership shall not be dissolved by the death or bankruptcy of a limited partner and the lunacy of a limited partner shall not be a ground for the dissolution of the partnership by the Court, unless the lunatic's share cannot be otherwise ascertained and realised.

(3) In the event of the dissolution of a limited partnership its affairs shall be wound up by the general partners unless the Court orders otherwise.

(4) Subject to any agreement, express or implied, between the partners —

(a) any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the general partners;

(b) a limited partner may, with the consent of the general partners, assign his share in the partnership and upon such an assignment the assignee shall become a limited partner with all the rights of the assignor;

(c) the other partners shall not be entitled to dissolve the partnership by reason of any limited partner suffering his share to be charged for his separate debt;

(d) a person may be introduced as a partner without the consent of the existing limited partners; and

(e) a limited partner shall not be entitled to dissolve the partnership by notice.

807. The provisions of Part C of this Act relating to limited liability partnerships shall apply to limited partnership except so far as they are inconsistent with the express provisions of this Part.

Application of Part C.

808. Subject to the provisions of this Act, the provisions of the Partnership Act 1890, except so far as they are inconsistent with the express provisions of this Act, shall apply to limited partnerships.

Law as to private partnerships to apply where not excluded by this Act.

809. (1) A person may inspect the statements filed by the Commission upon payment of such fees as maybe prescribed by the Commission in its regulations and any person may require a certificate of the registration of a limited partnership or a copy of an extract from any registered statement, to be certified by the Registrar. Inspection, etc. of document.
- (2) A certificate of registration or a copy of an extract from any statement registered under this Part, if duly certified to be a true copy under the hand of the Registrar, whom it shall not be necessary to prove to be the Registrar shall, in all legal proceedings, civil or criminal, and in all cases be received in evidence.

810. If any statement required to be furnished under this Part of this Act contains any matter which is false to the knowledge of any person signing it, such person commits an offence and is liable on conviction to imprisonment for a term of not more than one year or a fine as the Court deems fit and in addition, he shall be liable to pay such additional fines as the Commission may specify by regulation. Liability for false statement.

## PART E: BUSINESS NAMES

### CHAPTER 1 — ESTABLISHMENT OF BUSINESS NAMES REGISTRY, APPOINTMENT AND FUNCTIONS OF HEAD OF OFFICE AND OTHER OFFICERS

811. There shall be established in each State of the Federation, a registry of business names where there shall be kept a register in the prescribed form in which shall be entered such matters as are required by this Act or any regulation made under it to be entered in it. Establishment of business names registry in each state.
812. (1) The Registrar-General appointed under section 9 of this Act shall be the Registrar of Business Names. Appointment of head of office and other officers of business names registry.
- (2) Suitable staff of the Commission may be appointed from time to time to be head of office and other officers of the Business Names Registry in each State of the Federation as may be necessary for the administration of this Part of this Act.
813. (1) The Registrar shall cause business names to be registered in accordance with the provisions of this part of this Act. Functions of the head of office.
- (2) For the purpose of the registration under this Part, of the business names of a firm, individual or corporation at any of the offices for business names, any head of office may, subject to any direction that the Commission may give, perform any act or discharge any duty which the Registrar may lawfully perform or discharge or is required by this Act to perform or discharge, and, subject to that, any reference in this Part to the Registrar, unless the context

otherwise admits, shall accordingly be deemed to include a reference to a head of office.

- (3) Without prejudice to the generality of the foregoing provisions of subsection (1), a head of office may be assigned to the Business Names Registry in a State for the purpose of registering business names and keeping a register of business names.

## CHAPTER 2 — REGISTRATION OF BUSINESS NAMES

814. (1) Every individual, firm or Corporation having a place of business in Nigeria and carrying on business under a business name shall be registered in the manner provided in this Part if —

Registration of business names.

- (a) in the case of a firm, the name does not consist of the true surname of all partners without any addition other than the true forenames of the individual partners or the initials of such forenames;
- (b) in the case of an individual, the name does not consist of his true surname without any addition other than his true forenames or the initials thereof; or
- (c) in the case of a company, whether or not registered under this Act, the name does not consist of its corporate name without any addition.

(2) Notwithstanding subsection (1) where —

- (a) the addition merely indicates that the business is carried on in succession to a former owner of the business, that addition shall not of itself render registration necessary;
- (b) two or more individual partners have the same surname, the addition of an "s" at the end of that surname shall not of itself render registration necessary; and
- (c) the business is carried on by a receiver or manager appointed by any court, registration shall not be necessary.

815. (1) Every individual, firm or company required under this Act to be registered shall, within 28 days after the individual, firm or corporation commences the business in respect of which registration is required, furnish to the Registrar at

Procedure for registration.

the registry in the State in which the principal place of business of the individual, firm or company is situated, a statement in writing in the prescribed form, signed as required by this section and containing the following particulars —

- (a) the business name or, if the business is carried on under two or more business names, each of those business names;
- (b) the general nature of the business;
- (c) the full postal address of the principal place of business;
- (d) the full postal address of every other place of business;
- (e) where the registration to be effected is that of a firm —
  - (i) the present forenames and surname, any former forenames or surname, the nationality and, if that nationality is not the nationality of origin, the nationality of origin, the age, the sex, the usual residence and any other business occupation of each of the individuals who are partners; and
  - (ii) the corporate name and registered office of such company which is a partner;
- (f) where the registration to be effected is that of an individual, the present forenames and surname, any former forenames or surnames, the nationality and, if that nationality is not the nationality of origin, the nationality of origin, the age, the sex, the usual residence and any other business occupation of the individual;
- (g) where the registration to be effected is that of a company, the name and registered office of the company; and
- (h) the date of commencement of the business, whether before or after the coming into operation of this Act.

(2) Where the registration to be effected is that of an individual or a firm, some or all of whose partners are individuals, there shall be submitted to the Registrar copies of the passport photographs of the individual certified in a manner required by the Registrar.

(3) Where the registration to be effected is that of a firm or individual carrying on business on behalf of another individual, firm or corporation whether as nominee or trustee, the statement required by subsection (1) to be furnished shall contain the following particulars in addition to the particulars required by that subsection —

(a) the present forenames and surname, any former forenames or surname, the nationality and, if that nationality is not the nationality of origin, the nationality of origin and the usual residence of each individual on whose behalf the business is carried on; and

(b) the name of each firm or corporation on whose behalf the business is carried on.

(4) Where the registration to be effected is that of a firm or individual carrying on business as general agent for any concern carrying on business outside Nigeria and not having a place of business in Nigeria, the statement required by subsection (1) to be furnished shall, in addition to the particulars required by that subsection, state the name and full postal address of each such concern, provided that in the case of a firm or individual carrying on business as general agent for three or more such concerns, it shall be sufficient to state the fact that the business is so carried on and the countries in which the concerns carry on business.

(5) A statement furnished in accordance with subsections (1) - (4) shall in the case of a —

(a) statement furnished by an individual, be signed by him;

(b) statement furnished by a firm, be signed by each individual who is a partner and by a director or the secretary of each Corporation which is partner; and

(c) corporation, be signed by a director or the secretary:

Provided that, if the statement is accompanied by a statutory declaration made by any person to the effect that he is a partner of the firm or is a director or the secretary of a corporation which is a partner of the firm, the

statement may be signed by that person alone.

- (6) A statement furnished in accordance with subsections (1) - (4) by an individual who is a minor or by a firm of which one of the partners is a minor shall, in addition to the requirements of subsection (1), be signed by a magistrate, legal practitioner or police officer of, or above the rank of Assistant Superintendent of Police.
- (7) If an individual, firm or corporation makes default in complying with the provisions of this section, the individual, corporation or every partner in the firm commits an offence and is liable on conviction to a fine prescribed in the Commission's regulations for every day during which the default continues, and the Court shall order a statement of the required particulars to be furnished to the Registrar within such time as may be specified in the order.

816. (1) On receipt by the Registrar of the statement of particulars required to be furnished under section 815 of this Act, he shall, subject to subsection (2) and to the provisions of any regulations made under this Act, cause to be entered in the register the business name of the individual, company or firm and file the statement.

Entry of business name in the register.

- (2) The Registrar shall add to the business name in the register the identification letters of the State which shall be in brackets at the end of the business name, and these shall form part of the business name.

817. (1) On the registration of any individual, firm or corporation under this Act, the Registrar shall issue a certificate in the prescribed form containing the business name of the individual, firm or corporation.

Certificate of registration.

- (2) On the registration of any change in the particulars registered in respect of any firm, corporation or individual, the Registrar may in his discretion either amend the certificate previously issued or issue a fresh certificate.
- (3) A certificate issued under this section shall be sent by registered post or delivered to an individual, firm or corporation registering, who shall thereupon exhibit and thereafter maintain the same in a conspicuous position at the principal place of the business so registered:

Provided that —

- (a) where a fresh certificate has been issued under subsection (2), the provisions of this subsection shall apply to such fresh certificate; and
- (b) where any certificate has been lost or destroyed or rendered illegible, a copy of such certificate certified

by the Registrar may be exhibited in place of the original.

- (4) Where an individual, firm or corporation registered under this Act has more than one place of business, the original certificate shall be exhibited and maintained as required by subsection (3) at the principal place of business and a copy of the certificate certified by the Registrar shall be exhibited and thereafter maintained in a conspicuous position in each of the other places of business.
- (5) If an individual, firm or company makes default in complying with the provisions of subsection (3) or subsection (4), the individual, corporation or every partner in the firm is liable to a penalty for every day during which the default continues, the penalty shall be determined in accordance with regulations made by the Commission from time to time.

818. (1) Whenever a change is made or occurs in the particulars required by section 815 of this Act to be furnished in respect of any individual, firm or corporation registered under that section, other than particulars as to the age of an individual, the individual, firm or corporation shall within 28 days after such change notify the change to the registrar. Registration of changes.
- (2) The notice required under subsection (1) shall be in writing signed as provided in section 815 of this Act.
  - (3) If an individual, firm or corporation makes default in complying with the provisions of this section, the individual, corporation or every partner in the firm is liable to a penalty for every day during which the default continues, the penalty shall be determined in accordance with regulations made by the Commission from time to time.

### CHAPTER 3 — REMOVAL OF BUSINESS NAME FROM REGISTER

819. (1) If an individual, firm or corporation registered under this Act ceases to carry on business, it shall be the duty of the individual or if he is dead, his personal representative, or of a partner in the firm at the time it ceased to carry on business, the director or liquidator of the corporation, within three months after the business has ceased to be carried on, to send by post or deliver to the Registrar a notice, stating that the individual, firm or corporation has ceased to carry on business. Removal of name from register.
- (2) On receipt of such a notice as mentioned in subsection (1), the Registrar may remove the individual, firm or corporation from the register.
  - (3) Where the Registrar has reasonable cause to believe that any individual, firm or corporation registered under this Act is not carrying on business, he may send a

notice by registered post to the individual, firm or corporation, unless an answer is received to such notice within two months from the date thereof, the individual, firm or corporation may be removed from the register.

- (4) If the Registrar either receives an answer from the individual, firm or corporation to the effect that the individual, firm or corporation is not carrying on business or does not within two months from the date of the notice receive an answer, he may remove the individual, firm or corporation from the register.
- (5) If any person whose duty it is under subsection (1) to give notice that any individual, firm or corporation has ceased to carry on business fails to comply with the provisions of that subsection, he commits an offence and is liable on conviction to a fine in such amount as the Commission shall specify in its regulations.

#### CHAPTER 4 — MISCELLANEOUS AND SUPPLEMENTAL

820. (1) Every individual, firm or corporation required by this Act to be registered shall in all trade catalogues, trade circulars, show cards, complimentary cards, notices, bills of exchange, promissory notes, endorsements, cheques, orders for money or goods, invoices, receipts, letters of credits, advertisements, business letters and other official documents issued or sent by the individual or firm to any person, have mentioned in legible characters —
- Publication of true name.
- (a) in the case of an individual, his present forenames or the initials thereof and present surname and any former forenames or surname and his nationality; and
  - (b) in the case of a firm, the present forenames or the initials thereof and present surname, and any former forenames or surnames and the nationality of all the partners in the firm or in the case of a company being a partner, the corporate name; and
  - (c) the registration number of the business name.
- (2) Without prejudice to section 19, the provisions of subsection (1) do not apply in relation to a document issued by a firm with more than 20 partners if the following conditions are met -
- (a) the partnership maintains at its principal place of business a list of names of all the partners;
  - (b) no partners' name appears in the document, except in text or as a signatory; and

(c) the document states in legible characters the address of the firm's principal place of business and that the list of the partner's names is open to inspection there.

- (3) Where a firm maintains a list of the partners' names for the purposes of this section, any person may inspect the list during ordinary business hours.
- (4) Any member of the firm, who, without reasonable justification, refuses or sanctions the refusal of an inspection required by a person in accordance with this section, commits an offence and is liable to a fine in such amount as the Commission shall specify in its regulations.
- (5) Where an individual referred to in subsection (1) is a minor, the words "a minor" shall be added, in brackets, after his name.
- (6) If an individual, firm or corporation fails to comply with this section, the individual or each partner in the firm is liable to a penalty in such amount as the Commission shall specify in its regulations.

821. Where any firm or individual required under this Act to furnish a statement of particulars or of any change in particulars, makes default in so doing, the rights of such defaulter under or arising out of any contract made or entered into by or on behalf of such defaulter in relation to the business in respect of which particulars were required at any time while he is in default, shall not be enforceable by action or other legal proceedings either in the business name or otherwise:

Liability of person in default.

Provided that —

- (a) the defaulter may apply to a High Court in which any such contract would otherwise be enforceable for relief against the disability imposed by this section and a High Court in which any such contract would otherwise be enforceable, on being satisfied that the default was accidental, or due to inadvertence, or some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may grant such relief either generally as regards all contracts enforceable by the court or as respect any particular contract and on such conditions as the court may impose; and
- (b) nothing shall prejudice the rights of any other parties as against the defaulter in respect of such contract, if any action or proceeding shall be commenced by any other party against the defaulter to enforce the rights of such party in respect of such contract, nothing shall preclude the defaulter from enforcing in that action or

proceeding by way of counterclaim, set-off or otherwise such rights as he may have against that party in respect of such contract.

822. (1) Every individual, firm or corporation carrying on business under a registered business name shall, not later than the 30th day of June in each year, except the calendar year in which the business name is registered, deliver to the Commission a return in a prescribed form showing the particulars of the individual, firm or corporation and the nature of the business carried on. Annual returns.
- (2) The returns shall be accompanied by the financial statement of the individual, firm or corporation in the business during the preceding period of January 1 to December 31.
- (3) The returns and the accompanying financial statement shall be signed, in the case of an individual or firm consisting only of individuals, by the individuals and in the case of a corporation or a partner who is a corporation, by a director and the secretary.
- (4) Every individual, firm or corporation that fails to comply with any of the provisions of this section is liable to a penalty and a daily default penalty prescribed in the Commission's regulations.

## PART F — INCORPORATED TRUSTEES

### CHAPTER 1 — INCORPORATED TRUSTEES

823. (1) Where two or more trustees are appointed by any community of persons bound together by custom, religion, kinship or nationality or by anybody or association of persons established for any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose, they may, if so authorised by the community, body or association (in this Act referred to as "the association") apply to the Commission in the manner provided for registration under this Act as a corporate body. Incorporation of trustees of certain communities, bodies and associations.
- (2) Upon being so registered by the Commission, the trustees shall become a corporate body in accordance with the provisions of section 830 of this Part.
824. The Commission shall determine the classification of associations to be registered under this Part in accordance with the aims and objects of the association. Classification of associations.
825. (1) Application under section 823 shall be in the form prescribed by the Commission and shall state the — Method of application.
- (a) name of the proposed corporate body which must contain the words "Incorporated Trustees of";

- (b) aims and objects of the association which shall be for the advancement of any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose, and shall be lawful; and
- (c) names, addresses and occupations of the secretary of the association, if any.

(2) There shall be attached to the application —

- (a) two printed copies of the constitution of the association;
- (b) duly signed copies of the minutes of the meeting appointing the trustees and authorising the application showing the people present and the votes scored; and
- (c) the impression or drawing of the proposed common seal, if there is one.

(3) The application shall be signed by the person making it.

(4) The Commission may require such declaration or other evidence in verification of the statements and particulars in the application, and such other, information and evidence, if any, as it may deem fit.

(5) If any person knowingly makes any false statement or gives any false information for the purpose of incorporating trustees under this Part, he commits an offence and is liable on conviction to imprisonment for one year or to a fine as the Court deems fit.

826. (1) A person shall not be qualified to be appointed or act as a trustee if —

Qualification of trustees.

- (a) he is an infant;
- (b) he is a person of unsound mind having been so found by a court;
- (c) he is an undischarged bankrupt; or
- (d) he has been convicted of an offence involving fraud or dishonesty within five years of his proposed appointment.

(2) If a person disqualified under subsection (1) (c) or (d) acts as a trustee, he shall

be liable to a penalty for every day during which he so acts, the penalty shall be determined in accordance with regulations made by the Commission from time to time.

827. The constitution of the association shall in addition to any other matter —

Constitution.

- (a) state the name or title of the association;
- (b) the aims and objects of the association; and
- (c) make provisions, in respect of the following —
  - (i) appointment, powers, duties, tenure of office and replacement of the trustees,
  - (ii) the use and custody of the common seal, if there is one,
  - (iii) the meetings of the association,
  - (iv) the number of members of the governing body, if any, the procedure for their appointment and removal, and their powers, and

where subscriptions and other contributions are to be collected, the procedure for disbursement of the funds of the association, the keeping of accounts and the auditing of such accounts.

828. (1) If the Commission is satisfied that the application has complied with the provisions of sections 825 - 827 of this Act, it shall cause the application to be published in a prescribed form in two daily newspapers circulating in the area where the association is to be situated and at least one of the newspapers shall be a national newspaper.

Advertisement and objections.

- (2) The advertisement shall invite objections, if any, to the registration of the body.
- (3) The objection shall state the grounds on which it is made and shall be forwarded to reach the Commission within 28 days of the date of the last of the publications in the newspapers.
- (4) If objections are made, the Commission shall consider them and may require the objections and applicants, to furnish further information or explanation, and may uphold or reject the objections as it deems fit and inform the applicant accordingly.

829. (1) If, after the advertisement, no objection is received within the period specified in section 828 of this Act or, where any objection is received and the same is rejected, the Commission, having regard to all the circumstances, may assent to the application or withhold its assent.

Registration and certificate.

(2) If the Commission assents to the application, it shall register the trustees and issue a certificate in the prescribed form.

830. (1) From the date of registration, the trustees shall become a body corporate by the name described in the certificate, and shall have -

Effect of registration and certificate.

(a) perpetual succession;

(b) a common seal if they so wish;

(c) power to sue and be sued in its corporate name as such trustees; and

(d) subject to section 836 of this Part, power to hold and acquire, and transfer, assign or dispose of any property, or interests therein belonging to, or held for the benefit of such association, in such manner and subject to such restrictions and provisions as the trustees might without incorporation, hold or acquire, transfer, assign or otherwise dispose of the same for the purposes of such community, body or association of persons.

(2) The certificate of incorporation shall vest in the body corporate all property and interests of whatever nature or tenure belonging to or held by any person in trust for such community, body or association of persons.

(3) A certificate of incorporation when granted shall be *prima facie* evidence that all the preliminary requisitions herein contained and required in respect of such incorporation have been complied with, and the date of incorporation mentioned in such certificate shall be deemed to be the date on which incorporation has taken place.

831. Without prejudice to the provisions of section 849 of this Act, the Commission may direct that for all or any of the purposes of this Act —

Related associations.

(i) an association be treated as forming part of an already registered association; and

(ii) any two or more association having the same trustees be treated as a single association.

CHAPTER 2 — CHANGES IN REGISTERED PARTICULARS OF  
INCORPORATED TRUSTEES

832. (1) Where the association is desirous of changing, altering its name, objects or any of them, the trustees shall apply to the Commission in the prescribed form setting out the alterations desired and attaching a copy of the resolution approving the change and duly certified by the trustees. Change of name or objects.
- (2) The Commission on receipt of the application shall consider it and, if satisfied that the change or alteration is *prima facie* lawful shall —
- (a) cause the application to be published in two daily newspapers in the manner specified in section 828 (1) of this Act; and
- (b) direct the corporation to display for at least 28 days a notice of the proposed change or alteration conspicuously mounted at the corporation headquarters, or at any branch office, or any such place where a majority of the members are likely to see it, as the Commission may require.
- (3) The publication and notices shall call for objections which, if any, shall state the grounds of objection and be forwarded to reach the Commission not later than 28 days after the last of the publications in the newspapers.
- (4) The provisions of section 827 and of section 825 (1) of this Part of this Act shall apply to this section as they apply to an application for registration.
- (5) If the Commission assents to the application, the alterations shall be made and in the case of a change of name, the Commission shall issue a new certificate in the new name in place of the former certificate.
833. Subject to sections 827 and 828 of this Part, an association whose trustees are incorporated under this Part may alter its constitution by resolution passed by simple majority of its members and approved by the Commission. Alterations of provisions of the constitution.
834. (1) Where a body or association intends to replace some or all its trustees or to appoint additional trustees, it may by resolution at a general meeting do so and apply in the prescribed form for the approval of the Commission. Replacement and appointment of additional trustees.
- (2) Upon such application, the provisions of section 832 (2) - (4) of this Act shall apply to this section as they apply to the change of name or object.
- (3) If the Commission assents to the application, it shall signify its assent in writing to the board or association and the appointment shall become valid as from the date of the resolution appointing the trustees.

835. Any change or alteration purported to be made in contravention of section 832, 833 or 834 of this Part of this Act void.

Changes in contravention of certain provisions of this part of this Act.

### CHAPTER 3 — COUNCIL, POWERS, INCOME AND PROPERTY

836. The association may appoint a council, or governing body, which shall include the trustees and may, subject to the provisions of this Part, assign to it such administrative and management functions as it deems expedient.

Council or governing body.

837. The powers vested in the trustees by or under this Act shall be exercised subject to the directions of the associations, or the council or governing body appointed under section 836 of this Part.

Exercise of powers of trustee.

838. (1) The income and property of a body or association whose trustees are incorporated under this Part of this Act shall be applied solely towards –

Application of income and property.

(a) the promotion of the objects of the body as set forth in its constitution; and

(b) no portion from it shall be paid or transferred directly or indirectly, by way of dividend, bonus, or otherwise by way of profit to any of the members of the association.

(2) Nothing in subsection (1) (b) shall prevent the payment, in good faith, of reasonable and proper remuneration to an officer or servant of the body in return for any service actually rendered to the body or association:

Provided that —

(a) with the exception of ex-officio members of the governing council, no member of a council or governing body shall be appointed to any salaried office of the body or any office of the body paid by fees; and

(b) no remuneration or other benefit in money or money's worth shall be given by the body to any member of such council or governing body, except repayment of out-of-pocket expenses, reasonable rent for premises demised or let to the body or reasonable fee for services rendered.

- (3) A person who knowingly acts or joins in acting in contravention of this section, he is liable to refund such income or property so misapplied to the association.

#### CHAPTER 4 — SUSPENSION OF TRUSTEES, APPOINTMENT OF INTERIM MANAGERS, ETC.

839. (1) The Commission may by order suspend the trustees of an association and appoint an interim manager or managers to manage the affairs of an association where it reasonably believes that —
- Suspension of trustees, etc., and appointment of interim managers, etc.
- (a) there is or has been any misconduct or mismanagement in the administration of the association;
  - (b) it is necessary or desirable for the purpose of —
    - (i) protecting the property of the association,
    - (ii) securing a proper application for the property of the association towards achieving the objects of the association, the purposes of the association of that property or of the property coming to the association,
    - (iii) public interest; or
  - (c) the affairs of the association are being run fraudulently.
- (2) The trustees shall be suspended by an order of Court upon the petition of the Commission or members consisting one-fifth of the association and the petitioners shall present all reasonable evidence or such evidence as requested by the Court in respect of the petition.
- (3) Upon the hearing of the petition and the appointment of the interim manager, the Court, with the assistance of the Commission, may make provision with respect to the functions to be performed by the interim manager or managers appointed by the order -
- (a) the powers and duties of the interim manager or managers which may include the powers and duties of the trustees of the association concerned; and
  - (b) any power or duty specified under paragraph (a) to be exercisable or discharged by the interim manager or

managers to the exclusion of the trustees.

- (4) The functions shall be performed by the interim manager or managers under the supervision of the Commission.
- (5) The reference in subsection (1) to misconduct or mismanagement extends to the employment for —
  - (a) the remuneration or reward of persons acting in the affairs of the association, or
  - (b) other administrative purposes, of sums which are excessive in relation to the property which is or is likely to be applied or applicable for the purposes of the association.
- (6) A court of competent jurisdiction may, upon the petition of the Commission or members of the association —
  - (a) order or suspend any person, officer, agent or employee of the association from office or employment, provided that such suspension does not exceed 12 months from the date of the order or suspension;
  - (b) by order appoint such number of additional trustees as it considers necessary for the proper administration of the association;
  - (c) by order —
    - (i) vest any property held by or in trust for the association in the official custodian, who shall be a person so designated by the court from time to time;
    - (ii) require the persons in whom any such property is vested to transfer it to the official custodian who will be an individual as the court may, from time to time designate, or
    - (iii) appoint any person to transfer any such property to the official custodian;
  - (d) order any person who holds any property on behalf of the association, or of any trustee for it, not to part with

the property without the approval of the Court;

(e) order any debtor of the association not to make any payment in or towards the discharge of the debtor's liability directly to the association but to make such payment into an interest yielding account held by the Commission for the benefit of the association;

(f) by order restrict (regardless of anything in the trusts of the association) the transactions which may be entered into, or the nature or amount of the payments which may be made, in the administration of the association without the approval of the court; or

(g) by order appoint an interim manager to act as receiver and manager in respect of the property and affairs of the association.

(7) Where, at any time after the Commission has made an enquiry into the affairs of the association, it is satisfied as to the matters mentioned in subsection (1), it may suspend or remove —

(a) any trustee who has been responsible for or privy to the misconduct or mismanagement or whose conduct contributed to or facilitated it; or

(b) by order of the Court, establish a scheme for the administration of the association.

(8) The court may by order replace a trustee removed under subsection (7).

(9) A person who contravenes an order under subsection (6) (d), (e) and (f) commits an offence and is liable on conviction to fine as the Court deems fit or imprisonment for a term of 6 months or to both.

(10) The Commission may make regulations in respect of —

(a) the functions, powers and remuneration of the interim manager and the manner in which the interim manager shall make reports to the Commission; and

(b) making reports to the Commission, and such other things as may be necessary for the effective administration of the association during the period of its interim administration.

- (11) The Commission shall only exercise its power under this section in respect of any association with the approval of the Minister.

## CHAPTER 5 — COMMON SEAL AND CONTRACT

840. The common seal, if any of the body corporate shall have such device as may be specified in the constitution, and any instrument to which the common seal of the corporate body has been affixed in apparent compliance with the regulations for the use of the common seal shall be binding on the corporate body, notwithstanding any defect or circumstance affecting the execution of such instrument. Common seal.
841. Subject to the provisions of this Part of this Act and of the constitution of the association, the corporate body may contract in the same form and manner as an individual. Contract of corporate body.

## CHAPTER 6 — ACCOUNTS AND ANNUAL RETURNS

### POWER TO DIRECT TRANSFER OF CREDITS IN DORMANT BANK

842. (1) Where a bank holds one or more accounts in the name of or on behalf of the incorporated trustees of a particular association, and the account, or, if it holds two or more accounts, and each of the accounts is dormant (as defined under the relevant banking regulation), the bank shall without delay notify the Commission of these facts. Accounts of dissolved incorporated trustees.
- (2) Where the Commission receives a notice under subsection (1), the Commission may request that the association provide evidence of its activities, and where the association fails to respond satisfactorily within 15 days of the request, the Commission may dissolve the association in accordance with section 850, and where an association is so dissolved, the Commission may give a direction to the bank concerned to transfer —
- (a) the amount, or, as the case may be, the aggregate amount, standing to the credit of the relevant association in the account or accounts in question to such other association as is specified in the direction in accordance with subsection (3) of this section to the bank; or
  - (b) to each of two or more other associations so specified in the direction, such part of that amount or aggregate amount as is there specified in relation to that association.
- (3) The provisions of subsection (2) shall also apply where the Commission is

unable, after making reasonable inquiries, to locate an association registered under this Act or any of its trustees.

- (4) The Commission may specify in a direction under subsection (2) such other association or charity as it considers appropriate, having regard to the purposes of that association or charity:

Provided that before any association may be so specified by the Commission, the trustees of such an association shall, by a written memorandum to the Commission, indicate its willingness to accept such amount to be transferred to it.

- (5) Any amount received by an association by virtue of this section is to be received by the association on terms that —

(a) it is to be held and applied by the association for the purposes of the association;

(b) as property of the association, it is nevertheless subject to any restrictions on expenditure to which it was subject as property of the relevant association; and

(c) the receipt of a trustee for an association in respect of any amount received from a relevant bank by virtue of this section is a complete discharge of the bank in respect of that amount.

- (6) The Commission shall only exercise its power under this section in respect of any association with the approval of the Minister.

843. Where any bank has given notice to the Commission under section 842 (1) of this Act, it shall, subject to any contrary provision under the relevant banking enactment, not re-activate the dormant accounts, without first notifying the Commission -

Accounts which cease to be dormant before transfer.

(a) if before any transfer is made by the bank in pursuance of a direction under section 842 (2) of this Act, the bank has cause to believe that the account or accounts held by it in the name of or on behalf of an association is no longer dormant, the bank shall without delay notify the Commission that the account or accounts have ceased to be dormant.

(b) if it appears to the Commission that the account or accounts in question is or are no longer dormant, or

where the Commission receives satisfactory account of the activities of the association pursuant to section 842 (2), it shall revoke any direction made to the bank under section 842 (2) of this Act with respect to any such account.

844. (1) No obligation as to secrecy or other restriction on disclosure, however imposed, shall preclude a relevant bank from disclosing any information on the status of dormant bank accounts to the Commission for the purpose of enabling the Commission to discharge its functions under sections 842 and 843 of this Act. Dormant bank accounts: supplementary.
- (2) For the purposes of this section and sections 842 and 843 of this Act and, an account is dormant if no transaction, other than —
- (a) a transaction consisting of a payment into the account, or
  - (b) a transaction which the bank holding the account has itself caused to be effected, has been effected in relation to the account within the period of five years immediately preceding the date when the Commission is informed as mentioned in section 842 (1) of this Act.
- (3) For the purposes of sections 842 and 843 of this Act, the term "bank" and in this section, a "relevant bank" means —
- (a) any Central Bank of Nigeria designated money deposit institution; or
  - (b) such other person or organisation who may lawfully accept deposits as may be prescribed by the Minister.
- (4) For the purposes of sections 842 and 843 of this Act, references to the transfer of any amount to an association are deemed to be references to any of its transfers made to —
- (a) the trustees of the association, or
  - (b) any trustee of the association, as the trustee of the association may determine, and any reference to any amount received by an association is to be read accordingly.

845. (1) The trustees of an association shall submit to the Commission a bi-annual statement of affairs of the association, as the Commission shall specify in its regulations. Bi-annual statement of affairs.
- (2) If the trustees fail to comply with subsection (1), each trustee shall be liable to a penalty for every day during which the default continues in such amount as the Commission shall specify in its regulations.
846. (1) The trustees of an association shall ensure that accounting records are kept in respect of the association and such accounting records shall be sufficient to show and explain the transactions of the association, and — Accounting records and statement of accounts.
- (a) disclose at any time, with reasonable accuracy, the financial position of the association at that time; and
  - (b) enable the trustees to ensure that statements of accounts prepared by them comply with subsection (3).
- (2) The accounting records shall, in particular contain —
- (a) entries showing from day to day all sums of money received and expended by the association, and the matters in respect of which the receipt and expenditure took place; and
  - (b) a record of the assets and liabilities of the association.
- (3) The Commission may make regulations generally for the purpose of this Part and, in particular, without prejudice to the generality of the foregoing provisions, make regulations —
- (a) prescribing the forms, returns and other information required under this Part;
  - (b) prescribing the procedure for obtaining any information required under this Part;
  - (c) requiring returns to be made within the period specified therein by any body corporate to which this Part applies; and
  - (d) prescribing relevant accounting principles or standards to be adopted by the association.

(4) Regulations under subsection (3) may in particular provide —

- (a) for the statement to be prepared in accordance with methods and principles as are specified or referred to in the regulations; and
- (b) any information to be provided by way of notes to the accounts.

(5) The financial year of an association shall be determined by the Commission through regulations issued under subsection (3) and the Commission may also make provision for determining the financial years of an association for the purposes of this Act and any regulation made under it.

847. The accounting records of an association shall be preserved by it for six years from the date on which they were made. Preservation of accounting records.

848. (1) The trustees of the association shall, not earlier than 30<sup>th</sup> June or later than 31st December each year (other than the year in which it is incorporated), submit to the Commission a return showing the name of the association, the names, addresses and occupations of the trustees, and members of the council or governing body, particulars of any land held by the corporate body during the year, and of any change which has taken place in the constitution of the association during the preceding year. Annual returns.

(2) The return referred to in subsection (1) shall be accompanied by the audited statement of accounts for the year of return.

(3) If default is made in complying with this section, the corporate body is liable to a penalty as may be prescribed by regulation.

#### CHAPTER 7 — MERGER AND DISSOLUTION

849. Two or more associations with similar aims and objects may merge under terms and conditions as to Commission may prescribe by regulation. Merger of associations.

850. (1) A body corporate formed under this Part may be dissolved by the Court on a petition brought for that purpose by — Dissolution of a corporate body formed under this Act.

- (a) the governing body or council;
- (b) one or more trustees;
- (c) members of the association constituting at least 50% of the total membership; or
- (d) the Commission.

(2) The grounds on which the body corporate may be dissolved are that —

- (a) the aims and objects for which it was established have been fully realised and no useful purpose would be served by keeping the corporation alive;
- (b) the body corporate is formed to exist for a specified period, that period has expired and it is not necessary for it to continue to exist;
- (c) all the aims and objects of the association have become illegal or otherwise contrary to public policy;
- (d) it is just and equitable in all the circumstances that the body corporate be dissolved; and
- (e) the certificate of registration of the association has been withdrawn, cancelled or revoked by the Commission.

(3) At the hearing of the petition, all persons whose interest or rights may, in the opinion of the Court, be affected by the dissolution shall be put on notice.

(4) If in the event of a winding up or dissolution of the corporate body there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the association, but shall be given or transferred to some other institutions having objects similar to the objects of the association:

Provided that the institution shall be determined by the members of the association at or before the time of dissolution.

(5) If effect cannot be given to the provisions of subsection (4), the remaining property shall be transferred to some charitable object.

## PART G — GENERAL

### CHAPTER 1 — ESTABLISHMENT OF ADMINISTRATIVE PROCEEDINGS COMMITTEE

851. (1) The Commission shall establish an Administrative Proceedings Committee (in this Act referred to as “the Administrative Committee”) comprising —

Establishment of administrative proceedings committee.

- (a) the Registrar-General who shall be the Chairman of the Administrative

Committee;

(b) five representatives from the operational departments of the Commission, not below the grade level of a director, one of whom shall be from the Compliance Department of the Commission; and

(c) a representative of the Federal Ministry of Industry, Trade and Investment not below the grade level of a director.

- (2) The Administrative Committee may co-opt persons, at any of its meetings, as observers, representatives of relevant associations, including associations of shareholders, registrars or trustees, as are considered necessary, and members so co-opted shall not count towards a quorum or have the right to vote in respect of any decision taken by the Administrative Committee.
- (3) The Commission shall designate an officer of the Commission with at least 10 years post-call experience in the legal profession who shall be the secretary of the Administrative Committee.
- (4) The Administrative Committee shall —
  - (a) provide the opportunity of being heard for persons alleged to have contravened the provisions of this Act or its regulations;
  - (b) resolve disputes or grievances arising from the operations of this Act or its regulations; and
  - (c) impose administrative penalties for contravention of the provisions of this Act or its regulations in the settlement of matters before it.
- (5) The chairman shall preside at every meeting of the Administrative Committee and in his absence the members present at the meeting shall select one of their numbers to preside over the meeting.
- (6) The quorum at a sitting of the Administrative Committee is four members present while the determination of issue shall be by simple majority of members present and where there is equality of votes, the chairman or the member presiding shall be entitled to a casting vote.
- (7) Parties shall attend the sitting of the Administrative Committee in person or be represented by a legal practitioner.
- (8) Proceedings of the Administrative Committee shall be recorded on audio or visual tape or such other electronic device.

(9) Decisions reached on any matter before the Administrative Committee shall be forwarded to the parties not later than 14 days after the confirmation by the Board.

(10) The sanctions that may be imposed by the Administrative Committee, include

- (a) imposition of administrative penalties;
- (b) suspension or revocation of registration; or
- (c) recommendation for criminal prosecution if matters brought before it reveals any criminal act or conduct.

(11) Decisions of the Administrative Committee are subject to confirmation by the Board.

(12) Parties dissatisfied with decisions of the Administrative Committee may appeal to the Federal High Court.

(13) Subject to the provisions of this section, the Administrative Committee to regulate its proceedings.

852. (1) No company, limited liability partnership, limited partnership, business name or incorporated trustee shall be registered under this Act by a name or trade mark which —

Prohibited and restricted names.

- (a) is identical with that by which a company or limited liability partnership in existence is already registered, or so nearly resembles that name as to be calculated to deceive, except where the company or limited liability partnership in existence is in the course of being dissolved and signifies its consent in such manner as the Commission requires;
- (b) contains the words "Chamber of Commerce" unless it is a company limited by guarantee;
- (c) in the opinion of the Commission, is capable of misleading as to the nature or extent of its activities or is undesirable, offensive or otherwise contrary to public policy;
- (d) in the opinion of the Commission, would violate or conflict with any existing trademark or business name registered in Nigeria or body corporate formed

under this Act unless the consent of the owner of the trade mark, business name or trustees of the body corporate has been obtained;

- (e) contains any word which, in the opinion of the Commission, is likely to mislead the public as to the nationality, race or religion of the persons by whom the business is wholly or mainly owned or controlled;
- (f) is, in the opinion of the Commission, deceptive or objectionable in that it contains a reference or suggests association with any practice, institution, personage, foreign state or government, international organisation or international brand or is otherwise unsuitable; or
- (g) is capable of undermining public peace and national security.

(2) Except with the consent of the Commission, no company, limited liability partnership, limited partnership, business name or incorporated trustees shall be registered by a name which —

- (a) includes the word "Federal", "National", "Regional", "State",
- (b) "Government", or any other word which, in the opinion of the Commission suggests or is calculated to suggest that it enjoys the patronage of the Government of the Federation, the Government of a State in Nigeria, any Ministry or Department of Government, or contains the word "Municipal" or "Chartered" or in the opinion of the Commission, suggests or is calculated to suggest, connection with any municipality or other local authority;
- (c) contains the word "Cooperative" or its equivalent in any other language or any abbreviation; or of the words "Building Society" or
- (d) contains the word "Group" or "Holding".

(3) No individual or firm shall be registered under PART D or E of this Act if the age of the individual or any individual who is a partner is stated in the statement furnished under section 796 of this Act to be less than 18 years, unless the statement shows at least two other individuals aged above 18 years.

(4) No company, business name or incorporated trustee shall be registered where there is irrefutable evidence to the effect that the company, business name or incorporated trustee has previously been involved in fraudulent trade malpractices, either in local or international trade.

853. (1) The Commission may, by regulations, require that in connection with an application for the approval of the Commission under section 852 the applicant must seek the view of a specified Government Department or other body.

Duty to seek comments of government department or other body.

(2) Where such a requirement applies, the applicant must request the specified Department or other body in writing to indicate whether (and if so why) it has any objections to the proposed name.

(3) Where a request under this section is made in connection with an application for the registration of a company, limited liability partnership, business name or incorporated trustees under this Act, the application must —

(a) include a statement that a request under this section has been made, and

(b) be accompanied by a copy of any response received.

(4) Where a request under this section is made in connection with a change in the name of a company, limited liability partnership, business name or incorporated trustees, the notice of the change sent to the Commission must be accompanied by —

(a) a statement by a director, partner, incorporated trustees or their secretary that a request under this section has been made, and

(b) a copy of any response received.

854. (1) The Minister may make provision by regulations —

Permitted characters.

(a) as to the letters or other characters, signs or symbols (including accents and other diacritical marks) and punctuation that may be used in the name of a company, limited liability partnership, business name or incorporated trustee registered under this Act; and

- (b) specifying a standard style or format for the name of a company, limited liability partnership, business name or incorporated trustee for the purposes of registration.
- (2) The regulations may prohibit the use of specified characters, signs or symbols when appearing in a specified position (in particular, at the beginning of a name).
- (3) A company, limited liability partnership, business name or incorporated trustee may not be registered under this Act by a name that consists of or includes anything that is not permitted in accordance with regulations under this section.

855. (1) If it appears to the Commission that —

Misleading information.

- (a) misleading information has been given for the purposes of a company, limited liability partnership, business name or incorporated trustee registration by a particular name; or
- (b) an undertaking or assurance has been given for that purpose and has not been fulfilled, the Commission may direct the company, limited liability partnership, business name or incorporated trustee to change its name.

(2) The direction shall —

- (a) be given within five years of the company, limited liability partnership, business name or incorporated trustee registration by that name; and
- (b) specify the period within which the company, limited liability partnership, business name or incorporated trustee is to change its name.

(3) The Commission may, by a further direction, extend the period within which the company, limited liability partnership, business name or incorporated trustee is to change its name provided that the direction shall be given before the end of the period for the time being specified.

(4) A direction under this section shall be in writing.

(5) Where a company, limited liability partnership, business name or incorporated trustee fails to comply with a direction of the Commission under this section, the

company, limited liability partnership and incorporated trustees together with every of the officers or each partner in the case of a business name shall each be liable to a penalty for every day the failure continues in such amount as the Commission shall specify in its regulations.

(6) In this section, “officer” of the company, limited liability partnership or incorporated trustee means the directors (including a shadow director), partners or trustees whichever is applicable.

856. (1) If, in the opinion of the Commission, the name by which a company, limited liability partnership, business name or incorporated trustee is registered is misleading as to the nature of its activities as to be likely to cause harm to the public, the Commission may direct the company, limited liability partnership, business name or incorporated trustee in writing to change its name.

Misleading indication of activities.

(2) The direction must be complied with within six weeks from the date of the direction or such longer period as the Commission may deem fit.

(3) Where a company, limited liability partnership, business name or incorporated trustee fails to comply with a direction of the Commission under this section, the company, limited liability partnership or incorporated trustees together with every of its officers or each partner, in the case of a business, shall each be liable to a penalty for every day the failure continues in such amount as the Commission shall specify in its regulations.

(4) In this section, “officer” of the company or incorporated trustees means the directors (including a shadow director) or trustees.

857. (1) A person ("the applicant") may object to the registered name of a company, limited liability partnership, limited partnership, business name or incorporated trustees on the ground that it is —

Objection to the registered name of a company, limited liability partnership, limited partnership, business name or incorporated trustees.

(a) the same as a name associated with the applicant in which he has goodwill; or

(b) sufficiently similar to such a name that its use in Nigeria would be likely to mislead by suggesting a connection between the company, limited liability partnership, limited partnership, business name or incorporated trustee and the applicant.

- (2) The objection must be made by application to the Administrative Proceedings Committee established under this Act.
- (3) The company, limited liability partnership, limited partnership, business name proprietor or partners or incorporated trustees concerned shall be the primary respondent to the application provided that any of its members or directors may be joined as respondents.
- (4) If the ground specified in subsection (1) (a) or (b) is established, it is for the respondents to show that the —
- (a) name was registered before the commencement of the activities on which the applicant relies to show goodwill;
  - (b) company, limited liability partnership, limited partnership, business name or incorporated trustee —
    - (i) is operating under the name,
    - (ii) is proposing to do so and has incurred substantial start-up costs in preparation, or
    - (iii) was formerly operating under the name and is now dormant;
  - (c) name was adopted in good faith; or
  - (d) interests of the applicant are not adversely affected to any significant extent.
- (5) If the facts mentioned in subsection (4) (a) or (b) are established, the objection shall nevertheless be upheld if the applicant shows that the main purpose of the respondents (or any of them) in registering the name was to obtain money (or other consideration) from the applicant or prevent him from registering the name.
- (6) If the objection is not upheld under subsection (4) or (5), it shall be dismissed.
- (7) In this section "goodwill" includes reputation of any description.

858. The Administrative Proceedings Committee shall within 30 days of determining an application under section 857, make its decision and reasons for it available to the public.

Decision of administrative proceedings committee to be made available to the public.

## CHAPTER 2 — MISCELLANEOUS AND SUPPLEMENTAL

859. (1) In the case where any document filed with the Commission is lost or destroyed, the company, limited liability partnership, limited partnership, business name or incorporated trustees may apply to the Commission for leave to submit a copy of the document as originally filed. Resubmission of lost or destroyed registered documents.
- (2) On such application being made, the Commission may direct notice of it to be given to such persons and in such manners as it deems fit.
- (3) The Commission shall upon being satisfied —
- (a) that the original document has been lost or destroyed;
  - (b) of the date of the filing it with the Commission;
  - (c) that the copy of such document produced to the Commission is a correct copy, may certify upon that copy that he is so satisfied and direct that the copy be submitted in the manner required by law in respect of the original.
- (4) Upon submission under this section, the copy shall have the same effect as the original.
- (5) The Court may, by order upon application by any person aggrieved and after notice to any other person whom the Court directs, confirm, vary or rescind the certification by the Commission.
- (6) A copy of the Court order shall be delivered by the applicant under subsection (5) to the Commission for registration within seven days of its making.
- (7) Any payment, contract, dealing, act or thing made, had or done in good faith before the registration of such order and upon the faith of and in reliance upon the certification by the Commission under subsection (3) shall not be invalidated by the court order varying or rescinding the certification.
- (8) Submission of a document under subsection (3) shall be at no fee.
- (9) If default is made in complying with subsection (6), the applicant is liable to a fine as the Commission may by regulation prescribe for the default and for every day the default continues.
860. (1) Any document required to be filed with the Commission for registration may be filed electronically. Electronic documents.

- (2) A copy or extract from any document electronically filed with the Commission or issued by the Commission and certified to be a true copy or extract shall in any proceedings be admissible in evidence as of equal validity with the original documents.
- (3) Any information supplied by the Commission and certified to be a true extract from any document filed with it shall be admissible in evidence and presumed, unless evidence to the contrary is adduced, to be a true extract from such document.

861. (1) The Commission shall preserve all documents delivered to it under this Act.

Preservation of documents and inspection.

- (2) Any person may, on application to the Commission, be permitted to inspect the documents kept under subsection(1) on payment of a prescribed fee and may require a copy or extract of any such document to be certified by the Commission on payment of a prescribed fee.
- (3) Where a copy or extract from any document registered under this Act, is certified by the Commission to be a true copy or extract, it shall in all proceedings be admissible in evidence as of equal validity with the original document, and it shall be unnecessary to prove the official position of the person certifying the copy or extract.
- (4) No process for compelling the production of any document kept by the Commission shall issue from any court, except with the leave of that court, and such process, if issued, shall bear a statement that it is issued with the leave of the Court.

862. (1) Subject to the provisions of subsection (4), if any person in any return, report, certificate, balance sheet, or other document required by, or for the purpose of any of the provisions of this Act, wilfully makes a statement which is false in any material particular knowing it to be false, he commits an offence and is liable —

Penalty for false statements or information.

(a) on conviction to imprisonment for a term of two years; and

(b) in the case of a company, to fine as the Court deems fit for every day the default continues.

- (2) A company which makes a statement in its annual returns which is false in any material particular shall in respect of each year of any such returns be liable to a penalty prescribed in the Commission's regulations if it is a small company or in any other case.
- (3) Nothing in this section shall affect the provisions of any enactment imposing

penalties in respect of perjury in force in Nigeria.

863. (1) A person or association of persons shall not carry on business in Nigeria as a company, limited liability partnership, limited partnership or under a business name without being registered under this Act.

Penalty for carrying on business without registration.

(2) If an individual, corporation or association of persons required under this Act to be registered carries on business without registration or under a name registration of which has been refused or cancelled under this Act, the individual, corporation or every partner in the firm commits an offence and is liable on conviction to a fine prescribed in the Commission's regulations from time to time, of ₦200.00 for every day during which the default continues, and the Court shall order a statement of the required particulars for the registration of the business to be furnished to the Commission for registration within such time as may be specified in the order.

864. Companies, firms and corporate bodies registered under this Act shall retain documents stored in pursuance of the provisions of this Act in soft copies for six years from the date of storage.

Retention of records archived in soft copies.

865. (1) An authorised officer of the Commission shall at all reasonable times have access to premises, buildings, offices, places, books or documents in the custody or under the control of any officer of the company, firm, corporation or any other individual for the purpose of inspecting books or documents or where there is reason to believe that the provisions of this Act are being contravened.

Access to premises, etc.

(2) The powers of an authorised officer under this section shall also extend to the inspection of books or documents, including those stored or maintained in computers or on digital, magnetic, optical or electronic media and any other property, process or matter found on the premises, building, offices or place which the officer considers necessary or relevant for the purpose of any inspection and may without the payment of any fee, make extract from, or copies from such books or documents.

(3) The occupier of the premises, building or place that is entered upon or proposed to be entered upon shall —

(a) provide the authorised officer with all reasonable facilities and assistance for the exercise of the powers under this section;

(b) answer questions relating to the effective exercise of the powers under this section, orally or if required by the authorised officer, in writing or by statutory

declaration.

(4) The Commission may engage the services of any of the law enforcement agencies in the discharge of its functions under this section.

(5) Any person who —

(a) obstructs, hinders, prevents or assaults an authorised officer in the performance of any function or the exercise of any power under this section,

(b) does anything which impedes or is intended to impede the sealing up of premises or removal of books or documents or any other article for the purpose of investigation of any contravention of the provisions of this Act or its regulations,

(c) does anything intended to prevent the procuring or giving of evidence in connection with the prosecution for any breach of the provisions of this Act, or

(d) prevents the arrest of any person by a person duly engaged for that purpose or rescues any person so arrested,

commits an offence and be liable on conviction to a fine as the Court deems fit or imprisonment for a term not exceeding 12 months or to both.

866. The Commission shall have power to compound any administrative offence under this Act by accepting such sums of money as it deems fit in the circumstance but not exceeding the maximum fine to which the offender would have been liable if he had been convicted of the offence.

Power to compound offences.

867. The Commission may, with the approval of the Minister, make regulations generally for the purpose of this Act and in particular, make regulations —

Regulations.

(a) prescribing the forms, returns and other information required under this Act;

(b) prescribing the procedure for obtaining any information required under this Act;

(c) requiring returns to be made within the period specified by any company, limited liability partnership, limited partnership, business name proprietors or incorporated trustees to which this

Act applies;

(d) prescribing any fees payable under this Act; and

(e) generally for the conduct and regulation of registration under this Act.

868. (1) In this Act —

Interpretation.

"agent" does not include a legal practitioner acting as counsel for any person;

"alien" means a person or association, whether corporate or unincorporated, other than a Nigerian citizen or association a company, business name or association incorporated or registered in Nigeria;

"annual return" means the return required to be made in the case of –

(a) a company limited by shares, under sections 418-419 of this Act;

(b) a company limited by guarantee, under section 420 of this Act;

(c) a business name, under section 822 of this Act; and

(d) incorporated trustees, under section 848 of this Act;

"arrangement" has the meaning assigned to it under section 710 of this Act;

"articles" means the articles of association of a company, as originally framed or as altered by special resolution;

"book and paper" and "book or paper" include accounts, deeds, writings, and documents;

"business" includes any trade, industry and profession and any occupation carried on for profit;

"business name" means the name or style under which any business is carried on whether in partnership or otherwise;

"circulating capital" means a portion of the subscribed capital of the company intended to be used by being temporarily parted with and circulated in business, in the form of money, goods and other assets, and which, or the proceeds of which, are intended to return to the company with an increment, and are intended to be used again and again, and to always return with some accretion;

"Commission" means the Corporate Affairs Commission established under this Act;

"company" or "existing company" means a company formed and registered under this Act or, as the case may be, formed and registered in Nigeria before and in existence on the commencement of this Act;

"company limited by guarantee" and "company limited by shares" have the meanings assigned to them respectively by section 21 of this Act;

"companies liquidation account" means the account kept on behalf of the Commission pursuant to section 591 of this Act;

"contributory" means every person liable to contribute to the assets of a company in the event of its being wound up and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, the expression includes any person alleged to be contributory;

"Court" or "the Court" used in relation to a company, means the Federal High Court, and to the extent to which application may be made to it as; court includes the Court of Appeal and the Supreme Court of Nigeria;

"creditor" means any person who is owed an obligation (secured or unsecured) accruing on a debt, liability or performance under a contract (express or implied), or in tort, by another person;

"creditors voluntary winding up" has the meaning assigned to it by section 625 (4) of this Act;

"debenture" means a written acknowledgment of indebtedness by the company, setting out the terms and conditions of the indebtedness, and includes debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of the company or not;

“designated partner” means any partner designated as such pursuant to section 749;

"director" includes any person occupying the position of director by whatever name called; and includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;

"dividend" means a proportion of the distributed profits of the company which may be a fixed annual percentage, as in the case of preference shares, or it may be variable according to the prosperity or other circumstances of the company, as in the case of equity shares;

"document" includes information recorded in any form, summons, notice, order and other legal process, and register;

"equity capital" shall be construed accordingly;

"equity share" means a share other than a preference share; and

"firm" means an unincorporated body of two or more individuals or one or more individual and one or more corporations, or two or more corporations, who or which have entered into partnership with one another with a view to carrying on business for profit;

"fixed capital" means that capital which a company retains in the form of assets upon which the subscribed capital or other sum has been expended, and which assets either themselves produced income, independent of any further action by the company, or being retained by the company are made use of to produce income or gain profits;

"foreign company" means a company incorporated elsewhere than in Nigeria;

"foreign limited liability partnership" means a limited liability partnership formed, incorporated or registered outside Nigeria;

"forename" includes a Christian name and a personal name and when used with a surname includes any first name, and "surname" includes a patronymic;

"Gazette" or "Federal Gazette" means the official Gazette of the Federation;

"group financial statements" has the meaning assigned to it by section 379 (1) of this Act;

"holding company" means a holding company as defined by section 381 of this Act;

"inability to pay debts" in relation to a company has the meaning assigned by section 572 of this Act;

"initials" includes any recognised abbreviation of a forename;

"insolvent person" where used in this Act means any person in Nigeria who, in respect of any judgment, Act or court order against him, is unable to satisfy execution or other process issued in favour of a creditor, and the execution or other process remains unsatisfied for not less than six weeks;

"insolvency practitioner" means a legal practitioner within the meaning of the Legal Practitioners Act or a member of the Institute of Chartered Accountants of Nigeria or such other professional bodies of accountants as are established by an Act of the National Assembly;

"issued generally" means, in relation to a prospectus, issued to persons who are not existing members or debenture holders of the company;

"issued share capital" in relation to any reduction has the meaning assigned by section 124

(2) of this Act;

"legal practitioner" has the meaning assigned to it by the Legal Practitioners Act;

"limited liability partnership" means a partnership formed and registered under this Act;

"limited liability partnership agreement" means any written agreement between the partners of the limited liability partnership or between the limited liability partnership and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that limited liability partnership;

"member" includes the heir, executor, administrator or other personal representative, as the case may be, of the member;

"members' voluntary winding up" has the meaning assigned to it by section 625 (4) of this Act;

"memorandum" means the memorandum of association of a company as originally framed or as altered in pursuance of any enactment;

"minimum issued share capital" means the respective amounts stated in section 27 (2) (a) of this Act;

"Minister" means the Minister charged with responsibility for trade; and

"Ministry" shall be construed accordingly;

"minor" means a person who has not attained the age of 18 years;

"non-cash asset" means any property or interest in property other than cash and for this purpose, cash includes foreign currency;

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

"official receiver" means the officer by whatever name called or known charged with control of affairs in bankruptcy and if the appointment is vacant for any reason whatsoever, means the sheriff;

"partner" means a co-owner, member, or investor in a partnership, and shall include a person who joins with others to form a partnership and in relation to a limited liability partnership, means any person who becomes a partner in the limited liability partnership, in accordance with the partnership agreement;

"person" includes an individual, company, or other entity, which has legal rights and is subject to obligations;

"personal representative" where customary law is applicable, includes successors appointed in respect of deceased contributories;

"person with significant control" means any person -

- (a) directly or indirectly holding at least 5% of the shares or interest in a company or limited liability partnership;
- (b) directly or indirectly holding at least 5% of the voting rights in a company or limited liability partnership;
- (c) directly or indirectly holding the right to appoint or remove a majority of the directors or partners in a company or limited liability partnership;
- (d) otherwise having the right to exercise or actually exercising significant influence or control over a company or limited liability partnership; or
- (e) having the right to exercise, or actually exercising significant influence or control over the activities of a trust or firm whether or not it is a legal entity, but would itself satisfy any of the first four conditions if it were an individual;

"preference share" means a share, by whatever name designated, which does not entitle the holder of it to any right to participate beyond a specified amount in any distribution whether by way of dividend or on redemption, in a winding up, or otherwise;

"prescribed" means, as respects the provisions of this Act (other than as to the winding up of companies), prescribed by court or, as the case may be, by other proper authority by regulations or order, and as to winding up, means as prescribed by rules of court, or deemed so to be;

"private company" has the meaning assigned to it by section 22 (1) of this Act;

"prospectus" means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company and includes any document which, save to the extent that it offers securities for a consideration other than cash, is a prospectus;

"receiver" includes a manager;

"recognised stock exchange" means anybody of persons for the time being recognised by the Securities and Exchange Commission as a stock exchange dealing in shares, debentures and other securities;

"registered company" means a company incorporated or deemed to be incorporated under this Act;

"Registrar-General" means the Registrar-General appointed under this Act;

"resolution for reducing share capital" has the meaning assigned to it by section 131 of this Act;

"resolution for voluntary winding up" has the meaning assigned to it by section 620 of this Act;

"rules" includes rules made by the Chief Judge of the Federal High Court for the purpose of section 616 or 683 of this Act and all incidental forms together with rules made by the Corporate Affairs Commission;

"secured creditor" means a creditor who has been granted a security interest in any property, asset or assets for the purpose of securing the performance of a debt or guarantee obligation;

"securities" includes shares, debentures, debenture stock, bonds, notes (other than promissory notes) and units under a unit trust scheme;

"share" means the interests in a company's share capital of a member who is entitled to share in the capital or income of such company; and except where a distinction between stock and shares is expressed or implied, includes stock;

"share capital" means the issued share capital of a company at any given time;

"show cards" means a card containing or exhibiting articles dealt with, or samples or representations thereof;

"small company" has the meaning assigned to it under section 394 of this Act;

"statutory declaration" means a declaration voluntarily made under the Oaths Act and in Nigeria includes one so made under any other enactment or law providing for the taking of a voluntary declaration;

"statutory meeting" means the meeting required to be held by section 235 (1) of this Act;

"statutory report" has the meaning assigned to it by section 235 (2) of this Act;

"subsidiary" means, in relation to a body corporate, a subsidiary as defined by section 381 of this Act;

"treasury share" means a share in a company's share capital which the company itself

holds in a proprietary capacity and enjoys legal, beneficial and economic interest of;

"unlimited company" has the meaning assigned to it by section 21 (1) of this Act;

"unregistered company" where used in Chapters 20 - 27 of Part B of this Act, includes any partnership, association or company with the following exceptions —

(a) a company and any existing company registered under this Act; and

(b) a partnership, association or company which consists of less than eight members and is not a foreign partnership, association or company;

"unsecured creditors" means any creditor who is not a secured creditor;

(2) The Registration of a business name under this Act shall not be construed as authorising the use of that name if, apart from such registration, the use could be prohibited.

(3) References in this Act to bodies corporate or to corporations exclude corporations sole; but unless the context otherwise requires, they shall include references to companies incorporated outside Nigeria.

869. (1) Subject to the provisions of this section, the Companies and Allied Matters Act, 1990, the Companies and Allied Matters (Amendment) Act 1990, the Companies and Allied Matters (Amendment) Act, 1991, the Companies and Allied Matters (Amendment) Act, 1992 and the Companies and Allied Matters (Amendment) Act, 1998 are, on the commencement of this Act, are repealed.

Repeal and savings.

(2) Nothing in this Act shall affect any order, rule, regulation, appointment, conveyance, mortgage, deed or agreement, made, resolution passed, direction given, proceeding taken, instrument issued or thing done under the enactment hereby repealed; but any such order, rule, regulation, appointment, conveyance, mortgage, deed, agreement, resolution, direction, proceeding, instrument or thing if in force immediately before the commencement of this Act shall, on the commencement of this Act, continue in force, and so far as it could have been made, passed, given, taken, issued or done under this Act shall have effect as if so made, passed, given, taken, issued or done.

(3) Nothing in this Act shall be construed so as to prohibit the continuation of an inspection by inspectors appointed under any enactment repealed, begun before the commencement of this Act, and section 358 of this Act shall apply to a report of inspectors appointed under any enactment repealed as it applies to a report of inspectors appointed under section 357 of this Act.

- (4) A register kept under the enactment repealed shall be deemed to be kept under the corresponding provisions of this Act.
- (5) Funds and accounts constituted under this Act shall be deemed to be in continuation of the corresponding funds and accounts constituted under the enactment repealed.
- (6) Nothing in this Act shall affect the incorporation of any company registered under any enactment repealed.
- (7) Any individual, firm or company who immediately before the coming into operation of this Act was registered as a business name under the enactment repealed, shall be deemed to be registered under and in accordance with the repealed Act.

870. This Act may be cited as the Companies and Allied Matters Act, 2019.

Citation.

Schedules

First Schedule

Sections 378 (1) and (6) (a) 380

FORM AND CONTENT OF COMPANY'S FINANCIAL STATEMENTS

PART I — GENERAL INFORMATION TO BE DISCLOSED  
GENERAL RULES AND FORMATS

SECTION A -

GENERAL INFORMATION TO BE DISCLOSED

1. All accounting information that assist users to assess the financial liquidity, profitability and viability of a company should be disclosed and presented in a logical, clear and understandable manner.
2. The financial statements of a company shall state —
  - (a) the name of the company;
  - (b) the period covered;
  - (c) a brief description of its activities;
  - (d) its legal form; and
  - (e) its relationship with its significant local and overseas suppliers (if any) including the immediate and ultimate parent, associated or affiliated company.
3. Financial statements shall include the —
  - (a) statement of accounting policies;
  - (b) balance sheet;
  - (c) profit and loss account or income statement;
  - (d) notes on the accounts;
  - (e) statement of source and application of funds;
  - (f) value added statement; and
  - (g) five-year financial summary.

4. Financial implication of inter-company transfer and technical management agreements between the company and its significant local and overseas suppliers (if any), including its immediate and ultimate, associated, affiliated company shall be disclosed.
5. Financial statements shall show corresponding figures for the preceding period.

#### SECTION B — GENERAL RULES

6. (1) Subject to the following provisions of this Schedule, every —
  - (a) balance sheet of a company shall show the items listed in either of the balance sheet formats set out in section C of this Part; and
  - (b) profit and loss account of a company shall show the items listed in any one of the profit and loss account formats so set out, in either case, in the order and under the headings and subheadings given in the format adopted.
- (2) Subparagraph (1) is not to be read as requiring the heading or sub-heading for any items to be distinguished by any letter or number assigned to that item in the format adopted.
7. (1) Where, in accordance with paragraph 6 (1), a company's balance sheet or profit and loss account for any year has been prepared by reference to one of the formats set out in section C of this Schedule, the directors of the company shall adopt the same format in preparing the accounts for subsequent years of the company unless in their opinion there are special reasons for a change.
  - (2) Particulars of any change in the format adopted in preparing a company's balance sheet or profit and loss account in accordance with paragraph 6 (1) shall be disclosed, and the reasons for the change shall be explained in a note to the accounts in which the new format is first adopted.
8. (1) Any item required in accordance with paragraph 6 (1) to be shown in a company's balance sheet or profit and loss account, may be shown in greater detail than required by the format adopted.
  - (2) A company's balance sheet or profit and loss account may include an item representing or covering any asset or liability, income or expenditure not otherwise covered by any of the items listed in the format adopted, but the following shall not be treated as assets in any company's balance sheet —

- (a) preliminary expenses;
- (b) expenses or commission on any issue of shares or debentures; and
- (c) research and development costs.

(3) In preparing a company's balance sheet or profit and loss account, the directors of the company shall adopt the arrangement and subheadings otherwise required under subparagraph (1) in respect of the items to which an Arabic number is assigned in the format adopted, in any case where the special nature of the company's business requires such adaptation.

(4) Items to which Arabic numbers are assigned in any of the formats set out in section B may be combined in a company's accounts for any year if either —

- (a) their individual amounts are not material to assessing the state of affairs or profit or loss of the company for that year; or

- (b) the combination facilitates that assessment:

Provided that in a case within paragraph (a) the individual amounts of any item so combined shall be disclosed in a note to the accounts.

(5) Subject to paragraph 9 (3), a heading or subheading corresponding to an item listed in the format adopted in preparing a company's balance sheet or profit and loss account shall not be included if there is no amount to be shown for that item in respect of the year to which the balance sheet or profit and loss account relates.

(6) Every profit and loss account of a company shall show separately as additional items —

- (a) an amount set aside or proposed to be set aside to, or withdrawn or proposed to be withdrawn from, reserves; and

- (b) the aggregate amount of any dividend paid and proposed.

9. (1) In respect of every item shown in a company's balance sheet or profit and loss account, the corresponding amount for the year immediately preceding that to which the balance sheet or profit and loss account relates shall also be shown.

(2) Where that corresponding amount is not comparable with the amount to be

shown for the item in question in respect of the year to which the balance sheet or profit and loss account relates, the former amount shall be adjusted and particulars of the adjustment and the reasons for it shall be disclosed in a note to the accounts.

- (3) Paragraph 8 (5) does not apply in any case where an amount can be shown for the item in question in respect of the year immediately preceding that to which the balance sheet or profit and loss account relates, and that amount shall be shown under the heading or subheading required under subparagraph (1) for that item.
10. The amounts in respect of items representing assets or income may not be set off against amounts in respect of items representing liabilities or expenditure (as the case may be), or vice versa.

## SECTION C — THE REQUIRED FORMATS FOR ACCOUNTS

### *Preliminary*

11. References in this Part of this Schedule to the items listed in any of the formats set out below are to those items read together with any of the notes following the formats which apply to any of those items, and the requirement imposed by subparagraph 8 (1) to show the items, listed in any such format in the order adopted in the format, is subject to any provision in those notes for alternative positions for any particular items.
12. A number in brackets following any item in any of the formats set out under format 1 is a reference to the note of that number in the notes following the formats.
13. In the notes following the formats —
- (a) the heading of each note gives the required heading or subheading for the item to which it applies and a reference to any letter and number assigned to that item in the formats set out below (taking a reference in the case of Format 2 of the balance sheet formats to the item listed under assets or under liabilities as the case may require); and
  - (b) references to a numbered format are to the balance sheet format or, as the case may require, to the profit and loss account format of that number set out under format 1.

*Balance Sheet Formats*

FORMAT I

**A. Called up Share Capital Not Paid (1)**

**B. Fixed Assets**

1. Land and buildings.
2. Plant and machinery.
3. Fixtures, fittings, tools and equipment.
4. Construction-in-progress.
5. Pre-payment for stocks in-transit.

**C. Long-term Investments**

1. Shares in group companies.
2. Loans to group companies.
3. Shares in related companies.
4. Loans to related companies.
5. Investments other than loans.
6. Loans.
7. Own shares (treasury shares) (4).
8. Bonds, debentures and Federal Government Development Stocks.

**D. Deferred Charges**

1. Development costs.
2. Concessions, patents, licences, franchise, trademarks and similar rights and assets (2).
3. Goodwill (3).
4. Pre-payment for services to be received.

**E. Current Assets**

**I. Current Assets**

1. Stocks
2. Raw materials and consumables.
3. Work-in-progress.
4. Finished goods and goods awaiting sale.
5. Pre-payment for stocks in transit.

**II. Debtors (5)**

1. Trade debtors.
2. Amount owed by group companies.
3. Amount owed by related companies.
4. Other debtors.
5. Called up share capital not paid (1).
6. Pre-payments and accrued income.

### **III. Short-term investment**

1. Shares in group companies.
2. Own shares (Treasury shares) (4).
3. Other investments.

### **IV. Cash in bank and at hand**

### **F. Prepayments and accrued income(6)**

### **G. Creditors: amounts falling due within one year**

1. Debenture loans (7).
2. Bank loans and overdrafts.
3. Payments received on account (8).
4. Trade creditors.
5. Bills of exchange payable.
6. Amounts owed to group companies.
7. Amounts owed to related companies.
8. Other creditors including taxation (P.A.Y.E.) and National Provident Fund (social security) (9).
9. Accruals and deferred income (10).

### **H. Net current assets (liabilities) (11)**

### **I. Total assets less current liabilities**

### **J. Creditors: amount falling due after more than one year**

1. Debenture loans (7).
2. Bank loans and overdrafts.
3. Payments received on account (8).
4. Trade creditors.
5. Bills of exchange payable.
6. Amounts owed to group companies.
7. Amounts owed to related companies.
8. Other creditors including taxation and social security (9).
9. Accruals and deferred income (10).

### **K. Provisions for liabilities and charges**

1. Pensions and similar obligations.
2. Taxation, including deferred taxation.
3. Other provisions.

### **L. Accruals and deferred income (10)**

## **M. Capital and reserves**

1. Called up share capital (12)
2. Share premium account
3. Revaluation reserves
4. Other reserves
  1. Capital redemption reserve.
  2. Reserve for own shares.
  3. Reserves provided for by the articles of association.
  4. Other reserves.

## **V. Profit and loss transferred from Profit and Loss Account or Income Statement**

### **Balance Sheet Formats**

#### **FORMAT 2**

#### **ASSETS**

##### **A. Called up share capital not paid(1)**

##### **B. Tangible assets**

1. Land and buildings.
2. Plant and machinery.
3. Fixtures, fittings, tools and equipment.
4. Payments on account and assets in course of construction.

##### **C. Long-term investment**

1. Shares in group companies.
2. Loans to group companies.

3. Shares in related companies.
4. Loans to related companies.
5. Other investments other than loans.
6. Other loans.
7. Own shares (treasury shares) (4).

#### **D. Deferred charges**

1. Development costs.
2. Concessions, patents, licences, trademarks and similar rights and assets (2).
3. Goodwill (3).
4. Payments on account.

#### **E. Current assets**

##### **I. Stocks**

1. Raw materials and consumables.
2. Work-in-progress.
3. Finished goods and goods awaiting sale.
4. Payments for stocks in transit.

##### **II. Debtors (5)**

1. Trade debtors.
2. Amounts owed by group companies.
3. Amounts owed by related companies.
4. Other debtors.
5. Called up share capital not paid (1).
6. Pre-payments and accrued income (6).

##### **III. Short-term investments**

1. Shares in group companies.
2. Own shares (Treasury Shares) (4).
3. Other investments.

##### **IV. Cash in bank and at hand**

#### **F. Pre-payments and accrued income (6)**

### **CAPITAL AND LIABILITIES**

#### **A. Capital and reserves**

##### **I. Called up share capital(12)**

##### **II. Share premium account**

### **III. Revaluation reserve**

#### **IV. Other reserves**

1. Capital redemption reserves.
2. Reserve for own shares (12A).
3. Reserves provided for by the articles of association.
4. Other reserves.

### **V. Profit and loss account (Retained earnings) (12B)**

#### **B. Current liabilities**

1. Debenture loans (7).
2. Trade creditors.
3. Bank loans and overdrafts.
4. Payments received in advance (8).
5. Bills of exchange payable.

#### **C. Non-trade current liabilities**

1. Provision for pension and other similar obligations.
2. Provisions for taxation including deferred taxes, National Provident Fund (social security) (9).
3. Other provisions.
4. Accruals and deferred income (10).
5. Transactions between and within group:
  - (a) Amount owed to group companies.
  - (b) Amount owed to related companies.
  - (c) Others.

### **Portions of Long-Term Liabilities due in the Current Period.**

#### **D. Long-term liabilities**

4. Debenture loans (portions not due next year).
5. Bonds (portion not due next year).
6. Other long-term debts (portion not due next year).

### **Notes on the Balance Sheet Formats**

- (1) Called up share capital not paid (Formats 1 and 2, items A and E II 5) — This item may be shown in either of the two positions given in Formats 1 and 2.
- (2) Concessions, patents, licences, trademarks and similar rights and assets

(Formats 1 and 2, item D2) — Amounts in respect of assets shall only be included in a company's balance sheet under this item if either —

(a) the assets were acquired for valuable consideration and are not required to be shown under goodwill; or

(b) the assets in question were created by the company itself.

- (3) Goodwill (Formats 1 and 2, items D 3) — Amounts representing goodwill shall only be included to the extent that the goodwill was acquired for valuable consideration.
- (4) Own shares (Formats 1 and 2, items C 7 and E III 2) — The nominal value of the shares held shall be shown separately.
- (5) Debtors (Formats 1 and 2, items E II 1 - 6) — The amount falling due after more than one year shall be shown separately for each item included under debtors.
- (6) Pre-payments and accrued income (Formats 1 and 2, items E II 6 and F) — This item may be shown in either of the two positions given in Formats 1 and 2.
- (7) Debenture loans (7) (Format 1, items G 1 and B 1 and Format 2, item C 1) — The amount of any convertible loans shall be shown separately.
- (8) Payments received on account (Format 1, items G 3 and J 3 and Format 2, item C 3) — Payments received on account of orders shall be shown for each of these items in so far as they are not shown as deductions from stocks.
- (9) Other creditors including taxation (Format 1, items G 8 and J 8 and Format 2, item C 2) — The amount for creditors in respect of taxation shall be shown separately from the amount for other creditors.
- (10) Accruals and deferred income (Format 1, items G 9, J 9 and L 1 and Format 2, item C 4) — The two positions given for this item in Format I at E 9 and H 9 are an alternative to the position at J, but if the item is not shown in a position corresponding to that at J, it may be shown in either or both of the other two positions (as the case may require). The two positions given for this item in Format 2 are alternatives.
- (11) Net current assets (liabilities) (Format 1, item H) — In determining the amount to be shown for this item any amounts shown under pre-payments and accrued income shall be taken into account wherever shown.
- (12) Called up share capital (Format 1, item K 1 and Format 2, item A) - The

amount of allotted share capital and the amount of called up share capital which has been paid up shall be shown separately.

- (13) Creditors — Amounts falling due within one year and after one year shall be shown separately for each of these items and their aggregate shall be shown separately for all of these items.

## **Profit and Loss Account Formats**

### **FORMAT 1**

*(See note (17) below)*

1. Turnover.
2. Cost of sales (14).
3. Gross profit or loss.
4. Distribution expenses (14).
5. Administration expenses (14).
6. Other operating income (14).
7. Income from shares in group companies.
8. Income from shares in related companies.
9. Income from other fixed asset investments (15).
10. Other interest receivable and similar income (15).
11. Amounts written off investments.
12. Accrued interest expense and similar charges.
13. Tax on profit or loss on ordinary activities.
14. Profit or loss on ordinary activities after taxation.
15. Extraordinary income.
16. Extraordinary charges.
17. Extraordinary profit or loss.
18. Tax on extraordinary profit or loss.
19. Other taxes under the above items.
20. Profit or loss for the financial year.
21. Earnings per share.
22. Dividend per share.

## **Profit and Loss Account Formats**

### **FORMAT 2**

1. Sales or revenue.
2. Change in stocks of finished goods and in work-in-progress.

3. Own work capitalised.
4. Other operating income.
5. (a) Raw materials and consumables.  
(b) Other external charges.
6. Staff costs:
  - (a) wages and salaries;
  - (b) other pension costs.
7. (a) Depreciation of fixed assets, depletion and amortisation of wasting and intangible assets;  
(b) Exceptional amounts written off current assets.
8. Other operating charges.
9. Income from shares in group companies.
10. Income from shares in related companies.
11. Income from other fixed asset investments (15).
12. Other interest receivable and similar income (15).
13. Amounts written off investments.
14. Interest payable and similar charges (16).
15. Tax on profit or loss on ordinary activities.
16. Profit or loss on ordinary activities after taxation.
17. Extraordinary income.
18. Extraordinary charges.
19. Extraordinary profit or loss.
20. Tax on extraordinary profit or loss.
21. Other taxes not shown under the above item.
22. Profit or loss for the current year transferred to Retained Earnings or Reserve.

## **Profit and Loss Account Formats**

### **FORMAT 3**

*(See note (17) below)*

#### **A. Charges**

1. Cost of sales (14).
2. Distribution costs (14).
3. Administrative expenses (14).
4. Amounts written off investments.
5. Interest payable and similar charges (16).
6. Tax on profit or loss on ordinary activities.
7. Profit or loss on ordinary activities after taxation.
8. Extraordinary charges.
9. Tax on extraordinary profit or loss.
10. Other taxes not shown under the above items.
11. Profit or loss for the financial year.

## **B. Income**

1. Turnover.
2. Other operating income.
3. Income from shares in group companies.
4. Income from shares in related companies.
5. Income from other fixed asset investments (15).
6. Other interest receivable and similar income (15).
7. Profit or loss on ordinary activities after taxation.
8. Extraordinary income.
9. Profit or loss for the financial year.

## **Profit and Loss Account Formats**

### **FORMAT 4**

#### **A. Charges**

1. Reduction in stocks of finished goods and in work-in-progress.
2. (a) Raw materials and consumables;  
(b) Other external charges.
3. Staff costs:
  - (a) wages and salaries;
  - (b) other pension costs.
4. (a) Depreciation and other amounts written off tangible and intangible fixed assets;  
(b) Exceptional amounts written off current assets.
5. Other operating charges.
6. Amounts written off investments.
7. Interest payable and similar charges (16).
8. Tax on profit or loss on ordinary activities.
9. Profit or loss on ordinary activities after taxation.
10. Extraordinary charges.
11. Tax on extraordinary profit or loss.
12. Other taxes not shown under the above items.
13. Profit or loss for the financial year.

#### **B. Income**

1. Turnover.
2. Increase in stocks of finished goods and in work-in-progress.
3. Own work capitalised.
4. Other operating income.
5. Income from shares in group companies.
6. Income from shares in related companies.
7. Income from other fixed asset investments (15).
8. Other interest receivable and similar income (15).
9. Profit or loss on ordinary activities after taxation.
10. Extraordinary income.

11. Profit or loss for the financial year.

### **Notes on the Profit and Loss Account Format**

- (14) Cost of sales: distribution costs: administrative expenses - (Format 1, items 2, 4 and 5 and Format 3, items A 1, 2 and 3) - These items shall be stated after taking into account any necessary provisions for depreciation or diminution in value of assets.
- (15) Income from other fixed asset investments: other interest receivable and similar income (Format 1, items 9 and 10: Format 2, items 11 and 12: Format 3, items B 5 and 6: Format 4, items B 7 and 8) — Income and interest derived from group companies shall be shown separately from income and interest derived from other sources.
- (16) Interest payable and similar charges - (Format 1, item 12: Format 2, item 14: Format 3, item A 5: Format 1, item A 7) — The amount payable to group companies shall be shown separately.
- (17) Formats 1 and 3 — The amount of any provisions for depreciation and diminution in value of tangible and intangible fixed assets falling to be shown under items 7 (a) and A 4 (a) respectively in Formats 2 and 4, shall be disclosed in a note to the accounts in any case where the profit and loss account is prepared by reference to Format 1 or Format 3.

## **PART II — ACCOUNTING PRINCIPLES AND RULES SECTION A ACCOUNTING PRINCIPLES**

### *Preliminary*

14. Subject to paragraph 15, the amounts to be included in respect of all items shown in a company's financial statements shall be determined in accordance with generally accepted accounting principles, and with the accounting standards laid down from time to time by the Financial Reporting Council of Nigeria.

### *Departure from the Accounting Principles*

15. If it appears to the directors of a company that there are special reasons for departing from any of the principles stated above in preparing the company's financial statements in respect of any financial year they may do so, but particulars of the departure, the reasons for it and its effect shall be given in a note to the accounts.

## **SECTION A — HISTORICAL COST ACCOUNTING RULES**

### *Preliminary*

16. Subject to section C of this Part of this Schedule, the amounts to be included in respect of all items shown in a company's financial statements shall be determined in accordance with the rules set out in paragraphs 17-28.

*Fixed Assets*

17. Subject to any provision for depreciation or diminution in value made in accordance with paragraph 18 or 19, the amount to be included in respect of any fixed asset shall be its purchase price or production cost.

18. In the case of any fixed asset which has a limited useful economic life, the amount of —

(a) its purchase price or production cost; or

(b) where it is estimated that the assets have a residual value at the end of the period of its useful economic life, its purchase price or production cost less that estimated residual value, shall be reduced by provisions for depreciation calculated to write off that amount systematically over the period of the asset's useful economic life.

19. (1) Where a fixed asset investment of a description falling to be included under item B III of either the balance sheet formats set out in Part I of this Schedule had diminished in value, provisions for diminution in value may be made in respect of it and the amount to be included in respect of it may be reduced accordingly, and such provisions which are not shown in the profit and loss account shall be disclosed (either separately or in aggregate) in a note to the accounts.

(2) Provisions for diminution in value shall be made in respect of any fixed asset which had diminished in value if the reduction in its value is expected to be permanent (whether its useful economic life is limited or not), and the amount to be included in respect of it shall be reduced accordingly, and such provisions which are not shown in the profit and loss account, shall be disclosed (either separately or in aggregate) in a note to the accounts.

(3) Where the reasons for which any provision was made in accordance with subparagraph (1) or (2) have ceased to apply to any extent, that provision shall be written back to the extent that it is no longer necessary, and any amounts written back in accordance with this subparagraph which are not shown in the profit and loss account, shall be disclosed (either separately or in aggregate) in

a note to the accounts.

*Rules for determining particular fixed asset items*

20. (1) Notwithstanding that an item in respect of development costs is included under fixed assets in the balance sheet formats set out in Part I of this Schedule, an amount may only be included in a company's balance sheet in respect of development costs in special circumstances.
- (2) If any amount is included in a company's balance sheet in respect of development costs the following information shall be given in a note to the accounts —
- (a) the period over which the amount of those costs originally capitalised is being or is to be written off; and
  - (b) the reason for capitalising the development costs in question.
21. (1) The application of paragraphs 17 - 19 in relation to goodwill (in any case where goodwill is treated as an asset) is subject to the following provisions of this paragraph.
- (2) The amount of the consideration for goodwill acquired by a company shall be reduced by provision for amortisation calculated to write off that amount systematically over a period of five years or less as may be determined by the directors of the company.
- (3) In any case where any goodwill acquired by a company is shown or included as an asset in the company's balance sheet, the period chosen for writing off the consideration for that goodwill and the reasons for choosing that period shall be disclosed in a note to the accounts.

*Current assets*

22. Subject to paragraph 23, the amount to be included in respect of any current asset shall be its purchase price or production cost.
23. (1) If the net realisable value of any current asset is lower than its purchase price or production cost, the amount to be included in respect of that asset shall be the net realisable value
- (2) Where the reasons for which any provision for diminution in value was made in accordance with subparagraph (1) have ceased to apply to any extent, that provision shall be written back to the extent that it is no longer necessary.

*Miscellaneous and supplementary provision*

*Excess of money owed over value received as an asset item*

24. (1) Where the amount repayable on any debt owed by a company is greater than the value of the consideration received in the transaction giving rise to the debt, the difference may be treated as an asset.
- (2) Where any such amount is so treated —
- (a) reasonable amounts shall be completely written off each year before repayment of the debt; and
  - (b) if the current amount is not shown as a separate item in the company's balance sheet, it shall be disclosed in a note to the accounts.

*Assets included at a fixed amount*

25. (1) The assets which fall to be included among the —
- (a) fixed assets of a company under the item, "tangible assets", or
  - (b) current assets of a company under the item, "raw material and consumables",
- may be included at a fixed quantity and value.
- (2) Subparagraph (1) applies to assets of a kind which are constantly being replaced, where —
- (a) their overall value is not material to assessing the company's state of affairs; and
  - (b) their quantity, value and composition are not subject to material variation.

*Determination of purchase price or production cost*

26. (1) The purchase price of an asset shall be determined by adding to the actual price paid any expenses incidental to its acquisition.
- (2) The production cost of an asset shall be determined by adding to the purchase price of the raw materials and consumables used, the amount of the costs incurred by the company which are directly attributable to the production of that asset.

(3) In addition, there may be included in the production cost of an asset —

- (a) a reasonable proportion of the costs incurred by the company which are only indirectly attributable to the production of that asset, but only to the extent that they relate to the period of production; and
- (b) interest on capital borrowed to finance the production of that asset, to the extent that it accrues in respect of the period of production:

Provided that in a case within paragraph (a) above, that the inclusion of the interest in determining the cost of that asset and the amount of the interest so included is disclosed in a note to the accounts.

(4) In the case of current assets distribution, costs may not be included in production costs.

27. (1) Subject to the qualification mentioned below the purchase price or production of —

- (a) any assets which fall to be included under any item shown in a company's balance sheet under the general item "stocks"; and
- (b) any assets which are tangible assets (including investments), may be determined by the application of any of the methods mentioned in sub- paragraph (2) below in relation to any such assets of the same class, and the method chosen must be one which appears to the directors to be appropriate in the circumstances of the company.

(2) Those methods are —

- (a) the method known as "first in, first out" (FIFO);
- (b) the method known as "last in, first out" (LIFO);
- (c) a weighted average price; and
- (d) any other method similar to any of the methods mentioned above.

(3) Where in the case of any company –

- (a) the purchase price or production cost of assets falling to be included under any item shown in the company's balance sheet has been determined by the application of any method permitted by this paragraph, and
- (b) the amount shown in respect of that item differs materially from the relevant alternative amount given below in this paragraph,

the difference shall be disclosed in a note to the accounts.

- (4) Subject to subparagraph (5) below, for the purposes of subparagraph (3) (b), the relevant alternative amount, in relation to any item shown in a company's balance sheet, is the amount which would have been shown in respect of that item if assets of any class included under that item at an amount determined by any method permitted by this paragraph had instead been included at their replacement cost as at the balance sheet date.
- (5) The relevant alternative amount may be determined by reference to the most recent actual purchase price or production cost before the balance sheet date of the assets of any class included under the item in question instead of by reference to their replacement cost as at that date, but only if the former appears to the directors of the company to constitute the more appropriate standard of comparison in the case of assets of that class.
- (6) For the purposes of this paragraph, assets of any description shall be regarded as tangible if assets of that description are substantially indistinguishable one from another.

*Substitution of original stated amount where price or cost unknown*

- 28. Where there is no record of the purchase price or production cost of any assets of a company or of any price, expenses or costs relevant for determining its purchase price or production cost in accordance with paragraph 26, or any such record cannot be obtained without unreasonable expense or delay, its purchase price or production cost shall be taken for the purposes of paragraph 17 - 23 to be the value record of its value made on or after its acquisition or production by the company.

## SECTION C

### ALTERNATIVE ACCOUNTING RULES

*Preliminary*

29. (1) The rules set out in section B are referred to in this Schedule as the historical cost accounting rules.
- (2) Those rules, with the omission of paragraphs 16, 21 and 25 - 28, are referred to below in this Part of the Schedule as the depreciation rules, and references in this Schedule to the historical cost accounting rules do not include the depreciation rules as they apply by virtue of paragraph 32.
30. Subject to paragraph 32 to 34, the amount to be included in respect of assets of any description mentioned in paragraph 26 may be determined on any basis so mentioned.

*Alternative accounting rules*

31. (1) Intangible fixed assets, other than goodwill, may be included at their current cost.
- (2) Tangible fixed assets may be included at a market value determined as at the date of their valuation or at their current cost.
- (3) Investment of any description falling to be included under item B III of either of the balance sheet formats set out in Part I of this Schedule may be included either —
- (a) at a market value determined as at the date of their last valuation, or
  - (b) at a value determined on any basis which appears to the directors to be appropriate in the circumstances of the company, but in the latter case particulars of the method of valuation adopted and of the reasons for adopting it shall be disclosed in a note to the accounts.
- (4) Investments of any description falling to be included under item C III of either of the balance sheet formats set out in Part I of this Schedule may be included at their current cost.
- (5) Stocks may be included at their current cost.

*Application of the depreciation rules*

32. (1) Where the value of any assets of a company is determined on any basis mentioned in paragraph 31, that value shall be, or (as the case may require) be the starting point for determining, the amount to be included in respect of that asset in the company's accounts, instead of its purchase price or production

cost or any value previously so determined for that asset; and the depreciation rules shall apply accordingly in relation to any such asset with the substitution for any reference to its purchase price or production cost of a reference to the value most recently determined for that asset on any basis mentioned in paragraph 31.

- (2) The amount of any provision for depreciation required in the case of any fixed asset by paragraph 18 or 19 as it applies by virtue of sub-paragraph (1) is referred to below in this paragraph as the adjusted amount, and the amount of any provision which would be required by that paragraph in the case of that asset according to the historical cost accounting rules, is referred to as the historical cost amount.
- (3) Where subparagraph (1) applies in the case of any fixed asset, the amount of any provision for depreciation in respect of that asset —
  - (a) included in any item shown in the profit and loss account in respect of amounts written off assets of the description in question; or
  - (b) taken into account in stating any item so shown which is required by note (14) of the notes on the profit and loss account formats set out in Part I of this Schedule to be stated after taking into account any necessary provisions for depreciation or diminution in value of assets included under it, may be the historical cost amount instead of the adjusted amount provided that the amount of any difference between the two is shown separately in the profit and loss account or in a note to the accounts.

*Additional information to be provided in case of departure from historical costs accounting rules.*

33. (1) This paragraph applies where the amount to be included in respect of assets covered by any item shown in a company's accounts have been determined on any basis mentioned in paragraph 31.
- (2) The items affected and the basis of valuation adopted in determining the amounts of the assets in question in the case of such item shall be disclosed in a note to the accounts.
- (3) In the case of each balance sheet item affected (except stocks) either —
  - (a) the comparable amounts determined according to the historical cost accounting rules; or

- (b) the differences between those amount and the corresponding amounts actually shown in the balance sheet in respect of that item, shall be shown separately in the balance sheet or in a note to the accounts.
- (4) In subparagraph (3), references in relation to any item to the comparable amounts determined as there mentioned are references to-
- (a) the aggregate amount which would be required to be shown in respect of that item if the amounts to be included in respect of all the assets covered by that item were determined according to the historical cost accounting rules; and
  - (b) the aggregate amount of the cumulative provisions for depreciation or diminution in value which would be permitted or required in determining those amounts according to those rules.

*Revaluation reserve*

34. (1) With respect to any determination of the value of an asset of a company on any basis mentioned in paragraph 31, the amount of any profit or loss arising from that determination (after allowing, where appropriate, for any provisions for depreciation or diminution in value made otherwise than by reference to the value to be determined and any adjustment of any such provisions made in the light of that determination) shall be credited or (as the case may be) debited to a separate reserve ("the revaluation reserve").
- (2) The amount of the revaluation reserve shall be shown in the company's balance sheet under a separate subheading in the position given for the item "revaluation reserve" in Format 1 or 2 of the balance sheet formats set out in Part 1 of this Schedule, but need not be shown under that name.
- (3) The revaluation reserve shall be reduced to the extent that the amount standing to the credit of the reserve are in the opinion of the directors of the company no longer necessary for the purpose of the accounting policies adopted by the company; but an amount may only be transferred from the reserve to the profit and loss account if either —
- (a) the amount in question was previously charged to that account; or
  - (b) it represents realised profit.

- (4) The treatment for taxation purposes of amount credited or debited to the revaluation reserve shall be disclosed in a note to the accounts.

### PART III — NOTES TO THE ACCOUNTS

#### *Preliminary*

35. Any information required in the case of any company by the following provisions of this Part of the Schedule shall (if not given in the company's accounts) be given by way of a note to those accounts.

#### *Disclosure of accounting policies*

36. The accounting policies adopted by the company in determining the amounts to be included in respect of item shown in the balance sheet and in determining the profit or loss of the company shall be stated (including such policies with respect to the depreciation and diminution in value of assets).

#### *Information supplementing the balance sheet*

37. Paragraphs 38 to 50 require information which either supplement the information given with respect to any particular items shown in the balance sheet or is otherwise relevant to assessing the company's state of affairs in the light of the information so given.

#### *Share capital and debentures*

38. (1) The following information shall be given with respect to the company's share capital —
- (a) the authorised share capital; and
  - (b) where shares of more than one class have been allotted, the number and aggregate nominal value or shares of each class allotted.
- (2) In the case of any part of the allotted share capital that consists of redeemable shares, the following information shall be given —
- (a) the earliest and latest dates on which the company has power to redeem those shares;
  - (b) whether those shares must be redeemed in any event or are liable to be redeemed at the option of the company or of the shareholder; and

(c) whether any (and, if so, what) premium is payable on redemption.

39. (1) If the company has allotted any shares during the financial year, the following information shall be given —

(a) the reason for making the allotment;

(b) the classes of shares allotted; and

(c) as regards each class of shares, the number allotted, their aggregate nominal value, and the consideration received by the company for the allotment.

(2) With respect to any contingent right to the allotment of shares in the company, the following particulars shall be given —

(a) the number, description and amount of the shares in relation to which the right is exercisable;

(b) the period during which it is exercisable; and

(c) the price to be paid for the shares allotted.

(3) In subparagraph (2) "contingent right to the allotment of shares" means any option to subscribe for shares and any other right to require the allotment of shares and to any person whether arising on the conversion into shares of securities of any other description or otherwise.

40. (1) If the company has issued any debenture during the financial year to which the accounts relate, the following information shall be given —

(a) the reason for making the issue;

(b) the classes of debentures issued; and

(c) as respect each class of debentures, the amount issued and consideration received by the company for the issue.

(2) Particulars of any redeemed debenture which the company has power to re-issue shall also be given.

(3) Where any of the company's debenture are held by a nominee of or trustee for the company, the nominal amount of the debentures and the amount at which they are stated in the accounting records kept by the company in accordance

with section 324 of this Act shall be stated.

*Fixed Assets*

41. (1) In respect of each item which is or would but for paragraph 8 (4)(b) be shown under the general item "fixed assets" in the company's balance sheet, the following information shall be given —

(a) the appropriate amount in respect of that item as at the date of the beginning of the financial year and as at the balance sheet date respectively;

(b) the effect on any amount shown in the balance sheet in respect of that item of —

(i) any revision of the amount in respect of any asset included under that item made during,

(ii) that year on any basis mentioned in paragraph 31,

(iii) acquisitions during that year of any asset,

(iv) disposals during that year of any assets; and

(v) any transfer of assets of the company to and from that item during that year.

(2) The reference in subparagraph (1) (a) to the appropriate amount in respect of any item as at any date there mentioned, is a reference to amounts representing the aggregate amounts determined, as at that date, in respect of assets falling to be included under that item on either of the following bases, that is to say —

(a) on the basis of purchase price or production cost (determined in accordance with paragraphs 21 and 27); or

(b) on any basis mentioned in paragraph 31 (leaving out of account in either case any provision for depreciation or diminution in value).

(3) In respect of each item within sub-paragraph (1) —

(a) the cumulative amount of provisions for depreciation or diminution in value of assets included under that item as at each date mentioned in subparagraph (1) (a);

- (b) the amount of any such provisions made in respect of the financial year;
- (c) the amount of any adjustment made in respect of any such provisions during that year in consequence of the disposal of any assets; and
- (d) the amount of any other adjustments made in respect of any such provisions during that year, shall also be stated.

42. Where any fixed asset of the company, other than listed investments, are included under any item shown in the company's balance sheet at an amount determined on any basis mentioned in paragraph 31, the following information shall be given —

- (a) the years (if they are known to the directors) in which the assets were severally valued and the several values; and
- (b) in the case of assets that have been valued during the financial year, the name of the persons who valued them or particulars of their qualification for doing so and (whichever is stated) the bases of valuation used by them.

43. In relation to any amount which is or would but for paragraph 8 (4) (b) be shown in respect of the item "land and buildings" in the company's balance sheet, there shall be stated —

- (a) how much of the amount is ascribable to land held under statutory right of occupancy and how much to land held under a sublease; and
- (b) how much of the amount ascribable to land held under a sublease is ascribable to land held on long lease and how much to land held on short lease.

#### *Investments*

44. (1) In respect of the amount of each item which is or may for paragraph 8 (4) (b) be shown in the company's balance sheet under the general item " in "investments" (whether as fixed assets or as current assets) shall be stated —

- (a) how much of that amount is ascribable to listed investments; and

- (b) how much of any amount so ascribable is ascribable to investments as respects which there has been granted a listing on a recognised stock exchange and how much to other listed investments.
- (2) Where the amount of any listed investments is stated for any item in accordance with subparagraph (1) (a), the following amounts shall also be stated —
- (a) the aggregate market value of those investments where it differs from the amount stated; and
  - (b) both the market value and the stock exchange value of any investments of which the former value is, for the purposes of the accounts, taken as being higher than the latter

*Reserves and provisions*

45. (1) Where any amount is transferred —

- (a) to or from any reserves;
- (b) to any provisions for liabilities and charges; or
- (d) from any provisions for liabilities and charges otherwise than for the purpose for which the provision was established, and the reserves or provisions are or will but for paragraph 8 (4) (b) be shown as separate items in the company's balance sheet,

the information mentioned in the following sub-paragraph shall be given in respect of the aggregate of reserves or provisions included in the same item.

(2) That information is —

- (a) the amount of the reserves or provisions as at the date of the beginning of the year and as at the balance sheet date respectively;
- (b) any amount transferred to or from the reserves or provisions during that year; and
- (c) the source and application respectively of any amount so transferred.

- (3) Particulars shall be given of each provision included in the item "other provisions" in the company's balance sheet in any case where the amount of that provision is material.

*Provision for taxation.*

46. The amount of any provisions for taxation other than deferred taxation shall be stated.

*Details of indebtedness*

47. (1) In respect of each item shown under "creditors" in the company's balance sheet there shall be stated —

(a) the aggregate amount of any debt included under that item which are payable or repayable otherwise than by instalments and fall due for payment or repayment after the end of five years beginning with the day next following the end of the financial year; and

(b) the aggregate amount of any debt so included which are payable or repayable by instalments and any of which fall due for payment after the end of that period, and in the case of debts within paragraph (a), the aggregate amount of instalments falling due after the end of that period shall also be disclosed for each such item.

- (2) Subject to sub-paragraph (3), in relation to each debt falling to be taken into account under subparagraph (1), the terms of payments or repayment and the rate of any interest payable on debt shall be stated.

- (3) If the number of debts is such that, in the opinion of the directors, compliance with sub-paragraph (2) would result in a statement of excessive length, it shall be sufficient to give a general indication of the terms of payment or repayment and the rates of any interest payable on the debts.

- (4) In respect of each item shown under "creditors" in the company's balance sheet there shall be stated —

(a) the aggregate amount of any debt included under that item in respect of which any security has been given by the company; and

(b) an indication of the nature of the securities so given.

(5) References in this paragraph to an item shown under "creditors" in the company's balance sheet include references where amounts falling due to creditors within one year and after more than one year are distinguished in the balance sheet —

(a) in a case within subparagraph (1), to an item shown under the latter of those categories; and

(b) in a case within subparagraph (4), to an item shown under either of those categories, and references to items shown under "creditors" include references to items which would, but for paragraph 8 (4) (b), be shown under that heading.

48. If any fixed cumulative dividends on the company's shares are in arrears, there shall be stated —

(a) the amount of the arrears; and

(b) the period for which the dividends or, if there is more than one class, each class of them is in arrears.

*Guarantee and other financial commitments*

49. (1) Particulars shall be given of any charge on the assets of the company to secure the liabilities of any other person, including where practicable, the amount secured.

(2) The following information shall be given with respect to any other contingent liability not provided for —

(a) the amount or estimated amount of that liability;

(b) its legal nature; and

(c) whether any valuable security has been provided by the company in connection with that liability and if so, what.

(3) There shall be stated, where practicable —

(a) the aggregate amount or estimated amount of contracts for capital expenditure, if not provided for; and

(b) the aggregate amount or estimated amount of capital expenditure authorised by the directors which has not been contracted.

(4) Particulars shall be given of any —

(a) pension commitments included under any provision shown in the company's balance sheet; and

(b) such commitment for which no provision has been made, and where any such commitment relates wholly or partly to pensions payable to past directors of the company, separate particulars shall be given of that commitment so far as it relates to such pensions.

(5) Particulars shall also be given of any other financial commitment which —

(a) have not been provided for; and

(b) are relevant to assessing the company's state of affairs.

(6) Commitments within any of the preceding subparagraphs undertaken on behalf of or for the benefit of —

(a) any holding company or fellow subsidiary of the company; or

(b) any subsidiary of the company,

shall be stated separately from the other commitments within that subparagraph and commitments within paragraph (a) shall be stated separately from those within paragraph (b).

*Miscellaneous matters*

50. (1) Particulars shall be given of any case where the purchase price or production cost of any asset is for the first time determined under paragraph 28.

(2) Where any outstanding loan made under the authority of section 184 (3) (b) or (c) of this Act (various cases of financial assistance by a company for purchase of its own shares) are included under any item shown in the company's balance sheet, the aggregate amount of those loans shall be disclosed for each item in question.

- (3) The aggregate amount which is recommended for distribution by way of dividend shall be stated.

*Information supplementing the profit and loss account*

51. Paragraphs 52 to 56 require information which either supplements the information given with respect to any particular items shown in the profit and loss account or otherwise provides particulars of income or expenditure of the company or of circumstances affecting the items shown in the profit and loss account.

*Separate statement of certain items of income and expenditure*

52. (1) Subject to the provisions of this paragraph, each of the amounts mentioned in this paragraph shall be stated.

- (2) The amount of the interest on or any similar charges in respect of —

- (a) bank loans and overdrafts, and loans made to the company (other than bank loans and overdrafts) which are repayable —

- (i) than by instalments and fall due for repayment before the end of five years beginning with the day next following the end of the financial year; or

- (ii) by instalments the last of which falls due for payment before the end of that period; and

- (b) loans of any other kind made to the company, but this sub-paragraph shall not apply to interest or charges on loans to the company from group companies, but with that exception, it applies to interest or charges on all loans, whether made on the security of debentures or not.

- (3) The amounts respectively set aside for redemption of share capital and for redemption of loans.

- (4) The amount of income from list investments.

- (5) The amount of rents from land (after deduction of ground rents, rates and other outgoings). This amount need only be stated if a substantial part of the company's revenue for the financial year consists of rents from land.

- (6) The amount charged to revenue in respect of sum payable in respect of the hire

of plant and machinery.

(7) The amount of the remuneration of the auditors (taking "remuneration" for the purposes of this subparagraph, as including any sums paid by the company in respect of the auditors' expenses).

53. (1) The basis on which the charge for Nigerian corporation tax and Nigerian income tax is computed shall be stated.

(2) Particulars shall be given of any special circumstances affecting liability in respect of taxation of profits, income or capital gains for the financial year or liability in respect of taxation of profits, income or capital gains for succeeding financial years.

(3) The following amount shall be stated —

- (a) the amount of the charge for Nigerian corporation tax;
- (b) if that amount would have been greater but for relief from double taxation, the amount which it would have been but for such relief;
- (c) the amount of the charge for Nigerian income tax; and
- (d) the amount of the charge for taxation imposed outside Nigeria profits, income and (so far as charged to revenue) capital gains, and these amounts shall be stated separately in respect of the amount which is or would but for paragraph 8 (4) (b) be shown under the following items in the profit and loss account, that is to say "tax on profit or loss on ordinary activities" and "tax on extraordinary profit or loss".

*Particulars of turnover*

54. (1) If in the course of the financial year the company has carried on business of two or more lines that, in the opinion of the directors, differ substantially from each other, there shall be stated in respect of each line (describing it) —

- (a) the amount of the turnover attributable to that line;  
and
- (b) the amount of the profit or loss of the company before taxation which is in the opinion of the directors attributable to that line.

- (2) If in the course of the financial year the company has supplied markets that in the opinion of the directors, differ substantially from each other, the turnover attributable to each such market shall also be stated.
- (3) In this paragraph "market" means a market delimited by geographical bounds.
- (4) The source, in terms of business or in terms of market, of turnover or (as the case may be), of profit or loss, the directors of the company shall have regard to the manner in which the company's activities are organised.
- (5) For the purposes of this paragraph —
  - (a) classes of business which, in the opinion of the directors, do not differ substantially from each other shall be treated as one class; and
  - (b) markets which, in the opinion of the directors, do not differ substantially from each other shall be treated as one market, and any amount properly attributable to one line of business or (as the case may be) to one market which are not material, may be included in the amount stated in respect of another.

*Particulars of staff*

55. (1) The following information shall be given with respect to the employees of the company —
- (a) the average number of persons employed by the company in the financial year; and
  - (b) the average number of persons so employed within each category of persons employed by the company.
- (2) The average number required by sub-paragraph (1) (a) or (b) shall be determined by dividing the relevant annual number by the number of weeks in the financial year.
- (3) The relevant annual number shall be determined by ascertaining for each week in the financial year for the purposes of —
- (a) subparagraph (1) (a), the number of persons employed under contracts of service by the company in that week (whether throughout the week or
  - (b) subparagraph (1) (b), the number of persons in the

category in question of persons so employed, and in either case, adding together all the weekly numbers.

(4) In respect of all persons employed by the company during the financial year who are taken into account in determining the relevant annual number for the purposes of subparagraph (1) (a), there shall be stated the aggregate amounts respectively of —

(a) wages and salaries paid or payable in respect of that behalf; and

(b) other pension costs so incurred, save in if those amounts or any of them are stated in the profit and loss account.

(5) The categories of persons employed by the company by reference to which the number required to be disclosed by sub-paragraph (1) (b) is to be determined, shall be such as the directors may select, having regard to the manner in which the company's activities are organised.

#### *Miscellaneous matters*

56. (1) Where any amount relating to any preceding year is included in any item in the profit and loss account, the effect shall be stated.

(2) Particulars shall be given of any extraordinary income or charges arising in the year.

(3) The effect shall be stated of any transaction that are exceptional by virtue of size or incidence though they fall within the ordinary activities of the company.

#### *General*

57. (1) Where sums originally denominated in foreign currencies have been brought into account under any item shown in the balance sheet or profit and loss account, the basis on which those sums have been translated into Nigerian currency shall be stated.

(2) Subject to the following sub-paragraph, in respect of every item stated in a note to the accounts, the corresponding amount for the financial year immediately preceding that to which the accounts relate shall also be stated and where the corresponding amount is not comparable, it shall be adjusted and particulars of the adjustment and the reasons for it shall be given.

(3) Subparagraph (2) shall not apply in relation to any amount stated by virtue of

any of the following provisions of this Act —

- (a) section 383 as it applies Parts I and II of the Third Schedule (proportion of share capital of subsidiaries and other bodies corporate held by the company, etc.);
- (b) sections 384 and 385 and the Third Schedule to this Act (particulars of loans to directors, etc.); and
- (c) paragraphs 41 and 45.

#### PART IV — SPECIAL PROVISIONS WHERE THE COMPANY IS A HOLDING OR SUBSIDIARY COMPANY

##### *Company's own financial statements*

58. Where a company is a holding company or a subsidiary of another body corporate and any item required by Part I of this Schedule to be shown in the company's balance sheet in relation to group companies includes —

- (a) amounts attributable to dealings with or interests in any holding company or fellow subsidiary of the company; or
- (b) amounts attributable to dealings with or interests in any subsidiary of the company, the aggregate amounts within paragraphs (a) and (b) respectively shall be shown as separate items, either by way of sub-division of the relevant item in the balance sheet or in a note to the company's accounts.

59. (1) Subject to the following sub-paragraph, where the company is a holding company, the number, description and amount of the shares in and debentures of the company held by its subsidiaries or their nominees shall be disclosed in a note to the company's accounts.

(2) Subparagraph (1) shall not apply in relation to any shares or debentures —

- (a) in the case of which the subsidiary is concerned as personal representative; or
- (b) in the case of which it is concerned as trustee, provided that in the latter case neither the company nor any subsidiary of the company is beneficially interested under the trust, otherwise than by way of security only for the purposes of a transaction entered

into by the ordinary course of a business which includes the lending of money.

*The Second Schedule to this Act has effect for the interpretation of the reference in this sub-paragraph to a beneficial interest under a trust.*

*Consolidated accounts of holding company and subsidiaries*

60. Subject to paragraphs 62 and 65, the consolidated balance sheet and profit and loss account shall combine the information contained in the separate balance sheets and profit and loss accounts of the holding company and of the subsidiaries dealt with by the consolidated accounts, but with such adjustments (if any) as the directors of the holding company think necessary.

61. Subject to paragraphs 62 to 65, and to Part V of this Schedule, the consolidated accounts shall, in giving the information required by paragraph 60, comply so far as practicable with the requirements of this Schedule and with the other requirements of this Act as if they were the accounts of an actual company.

62. The following provisions of this Act, namely —

(a) section 382 as it applies to the Sixth Schedule; and

(b) sections 578 - 579 and the Sixth Schedule,

if relating to accounts, other than group accounts, shall not, by virtue of paragraphs 60 and 61, apply for the purposes of the consolidated accounts.

63. Paragraph 61 is without prejudice to any requirement of this Act which applies (otherwise than by virtue of paragraph 61 or 62) to group accounts.

64. (1) Notwithstanding paragraph 61, the consolidated accounts prepared by a holding company may deal with an investment of any member of the group in the shares of anybody corporate by way of the equity method of accounting in any case where it appears to the directors of the holding company that that body corporate is so closely associated with any member of the group as to justify the use of that method in dealing with investments by that or any other member of the group in the shares of that body corporate.

(2) In this paragraph, references to the group, in relation to consolidated accounts prepared by a holding company, are references to the holding company and the subsidiaries dealt with by the accounts.

65. Notwithstanding paragraphs 60 and 61, paragraphs 17 - 19 and 21 shall not apply to any amount shown in the consolidated balance sheet in respect of goodwill arising

on consolidation.

66. In relation to any subsidiaries of the holding company not dealt with by the consolidated accounts, paragraphs 58 and 59 shall apply for the purpose of those accounts as if those accounts were the accounts of an actual company of which they were subsidiaries.

*Group financial statements not prepared as consolidated financial statements*

67. Group financial statements which are not prepared as consolidated statements, together with any notes to those statements, shall give the same equivalent information as that required to be given by consolidated financial statements by virtue of paragraphs 60 to 66.

*Provisions of general application*

68. (1) This paragraph applies where the company is a holding company and either —

- (a) does not prepare group accounts; or
- (b) prepares group accounts which do not deal with one or more of its subsidiaries, and references below in this paragraph to the company's subsidiaries shall be read in a case within paragraph (b) as references to such of the company's subsidiaries as are excluded from the group accounts.

- (2) Subject to the provisions of this paragraph —

- (a) the reasons why the subsidiaries are not dealt with in group accounts; and
- (b) a statement showing any qualification contained in the reports of the auditors of the subsidiaries on their accounts for their respective years ending with or during the year of the company, and any note or saving contained in those accounts to call attention to a matter which, apart from the note or saving, would properly have been referred to in such a qualification, in so far as the matter which is the subject of the qualification or note is not covered by the company's own accounts and is material from the point of view of its members, shall be given in a note to the company's accounts.

- (3) Subject to the following provisions of this paragraph, the aggregate amount of

the total investment of the holding company in the shares of the subsidiaries under the equity method of valuation shall be stated in a note to the company's financial statements.

- (4) Subparagraph (3) shall not apply where the company is a wholly-owned subsidiary of another body corporate incorporated in Nigeria if there is indeed in a note to the company's accounts a statement that in the opinion of the directors of the company the aggregate value of the assets of the company consisting of shares in or amounts owing (whether on account of a loan or otherwise) from, the company's subsidiaries is not less than the aggregate of the amounts at which those assets are stated or included in the company's balance sheet.
- (5) In so far as information required by any of the preceding provisions of this paragraph to be stated in a note to the company's accounts is not obtainable, a statement to that effect shall be given instead in a note to those accounts.
- (6) The Commission may, on the application or with the consent of a company's directors, direct that in relation to any subsidiary, subparagraphs (2) and (3) shall not apply or shall apply only to such extent as may be provided by the direction.
- (7) Where in any case within sub-paragraph (1) (b) the group accounts are consolidated accounts, references above in this paragraph to the company's accounts and the company's balance sheet respectively, shall be read as references to the consolidated accounts and the consolidated balance sheet.

69. Where a company has subsidiaries whose years did not end with that of the company, the following information shall be given in relation to each such subsidiary (whether or not dealt with in any group accounts prepared by the company) by way of a note to the company's accounts or (where group accounts are prepared) to the group accounts, that is to say —

- (a) the reasons why the company's directors consider that the subsidiaries' years should not end with that of the company;
- (b) the dates of which the subsidiaries' year ending last before that of the company respectively ended or the earliest and latest of those dates; and
- (c) the date immediately following the last statements when the accounts will be consolidated or be re-classified where appropriate as investment properties (long time investments).

#### PART V — INTERPRETATION OF SCHEDULE

70. The following paragraphs apply for the purposes of this Schedule and its

interpretation.

*Assets: fixed or current*

71. Assets of a company are taken to be fixed assets if they are intended for use on a continuing basis in the company's activities and any assets not intended for such use shall be taken to be current assets.

*Balance sheet date*

72. "Balance sheet date" in relation to a balance sheet, means the date as at which the balance sheet was prepared.

*Capitalisation*

73. References to capitalising any work or costs are to treating that work or those costs as a fixed asset.

*Fellow subsidiary*

74. A body corporate is treated as a fellow subsidiary of another body corporate if both are subsidiaries of the same body corporate but neither is the other's.

*Group companies*

75. "Group company" in relation to any company, means anybody corporate which is that company's subsidiary or holding company, or a subsidiary of that company's holding company.

*Historical cost accounting rules*

76. References to the historical cost accounting rules shall be read in accordance with paragraph 29.

*Leases*

77. (1) "Long lease" means a lease with respect to which the portion of the term for which it was granted remaining unexpired at the end of the year is —
- (a) in case of a right of occupancy to land, not less than 50 years;
  - (b) in any other case, not less than 12 months.
- (2) "Short lease" means a lease which is not a long lease.

(3) "Lease" includes an agreement for a lease.

*Listed investment*

78. "Listed investment" means an investment as respects which there has been granted a listing on a recognised stock exchange, or on any stock exchange of repute (other than a recognised stock exchange) outside Nigeria.

*Loan*

79. A loan is treated as falling due for repayment, and an instalment of a loan is treated as falling due for payment, on the earliest date on which the lender could require repayment or (as the case may be) payment, if he exercised all options and rights available to him.

*Materiality*

80. Amounts which in the particular context of any provision of this Schedule, the disclosure of which will influence the opinion of the reader or user of financial statements, and which are not material may be disregarded for the purposes of that provision.

*Notes to the accounts*

81. Notes to a company's accounts may be contained in the accounts or in a separate document annexed to the accounts.

*Provisions*

82. (1) References to provisions for depreciation or diminution in value of assets are to any amount written off by way of providing for depreciation or diminution in value of assets.

(2) Any reference in the profit and loss account formats set out in Part I of this Schedule to the depreciation of, or amounts written off, assets of any description is to any provision for depreciation or diminution in value of assets of that description.

83. References to provisions for liabilities or charges are to any amount retained as reasonably necessary for the purpose of providing for any liability or loss which is either likely to be incurred, or certain to be incurred, but uncertain as to amount or as to the date on which it will arise.

*Purchase price*

84. References (however expressed) to the purchase price of any asset of a company or of any raw materials or consumables used in the production of any such asset,

include any consideration (whether in cash or otherwise) given by the company in respect of that asset or in respect of those materials or consumables (as the case may require). This includes the costs of putting it into condition ready for its intended use.

*Realised profits*

85. Without prejudice to —

- (a) the construction of any other expression (where appropriate) by reference to accepted accounting principles or practice; or
- (b) any specific provision for the treatment of profits of any description as realised,

it is declared for the avoidance of doubt that references in this Schedule to realised profits, in relation to a company's accounts, are to such profits of the company's, fall to be treated as realised profits for the purposes of those accounts in accordance with principles generally accepted with respect to the determination, for accounting purposes, of realised profits at the time when accounts are prepared.

*Related companies*

86. (1) "Related company", in relation to any company, means anybody corporate (other than one which is a group company in relation to that company) in which that company holds on a long-term basis a qualifying capital interest for the purpose of securing a contribution to that company's own activities by the exercise of any control or influence arising from that interest.

(2) In this paragraph "qualifying capital interest" means, in relation to anybody corporate, an interest in shares comprised in the equity share capital of that body corporate of a class carrying rights to vote in all circumstances at general meetings of that body corporate.

(3) Where —

- (a) a company holds a qualifying capital interest in a body corporate;
- (b) a company exercises material influence in matters relating to dividends, commercial and financial policies; and
- (c) the nominal value of any relevant shares in that body

corporate held by that company is equal to twenty per cent or more of the nominal value of all relevant shares in that body corporate, it shall be presumed to hold that interest on the basis and for the purpose mentioned in subparagraph (1), unless the contrary is shown.

- (4) In subparagraph (3) "relevant shares" means, in relation to anybody corporate, any such shares in that body corporate as are mentioned in subparagraph (c).

*Staff costs*

87. (1) "Pension costs" includes any (past or present) costs, other contributions by the company for the purposes of any pension scheme established for the purpose of providing pensions for persons employed by the company, any sums set aside for that purpose and any amounts paid by the company in respect of pensions without first being so set aside.
- (2) Any amount stated in respect of either of the above items or in respect of the item "wages and salaries" in the company's profit and loss account shall be determined by reference to payments made or costs incurred in respect of all persons employed by the company during the year who are taken into account in determining the relevant annual number for the purposes of paragraph 55 (1) (a).

*Turnover*

88. "Turnover", in relation to a company, means the amounts derived from the provision of goods and services falling within the company's ordinary activities, after deduction of —
- (a) Trade discounts;
  - (b) value added tax; and
  - (c) any other taxes based on the amounts so derived.

MISCELLANEOUS MATTERS TO BE DISCLOSED IN NOTES TO COMPANY  
FINANCIAL STATEMENTS

PART I — PARTICULARS OF SUBSIDIARIES

1. If, at the end of the year, the company has subsidiaries there shall, in the case of each subsidiary, be stated —
  - (a) the name of the subsidiary -
    - (i) if it is incorporated in Nigeria, the address of its registered office, and
    - (ii) if it is incorporated outside Nigeria, the country in which it is incorporated and the address of its registered office; and
  - (b) in relation to shares of each class of the subsidiary held by the company, the identity of the class and the proportion of the nominal value of the allotted shares of that class represented by the shares held.
2. The particulars required under paragraph 1 include, with reference to the proportion of the nominal value of the allotted shares of a class represented by shares held by the company, a statement of the extent (if any) to which it consists in shares held by, or by a nominee for, a subsidiary of the company and the extent (if any) to which it consists in shares held by, or by a nominee for, the company itself.
3. Paragraph 1 does not require the disclosure of information with respect to a body corporate which is the subsidiary of another and is incorporated outside Nigeria or, being incorporated in Nigeria, carries on business outside it if the disclosure would, in the opinion of the Minister, be harmful or jeopardise national interest.
4. If, at the end of its financial year, the company has subsidiaries and the directors are of the opinion that the number of them is such that compliance with paragraph 1 would result in particulars of excessive length being given, compliance with that paragraph shall be required only in the case of the subsidiaries carrying on the business, the results of the carrying on of which (in the opinion of the directors), principally affected the amount of the profit or loss of the company and its subsidiaries or the amount of the assets of the company and its subsidiaries.
5. If advantage is taken of paragraph 4, there shall be included in the statement required by this Part the information that it deals only with the subsidiaries carrying on such businesses as are referred to in that paragraph; and in that case section 382 (3) of this

Act (subsequent disclosure with annual return) applies to the particulars given in compliance with paragraph 1, together with those which (but for the fact that advantage is taken) would have to be given.

6. For purposes of this Part, shares of a body corporate are treated as held, or not held, by another body if they would, by virtue of section 381 (4) of this Act be treated as being held or (as the case may be) not held by that other body for the purpose of determining whether the first mentioned body is its subsidiary.

## PART II — SHAREHOLDING IN COMPANIES OTHER THAN SUBSIDIARIES

7. If, at the end of a year, the company holds shares of any class comprised in the equity share capital of another body corporate (not being its subsidiary) exceeding in nominal value 20% of the nominal value of the allotted shares of that class, there shall be stated —

- (a) the name of that other body corporate, if it is incorporated —
  - (i) in Nigeria and if it is registered in Nigeria, the part of Nigeria in which it is registered; and
  - (ii) outside Nigeria, the country in which it is incorporated;
- (b) the identity of the class and the proportion of the nominal value of the allotted shares of that class represented by the shares held;
- (c) if the company also holds shares in that other body corporate or another class (whether or not comprised in its equity share capital), or of other classes (whether or not so comprised), the like particulars as respects that other class or (as the case may be) those other classes; and
- (d) the accounting treatment, (the equity or costs).

8. If, at the end of its year, the company holds shares comprised in the share capital of another body corporate (not being its subsidiary) exceeding in nominal value one-tenth of the allotted share capital of that other body, there shall be stated —

- (a) with respect to that other body corporate, the same information as is required by paragraph 7 (a); and
- (b) the identity of each class of such shares held and the proportion of the nominal value of the allotted shares

of that class represented by the shares of that class held by the company.

9. If, at the end of its year, the company holds shares in another body corporate (not being its subsidiary) and the amount of all shares in it which the company holds (as stated or included in the company accounts) exceeds one-tenth of the amount of the company's assets (as so stated), there shall be stated —
  - (a) with respect to the other body corporate, the same information as is required by paragraph 7 (a);and
  - (b) in relation to shares in that other body corporate of each class held, the identity of the class and the proportion of the nominal value of the allotted shares of that class represented by the shares held.
10. None of the provisions of this Part requires the disclosure by a company of information with respect to another body corporate if that other is incorporated outside Nigeria or, being incorporated in Nigeria, carries on business outside it if the disclosure would, in the opinion of the company's directors, be harmful to the business of the company or of that other body and the Minister agrees that the information need not be disclosed.
11. If, at the end of its year, the company falls within paragraph 7 or 8 in relation to more bodies corporate than one, and the number of them is such that, in the directors' opinion, compliance with either or both of those paragraphs would result in particulars of excessive length being given, compliance with paragraph 7 or (as the case may be) paragraph 8, is not required except in the case of bodies carrying on the business the results of the carrying on of which (in the directors' opinion) principally affected the amount of the profit or loss of the company or the amount of its assets.
12. If advantage is taken of paragraph 11, there shall be included in the statement dealing with the bodies last mentioned in that paragraph, the information that it deals with them; and section 382 (3) of this Act (subsequent disclosure in annual return) applies to the particulars given in compliance with paragraph 7 or 8 (as the case may be), together with those which, but, for the fact that advantage is so taken, would have to be so given.
13. For the purposes of this Part, shares of a body corporate are treated as held, or not held, by another such body if they would, by virtue of section 381 (4) of this Act (but on the assumption that paragraph (b) (ii) were omitted from that subsection) be treated as being held or (as the case may be), not held, by that other body for the purpose of determining whether the first- mentioned body is its subsidiary.

### PART III — FINANCIAL INFORMATION ABOUT SUBSIDIARIES

14. If —

- (a) at the end of its year the company has subsidiaries;  
and
- (b) it is required under paragraph 1 in Part I to disclose particulars with respect to any of those subsidiaries, the additional information specified below shall be given with respect to each subsidiary to which the requirement under paragraph 1 applies.

15. If —

- (a) at the end of the year the company holds shares in another body corporate;
- (b) it is required under paragraph 8 in Part II above to disclose particulars with respect to that body corporate; and
- (c) the shares held by the company in that body corporate exceed in nominal value 50% of the allotted share capital of that body, the additional information specified below shall be given with respect to that body corporate.

16. The information required under paragraph 10, shall, in relation to anybody corporate (whether a subsidiary of the company or not), contain the aggregate amount of the capital and reserves of that body corporate as at the end of its relevant year, and its profit or loss for that year; and for this purpose, the relevant year is, if —

- (a) the year of the body corporate ends with that of the company giving the information in a note to its accounts, that financial year; and
- (b) not, the body corporate's financial year ending last before the end of the year of the company giving that information. This is subject to the exceptions and other provisions of paragraph 17.

17. (1) Information otherwise required by paragraph 16 need not be given in respect of a subsidiary of a company if, either —

(a) the company is exempt under this Act from the requirement to prepare group accounts, as being at the end of its year the wholly-owned subsidiary of another body corporate incorporated in Nigeria, or the company prepares group accounts and —

(i) the accounts of the subsidiary are included in the group accounts, or

(ii) the investment of the company in the shares of the subsidiary is included in, or in a note to, the company's accounts by way of the equity method of valuation.

(2) The information under subparagraph (1) need not be given in respect of another body corporate in which the company holds shares if the company's investment in those shares is included in, or in a note to, the accounts by way of the equity method of valuation.

(3) The information under subparagraph (1) need not be given in respect of anybody corporate if—

(a) that body is not required by any provision of this Act to deliver a copy of its balance sheet for its relevant year mentioned in paragraph 16, and does not otherwise publish that balance sheet in Nigeria or elsewhere; and

(b) the shares held by the company in that body do not amount to at least 50% in nominal value of the body's allotted share capital.

(4) The Information required by paragraph 16 need not be given if it is not material.

18. Where, with respect to any subsidiary of the company or any other body corporate, particulars which would be required under paragraph 1 in Part I or paragraph 8 in Part II of this Schedule to be stated in a note to the company's accounts are omitted by virtue of paragraph 4 or (as the case may be) paragraph 11, section 382 (3) of this Act (subsequent disclosure in next annual return) shall apply to any information —

(a) with respect to any other subsidiary or body corporate which is given in a note to the company's accounts in accordance with this Part; and

(b) which would have been required by this Part to be given in relation to a subsidiary or other body corporate but for the exemption under paragraph 4 or 11.

19. For the purposes of this Part, shares of a body corporate shall be treated as held, or not held, by the company if they would, by virtue of section 381 (4) of this Act (but on the assumption that section 381 (4) (b) (ii) were omitted from that subsection), be treated as being held or (as the case may be), not held by the company for the purpose of determining whether that body corporate is the company's subsidiary.

#### PART IV — IDENTIFICATION OF ULTIMATE HOLDING COMPANY

20. If, at the end of its year, the company is the subsidiary of another body corporate, there shall be stated the name of the body corporate regarded by the directors as being the company's ultimate holding company and, if known to them, the country in which it is incorporated.

21. Paragraph 20 does not require the disclosure by a company which carries on business outside Nigeria of information with respect to the body corporate regarded by the Minister as being its ultimate holding company if the disclosure would, in his opinion, be harmful to or jeopardise national interest.

#### PART V — CHAIRMAN'S AND DIRECTORS' EMOLUMENTS, PENSIONS AND COMPENSATION FOR LOSS OF OFFICE EMOLUMENTS

22. (1) There shall be shown the aggregate amount of the directors' emoluments .

(2) This amount —

(a) includes any emolument paid to or receivable by a person in respect of his services as director of the company or in respect of his services, while director of the company, as director of any subsidiary of it or in connection with the management of the affairs of the company or any subsidiary of it; and

(b) shall distinguish between emoluments in respect of services of a director, whether of the company or its subsidiary, and other emoluments.

(3) For the purposes of this paragraph, "emolument" in relation to a director, includes fees and percentages, any sums paid by way of expenses, allowances, (in so far as those sum are charged to Nigerian income tax), any contribution paid in respect of him under any pensions scheme and estimated money value of any other benefit received by him otherwise than in cash.

23. A company which is neither a holding company nor a subsidiary of another body

corporate need not comply with paragraphs 24 - 27 as respects a year in the case of which the amount shown in compliance with paragraph 22 does not exceed ₦120,000.

24. (1) This paragraph applies to the emoluments of the company's chairman, and for this purpose "chairman" means the person elected by the directors to be chairman of their meetings and includes a person, who, though not so elected, holds any office (however designated) which, in accordance with the company's constitution, carries with it functions substantially similar to those discharged by a person so elected.
  - (2) If one person has been chairman throughout the year, there shall be shown with respect to that person during the year, his emoluments so far as attributable to the period during which he was chairman, unless his duties as chairman were wholly or mainly discharged outside Nigeria.
  - (3) There shall be shown with respect to each person who has been chairman during the year, his emoluments so far as attributable to the period during which he was chairman, unless his duties as chairman were wholly or mainly discharged outside Nigeria.
25. (1) This paragraph applies to the emoluments of directors.
  - (2) With respect to all directors (other than any who discharged their duties as such wholly or mainly outside Nigeria), there shall be shown —
    - (a) the number (if any) who had no emoluments or whose several emoluments amounted to not more than ₦10,000; and
    - (b) by reference to each pair of adjacent points on a scale whereon the lowest point is ₦10,000 and the succeeding ones are successive integral multiples of ₦10,000, the number (if any) whose several emoluments exceeded the lowest point but did not exceed the higher.
  - (3) If, one of the directors (other than any who discharged his or their duties as such wholly or mainly outside Nigeria), the emoluments of each of two or more exceed the relevant amount, the emoluments (or, in the case of equality) who had the greater or, as the case may be, the greatest, shall also be shown.
  - (4) If, one of the directors (other than any who discharged his or their duties as such wholly or mainly outside Nigeria), the emoluments of each of two or more exceed the relevant amount, his or their emoluments (or, in the case of equality) who had the greater or, as the case may be, the least, shall also be shown.

(5) The "relevant amount" —

- (a) if one person has been chairman throughout the year, means the amounts emoluments; and
- (b) otherwise, means an amount equal to the aggregate of the emoluments, so far as attributable to the period during than contributions paid in respect of him under pension scheme) as in his case are to be included in the payment shown under the paragraph 22.

26. There shall, under paragraphs 24 and 25, be brought into account as emoluments of a person all such amounts (other than contributions paid in respect of him under a pension scheme) as in his case are to be included in the payment shown under paragraph 22.

*Emoluments waived*

27. There shall be shown —

- (a) the number of directors who have waived rights to receive emoluments which, but for the waiver, would have fallen to be included in the payment shown under paragraph 22; and
- (b) a sum not so receivable that was payable only on demand, being a sum the right to receive which has been waived, is deemed to have been due been for payment at the time of the waiver. Pensions of directors and past directors.

28. (1) There shall be shown the aggregate amount of directors' or past director's pensions.

(2) This amount does not include any pension paid or receivable under a pension scheme if the scheme is such that the contributions under it are substantially adequate for the maintenance of the scheme, but, subject to this scheme, it includes any pension paid or receivable in respect of such services of a director or past director as are mentioned in paragraph 22 (2) whether to or by him or, on his nomination or by virtue of dependence on or other connection with him, to or by any other person.

(3) The amount shown shall distinguish between pensions in respect of services as director, whether of the company or its subsidiary, and other pensions.

## Compensation to directors for loss of office

29. (1) There shall be shown the aggregate amount of any compensation to directors or past directors in respect of loss of office.
- (2) This amount —
- (a) includes any sums paid to or receivable by a director or past director by way of compensation for the loss of office as director of the company or for the loss, while director of the company or on or in connection with his ceasing to be a director of it, or of any other office in connection with the management of the company's affairs or of any office as director or in connection with the management of the affairs of any subsidiary of the company; and
  - (b) shall distinguish between compensation in respect of the office of director, whether of the company or its subsidiary, and compensation in respect of other offices.
- (3) References to compensation for loss of office includes sums paid as consideration for or in connection with a person's retirement from office.

### *Supplementary*

30. (1) This paragraph applies with respect to the amounts shown under paragraphs 22, 28 and 29.
- (2) The amount in each case includes all relevant sums paid by or receivable from —
- (a) the company;
  - (b) the company's subsidiaries; and
  - (c) any other person, except sums to be accounted for to the company or any of its subsidiaries, to past or present members of the company or any of its subsidiaries or any class of those members.
- (3) The amount shown under paragraph 29 shall distinguish between the sums respectively paid by or receivable from the company, the company's subsidiaries and persons other than the company and its subsidiaries.

31. (1) The amounts shown for any year under paragraphs 22, 28 and 29 are the sums receivable in respect of that year (whenever paid) or, in the case of sums not receivable in respect of a period, the sums paid during that year.

(2) Where the sums —

(a) are not shown in a note to the accounts for the relevant year on the ground that the person receiving them is liable to account for them as mentioned in paragraph 30 (2), but the liability is thereafter wholly or partly released or is not enforced within a period of two years; or

(b) paid by way of expenses allowance are charged to income tax after the end of the relevant year, those sums shall, to the extent to which the liability is released or not enforced or they are charged as mentioned above (as the case may be), be shown in a note to the first accounts in which it is practicable to show them, and shall be distinguished from the amounts to be shown apart from this provision.

32. Where it is necessary to do so for the purpose of making any distinction required by the preceding paragraphs in an amount shown in compliance with this Part, the directors may apportion any payments between the matters in respect of which these have been paid or are receivable in such manner as they think appropriate.

#### *Interpretation*

33. (1) This paragraph applies for the interpretation of paragraphs 22 - 32.

(2) A reference to the company's subsidiary —

(a) in relation to a person who is or was, while a director of the company, a director also, by virtue of the company's nomination (direct or indirect) or any other body corporate includes, (subject to subparagraph (2)) that body corporate, whether or not it is or was in fact the company's subsidiary; and

(b) for the purposes of paragraphs 22 - 28 (including any provision of this Part referring to paragraph 22) is to a subsidiary at the time the services were rendered, and for the purposes of paragraph 29, to a subsidiary immediately before the loss of office as director.

(3) For the purpose of this paragraph —

- (a) "pension" includes any superannuation allowance, superannuation gratuity or similar payment;
- (b) "pension scheme" means a scheme for the provision of pension in respect of services as director or otherwise which is maintained in whole or in part by means of contributions; and
- (c) "contribution", in relation to a pension scheme, means any payment (including an insurance premium) paid for the purposes of the scheme by or in respect of persons rendering services in respect of which pensions become payable under the scheme, except that it does not include any payment in respect of two or more persons if the amount paid in respect of each of them is not ascertainable.

*Supplementary*

34. This Part of the Schedule requires information to be given only if it is contained in the company's books and papers or the company has the right to obtain it from the persons concerned.

PART VI — PARTICULARS RELATING TO NUMBER OF EMPLOYEES  
REMUNERATED AT HIGHER RATES

35. (1) There shall be shown by reference to each pair of adjacent points on a scale whereon the lowest point is ₦60,000 and the succeeding ones are successive integral multiples of ₦10,000 beginning with that in the case of which the multiplier is seven, the number (if any) of persons in the company's employment whose several emoluments exceeded the lower point but did not exceed the higher.

(2) The persons whose emoluments are to be taken into account for this purpose shall not include —

(a) directors of the company; or

(b) persons (other than directors of the company) who if employed by the company —

(i) throughout the financial year, worked wholly or mainly during that year outside Nigeria; or

(ii) for part only of that year, worked wholly or mainly during that part outside Nigeria.

36. (1) For the purpose of paragraph 35, a person's emoluments include any paid to or receivable by him from the company, the company's subsidiaries and any other person in respect of his services as a person in the employment of the company or a subsidiary of it or as a director of a subsidiary of the company (except sums to be accounted for to the company or any of its subsidiaries).

(2) In this paragraph, "Emoluments" here includes fees and percentages, any sums paid by way of expenses allowances if those sums are charged to Nigerian income tax, and the estimated money value of any other benefits received by a person otherwise than in cash.

(3) The amounts to be brought into account for the purpose of complying with paragraph 35, are the sums receivable in respect of the year (whenever paid) or, in the case of sums not receivable sums in respect of a period, the sums paid during that year.

(4) The sums —

(a) are not brought into account for that year on the ground that the person receiving them is liable to account for them as mentioned in subparagraph (1), but the liability is wholly or partly released or is not enforced within a period of two years; or

(b) paid to a person by way of expenses allowance, are charged to Nigerian income tax after the end of the year, those sums shall, to the extent to which the liability is released or not enforced or they are charged as above mentioned (as the case may be), be brought into account for the purpose of complying with paragraph 25 on the first occasion on which it is practicable to do so.

37. References in paragraph 36 to a company's subsidiary —

(a) in relation to a person who is or was, while employed by the company, a director, by virtue of the company's nomination (direct or indirect), of any other body corporate, include that body corporate (but subject to subparagraph (b)), whether or not it is or was in fact the company's subsidiary; and

(b) are to be taken as referring to a subsidiary at the time

the services were rendered.

PARTICULARS IN COMPANY FINANCIAL STATEMENTS OF LOAN AND  
OTHER TRANSACTIONS FAVOURING DIRECTORS AND OFFICERS

PART I — MATTERS TO BE DISCLOSED UNDER SECTION 383

1. Group financial statements shall contain the particulars required by this Schedule of  
—

- (a) any transaction or arrangement of a kind described in section 296 of this Act entered into by the company or by a subsidiary of the company for a person who at any time during the year was a director of the company or its holding company, or was connected with such a director;
- (b) an agreement by the company or by a subsidiary of the company to enter into any such transaction or arrangement for a person who was at any time during the year a director of the company or its holding company, or was connected with such a director; and
- (c) any other transaction or arrangement with the company or subsidiary of it in which a person who at any time during the year was a director of the company or its holding company had, directly or indirectly, a material interest.

2. The accounts prepared by a company other than a holding company shall contain the particulars required by this Schedule of —

- (a) any transaction or arrangement of a kind described in section 296 of this Act entered into by the company for a person who at any time during the year was a director of it or of its holding company or was connected with such a director;
- (b) an agreement by the company to enter into any such transaction or arrangement for a person who at any time during the year was a director of the company or its holding company or was connected with such a director; and
- (c) any other transaction or arrangement with the company in which a person who, at any time during

the year, was a director of the company or of its holding company had, directly or indirectly, a material interest.

3. (1) For purposes of paragraphs 1 (c) and 2 (c), a transaction or arrangement between a company and a director of it or of its holding company, or a person connected with such a director, is to be treated, as a transaction, arrangement or agreement in which that director is interested.

(2) An interest in such a transaction or arrangement is not material for purposes of subparagraphs (1) and this subparagraph if, in the board's opinion it is not so; but this shall be without prejudice to the question whether or not such an interest is material in a case where the board has not considered the matter.

(3) For the purpose of subparagraphs (2), the board" means the directors of the company preparing the accounts, or a majority of those directors, but excluding, in either case, the director whose interest it is.

4. Paragraphs 1 and 2 shall not apply, for the purposes of accounts prepared by a company which is, or is the holding company of a recognised bank, in relation to a transaction or arrangement of a kind described in section 296 of this Act or an agreement to enter into such a transaction or arrangement, to which that recognised bank is a party.

5. Paragraphs 1 and 2 shall not apply in relation to —

(a) a transaction, arrangement or agreement between one company and another in which a director of the former or of its subsidiary or holding company is interested only by virtue of his being a director of the latter;

(b) a contract of service between a company and one of its directors or a director of its holding company, or between a director of a company and any of that company's subsidiaries; or

(c) a transaction, arrangement or agreement which was not entered into during the year and which did not subsist at any time during that year.

6. Paragraphs 1 and 2 shall apply whether or not —

(a) the transaction or arrangement was prohibited by section 296 of this Act;

(b) the person for whom it was made was a director of the company or was connected with a director of it at the time it was made; and

(c) in the case of a transaction or arrangement made by a company which at any time during a financial year is a subsidiary of another company, it was a subsidiary of that other company at the time the transaction or arrangement was made.

7. Neither paragraph 1 (c) nor 2 (c) applies in relation to any transaction or arrangement if —

(a) each party to the transaction or arrangement which is a member of the same group of companies (meaning a holding company and its subsidiaries) as the company entered into the transaction or arrangement in the ordinary course of business; or

(b) the terms of the transaction or arrangement are not less favourable to any such party than it would be reasonable to expect if the interest mentioned in that subparagraph had not been an interest of a person who was a director of the company or of its holding company.

8. Neither paragraph 1 (c) nor 2 (c) applies in relation to any transaction or arrangement if —

(a) the company is a member of a group of companies (meaning a holding company and its subsidiaries);

(b) either the company is a wholly-owned subsidiary or no body corporate (other than the company or a subsidiary of the company) which is a member of the group of companies, which includes the company's ultimate holding company, was a party to the transaction or arrangement;

(c) the director in question was at some time during the relevant period associated with the company; and

(d) the material interest of the director in question in the transaction or arrangement would not have risen if he had not been associated with the company at any time during the relevant period.

*The particulars required by this Part*

9. (1) Subject to paragraph 10, the particulars required by this Part are those of the principal terms of the transaction, arrangement or agreement.

(2) Without prejudice to the generality of subparagraph (1), the following particulars are required —

- (a) a statement of the fact either that the transaction, arrangement or agreement was made or subsisted (as the case may be) during the year;
- (b) the name of the person for whom it was made and, where that person is or was connected with a director of the company or of its holding company, the name of that director;
- (c) in a case where paragraph 1 (c) or 2 (c) applies, the name of the director with the material interest and the nature of that interest;
- (d) in the case of a loan or an agreement for a loan or an arrangement within section 286 of this Act relating to a loan —
  - (i) the amount of the liability of the person to whom the loan was or was agreed to be made, in respect of principal and interest, at the beginning and at the end of the year,
  - (ii) the maximum amount of that liability during that year,
  - (iii) the amount of any interest which, having fallen due, has not been paid, and
  - (iv) the amount of any provision (within the meaning of the First Schedule to this Act),  
  
made in respect of any failure or anticipated failure by the borrower to repay the whole or part of the loan or to pay the whole or part of any interest on it;
- (e) in the case of a guarantee, security or an arrangement

within section 286 of this Act relating to a guarantee or security —

- (i) the amount for which the company (or its subsidiary) was liable under the guarantee or in respect of the security both at the beginning and at the end of the year,
- (ii) the maximum amount for which the company (or its subsidiary) may become so liable, and
- (iii) any amount paid and any liability incurred by the company (or its subsidiary) for the purpose of fulfilling the guarantee or discharging the security (including any loss incurred by reason of the enforcement of the guarantee or security); and

(f) in the case of any transaction, arrangement or agreement other than those mentioned in paragraphs 11 (2).

10. Paragraph 9 (2) (c) - (f) shall not apply in the case of a loan or quasi- loan made or agreed to be made by a company to or for a body corporate which is either —

- (a) a body corporate of which that company is a wholly-owned subsidiary;
- (b) a wholly-owned subsidiary of a body corporate of which that company is a wholly- owned subsidiary; or
- (c) a wholly-owned subsidiary of that company, if particulars of that loan, quasi- loan or agreement for it would not have been required to be included in that company's annual accounts if the first-mentioned body corporate had not been associated with a director of that company at any time during the relevant period.

*Transactions excluded from section 383*

11. (1) In relation to a company's accounts for a year, compliance with this Part is not be required in the case of transactions of a kind mentioned in subparagraph (2) which are made by the company or a subsidiary of it for a person who at any time during that financial year was a director of the company or of its holding

company, or was connected with such a director, if the aggregate of the values of each transaction, arrangement or agreement so made for that director or any person connected with him, less the amount (if any) by which the liabilities of the person for whom the transaction or arrangement was made has been reduced, did not at any time during the year exceed N10,000.

(2) The transactions in question are —

- (a) credit transactions;
- (b) guarantees provided or securities entered into in connection with credit transactions;
- (c) arrangements within section 296 of this Act relating to credit transactions; and
- (d) agreements to enter into credit transactions.

12. In relation to a company's accounts for a financial year, compliance with this Part shall not be required by virtue of paragraph 1 (c) or 2 (c) in the case of any transaction or arrangement with a company or any of its subsidiaries in which a director of the company or its holding company had, directly or indirectly, a material interest if the —

- (a) value of each transaction or arrangement within paragraph 1 (c) or 2 (c) (as the case may be) in which that director had (directly or indirectly) a material interest and which was made after the commencement of the year with the company or any of its subsidiaries; and
- (b) value of each such transaction or arrangement which was made before the commencement of the year less the amount (if any) by which the liabilities of the person for whom the transaction or arrangement was made have been reduced, did not at any time during the year exceed in the aggregate ₦3,000 or, if more, did not exceed ₦19,000 or one per cent of the value of the net assets of the company preparing the accounts in question as at the end of the year, whichever is less.

For this purpose, a company's net assets are the aggregate of its assets less the aggregate of its liabilities ("liabilities" to include any provision for liabilities or charges within paragraph 83 of the First Schedule to this Act).

PART II — MATTERS TO BE DISCLOSED UNDER SECTION 384

13. This Part of this Schedule shall apply in relation to the following classes of transactions, arrangements and agreements —

- (a) loans, guarantees and securities relating to loans, arrangements of a kind described under section 296 of this Act relating to loans and agreements to enter into any of the foregoing transactions and agreements;
- (b) quasi-loans, guarantees and securities relating to quasi-loans, arrangements of a kind described in either of those subsections relating to quasi-loans and agreements to enter into any of the foregoing transactions and arrangements;
- (c) credit transactions, guarantees and securities relating to credit transactions and arrangements of a kind described in either of those subsections relating to credit transactions and agreements to enter into any of the foregoing transactions and arrangements.

14. (1) To comply with this Part of this Schedule, the accounts must contain a statement, in relation to transactions, arrangements and agreements, made as mentioned in section 296 (1) of this Act —

- (a) the aggregate amounts outstanding at the end of the financial year under transactions, arrangements and agreements within subparagraphs 13 (a), (b) and (c); and
- (b) the number of officers for whom the transactions, arrangements and agreements falling within each of those sub-paragraphs, were made.

(2) This paragraph does not apply to transactions, arrangements and agreements made by the company or any of its subsidiaries for an officer of the company if the aggregate amount outstanding at the end of the year under such transactions, arrangements, and agreement do not exceed N5,000.

## MATTERS TO BE DEALT WITH IN DIRECTORS' REPORT

## PART I — MATTERS OF A GENERAL NATURE ASSET VALUES

1. (1) If significant changes in the fixed assets of the company or of any of its subsidiaries have occurred in the financial year, the report shall contain particulars of the changes.
- (2) If, in the case of such assets which consist of interests in land, their market value (as at the end of the year) differs substantially, from the amount at which they are included in the balance sheet, and the difference is, in the directors' opinion, of such significance as to require that the attention of members of the company or of holders of its debentures should be drawn to it, the report shall indicate the difference with such degree of precision as is practicable.

*Directors' interests*

2. (1) The report shall state, with respect to each person who, at the end of the year, was a director of the company —
  - (a) whether or not, according to the register kept by the company for the purposes of sections 302 and 303 of this Act (director's obligation to notify his interests in the company and companies in the same group), he was at the end of that year interested in shares in, or debentures of, the company or any other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company;
  - (b) if he was so interested —
    - (i) the number and amount of shares in, and debentures of, each body (specifying it) in which, according to that register, he was then interested,
    - (ii) whether or not (according to that register) he was, at the beginning of that year or, if he was not then a director, when he became one, interested in shares in, or debentures of, the company or any other such body corporate, and
    - (iii) if he was, the number and amount of shares in and debentures of, each body (specifying it) in

which, according to that register, he was interested at the beginning of the year or (as the case may be) when he became a director.

- (2) An interest in shares or debentures which, under sections 302 and 303 of this Act, falls to be treated as being the interest of a director is so treated for the purposes of this paragraph, and the references above to the time when a person became a director, in the case of a person who became director on more than one occasion, is the time when he first became a director.
- (3) The particulars required by this paragraph may be given by way of notes to the company's accounts in respect of the year, instead of being stated in the directors' report.

#### *Charitable gifts*

3. (1) Money given for charitable purposes to a person who, when it was given, was ordinarily resident outside Nigeria is to be left out of the account.
- (2) For the purpose of subparagraph (1), "Charitable purposes" means purposes which are exclusively charitable.

#### *Miscellaneous*

4. The directors' report shall contain —
  - (a) particulars of any important event affecting the company or any of its subsidiaries which have occurred since the end of the year;
  - (b) an indication of likely future developments in the business of the company and of its subsidiaries;
  - (c) an indication of the activities (if any) of the company and its subsidiaries in the field of research and development;
  - (d) names of distributors of the company's products; and
  - (e) particulars of donations and gifts made for any purpose.

#### PART II — DISCLOSURE REQUIRED BY COMPANY ACQUIRING ITS OWN SHARES.

5. This Part of this Schedule applies where shares in a company are —

- (a) purchased by the company or are acquired by it by forfeiture or surrender in lieu of forfeiture, or in pursuance of section 184 of this Act (acquisition of own shares by company limited by shares);
- (b) required by another person in circumstances where section 183 (3) (b) or (c) of this Act applies (acquisition by company's nominee, or by another with company financial assistance, the company having a beneficial interest); or
- (c) made subject to a lien or other charges taken (whether expressly or otherwise) by the company and permitted by section 164 (1) or (4) of this Act.

6. The directors' report with respect to a year shall state —

- (a) the number and nominal value of the shares so purchased, the aggregate amount of the consideration paid by the company for such shares and the reasons for their purchase;
- (b) the number and nominal value of the shares so acquired by the company, acquired by another person in such circumstances and so charged respectively during the year;
- (c) the maximum number and nominal value of shares which, having been so acquired by the company, acquired by another person in such circumstances or so charged (whether or not during that year) are held at any time by the company or that other person during the year;
- (d) where the number and nominal value of the shares of any particular description are stated in pursuance of any of the preceding sub-paragraphs, the percentage of the called up share which shares of that description represent;
- (e) where any of the shares has been so charged, the amount of the charge in each case;
- (f) where any of the shares has been disposed of by the company or the person who acquired them in such

circumstances for money or money's worth, the amount or value of the consideration in each case; and

- (g) the excess of the selling price over the purchase price of each share resold or the excess of the cost over the selling price which was taken to capital reserve.

### PART III — EMPLOYMENT AND EMPLOYEES

#### *Employment of disabled persons*

7. The directors' report shall contain a statement showing how many disabled persons were employed during the year and describing the policy which the company has applied during the year —

- (a) for giving full and fair consideration to applications for employment by the company made by disabled persons, having regard to their particular aptitudes and abilities;
- (b) for continuing the employment of, and for arranging appropriate training for, employees of the company who have become disabled persons during the period when they were employed by the company; and
- (c) otherwise for the training, career development and promotion of disabled persons employed by the company.

#### *Health, safety and welfare at work of company's employees*

8. The directors' report shall contain a statement as to the arrangement in force in the year for securing the health, safety and welfare at work of employees of the company and its subsidiaries, and for protecting other persons against risks to health or safety arising out of or in connection with the activities at work of those employees.

#### *Employee involvement and training*

9. The directors' report shall contain a statement describing the action that has been taken during the year to introduce, maintain or develop arrangements aimed at —

- (a) providing employees systematically with information

on matters of concern to them as employees;

- (b) consulting employees or their representatives on a regular basis so that the views of employees can be taken into account in making decisions which are likely to affect their interests;
- (c) encouraging the involvement of employees in the company's performance through an employees' share scheme or by some other means;
- (d) achieving a common awareness on the part of all employees of the financial and economic factors affecting the performance of the company; and
- (e) showing the arrangements made or facilities provided by the company for the training of employees during the year.

## MATTERS TO BE EXPRESSLY STATED IN AUDITOR'S REPORT

1. Whether the directors have obtained all the information and explanations which, to the best of their knowledge and belief, were necessary for the purpose of their audit.
2. Whether, in the auditors' opinion, proper books of account have been kept by the company, so far as appears from their examination of those books, and proper returns adequate for the purposes of their audit have been received from branches not visited by them.
3. (1) Whether the company's balance sheet and (unless it is framed as a consolidated profit and loss account) profit and loss account dealt with by the report are in agreement with the books of account and returns.  
  
(2) Whether, in the auditors' opinion and to the best of their information and according to the explanations given them, the said statements give the information required by this Act in the manner so required and give a true and fair view in the case of the —
  - (a) balance sheet, of the state of the company's affairs as at the end of its year; and
  - (b) profit and loss account, of the profit and loss for its year; or as the case may be, give a true and fair view thereof subject to the non-disclosure of any matters (to be indicated in the report) which, by virtue of Part I of the First Schedule of this Act, are not required to be disclosed.
4. In the case of a holding company, submitting group financial statements whether, in their opinion, the group financial statements have been properly prepared in accordance with the provisions of this Act so as to give a true and fair view of the state of affairs and profit or loss of the company and its subsidiaries and associates dealt with where it, so far as it concerns members of the company, or the case may so as to give a true and fair view thereof subject to the non-disclosure of any matter to be indicated in the report which by virtue of Part I of the First Schedule to this Act are not required to be disclosed.

MODIFIED FINANCIAL STATEMENTS OF COMPANIES QUALIFYING AS  
SMALL COMPANIES

PART I — MODIFIED FINANCIAL STATEMENTS INTRODUCTORY

*Accounts modified as for a small company*

1. (1) In respect of the relevant financial year, there may be delivered a copy of a modified balance sheet, instead of the full balance sheet.
  - (2) The modified balance sheet shall be an abbreviated version of the full balance sheet, showing only those items to which a letter or Roman number is assigned in the balance sheet format adopted under the Part I of the First Schedule to this Act but in other respects corresponding to the full balance sheet.
  - (3) The copy of the modified balance sheet shall be signed as required by section 386 of this Act.
2. A copy of the company's profit and loss account need not be delivered nor a copy of the directors' report otherwise required by section 388 of this Act.
3. The information required by Parts III and IV of the First Schedule of this Act need not be given.
4. The information required by the First Schedule to this Act to be given in notes to the accounts need not be given, with the exception of any information required by the following provisions of that Schedule —
  - (a) paragraph 36 (accounting policies);
  - (b) paragraph 38 (share capital);
  - (c) paragraph 39 (particulars of allotments);
  - (d) paragraph 47 (1) and (4) (particulars of debts);
  - (e) paragraph 57 (1) (basis of translation of foreign currency amounts into naira); and
  - (f) paragraph 57 (2) (corresponding amounts for preceding year), and the reference here to paragraph 57 (2) includes that subparagraph as applied to any item stated in a note to the company's accounts, whether by virtue of a requirement of the Third

Schedule or under any other provision of this Act.

5. If a modified balance sheet is delivered, there shall be disclosed in it (or in a note to the company's accounts delivered) —

(a) the aggregate of the amounts required by note (5) of the notes on the balance sheet formats set out in the Part I of the First Schedule to be shown separately for each item included under debtors (amounts falling due after one year); and

(b) the aggregate of the amounts required by note 13 of those notes to be shown separately for each item included under creditors in format 2 (amounts falling due within one year or after more than one year).

6. The company's balance sheet shall contain a statement by the directors that they —

(a) rely on sections 393 to 397 of this Act as entitling them to deliver modified accounts; and

(b) do so on the ground that the company is entitled to the benefit of those sections as a small company, and the statement shall appear in the balance sheet immediately above the signatures of the directors.

7. (1) The accounts delivered shall be accompanied by a special report of the auditors stating that in their opinion —

(a) the directors are entitled to deliver modified accounts in respect of the financial year as claimed in the directors' statement; and

(b) any account comprised in the documents delivered as modified account is properly prepared as such in accordance with this Schedule.

(2) A copy of the auditors' report under section 404 of this Act need not be delivered; but the full text of it shall be reproduced in the special report under this paragraph.

(3) If the directors propose to rely on sections 393 - 397 of this Act as entitling them to deliver modified accounts, it shall be the auditors' duty to provide them with a report stating whether, in their opinion, the directors are so entitled, and whether the documents to be delivered as modified accounts are properly prepared.

8. Where the directors rely on sections 393 to 397 of this Act in delivering any document, and —

(a) the company is entitled to the benefit of those sections on the ground claimed by the directors in their statement under paragraph 6; and

(b) the accounts comprised in the documents are properly prepared in accordance with this Schedule, then section 389 (3) of this Act shall have effect as if any document which, by virtue of this Part of this Schedule, is included in or omitted from the documents delivered as modified accounts were (or, as the case may be), not required by this Act to be comprised in the company's accounts in respect of the year.

## PART II — MODIFIED GROUP FINANCIAL STATEMENTS (IN CONSOLIDATED FORM) FOR SMALL COMPANIES

### *Introductory*

9. In this Part of this Schedule, paragraphs 10-16 relate to modified financial statements for a small group.

### *Small groups.*

10. (1) In respect of the relevant year, there may be delivered a copy of a modified balance sheet, instead of the full consolidated balance sheet.

(2) The modified balance sheet shall be an abbreviated version of the full consolidated balance sheet, showing only those items to which a letter or Roman numeral is assigned in the balance sheet format adopted under the Part I of the First Schedule, but in other respects corresponding to the full consolidated balance sheet.

11. Neither copy of the profit and loss account nor a copy of the directors' report otherwise required by section 386 of this Act need not be delivered.

12. The information required by the First Schedule to this Act to be given in notes to group financial statements need not be given, with the exception of any information required by provisions of that Schedule listed in paragraph 4.

13. There shall be disclosed in the modified balance sheet, or in a note to the group accounts delivered, aggregate amounts corresponding to those specified in paragraph 5 above.

14. The information required by Part III and IV of the Second Schedule need not be given.

### PART III — MODIFIED GROUP ACCOUNTS CONSOLIDATED OR OTHERS

15. If modified group accounts are delivered, paragraphs 16 -18 apply.

16. The directors' statement required by paragraph 6 to be contained in the balance sheet include a statement that the documents delivered include modified group accounts, in reliance on section 397 of this Act.

17. (1) The auditors' special report under paragraph 7 shall include a statement that, in their opinion —

(a) the directors are entitled to deliver modified group accounts, as claimed in their statement in the balance sheet; and

(b) any account comprised in the documents delivered as modified group financial statements are properly prepared as such in accordance with this Schedule.

(2) A copy of the auditors' report under section 404 need not be delivered; but the full text of it shall be reproduced in the special report under paragraph 7.

(3) If the directors propose to rely on section 397 as entitling them to deliver modified group financial statements, it is the auditors' duty to provide them with a report stating whether, in their opinion, the directors are so entitled, and whether the documents to be delivered as modified group financial statements are properly prepared in accordance with this Schedule.

18. Where the directors rely on section 397 in delivering any documents, and —

(a) the company is entitled to the benefit of that section on the ground claimed by the directors in their statement in the balance sheet, and

(b) the accounts comprised in the documents delivered as modified financial statements are properly prepared in accordance with this Schedule,

then section 388 (3) has effect as if any document which by virtue of this Schedule is included in or omitted from the documents delivered as modified group financial statements were (or, were not) required by this Act to be comprised in the

company's financial statements in respect of the year.



*Contents and form of annual returns of a company having shares other than a small company*

## PART I

*Contents*

1. The address of the registered office of the company.
2. (1) If the register of members is, under the provisions of this Act, kept elsewhere than at the registered office of the company, the address of the place where it is kept.  
  
(2) If any register of holders of debentures of the company or any duplicate of any such register or part of any such register is, under the provisions of this Act kept elsewhere than at the registered office of the company, the address of the place where it is kept.
3. A summary, distinguishing between shares issued for cash and shares issued as fully or partly paid or otherwise than in cash, specifying the following particulars—
  - (a) the amount of the share capital of the company and the number of shares into which it is divided;
  - (b) the number of shares taken from the commencement of the company up to the date of the return;
  - (c) the amount called up on each share;
  - (d) the total amount of calls received;
  - (e) the total amount of calls unpaid;
  - (f) total amount of the sums (if any) paid by way of commission in respect of any shares or debentures;
  - (g) the discount allowed on the issue of any shares issued at a discount or so much of that discount as has not been written off at the date on which the return is made;
  - (h) the total amount of the sums (if any) allowed by way of discount in respect of any debentures since the date of the last return; and
  - (i) the total number of shares forfeited.
4. Particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Commission under this Act.

5. A list—

(a) containing the names and addresses of all persons who, on the fourteenth day after the company's annual general meeting for the year, are members of the company, and of persons who have ceased to be members since the date of the last return or, in the case of the first return, since the incorporation of the company;

(b) stating the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return (or, in the case of the first return, since the incorporation of the company) by persons who are still members and have ceased to be members respectively, and the dates of registration of the transfers;

(c) if the names aforesaid are not arranged in alphabetical order, having annexed thereto an index sufficient to enable the name of any person therein to be easily found.

6. All such particulars with respect to the persons who at the date of the return are the directors of the company and any person who at that date is the secretary of the company as are by this Act required to be contained with respect to directors and the secretary respectively in the register of the directors and secretaries of a company.

PART II

*Form*

ANNUAL RETURN OF..... Limited  
made up to the day of 20.....(being the fourteenth day after the date  
of the annual general meeting for the year..... 20..... )

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1. Address  
.....  
(*Address of the registered office of the company*)

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2. Situation of registers of members and debenture holders.

(a) (Address of place at which the register of members is kept, if other than the registered office of the company).

(b) (Address of any place in Nigeria other than the registered office of the company at which is kept any register of holders of debentures of the company or any duplicate of any such register or part of any such register).

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3. Summary of share capital and debentures.

(a) Nominal share capital

<i>Nominal share capital ₦</i> <i>(Insert number and class)</i>	<i>divided into:</i>
..... shares of.....	each
.....shares of.....	each
.....shares of.....	each

(b) Issued share capital and debentures

<i>Number</i>	<i>Class</i>	<i>Shares</i>
Number of shares of each class taken up to the date of this return (which number must agree with the total shown in the list as held by existing members).		
Number of shares of each class issued subject to payment wholly in cash.		
Number of shares of each class issued as partly paid up for a consideration other than cash and extent to which each such share is so paid up.		shares issued as paid up to the extent of # per share
Number of shares (if any) of each class issued at a discount.		
Amount of discount on the issue of shares which has not been written off at the date of this return.		₦
Amount called ₦..... per share on.....		shares
up on number ₦..... per share on.....		shares
of shares of ₦..... share on.....		shares
each class ₦..... per share.....		shares
Total amount of calls received, including payments on application and allotment and any sums received on shares forfeited.		₦
Total amount (if any) agreed to be considered as paid on the number of shares each class issued as fully paid.....		shares

up for a consideration..... shares

paid other than cash.....shares

Total amount (if any) agreed as.....shares

₦..... to be considered shares

paid on number of shares of each class issued as partly  
paid up for a consideration other than cash ..... shares

Total amount of calls unpaid ₦

Total amount of the sums (if any) paid by way of commi  
ssion in respect of any shares or debentures..... ₦

Total amount of the sums (if any) allowed by way of  
discount in respect of any debentures since the date of the last return... ₦

Total number of shares of each class forfeited .....shares

#### 4. Particulars of indebtedness.

Total amount of indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Commission under the Companies and Allied Matters Act.

#### 5. List of past and present members.

List of persons holding shares or stock in the company on the fourteenth day after the annual general meeting for 20 and of persons who have held shares or stock therein at any time since the date of the last return, or, in the case of the first return, of the incorporation of the company.

<i>Folio in register containing particulars</i>	<i>Name and addresses</i>	<i>Number of shares held by existing members at date of return*</i>	<i>Account of shares</i>	<i>Remarks</i>
		Particulars of shares transferred since the date of the last return, of the incorporation of the company by (a) persons who are still members and (b)		

		person who have ceased to be members*		
		Number	(a) (b)	Date of registration of transfer

\*The aggregate number of shares held by each member must be stated, and the aggregate must be added up so as to agree with the number of shares stated in the Summary of Share Capital and Debentures to have been taken up.

When the shares are of different classes these columns should be subdivided so that the number of each class held, or transferred, may be shown separately. Where any shares have been converted into stock, the amount of stock held by each member must be shown.

The date of registration of each transfer should be given as well as the number of shares transferred on each date. The particulars should be placed together with that of the transferee, but the name of the transferee may be inserted in the remarks column immediately opposite the particulars of each transfer.

(i) If the return for either of the two immediately preceding years has given as at the date of that return the full particulars required as to past and present members and the shares and stock held and transferred by them, only such of the particulars need be given as relate to persons ceasing to be or becoming members since the date of the last return and to shares transferred since that date or to changes as compared with the date in the amount of stock held by a member.

(ii) If the names in the list are not arranged in alphabetical order, an index sufficient to enable the name of any person to be readily found must be annexed.

#### 6. Particulars of directors and secretaries.

##### *Particulars of the persons who are directors of the company at the date of this return*

<i>Present fore-name or names and surname</i>	<i>Any former forenames or names and surnames</i>	<i>Nationality</i>	<i>Usual residential address</i>	<i>Business occupation and particulars of other directorships</i>	<i>Date of birth</i>
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##### *Particulars of the person who is secretary of the company at the date of this return*

<i>Name (In the case of an individual</i>	<i>Any former forenames or</i>	<i>Usual residential address (in</i>
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<i>,present forename or names and surname, in the case of a corporation, the corporate name)</i>	<i>surnames</i>	<i>the case of a corporation, the registered or principal office)</i>
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Signed.....Director

*Notes*

**“Directors”** includes any person who occupies the position of a director by whatsoever name called and any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

**“Former forename”** and **“former surname”** do not include in the case of a married woman the name or surname by which she was known prior to the marriage.

The names of all bodies corporate of which the company making the return is the wholly- owned subsidiary or bodies corporate which are the wholly-owned subsidiaries either of the company or of another company of which the company is a subsidiary of another if it has no members except that other and that other’s wholly-owned subsidiaries and its or their nominees. If the space provided in the form is insufficient, particulars of both directorships should be listed on a separate statement attached to the return.

Where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated.

\*Delivered for filing  
by.....

\*This should be printed at the bottom of the first page of the return.

**CERTIFICATES AND OTHER DOCUMENTS ACCOMPANYING ANNUAL RETURNS**

*Certificate to be given by a director and the secretary of every private company*

We certify that the company has not since the date of the incorporation of the company/the last annual return, issued any invitation to the public to subscribe for any shares or debentures in the company.

Signed..... *Director*

Signed..... *Secretary*

Further certificate to be given as aforesaid if the number of members of the company exceeds fifty.

We certify that the excess of the number of members of the company over fifty consists wholly of persons who, under subsection (3) of section 22 of the Companies and Allied Matters Act, are not to be included in reckoning the number fifty.

Signed..... *Director*

Signed..... *Secretary*

*Certified copies of accounts*

There shall be annexed to this return a written copy, certified both by a director and by the secretary of the company to be a true copy, of every balance sheet laid before the company in general meeting during the period to which this return relates (including every document required by law to be annexed to the balance sheet) and a copy (certified as aforesaid) of the report of the directors accompanying each such balance sheet. If any such balance sheet or document required by law to be annexed thereto is in a foreign language, there must also be annexed to that balance sheet a translation in English of the balance sheet or document certified in a prescribed manner to be a correct translation. If any such balance sheet as aforesaid or document required by law to be annexed thereto did not comply with the requirements of the law as in force at the date of audit with respect to the form of balance sheet or documents aforesaid, as the case may be, there shall be made such additions to and corrections in the copy as would have been required to be made in the balance sheet or document in order to make it comply with the said requirements, and the fact that the copy has been amended must be stated thereon.

*Annual return of a small company*

PART I

*Contents*

1. The name and address of the registered office of the company.
2. If the register of members is, under the provisions of this Act, kept elsewhere than at the registered office of the company, the address of the place where it is kept.
3. If any register of holders of debentures of the company or any such register or part of any such register is, under the provisions of this Act, kept elsewhere than at the registered office of the company, the address of the place where it is kept.
4. The authorised share capital of the company.
5. The issued capital.
6. The total paid-up capital.
7. Particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Registrar under the Act.
8. Particulars of the directors and secretary.

PART II

ANNUAL RETURN OF.....  
Limited

made up to the day of..... 20..... (being the fourteenth day after  
the date of the annual general meeting for the year 20..... )

1.  
Name.....

2.  
Address.....

*(Address of the registered office of the company)*

3. Situation of registers of members and debenture holders.

- (a) (Address of place at which the register of members is kept, if other than the registered office of the company).
- (b) (Address of any place in Nigeria other than the registered office of the company at which is kept any register of holders of debentures of the company or any duplicate of any such register or part of any such register).

4. Particulars of indebtedness.

Total amount of indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Commission under the Companies and Allied Matters Act, the particulars of which are set in the annexed statement. ₦ .....

5. Particulars of directors and secretaries.

FORM- *continued.*

*Particulars of the persons who are directors of the company at the date of this return*

<i>Name present forename or names and surname</i>	<i>Any former forenames or names and surnames</i>	<i>Nationality</i>	<i>Usual residential address</i>	<i>Business occupation and particulars of other directorships</i>	<i>Date of birth</i>

*Particulars of the person who is secretary of the company at the date of this return*

<i>Name (In the case of an individual, present forename or names and surname, in the case of a corporation, the corporate name)</i>	<i>Any former forenames or surnames</i>	<i>Usual residential address (in the case of a corporation, the registered or principal office)</i>

Signed..... Director

“**Directors**” includes any person who is appointed a director by the company, or is described as a director by the company, and any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

“**Former forename**” and “**former surname**” do not include in the case of a married woman the name or surname by which she was known previous to the marriage.

The names of all bodies corporate incorporated in Nigeria of which the director is also a director should be given, except bodies corporate of which the company making the return is the wholly-owned subsidiary or bodies corporate which are the wholly-owned subsidiaries either of the company or of another company of which the company is the wholly-owned subsidiary. A body corporate is deemed to be the wholly-owned subsidiary of another if it has no members except that other and that other’s wholly-owned subsidiaries and its or their nominees. If the space provided in the form is insufficient, particulars of other directorships should be listed on a separate statement attached to this return.

Where all the partners in a firm are joint secretaries, the name and principal office of the firm should be stated.

\*Delivered ..... for ..... filing  
by.....

\*This should be printed at the bottom of the first page of the return.

#### CERTIFICATES AND OTHER DOCUMENTS ACCOMPANYING ANNUAL RETURN

##### *Certificate to be given by a director and the secretary of every private company*

We certify that the company has not since the date of the incorporation of the company/the last annual return, issued any invitation to the public to subscribe for any shares or debentures of the company.

Signed..... *Director*

Signed..... *Secretary*

Further certificate to be given as aforesaid if the number of members of the company exceeds fifty.

We certify that the excess of the number of members of the company over fifty consists wholly of persons, who under section 22 (3) of the Companies and Allied Matters Act, are not to be included in reckoning the number of fifty, and we also certify that the company still retains its smallness.

Signed..... *Director*

Signed..... *Secretary*

*Certified copies of Accounts*

There shall be annexed to this return a written copy, certified both by a director and by the secretary of the company to be a true copy, of every balance sheet laid before the company in general meeting during the period to which this return relates (including every document required by law to be annexed to the balance sheet) and a copy (certified as aforesaid) of the report of the directors accompanying each such balance sheet. If any such balance sheet or document required by law to be annexed thereto is in a foreign language, there must also be annexed to that balance sheet a translation in English of the balance sheet or document certified in prescribed manner to be a correct translation. If any such balance sheet as aforesaid or document required by law to be annexed thereto did not comply with the requirements of the law as in force at the date of audit with respect to the form of balance sheets or documents aforesaid, as the case may be, there shall be made such additions to and corrections in the copy as would have been required to be made in the balance sheet or document in order to make it comply with the said requirements, and the fact that the copy has been amended must be stated thereon.

*Annual return of a company limited by guarantee*

*(Under the Companies and Allied Matters Act)*

ANNUAL RETURN OF.....  
 Limited

made up to the day of 20..... (being the fourteenth day after the date  
 of the annual general meeting for the year .....20..... )

1.

Address.....  
*(Address of the registered office of the company)*

2. Situation of registers of members and debenture holders.

- (a) (Address of place at which the register of members is kept, if other than the registered office of the company).
- (b) (Address of any place in Nigeria other than the registered office of the company at which is kept any register of holders of debentures of the company or any duplicate of any such register or part of any such register).

3. Particulars of indebtedness.

Total amount of indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Commission under this Act, the particulars of which are set in the annexed statement. ₦ .....

4. Particulars of directors and secretaries.

*Particulars of the persons who are directors of the company at the date of this return*

<i>Name present forename or names and surname</i>	<i>Any former forenames or names and surnames</i>	<i>Nationality</i>	<i>Usual residential address</i>	<i>Business occupation and particulars of other directorships</i>	<i>Date of birth</i>
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*Particulars of the person who is secretary of the company at the date of this return*

<p align="center"><i>Name</i> <i>(In the case of an individual, present forename or names and surname, in the case of a corporation, the corporate name)</i></p>	<p align="center"><i>Any former forenames or surnames</i></p>	<p align="center"><i>Usual residential address (in the case of a corporation, the registered or principal office)</i></p>

Signed .....Director

*Notes*

“**Directors**” includes any person who occupies the position of a director by whatsoever name called and any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

“**Former forename**” and “**former surname**” do not include in the case of a married woman the name or surname by which she was known previous to the marriage.

The names of all bodies corporate incorporated in Nigeria of which the director is also a director, should be given, except bodies corporate of which the company making the return is the wholly-owned subsidiary of bodies corporate which are the wholly-owned subsidiaries either of the company or of another company of which the company is the wholly-owned subsidiary of another if it has no members except that other and that other’s wholly-owned subsidiaries and its or their nominees. If the space provided in the form is insufficient, particulars of both directorships should be listed on a separate statement attached to the return.

Where all partners in a firm are joint secretaries, the name and principal office of the firm should be stated.

\*Delivered ..... for ..... filing  
by.....

\*This should be printed at the bottom of the first page of the return.

CERTIFICATES AND OTHER DOCUMENTS ACCOMPANYING ANNUAL RETURN

*Certificate to be given by a director and the secretary of every private company*

We certify that the company has not since the date of the incorporation of the company/the last annual return, issued any invitation to the public to subscribe for any shares or debentures of the company.

Signed..... *Director*  
Signed..... *Secretary*

Further certificate to be given as aforesaid if the number of members of the company exceeds fifty.

We certify that the excess of the number of members of the company over fifty consists wholly of persons who, under section 22 (3) of the Companies and Allied Matters Act, are not to be included in reckoning the number of fifty.

Signed..... *Director*  
Signed..... *Secretary*

*Certified copies of Accounts*

There shall be annexed to this return a written copy, certified both by a director and by the secretary of the company to be a true copy, of every balance sheet laid before the company in general meeting during the period to which this return relates (including every document required by law to be annexed to the balance sheet) and a copy (certified as aforesaid) of the report of the directors accompanying each such balance sheet. If any such balance sheet or document required by law to be annexed thereto is in a foreign language, there must also be annexed to that balance sheet a translation in English of the balance sheet or document certified in prescribed manner to be a correct translation. If any such balance sheet as aforesaid or document required by law to be annexed thereto did not comply with the requirements of the law as in force at the date of audit with respect to the form of balance sheets or documents aforesaid, as the case may be, there must be made such additions to and corrections in the copy as would have been required to be made in the balance sheet or document in order to make it comply with the said requirements, and the fact that the copy has been amended must be stated thereon.

*Powers of Administrator*

1. Power to take possession of, collect and get in the property of the company and, for that purpose, to take such proceedings as may seem to him expedient.
2. Power to sell or otherwise dispose of the property of the company.
3. Power to raise or borrow money and grant security therefor over the property of the company.
4. Power to appoint a solicitor or accountant or other professionally qualified person to assist him in the performance of his functions.
5. Power to bring or defend any action or other legal proceedings in the name and on behalf of the company.
6. Power to refer to arbitration any question affecting the company.
7. Power to effect and maintain insurances in respect of the business and property of the company.
8. Power to use the company's seal.
9. Power to do all acts and to execute in the name and on behalf of the company any deed, receipt or other document.
10. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company.
11. Power to appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent and power to employ and dismiss employees.
12. Power to do all such things (including the carrying out of works) as may be necessary for the realisation of the property of the company.
13. Power to make any payment which is necessary or incidental to the performance of his functions.
14. Power to carry on the business of the company.
15. Power to establish subsidiaries of the company.
16. Power to transfer to subsidiaries of the company the whole or any part of the business and property of the company.

17. Power to grant or accept a surrender of a lease or tenancy of any of the property of the company, and to take a lease or tenancy of any property required or convenient for the business of the company.
18. Power to make any arrangement or compromise on behalf of the company.
19. Power to call up any uncalled capital of the company.
20. Power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the company and to receive dividends, and to accede to trust deeds for the creditors of any such person.
21. Power to present or defend a petition for the winding up of the company.
22. Power to change the situation of the company's registered office.
23. Power to do all other things incidental to the exercise of the foregoing powers.

*Powers of receivers and managers of the whole or substantially the whole of the company's property*

1. Power to take possession of, collect and get in the property of the company and, for that purpose, to take such proceedings as may seem to him expedient.
2. Power to sell or otherwise dispose of the property of the company by public auction or private contract.
3. Power to raise or borrow money and grant security therefor over the property of the company.
4. Power to appoint a solicitor or accountant or other professionally qualified person to assist him in the performance of his functions.
5. Power to bring or defend any action or other legal proceedings in the name and on behalf of the company.
6. Power to refer to arbitration any question affecting the company.
7. Power to effect and maintain insurances in respect of the business and property of the company.
8. Power to use the company's seal.
9. Power to do all acts and to execute in the name and on behalf of the company any deed, receipt or other document.
10. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company.
11. Power to appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent and power to employ and dismiss employees.
12. Power to do all such things (including the carrying out of works) as may be necessary for the realisation of the property of the company.
13. Power to make any payment which is necessary or incidental to the performance of his functions.
14. Power to carry on the business of the company.
15. Power to establish subsidiaries of the company.

16. Power to transfer to subsidiaries of the company the whole or any part of the business and property of the company.
17. Power to grant or accept a surrender of a lease or tenancy of any of the property of the company, and to take a lease or tenancy of any property required or convenient for the business of the company.
18. Power to make any arrangement or compromises on behalf of the company.
19. Power to call up any uncalled capital of the company.
20. Power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the company and to receive dividends, and to accede to trust deeds for the creditors of any such person.
21. Power to present or defend a petition for the winding up of the company.
22. Power to change the situation of the company's registered office.
23. Power to do all other things incidental to the exercise of the foregoing powers.

*Provisions not applicable on winding up under supervision of the court*

<i>Section</i>	<i>Subject matter</i>
551	Power to appoint official receiver for debenture holders and others.
583	Statement of company's affairs to be submitted to official receiver.
584	Report by official receiver.
585	Appointment, remuneration and title of liquidators (except subsection 8).
590	Exercise and control of liquidator's powers.
591	Payments by liquidator into companies liquidation account.
592	Audit, etc., of liquidator's account.
593	Books to be kept by liquidator.
594	Release of liquidator.
595	Control over liquidators.
596	Power to appoint committee of inspection, etc.
598	Powers, etc., of committee of inspection.
513	Powers where no committee of inspection is appointed.
599	Power to appoint special manager.
613	Power to order public examination of promoters, etc.
616	Delegation to liquidator of certain powers of the court.

*Provision of this Act applying to unregistered companies*

<i>Provisions of this Act applied</i>	<i>Subject matter</i>	<i>Limitation on application</i>
Sections 417 to 425 and Seventh, Eighth and Ninth Schedules	Annual return	Not to apply so as to require particulars in respect of any period before the commencement of this Act, and as respects any period thereafter to apply so far only as may be specified as aforesaid and to such bodies corporate as may be so specified.
Section 374 to 416 and Fourth to Eighth Schedules	Accounts and audit	To apply so far as may be specified as aforesaid and to such bodies corporate as may be so specified
Sections 314 to 330	Investigations	
Sections 357 to 373, 301, 302, 303, 727, 731, 733, 738, 740 (1), 742	Registration of Documents, enforcement and supplemental matters	To apply so far only as they have effect in relation to provisions applying by virtue of the foregoing entries in this schedules

*Forms of statement to be published by banking and insurance companies and deposit, provident or benefit societies*

The share capital is..... divided into.....shares of  
..... each.

The number of shares issued is.....

Calls to the amount of..... naira per share have been made,  
under which the sum of..... naira has been received.

The liabilities of the company on the first day of January (or July) were—

Debts owing to sundry persons by the company—

On judgment, N

On specialty ₦

On notes or bills, ₦

On simple contracts, ₦

On estimated liabilities, ₦

The assets of the company on that day were—

Government securities (stating them), ₦

Bills of exchange and promissory notes, ₦

Cash at the bankers, ₦

Other securities, ₦

\*If the company has no share capital, the portion of the statement relating to capital and shares must be omitted.

*Provisions regarding matters relating to mutual rights and duties of partners and limited liability partnership and its partners applicable in the absence of any agreement on such matters*

1. The mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and its partners shall be determined, subject to the terms of any limited liability partnership agreement or in the absence of any such agreement on any matter, by the provisions of this schedule.
2. All the partners of a limited liability partnership are entitled to share equally in the capital, profits and losses of the limited liability partnership
3. The limited liability partnership shall indemnify each partner in respect of payments made and personal liability incurred by him –
  - (a) in the ordinary and proper conduct of the limited liability partnership;  
or
  - (b) in or about anything necessarily done for the preservation of the business or property of the limited liability partnership.
4. Every partner shall indemnify the limited liability partnership for any loss caused to it by his fraud in the conduct of the business of the limited liability partnership.
5. Every partner may take part in the management of the limited liability partnership.
6. No partner shall be entitled to remuneration for acting in the business or management of the limited liability partnership.
7. No person may be introduced as a partner without the consent of all the existing partners.
8. Any matter or issue relating to the limited liability partnership shall be decided by a resolution passed by a majority in number of the partners, and for this purpose, each partner shall have one vote. However, no change may be made in the nature of business of the limited liability partnership without the consent of all the partners.
9. Every limited liability partnership shall ensure that decisions taken by it are recorded in the minutes within 30 days of taking such decisions are

kept and maintained at the registered office of the limited liability partnership.

10. Each partner shall render true accounts and full information of all things affecting the limited liability partnership to any partner or his legal representative.
11. If a partner, without the consent of the limited liability partnership, carries on any business of the same nature as and competing with the limited liability partnership, he must account for and pay over to the limited liability partnership all profits made by him in that business.
12. Every partner shall account to the limited liability partnership for any benefit derived by him without the consent of the limited liability partnership from any transaction concerning the limited liability partnership, or from any use by him of the property, name or any business connection of the limited liability.
13. No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.
14. All disputes between the partners arising out of the limited liability partnership agreement which cannot be resolved in terms of such agreement shall be referred for arbitration as per the provisions of the Arbitration and Conciliation Act.
15. The limited liability partnership shall not, without the consent of all partners, sell assets having a value of more than 50% of the total value of assets of the limited liability partnership.
16. A partner shall not sell or agree to sell his interest in the partnership to a non-partner without first offering his interest to existing partners.
17. A partner or group of partners acting together, shall not sell or agree to sell more than 50% of interest or combined interest in the partnership unless that non-partner has offered to buy all of the partners' interests and on the same terms.

## **COMPANIES AND ALLIED MATTERS ACT, 2019**

### **EXPLANATORY MEMORANDUM**

This Act repeals the Companies and Allied Matters Act, Cap. C20, Laws of the Federation of Nigeria, 2004 and enacts the Companies and Allied Matters Act, 2019 to provide for the incorporation of companies, limited liability partnerships, limited partnerships, registration of business names together with incorporation of trustees of certain communities, bodies, associations.