

(4) Any meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by the directors.

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

(6) Any officer of the company who is knowingly a party to a default in convening a meeting as required by sub-section (1) of this section shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand.

Length of  
notice for  
calling  
meetings

100. (1) A company's annual general meeting may be called by twenty-one days' notice in writing, and a meeting of a company other than an annual general meeting or a meeting for the passing of a special resolution may be called by fourteen days' notice in writing or in the case of a private company, by seven days' notice in writing; and any provision of a company's articles shall be void so far as it provides for the calling of a meeting of the company (other than an adjourned meeting), by shorter notice than that specified in this section.

(2) A meeting of a company shall, notwithstanding that it is called by shorter notice than that specified in sub-section (1) of this section or in the company's articles, as the case may be, deemed to have been duly called if it is so agreed -

- (a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and
- (b) in the case of any other meeting, by a majority in numbers of the member having a right to attend and vote at the meeting, being a majority holding not less than ninety-five per cent in nominal value of the shares giving a right to attend and vote at the meeting, or, in the case of a company not having a share capital, together representing not less than ninety-five percent of the total voting rights at that meeting of all the members.

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

- (a) Notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by Table A:

General  
provisions as  
to meetings  
and votes and  
power of court  
to order meeting

- (b) two or more members holding not less than one-tenth of the issued share capital, or, if the company has not share capital, not less than five percent in numbers of the members of the company, may call a meeting;
  - (c) in the case of a private company, two members and in the case of any other company three members, personally present shall be a quorum;
  - (d) any member elected by the members present at a meeting may be chairman thereof;
  - (a) every member shall have one vote in respect of each share or each twenty rand of stock held by him, and in any other case every member shall have one vote.
- (2) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in manner prescribed by the articles or this Act, or if for any reason the court sees fit, the court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the court thinks fit, and where any such order is made may give such ancillary or consequential direction as it thinks expedient, including a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.
- (3) Any meeting called, held and conducted in accordance with an order under sub-section (2) of this section shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.

Proxies and  
voting on a poll

102. (1) Any member of any company, other than private company, who is entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a member or not) as his proxy to attend any meeting of the company in his stead.

(2) Any member of a private company who is entitled to attend and vote at a meeting of the company shall be entitled to appoint another member of the company or such other person as the articles of the company may allow to attend any meeting of the company in his stead.

(3) A proxy appointed to attend a meeting of a company instead of a member shall have the same right as the member to speak at the meeting but shall not be entitled to vote except on a poll.

(4) In every notice calling a meeting of a company and on the face of every proxy form issued at the company's expense shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy to attend and vote and speak in his stead and, where that is so, that a proxy need not also be a member; and if default is made in complying with this sub-section in relation to a meeting, every officer of the company who authorizes, knowingly permits or is part to the default shall be guilty of an offence and liable to conviction to a fine not exceeding one hundred rand.

(5) Any provision contained in a company's articles shall be void in so far as it would have the effect of requiring the instrument appointing a proxy, or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy, to be received by the company or any other person more than forty-eight hours before a meeting in order that the appointment may be effective thereat.

(6) If for the purpose of any meeting or a company invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to some only of the members entitled to be sent a notice of the meeting and to vote thereat by proxy, every officer of the company who authorizes or knowingly permits or is a party to the issue as aforesaid shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand:

Provided that an officer shall not be liable under this subsection by reason only of the issue to a member at his written request of a form of appointment naming the proxy or of a list of persons willing to act as proxy if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(7) On a poll taken at a meeting of a company, a member entitled to a more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

(8) This section shall apply to meetings of any class of members of a company as it applies to general meetings of the company.

103.(1) If at any meeting of a company, any member of the company who is present and entitled to vote at that meeting demands an adjournment of the meeting upon any grounds stated by him the chairman shall put the demand to the vote of the meeting and if a majority of the members present personally or by proxy and entitled to vote at the meeting or if such members representing either personally or by proxy more than half of the

Procedure for  
compulsory  
adjournment

share capital of the company represented at the meeting vote in favour of an adjournment, the chairman shall adjourn the meeting to a day seven days after the date of the meeting or if that day is public holiday, to the next succeeding day other than a public holiday.

(2) when a meeting has been adjourned as aforesaid the secretary of the company shall, upon a date not later than four days after the adjournment publish in a newspaper circulating in Lesotho, a notice stating –

- (a) the time and place to which the meeting was adjourned;  
and
- (b) the matter before the meeting at the time when it was adjourned; and
- (c) the ground for adjournment

This sub-section shall not apply to a private company.

(3) Any person acting as chairman of a meeting of a company who fails to comply with the requirements of sub-section (1) of this section and any secretary of a company other than a private company who fails to comply with the requirements of sub-section (2) of this section shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand.

104. (1) A corporation, whether a company within the meaning of this Act or not, may –

- (a) if it is a member of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of any class of members of the company;
- (b) if it is a creditor (including a holder of debentures) of another corporation, being a company within the meaning of this Act, authorize by resolution of its directors or other governing body, such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

Representation of corporations at a meeting of a company and of creditors

(2) A person authorized as aforesaid shall be entitled to exercise the same powers on behalf of the corporation which he represents, as that corporation could exercise if it were an individual member, creditor or holder of debentures of that other company.

Circulation of  
members'  
resolutions, etc.

105. (1) Subject to the following provisions it shall be the duty of a company, on the requisition in writing of such number of members as is hereinafter specified and (unless the company otherwise resolves) at the expense of the requisitionists –

- (a) to give to members of the company entitled to receive notice of the next annual general meeting notice of any resolution which may properly be moved and is intended to be moved at that that meeting;
- (b) to circulate to members entitled to have notice of any general meeting sent to them any statement of not more than one thousand words with respect to the matter referred to in any proposed resolution of the business to be dealt with at that meeting.

(2) The number of members necessary for a requisition under sub section (1) of this section shall be –

- (a) any number of members representing not less than one twentieth of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or
- (b) not less than one hundred members holding shares in the company on which there has been paid up an average sum, per member, of not less than two hundred rand.

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

Provided that the copy shall be served, or notice of the effect of the resolution shall be given, as the case may be, in the same manner and, so far as a practicable, at the same time as notice of the meeting and where it is not practicable for it to be served or given at that time, it shall be served or given as soon as practicable thereafter.

(4) A company shall not be bound under this section to give notice of any resolution or not circulate any statement unless-

- (a) a copy of the requisition signed by the requisitionists (or two or more copies which between them contain the signatures of all the requisitionists) is deposited at

the registered office of the company –

- (i) in the case of a requisition requiring notice of a resolution not less than six weeks before the meeting; and
  - (ii) in the case of any other requisition, not less than twenty-one days before the meeting, and
- (b) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect thereto:

Provided that it, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date six weeks or less after the copy has been deposited, the copy though not deposited within the time required by this sub-section shall be deemed to have been properly deposited for the purposes thereof.

(5) The company shall also not be bound under this section to circulate any resolution or statement if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by 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 requisitionists, notwithstanding that they are not parties to the application.

(2) Notwithstanding anything in the company's articles, the business which may be dealt with at an annual general meeting shall include any resolution of which notice is given in accordance with this section, and for the purposes of this sub-section notice shall be deemed to have been so given notwithstanding the accidental omission, in giving it, of one or more members.

(7) In the event of any default in complying with the provisions of this section every officer of the company who authorizes, or knowingly permits or is party to the default shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand rand.

Definition of  
special  
resolution

106. (1) A resolution shall be a special resolution when it has been passed by a majority of not less than three-fourths of such members entitled to vote who vote in person or by proxy at a general meeting of which not less than twenty-one days' notice has been given, specifying the intention to propose the resolution as a special resolution and the terms of the resolution and at which members holding in the aggregate not less than one-fourth of the

total votes of the company are present in person or by proxy.

(2) If the members present at the meeting hold less than one-fourth of the total votes of all members entitled to vote, the meeting shall stand adjourned to the same day in the following week or, if that is a public holiday, to the next succeeding day other than a public holiday. At the adjourned meeting the members present in person or by proxy may deal with the business for which the original meeting was convened and a resolution passed by not less than three-fourths of such members shall be deemed to be a special resolution, notwithstanding that less than one-fourth of the total votes of the company are represented at such adjourned meeting.

(3) If it is so agreed by the majority in number of the members having the right to attend and vote at any such meeting, being a majority together holding not less than ninety-five percent in nominal value of the shares giving that right or, in the case of a company having no share capital, together representing not less than ninety-five percent 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 twenty-one days' notice has been given, and sub-section (8) of this section shall not apply for the purposes of this sub-section.

(4) In the case of a private company a resolution which is dated and signed by all members of the company, stating that it is passed as a special resolution shall be a special resolution passed on the said date, notwithstanding that it was so passed at a meeting of which less than twenty-one days' notice has been given, and sub-section (8) of this section shall not apply for the purposes of this sub-section.

(5) All other resolutions at a general meeting shall be called ordinary resolutions.

(6) At any meeting at which a special resolution is submitted to be passed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(7) When a poll is demanded regard shall be had in computing the majority on the poll to the number of votes cast for and against the resolution.

(8) For the purposes of this section notice of a meeting shall be deemed to be duly given and the meeting shall be deemed to be duly held when the notice is given and meeting held manner provided by the articles but subject always to the provisions of this Act.

107. (1) Where by any provision of this Act or of the articles of association of a company special notice is required of a

Resolutions  
requiring  
special notice

resolution, the resolution shall not be effective unless notice of the intention to move it has been given to the company not less than twenty-eight days before the meeting at which it is moved, and the company shall give its members notice of any such resolution at the same time or, if that is not practicable, shall give them notice and thereof, either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the articles, not less than twenty-one days before the meeting:

Provided that if, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date twenty-eight days or less after the notice has been given, the notice though not given within the time required by this sub-section shall be deemed to have been properly given for the purposes thereof.

(2) If the status of any person in relation to a company will be affected by the terms of a resolution of which special notice has been given the company shall send to or serve upon such person a copy of such resolution and of the notice of the meeting at which it will be moved at the time when similar notice is given to the members of the company, and such person shall be entitled to speak on the resolution at the meeting before any vote is taken upon it.

(3) If default is made by a company in giving notice to its members the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand.

108. (1) Within fifteen days from the passing of any special resolution, a copy of such resolution shall be transmitted to the Registrar, who shall, subject to other provisions of sub-section (2) of this section, record the same and the special resolution shall be of no force or effect until so recorded.

Registration  
and copies of  
special  
resolution

(2) The Registrar may, except upon the order of the court, refuse to record any special resolution so transmitted to him if such resolution appears to him to be in contravention of the provisions of this Act or of the memorandum or articles of the company.

(3) Where articles have been registered, a copy of every special resolution for the time being in force shall be embodied in or annexed to every copy of the articles issued after the recording of the resolution.

(4) Where articles have not been registered, a copy of every special resolution shall be transmitted to any member of the company at his request on payment of one rand or such less sum as the company may direct.



(5) If default is made in transmitting the copy of a special resolution to the Registrar, the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine not exceeding four rand for every day during which the offence continues.

(6) If default is made in complying with sub-section (3) sub-section (4) of this section the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine not exceeding two rand for each copy of articles or special resolution in respect of which the default is made

Resolution  
passed at  
adjourned  
meetings

109. If a resolution is passed at an adjourned meeting of –

- (c) a company;
- (d) the holders of any class of shares in a company;  
or
- (e) the directors of a company;

shall for all purposes be treated as having been passed on the date on which it was in fact passed and shall not be deemed to have been passed on any earlier date.

Minutes of  
proceedings of  
meetings of  
company or  
directors or  
managers

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

(2) Any such minute if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

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

(4) If default is made in complying with sub-section (1) of this section the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand.

111. (1) The books or copies of the books certified by a

Inspection of

director or secretary containing the minutes of proceedings of any general meeting of a company held 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, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge.

minute books

(2) Any member shall be entitled to be furnished within fourteen days after he has made a request in that behalf to the company with a copy of such minutes as aforesaid certified by the secretary or director, as correct, at a charge not exceeding twenty cents for every hundred words.

(3) If any inspection required under this section is refused, or if any copy required under this section is not sent within the proper time, the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine not exceeding four rand and to a further fine not exceeding four rand for every day during which the offence continues.

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

### **Accounts and Audit**

112. (1) Every company shall cause to be kept in the English or the Sesotho language proper books of account with respect to –

Keeping of  
books of  
account

- (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
- (b) all sales and purchases of goods by the company;
- (c) the assets and liabilities of the company.

(2) For the purposes of sub-section (1) of this section, proper books of account shall not be deemed to be kept with respect to the matters aforesaid if the are not kept such books as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.

(3) The books of account shall be kept at the registered

office of the company or at such other place as the directors think fit, and shall at all times be open to inspection by the directors:

Provided that if books of account are kept at a place outside Lesotho there shall be sent to, and kept at a place in Lesotho, and be at all times open to inspection by the directors such accounts and returns with respect to the business dealt with in the books of account so kept as will disclose with reasonable accuracy the financial position of that business at intervals not exceeding twelve months and will enable to be prepared in accordance with this Act the company's balance sheet, its profit and loss account or income and expenditure account, and any document annexed to any of those documents giving information which is required by this Act and is thereby allowed to be so given.

(4) If any directors of a company fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by own willful act been the cause of any default by the company thereunder, he shall, in respect of each default and subject to the provisions of section one hundred and

twenty, be guilty of an offence and liable on conviction to a fine not exceeding four hundred rand.

Profit and Loss  
account and  
balance sheet  
and financial  
year of holding  
company and  
subsidiary

113. (1) The directors of every company shall at some date not later than eighteen months after the incorporation of the company, and subsequently once at least in every calendar year, lay before the company in general meeting a profit and loss account for the period, in the case of the first account, since the incorporation of the company, and, in any other case, since the year preceding account, made up to a date not earlier than the date of the meeting by more than nine months. Every such account shall comply with the provisions of section **one hundred and fourteen**:

Provided that the Registrar on cause shown to his satisfaction may, in the case of any company, extend by a period not exceeding three months the period of eighteen months or nine months aforesaid, or both such periods.

(2) The directors shall cause to be made out in every calendar year and to be laid before the company in general meeting, a balance sheet as at the date to which the profit and loss account is made up.

(3) A holding company's directors shall secure that except where in their opinion there are good reasons against it, the financial year of each of its subsidiaries shall coincide with the

company's own financial year.

(4) If any director of a company fails to take all reasonable steps to comply with the requirements of this section, he shall subject to the provisions of section one hundred and twenty, be guilty of an offence and liable on conviction to a fine not exceeding four hundred rand, or to imprisonment for a period of exceeding twelve months, or to both such fine and imprisonment.

114. (1) Every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of its financial year, and every profit and loss account of a company shall give a true and fair view of the profit or loss of the use company for the financial year.

General  
provisions as  
to contents and  
form of  
accounts

(2) A company's balance sheet and profit and loss account shall comply with the requirements of the Sixth Schedule so far as applicable thereto.

(3) The requirements of sub-section (2) of this section and the Sixth Schedule shall be without prejudice either to the general requirements of sub-section (1) of this section or to any other requirements of this Act.

(4) The Minister may, on the application or with the consent of the company's directors, modify in relation to that company any of the requirements of this Act as to the matter to be stated in a company's balance sheet or profit and loss account (except the requirements of sub-section (1) of this section) for the purpose of adapting them to the circumstances of the company.

(5) Sub-sections (1) and (2) of this section shall not apply to a company's profit and loss account if –

- (a) the company has subsidiaries; and
- (b) the profit and loss account is framed as a consolidated profit and loss account dealing with all or any of the company's subsidiaries as well as the company and –

(ii) complies with the requirements of this Act relating to consolidated profit and loss accounts; and

(iii) shows how much the consolidated profit or loss for the financial year is dealt with in the accounts of the company.

(6) If a director of a company fails to take all reasonable steps to secure compliance by the company as respects any accounts required to be laid before the company in general meeting with the provisions of this section and with the other requirements of this Act as to the matters to be stated in the accounts, he shall, subject to the provisions of section one hundred and twenty, be guilty of

an offence and liable on conviction in respect of each offence to a fine not exceeding four hundred rand or to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment.

(7) For the purposes of this Act, except where the context otherwise requires –

- (a) any reference to a balance sheet or profit and loss account shall include any note thereon or document annexed thereto giving information which is required by this Act and is thereby allowed to be so given; and
- (b) any reference to a profit and loss account shall in the case of a company not trading for profit, be taken as including an income and expenditure account or any similar account which may be appropriate and references to profit or to loss and if the company has subsidiaries, references to a consolidated profit and loss account shall be construed accordingly.

Meaning of holding company, subsidiary and wholly owned subsidiary

115. (1) A company shall, subject to the provisions of subsection (3) of this section, be deemed to be a subsidiary of another if, but only if –

- (a) that other either –
  - (i) is a member of it and controls the composition of its board of directors; or
  - (ii) holds more than half in nominal value of its equity share capital; or
- (b) the first-mentioned company is a subsidiary of any company which is that other's subsidiary:

Provided that the first-mentioned company shall be deemed to be a subsidiary of that other if subsidiaries of that other between them hold more than one half in nominal value of the equity share capital of the first mentioned company or if that other and one or more of its subsidiaries between them hold more than one-half of such capital.

(2) For the purposes of sub-section (1) of this section the composition of a company's board of directors shall be deemed to be controlled by another company if, but only if, that other company the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove the holders of all or a majority of the directorships: but for the purpose of this provision that other company shall be deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied, that is to say –

- (a) that a person cannot be appointed thereto without the exercise in his favour by that other company of such power as aforesaid; or
- (b) that a person's appointment thereto follows necessarily from his appointment as a director of that other company;
- (c) that the directorship is held by that other company itself or by a subsidiary of it.

(3) In determining whether one company is a subsidiary of another-

- (a) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it;
- (b) subject to the two following paragraphs, any shares held or power exercisable –
  - (i) by any person as a nominee for that other except where that other is concerned only in a fiduciary capacity; or
  - (ii) by, or by nominee for, subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity;
- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing.
- (d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary (not being held or exercisable as mentioned in paragraph (c) of this sub-section) shall be treated as not held or exercisable by that other if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(4) A company shall be deemed to be the wholly-owned subsidiary of another if it has no members except that other and that other's wholly-owned subsidiaries and its or their nominees.

(5) A company shall be deemed to be another's holding

company if that other is its subsidiary.

(6) In this section, the expression “company” includes any body corporate, and the expression “equity share capital” means, in relation to a company, its issued share capital excluding any part thereof which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.

Obligation to  
lay group  
accounts before  
holding  
company

116. (1) Where at the end of its financial year a company has subsidiaries, accounts of statements (in this Act referred to as group accounts) dealing as hereinafter mentioned with the state of affairs and profit or loss of the company and the subsidiaries shall, subject to the provisions of sub-section (2) of this section, be laid before the company in general meeting when the company’s own balance sheet and profit and loss accounts are so laid.

(2) Notwithstanding anything in sub-section (1) of this section -

(a) group accounts shall not be required where the company is at the end of its financial year the wholly-owned subsidiary of another company incorporated in Lesotho; and

(b) group accounts need not deal with a subsidiary of the company if the company’s directors are of the opinion that –

(i) it is impracticable, or would be of no real value to members of the company, in view of the insignificant amounts involved, or would entail expense or delay out of proportion to the value to members of the company; or

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

or

(iii) the business of the holding company and that of the subsidiary are so different that they cannot reasonably be treated as a single undertaking; and

(c) group accounts shall not be required if the directors are of an opinion described in paragraph (b) of this subsection about each of the company’s subsidiaries:

Provided further, that the approval of the Minister shall be required for not dealing in group accounts with a subsidiary on the ground that the result would be harmful or on the ground of the difference between the business of the holding

company and that of the subsidiary.

- (3) If any director of a company fails to take all reasonable steps to secure compliance as respects the company with the requirements of this section he shall, subject to the provisions of section one hundred and twenty, be guilty of an offence and liable on conviction to a fine not exceeding four hundred rand or to imprisonment for a period not exceeding twelve months, or to both such fine and such imprisonment:

Provided that he shall not be sentenced to imprisonment unless in the opinion of the court dealing with the case, the offence was committed willfully.

117. (1) The group accounts laid before a holding company shall be consolidated account comprising –

Form and  
contents of  
group accounts

- (a) a consolidated balance sheet dealing with the state of affairs of the company and all the subsidiaries to be dealt with in the group accounts; and
- (b) a consolidated profit and loss account dealing with profit or loss of the company and those subsidiaries.

(2) If the company's directors are of opinion that it is better for the purpose –

- (a) of presenting the same or equivalent information about the state of affairs and profit or loss of the company and those subsidiaries; and
- (b) of so presenting it that it may be readily appreciated by the company's members;

the group accounts may be prepared in a form other than that required by sub-section (1) of this section and in particular may consist of more than one set of consolidated accounts, that is to say, one set dealing with the company and one groups of subsidiaries and one or more sets dealing with other groups of subsidiaries, or of separate accounts dealing with each of the subsidiaries or of statement expanding the information about the subsidiaries in the company's own accounts, or any combination or these forms.

(3) The group accounts may be wholly or partly incorporated in the company's own balance sheet and profit and loss accounts.

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



as concerns members of the company; and in particular shall exclude intergroup balances and any profit or loss arising from transaction within the group in so far as those profits or losses may not have been realized or incurred so far as concerns members of the company.

(5) Where the financial year of a subsidiary does not coincide with that of the holding company the group accounts shall, unless the Minister on the application or with the consent of the holding company's directors otherwise directs, deal with the subsidiary's last before that of the holding company and with the subsidiary's profit or loss for the financial year.

(6) Without prejudice to sub-section (4) of this section, the group accounts, if prepared as consolidated accounts, shall comply with the requirements of the Sixth Schedule so far as applicable thereto, and if not so prepared shall give the same or equivalent information:

Provided that the Minister may, on the application or with the consent of the company's directors, modify the said requirements in relation to that company for the purpose of adapting them to the circumstances of the company.

Accounts and auditor's report to be Annexed to signed balance sheet

118. (1) The profit and loss account and, so far as not incorporated in the balance sheet or profit and loss account, any group account laid before a company in general meeting shall be annexed to the balance sheet and approved by the board of directors before the balance sheet is signed on its behalf, and the auditor's report shall be attached thereto except in the case of a private company which in terms of subsection (7) of section **one hundred and twenty-two** is not required to appoint an auditor.

(2) If any copy of a balance sheet is issued. Circulated, or published without having a copy annexed thereto of the profit and loss account or any group accounts required by this section to be so annexed or without having attached thereto a copy of the auditor's report as required by this section, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding one hundred rand.

(3) Every balance sheet of a company shall be signed on behalf of the board by two of the directors of the company who is in default shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand.

Directors' report to be attached balance sheet

119. (1) Save in the case of a private company there shall be attached to every balance sheet laid before the company in general meeting a report by the directors with respect to the state of the company's affairs, amount, if any, already paid or declared or

which they recommend should be paid by way of dividend and the amount, if any, which they propose to carry to reserves within the meaning of the Sixth Schedule, and if directors' remuneration is to be determined at the meeting the amount of remuneration recommended.

(2) The said report shall deal, so far as is material for the appreciation of the state of the company's affairs by its members and will not in the directors' opinion be harmful to the business of the company or of any of its subsidiaries, with any change during the financial year in the nature of the company's business, or in the company's subsidiaries or in the classes of business in which the company has an interest, whether as members of another company or otherwise.

(3) If any director of a company fails to take all reasonable steps to comply with the provisions of sub-section (1) of this section he shall be guilty of an offence, and liable on conviction to a fine not exceeding four hundred rand or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment:

Provided that he shall not be sentenced to imprisonment unless, in the opinion of the court dealing with the case, the offence was committed willfully.

120. In any proceedings against a person under sub-section (4) of section **one hundred and twelve**, or sub-section (4) of section **one hundred and thirteen**, or sub-section (6) of **one hundred and fourteen**, or sub-section (3) of **section one hundred and sixteen**, or sub-section (3) of the section **one hundred and nineteen** for failing to take all reasonable steps to comply or secure compliance by a company with the requirements referred to in the sub-section under which he is so charged, it shall be a defence for him to prove that he had reasonable ground to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that the requirements or provisions referred to in that sub-section were complied with and was in a position to discharge that duty.

Defence to certain charges

121. (1) Save in the case of a private company a copy of every balance sheet, including every document required by this Act to be annexed thereto, which is to be laid before the company in general meeting, together with group accounts, if any, prepared under section one hundred and sixteen and one hundred and seventeen and a copy of the auditor's report, shall, not less than fourteen days before the date of the meeting, be sent to all persons entitled to receive notices of general meetings of the company.

Right to receive copy of balance sheet and auditor's report

(2) Any member and any debenture holder of the company shall be entitled to be furnished on demand without charge with a copy of the last balance sheet of the company, including every document required by law to be annexed thereto, together with a copy of the auditor's report on the balance sheet unless he shall previously have been supplied therewith.

(3) If default is made in complying with the provisions of sub-section (1) of this section, of this section, the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand, and if, where any person makes a demand for a document to which he is by virtue of sub-section (2) of this section entitled, default is made in complying with the demand within fourteen days after the making thereof, the company and any officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine not exceeding ten rand for every day during which the offence continues.

Appointment  
and  
remuneration of  
auditors

122. (1) The first auditor of a company shall be appointed by the directors within thirty days of the issue of the certificate that the company is entitled to commence business in the case of a company to which Section eighty-seven applies, and in the case of other companies within thirty days of the issue of the certificate of incorporation; and an auditor so appointed shall hold office until the conclusion of the first annual general meeting:

Provided that –

- (i) subject to the provisions of the next succeeding section the company may at a general meeting remove any such auditor and appoint in his place any other person who has by special notice been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company, not less than fourteen days before the date of the meeting; and
- (ii) if the directors fail to exercise their power under this sub-section, the company in general meeting may appoint the first auditor, and thereupon the said powers of the directors shall cease; and
- (iii) if neither the directors nor the company appoint an auditor under this sub-section, the Minister may on the application of any member do so.

(2) Every company shall at each annual general meeting appoint an auditor to hold office from the conclusion of that, until the conclusion of the next annual general meeting.

(3) Where at an annual general meeting no auditor is appointed or re-appointed, the Minister may appoint a person to

fill the vacancy.

(4) The company shall, within one week of the Minister's power under sub-section (3) of this section becoming exercisable, give him notice of that fact, and if a company fails to give notice as required by this sub-section, the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine not exceeding ten rupees for every day during which the offence continues.

(5) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor, if any, may act.

(6) The remuneration of the auditor of a company –

- (a) in the case of an auditor not appointed by Minister, shall be fixed by the company in general meeting of in such manner as the company in general meeting may determine;
- (b) in the case of an auditor appointed by the Minister, shall be fixed by the Minister.

For the purposes of this sub-section, any sums paid by the company in respect of the auditor's expenses shall be deemed to be included in the expression "remuneration".

(7) Notwithstanding anything to the contrary contained in this section, a private company shall not be required to appoint an auditor if, but only if –

- (a) the number of shareholders in such company does not exceed ten;
- (b) none of the shareholders in such company is a company;
- (c) all the shareholders in such company agree that an auditor shall not be appointed.

123.(1) Special notice shall be required for a resolution at a company's annual general meeting appointing as auditor a person other than a retiring auditor or providing expressly that a retiring auditor shall not be re-appointed.

Special notice  
required of  
resolution to  
appoint or  
remove auditor

(2) On receipt of notice of such an intended resolution as aforesaid, the company shall forthwith send a copy thereof to the retiring auditor (if any).

(3) Where notice is given of such an intended resolution as aforesaid and the retiring auditor 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 sent (whether before or after receipt of the representations by the company);

and if a copy of the representations is not sent as aforesaid because received too late or because of the company's default the auditor may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting:

Provided that copies of the representations need not be sent out and the representations need not be read 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 an application under this section to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

(4) The last foregoing sub-section shall apply to a resolution to remove the first auditors by virtue of sub-section (1) of the last foregoing section as it applies in relation to a resolution that a retiring auditor shall not be re-appointed.

Disqualifica-  
tions for  
appointment as  
auditor

124. (1) A person shall not be qualified for appointment as an auditor of a company unless either –

(a) he is a member of a body of accountants established by law in any country and recognized by the Minister for the purposes of the qualifications of auditors; or

(b) he is for the time being authorized by the Minister to be so appointed as having adequate alternative qualifications or as having obtained adequate knowledge and experience in the course of

employment.

- (2) None of the following persons shall be qualified for appointment as auditors of a company-
- (a) an officer or servant of the company;
  - (b) a person who is a partner of an officer or servant of the company;
  - (c) a person who is an employer or an employee of an officer or servant of the company;
  - (d) a body corporate;
  - (e) a person who is an officer or servant of a body corporate which is an officer of the company;
  - (f) a person who by himself, or his partner or his employee, regularly performs the duties of secretary or bookkeeper to the company.

Reference in this sub-section to an officer or servant shall be construed as not including reference to an auditor.

(3) A person shall also not be qualified for appointment as auditor of a company if he is, by virtue of sub-section (1) of this section, disqualified for appointment as auditor of any other body corporate which is that company's subsidiary holding company, or a subsidiary of that company's holding company, or would be disqualified if the body corporate were a company.

(4) Any person who acts as auditor of a company when disqualified in terms of this section shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand.

125. (1) The auditor shall make report to the members on the accounts examined by him, and on every balance sheet, every profit and loss account and all group accounts laid before the company in general meeting during his tenure of office, and the report shall contain statements as to the following matters:-

Contents of  
auditor's report

- (a) whether he has examined or satisfied himself on the existence of the securities and examined the books and accounts and vouchers of the company;
- (b) whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purposes of his audit.
- (c) Whether, in his opinion, proper books of account have been kept by the company, so far as appears from his examination of those books, and proper returns adequate for the purpose of his audit have been received from branches not visited by him;

- (d) (i) whether the company's balance sheet and profit and loss account dealt with by the report are in agreement with the books of account and returns:
- (ii) whether, in his opinion and to the best of his information and according to the explanations given him, the said accounts give the information required by the Act in the manner so required and give a true and fair view, in the case of the balance sheet, of the state of the company's affairs as at the end of the financial year, and in the case of the profit and loss account, of the profit and loss for its financial year; or, as the case may be, gives 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 III of the Sixth Schedule are not required to be disclosed;
- (d) in the case of a holding company submitting group accounts whether, in his opinion, the group accounts have been properly prepared in accordance with the provisions of this Act so as to give a true and fair view of the state of affairs and profit or loss of the company and its subsidiaries dealt with thereby, so far as concerns members of the company, or, as the case may be, so as to give a true and fair view thereof subject to the non-disclosure of any matters (to be indicated in the report) which by virtue of Part III of the Sixth Schedule are not required to be disclosed.

(2) In the event of the auditor being unable to make such report, or to make it without qualification, he shall inscribe upon or attach to the balance sheet a statement of that fact or of the nature of the qualification, as the case may be, and he shall set forth therein the facts or circumstances which prevent him from making the report or from making it without qualification.

(3) The auditor's report or any statement under sub-section (2) of this section shall, unless all the members present agree to the contrary, be read before the company in general meeting, and shall, in any event, be open to inspection by any member.

Auditor's right of access to books and to attend general meeting

126. (1) Every auditor of a company shall have a right of access at all times to the books, accounts, vouchers and securities of the company, and shall be entitled to require from the officers of the company such information and explanation as he thinks necessary.

(2) Every auditor of a holding company shall have a right of access to all current and former accounts of any company subsidiary thereto and shall be entitled to require from the officers of the holding or subsidiary company all such information and explanations in connection therewith as he may deem necessary.

(3) Every auditor of a company shall be entitled to attend any general meeting of the company and to receive all notices of and other communications relating to any general meeting which any member of the company is entitled to receive and to be heard at any general meeting which he attends on any part of the business of the meeting which concerns him as auditor.

Construction of  
reference to  
documents  
annexed to  
accounts

127. References in this Act to a document annexed or required to be annexed to a company's accounts or any other document shall not include the directors' report or the auditor's report.

Provided that any information which is required by this Act to be given in accounts, and is hereby allowed to be given in a statement of annexed, may be given in the director's report instead of in the accounts, and, if any such information is given the report shall be annexed to the accounts and this Act shall apply in relation thereto accordingly, except that the auditor shall report thereon only so far as it gives the said information.

### Inspection

128 (1) The Minister may appoint one or more inspectors to investigate the affairs of a company and to report thereon in such manner as he may direct –

Investigation  
of company's  
affairs on  
application of  
members

- (a) in the case of a company having a share capital, on the application either of not less than one hundred members or of members holding not less than one-twentieth of the issued shares of such company;
- (b) in the case of a company having no share capital, on the application of not less than one-tenth in number of the persons on the company's register of members.

(2) The application shall be supported by such evidence as the Minister may require for the purpose of showing that the applicants have good reason for requiring the investigation, and the Minister may, before appointing an inspector, require the applicants to give satisfactory security in an amount not exceeding four hundred rand for payment of the costs of the investigation.

129. Without prejudice to his powers under section one hundred and twenty-eight, the Minister-

Investigation  
of company's



- (a) shall appoint one or more inspectors to investigate the affairs of a company and to report thereon in such manner as he directs if –
- (i) the company by special resolution, or
  - (ii) the court by order,

affairs in other cases

declares that its affairs ought to be investigated by an inspector appointed by him.; and

- (b) may do so, if it appears to him that there are circumstances suggesting –
- (i) that its business is being conducted with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose or in a manner oppressive of any part of its members or that it was formed for any fraudulent or unlawful purpose;
  - (ii) that persons concerned with its formation or the management of its affairs have in connection therewith been guilty of fraud or other misconduct towards it or towards its members; or
  - (iii) that its members have not been given all the information with respect to its affairs which they might reasonably expect.

Powers of inspectors to investigate related companies

130. If an inspector appointed under either section one hundred and twenty-eight or one hundred and twenty-nine to investigate the affairs of a company thinks it necessary for that purpose to investigate also the affairs of any other body corporate which is or has at any relevant 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, with the sanction of the Minister, have power so to do, and shall report on the affairs of the other body corporate so far as he thinks the results of his investigation thereof are relevant to the investigation of the affairs of the first-mentioned company.

Production of documents and evidence on investigation

131. (1) It shall be the duty of all others and agents of the company and of all officers and agents of any other body corporate whose affairs are investigated by virtue of section one hundred and twenty-eight, one hundred and twenty-nine, one hundred and thirty or one hundred and thirty-five as the case may be to produce to the inspector all books and documents of or relating to the company or, as the case may be, the other body corporate which are in their custody or power and otherwise to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.

(2) The inspector may examine on oath the officers and

agents of the company or other body corporate in relation to its business and may administer an oath accordingly.

(3) If any officer or agent of the company or other body corporate refuses to produce to the inspector any book or document which it is his duty under this section so to produce, or refuses on any ground other than that the answer may tend to incriminate him, to answer any question which is put to him by the inspector with respect to the affairs of the company or other body corporate as the case may be, the inspector may certify the refusal under his hand to the court, and the court may thereupon inquire into the case, and after hearing any witnesses who may be produced against to on behalf of the alleged offender and after hearing any statement which may be offered in defense, convict and punish the offender in like manner as if he had been guilty of contempt of the court.

(4) If an inspector thinks it necessary for the purpose of his investigation that a person whom he has no power to examine on oath should be so examined, he may apply to the court and the court may, if it sees fit, order that person to attend and be examined on oath before it on any matter relevant to the investigation, and on any such examination –

- (a) the inspector may take part therein either personally or by attorney or counsel;
- (b) the court may put such questions to the person examined as the court thinks fit;
- (c) the person examined may at his own cost employ an attorney with or without counsel who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him:

Provided that the court may allow the person examined such costs as in its discretion it may think fit, and any costs so allowed shall be paid as part of the expense of the investigation.

(5) Notes of any examinations made in terms of this section shall be taken down in writing, shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him.

(6) In this section any references to officers or to agents shall include past as well as present officers or agents, as the case may be, and for the purpose of this section the expression “agents” in relation to a company or other body corporate shall include the bankers and attorneys of the company or other body corporate and

any person employed by the company or other body corporate as auditors, whether those persons are or are not officers of the company or other body corporate.

132. (1) The inspector may, and, if so directed by the Minister, shall, make interim reports to the Minister, and on the conclusion of the investigation shall make a final report to the Minister.

Inspector's  
report

(2) The Minister shall-

- (a) send a copy of any report made by the inspector to the registered office of the company;
- (b) where the inspector is appointed under section **one hundred and twenty-eight**, furnish each applicant for the investigation, on request, with a copy of the report; and
- (c) where the inspector is appointed under section **one hundred and twenty-nine** in pursuance of an order of the court, furnish copy to the court; and may –
- (d) furnish a copy thereof on request and on payment of the prescribed fee, to any person who is a member of the company or of any other body corporate dealt with in the report by virtue of section one hundred and thirty or whose interests as a creditor of the company or of any other such body corporate as aforesaid appear to the Minister to be affected;
- (e) cause the report to be printed and published.

Proceedings on  
inspector's  
report

133. (1) If from any report made under section one hundred and thirty-two it appears to the Minister that any person has, in relation to the company or any other body corporate whose affairs have been investigated by virtue of section one hundred and thirty, been guilty of an offence for which he is criminally liable, the Minister shall refer the matter to the [Attorney-general].

(3) If, in the case of any body corporate liable to be wound up under this Act, it appears to the Minister from any such report as aforesaid, that it is expedient so to do by reason of any such circumstance as are referred to in sub-paragraph (i) or (ii) of paragraph (b) of section one hundred and twenty-nine the Minister may, unless the body corporate is already being wound up by the court, present a petition for it to be so wound up if the court thinks it just and equitable that it should be wound up or a petition for an order under section **one hundred and sixty-five**, or both.

(4) If from any such report as aforesaid it appears to the Minister 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 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 mis-applied or wrongfully retained the Minister may himself bring the proceedings for that purpose in the name of the body corporate.

(5) The Minister shall indemnify the body corporate against any costs or expenses incurred by it in or in connection with any proceedings brought by virtue of subsection (3) of this section.

Expenses of  
investigation of  
company's  
affairs

134. (1) The expenses of and incidental to investigation by an inspector appointed by the Minister under this law shall be defrayed in the first instance by the Minister from public funds, but the following persons shall, to the extent mentioned, be liable to repay the Minister –

- (a) any person who is convicted on a prosecution instituted as a result of the investigation, or who is ordered to pay damages or restore any property in proceedings brought by virtue of sub-section (3) of section one hundred and thirty-three, may in the same proceedings be ordered to pay the said expenses to such extent as be specified in the order;
- (b) any body corporate in whose name proceedings are brought as aforesaid shall be liable to the amount or value of any sums or property recovered by it as a result of those proceedings; and
- (c) unless as a result of the investigation a prosecution is instituted –
  - (i) any body corporate dealt with by the report, where the inspector was appointed otherwise than of the Minister's own motion, shall be liable, except so far as the Minister may otherwise direct; and
  - (ii) the applicants for the investigation, where the inspector was appointed under section one hundred and twenty-eight, shall be liable to such extent (if any) as the Minister may direct; and any amount for which a body corporate is liable by virtue of paragraph (b) of this sub-section shall be a first charge on the sums or property mentioned in that paragraph.

(2) The report of an inspector appointed otherwise than of the Minister's own motion may, if he thinks fit, and shall, if the Minister so directs, include a recommendation as to the directions, if any, which he thinks appropriate, in the light of his investigation, to be given under paragraph (c) of sub-section (1) of this section.

(3) For the purpose of this section, any costs or expenses incurred by the Minister in or in connection with proceedings brought by virtue of sub-section (3) of section **one hundred and thirty-three** (including expenses incurred by virtue of sub-section (4) thereof), shall be treated as expenses of the investigation giving rise to the proceedings.

(4) Any liability to repay the Minister imposed by paragraphs (a) and (b) of sub-section (1) of this section shall subject to satisfaction of the Minister's right to repayment be a liability also to indemnify all persons against liability under paragraph (c) thereof, and any such liability imposed by the said paragraph shall, subject as aforesaid, be a liability also to indemnify all persons against liability under the said paragraph (b); and any person liable under the said paragraph (a) or (b) or either sub-paragraph of the said paragraph (c) shall be entitled to contribution from any other person liable under the same paragraph or sub-paragraph, as the case may be, according to the amount of their respective liabilities thereunder.

135. (1) The Minister may, with or without an application by members of the company, appoint one or more inspectors to investigate and report on the membership of any company and otherwise with respect of the company for the purpose of determining the true persons who are or have been financially interested in the success or failure of the company or able to control or materially to influence the policy of the company and may determine the limits, conditions and methods of such investigation.

Appointment and powers of inspectors to investigate ownership of company

(2) The expenses of any investigation under this section shall be defrayed by the Minister out of public funds.

Power to require information as to persons interested in shares or debentures

136. (1) Where it appears to the Minister that there is good reason to investigate the ownership of any shares in or debentures of a company and that it is unnecessary to appoint an inspector for the purpose, he may require any person whom he has reasonable cause to believe -

- (a) to be or to have been interested in those shares or debentures; or
- (b) to act or to have acted in relation to those shares or debentures as the agent of someone interested therein to give him any information which he has or can reasonably be expected to obtain as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures.

(2) For the purposes of this section, a person shall be deemed to have an interest in a share or debenture if he has any right to acquire or dispose of the share or debenture or any interest therein or to vote in respect thereof, or if his consent is necessary for the exercise of any of the rights of other persons interested therein, or if other persons interested therein can be required or are accustomed to exercise their rights in accordance with his instructions.

(3) Any person who fails to give any information required of him under this section, or who in giving any such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand rand or imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Power to  
impose  
restriction on  
shares or  
debentures

137. (1) Where in connection with an investigation under section one hundred and thirty-five or section one hundred and thirty-six, it appears to the Minister that there is difficulty in finding out the relevant facts about any shares (whether issued or to be issued) and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned or any of the them to assist the investigation as required by this Act, he may by order direct that the shares shall until further order be subject other restrictions imposed by this section.

(2) So long as any shares are directed to be subject to the restrictions imposed by this section –

- (b) any transfer of those shares, or in the case of unissued shares any transfer of the right to be issued therewith and any issue thereof, shall be void;
- (c) no voting rights shall be exercisable in respect of those shares;
- (d) no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder thereof;
- (e) 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 Minister makes an order directing that shares shall be subject to the said restrictions, or refuses to make an order directing that shares shall cease to be subject thereto, any person aggrieved thereby may apply to the court, and the court may, if it sees fit, direct that the shares shall cease to be subject to the said

restrictions and may have such order as to costs as it deems fit.

(4) Any order (whether of the minister or of the court) directing that shares shall cease to be subject to the said restriction which is expressed to be made with a view to permitting a transfer of those shares may continue the restriction mentioned in paragraph (c) and (d) of subsection (2) of this section either in whole or in part, so far as they relate to any acquired or offer made before the transfer.

(5) Any person who-

- (a) exercises or purports to exercise any right to dispose of any shares which, to his knowledge, are for the time being subject to the said restrictions or of any right to be issued with any shares;
- (b) votes in respect of any such shares, whether as holder or proxy, or appoints a proxy to vote in respect thereof; or
- (c) being the holder of any such shares, fails to notify of their being subject to the said restriction any person whom he does not know to be aware of that fact but does know to be entitled, apart from the said restrictions, to vote in respect to those shares whether as holder or proxy;

shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand rand or imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(6) Where shares in any company are issued in contravention of the said restrictions, the company shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand rand.

(7) This section shall apply in relation to debentures as it applies in relation to shares.

Saving for  
Attorneys and  
bankers

138. Nothing in this Act shall require disclosure to the Minister or an inspector appointed by him –

- (a) by an attorney of any privileged communication made to him in that capacity, except as respects the name and address of his client; or
- (b) by a company's bankers as such of any information as to the affairs of any of their customers other than the company.

Inspector's  
report to be

139. A copy of any report of any inspector appointed under

evidence

the Act shall be admissible in any legal proceedings as evidence of the opinion of the inspector in relation to any matter contained in the report.

### **Directors and other Officers**

Directors and secretary

140. (1) Every company not being a private company shall have at least two directors and every private company at least one director, and every company shall have a secretary.

(2) The sole director of a company shall not also be secretary nor shall any company have as secretary to the company a corporation the sole director of which is a sole director of a company.

(3) Every subscriber to a memorandum of association of a private company shall, until other directors are appointed, be deemed to a director of the company and be liable for all the duties and obligations of a director.

(4) Any provision requiring or authorizing a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as or in place of the secretary.

Validity of Acts of Directors

141. The acts of the director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

Restrictions on appointment or advertisement of director

142. (1) This section shall not apply to –

- (a) an association licensed under section **twenty-three**;
- (b) a private company;
- © a company which was a private company before becoming a public company; or
- (d) a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company was entitled to commence business.

(2) A persons shall not be capable of being appointed director of a company by the articles, and shall both be named as a director or proposed director of a company in the list to be lodged in terms of sub-section (4) of this section or in any prospectus issued by or on behalf of the company or in any statement in lieu of prospectus lodged by or on behalf of the company, unless, before the lodging of the list or registration of the articles or the publication of the



prospectus, or the lodging of the statement in lieu of the prospectus, as the case may be, he has himself or by his agent authorised in writing -

(a) signed and lodged with the Registrar a consent in writing to act as such director; and

(b) either signed the memorandum of association for a number of shares no less than his qualification, if any, or signed and lodged with the Registrar a contract in writing to take from the company and pay for his qualification shares, if any.

(3) The share qualification mentioned in sub-section (2) of this section means a share qualification required on appointment to the office of director or within a period determined by reference to the time of appointment, and the words "qualification shares" shall be construed accordingly.

(4) When application is made under section eighteen for registration of the memorandum and of the articles, if any, of a company the applicant shall lodge with the Registrar a list, in the prescribed form, of the persons, if any, not being less than two, with their full names, addresses and occupations, who have consented to be directors of the company and, upon such registration, the persons who have so consented shall, until other directors are appointed, be deemed to be the directors of the company and liable for a duties and obligations of a director.

(5) For the purpose of sub-section (4) of this section a person who, having consented to be a director, has, before the lodging of the list with the Registrar, withdrawn his consent by notice in writing lodged with the Registrar, shall be deemed to be a person who has not so consented.

143. (1) Without prejudice to the restrictions imposed by section one hundred and forty-two, it shall be the duty of every director who is by the articles of the company required to hold a specified share qualification and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the articles.

Share  
qualifications  
of directors

(2) The office of director of a company shall be vacated if the director does not within two months from the date of his appointment, or within such shorter time as may be fixed by the articles, obtain his qualification, or if after the expiration of the said period or shorter time he ceased at any time to hold his qualification.

(3) A person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his qualification.

(4) If after the expiration of the said period or shorter time any unqualified person acts as a director of the company, he shall be guilty of an offence and liable on conviction to a fine not exceeding ten rand for every day between the expiration of the said period or shorter time, 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.

Disqualification  
for appointment  
as director

144. (1) Any of the following persons shall be disqualified for being appointed a director of a company;

- (a) a body corporate;
- (b) a minor or any other person under legal disability, provided that a woman married in community of property may be a director if her husband gives his written consent and that consent is lodged with the Registrar;
- (c) save with the leave of the court, an unrehabilitated insolvent;
- (d) save with the leave of the court any person who has at any time been convicted (whether in Lesotho or elsewhere) of theft, fraud, forgery or uttering a forged document, or perjury and has been sentenced therefore fine, or to a fine exceeding a hundred rand;
- (e) any person who is the subject of any order under this Act disqualifying him as director;
- (f) save with the leave of the court, any person removed by a competent court from an office of trust on account of misconduct.

(2) A director of any company shall cease to hold office as such if, after the date of commencement of this Act –

- (a) his estate is sequestrated as insolvent;
- (b) he is convicted (whether in Lesotho or elsewhere) of theft, fraud, forgery or uttering a forged document, or perjury and has been sentenced therefore to serve a term of imprisonment without the option of a fine, or to a fine exceeding a hundred rand; or
- (c) he is removed by the court from any office of trust on account of misconduct.

(3) If any person who is disqualified under this section for being or continuing to be a director of any company directly or

indirectly takes part in or is concerned in the management of any company. he shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand rand or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(4) Nothing in this section shall be deemed to prevent a company from applying under its regulations any further disqualification for the appointment of, the retention of office by, a director.

145. (1) At a general meeting of a company other than 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 a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.

Appointment  
of directors to  
be voted on  
individually

(2) A resolution moved in contravention of this section shall be void. whether or not its being so moved was objected to at the time:

Provided that -

- (i) this sub-section shall not be taken as excluding the operation of section one hundred and forty-one; and
- (ii) where a resolution so moved is passed, no provision for the automatic re-appointment of retiring directors in default of another appointment shall apply.

(3) For the purposes of this section, a motion for approving a person's appointment or for nominating a person for appointment shall be treated as a motion for his appointment.

146. (1) A company may by ordinary resolution of which special notice has been given remove a director before the expiration of his period of office notwithstanding in its articles or any agreement between it and him:

Removal of  
directors

Provided that this sub-section shall not, in the case of a private company. authorise the removal of a director holding office for life on the commencement of this Act, whether or not he is subject to retirement under an age limit by virtue of the articles or otherwise.

(2) Where the director concerned makes with respect to the intended resolution representations in writing to the company, not exceeding one thousand words, 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;

and if a copy of the representations is not sent as aforesaid because it was received too late or because of the company's default, the director may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting:

Provided that copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on an application under this section to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.

(3) A vacancy created by the removal of a director under this section if not filled at the meeting at which he is removed may be filled as a casual vacancy.

(4) A person appointed director in place of a person removed under this section shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become director on the day on which the person in whose place he is appointed was last appointed a director.

(5) Nothing in this section shall be taken as depriving a person removed thereunder of compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminated with that as director or as derogating from any power to remove a director which may exist apart from this section.

Prohibition of  
tax-free  
payments to  
directors

147. (1) It shall not be lawful for a company to pay a director remuneration (whether as director or otherwise) free of any taxation in respect of income, or otherwise calculated by reference to or varying with the amount of such taxation, or with the rate of taxation on incomes, except under a contract which was in force on the 1st February, 1967, and provides expressly, and not by reference to the articles, for payment of remuneration as aforesaid.

(2) Any provision contained in a company's articles, or in

any contract other than such a contract as aforesaid, or in any resolution of a company or a company's directors, for payment to a director of remuneration as aforesaid shall have effect as if it provided for payment, as a gross sum subject to taxation of the net sum for which it actually provides.

(3) This section shall not apply to remuneration due before or in respect of a period before this Act came into force.

148. (1) It shall not be lawful for a company to make a loan either of money or any other property to any person who is its director or a director of its holding company, or to enter into any guarantee or provide any security connection with a loan made to such person as aforesaid by any other person:

Prohibition of  
loans to  
directors

Provided that nothing in this section shall apply either-

- (i) to anything done by a private company with the consent of all members; or
- (ii) Subject to the provisions of sub-section (2) of this section, to anything done to provide any such person as aforesaid with funds to meet expenditure incurred or to be incurred by him for purpose of the company or for the purpose of enabling him properly to perform his duties as an officer of the company; or
- (iii) in the case of a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, to anything done by the company in the ordinary course of that business.

(2) Proviso (ii) to sub-section (1) of this section shall not authorise the making of any loan, or the entering into any guarantee, or the provisions of any security, except either-

- (a) with the prior approval of the company given at a general meeting at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed;
- (b) on condition that, if the approval of the company is not given as aforesaid at or before the next following annual general meeting, the loan shall be repaid or the liability under the guarantee or security shall be discharged, as the case may be, within six months from the conclusion of that meeting.

(3) Where the approval of the company is not given as required by any such condition, the directors authorising the making of the loan, or the entering into the guarantee, or the provision of the security, shall be jointly and severally liable to indemnify the company against any loss arising therefrom.

Approval of company requisite for payment by it to director for loss of office, etc

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

Approval of company requisite for payment in connection with transfer of its property to director for loss of office

150. (1) It shall not be lawful in connection with the transfer of the whole or any part of the undertaking or property of a company for any part of the undertaking or property or a company for any payment to be made by any person to any director of the company 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 (including the amount thereof) have been disclosed to the members of the company and proposal approved by the company in general meeting.

(2) Where a payment which is hereby declared to be illegal is made to a director of the company, the amount received shall be deemed to have been received by him in trust for the company.

Duty of director to disclose payments for loss of office, etc., made in connection with transfer of shares in company

151. (1) Wherein connection with the transfer to any persons of all or any of the shares in a company, being a transferred resulting from-

- (a) an offer made to the general body of shareholders;
- (b) an offer made by or on behalf of some other body corporate with a view to the company becoming its subsidiary or a subsidiary of its holding company;
- (c) an offer made by or on behalf of an individual with a view to his obtaining the right to exercise or control the exercise of not less than one-third of the voting power at any general meeting of the company; or
- (d) any other offer which is conditional on acceptance to a given extent;

a payment is to be made to a director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, it shall be the duty of

that director to take all reasonable steps to secure to that particulars with respect to the proposed payment (including the amount thereof) shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(2) If-

- (a) any such director fails to take reasonable steps as aforesaid; or
  - (b) any person who has been properly required by any such director to include to said particulars in or send them with any such notice as aforesaid fail so to do;
- such director or such person, as the case may be shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand.

(3) If -

- (a) the requirements of sub-section (1) of this section are not complied with in relation to any such payment as is therein mentioned; or
- (b) the making of the proposed payment is not, before the transfer of any shares in pursuance of the offer, approved by a meeting summoned for the purpose of the holders of the shares to which the offer relates and of other holders of shares of the same class as any of the said shares;

any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any persons who have sold their 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 paragraph (b) of sub-section (3) if of this section are not all the members of the company and no provision is made by the articles for summoning or regulating such a meeting as is mentioned in that paragraph, the provisions of this Act and of the company's articles relating to general meetings of the company shall, for that purpose, apply to the meeting either without modification or with such modifications as the \minister on the application of any person concerned may direct for the purpose of adapting them to the circumstances or the meeting.

(5) If at a meeting summoned for the purpose of approving any payment as required by paragraph (b) of sub-section (3) of this section a quorum is not present and, after the meeting has been adjourned to a later date, a quorum is again not present, the payment shall be deemed for the purposes of that sub-section to have been approved.

Provisions  
supplementary  
to the last three  
foregoing  
sections

152. (1) Where in proceedings for the recovery of any payment as having, by virtue of sub-sections (1) and (2) of section **one hundred and fifty** or sub-sections (1) and (3) of section **one hundred and fifty-one**, been received by and person in trust it is shown that-

- (a) the payment was made in pursuance of any arrangement entered into as part of the agreement of the transfer in question, or within one year before or two years after that agreement or the offer leading thereto; and
  - (b) the company or any person to whom the transfer was made was privy to that arrangement;
- the payment shall be deemed, except in so far as the contrary is shown, to be one to which the sub-sections apply.

(2) If in connection with any such transfer as is mentioned in either section **one hundred and fifty** or **one hundred and fifty one** -

- (a) the price to be paid to a director of the company, whose office is to be abolished or who is to retire from office, for any shares in the company held by him is in excess of the price which could at the time have been obtained 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 section **one hundred and forty-nine**, section **one hundred and fifty** or section **one hundred and fifty-one** 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, do 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 sub-section the expression "pension" includes any superannuation allowance, superannuation gratuity or similar payment.

(4) Nothing in section **one hundred and fifty** or section **one hundred and fifty-one** 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 therein mentioned or with respect to any other like payments made or to be made or to be made to the directors of a company.



153. (1) Every company shall keep a register showing as respects each director of the company the number, description and amount of any shares in or debentures of the company or any other body corporate, being the company's subsidiary or holding company, or a subsidiary of the company's holding company, which are held by or in trust for him of which he has any right to become the holder (whether on payment or not):

Provided that the register need not include shares in any body corporate which is the wholly-owned subsidiary of another body corporate.

(2) Where any shares or debentures fail to be or cease to be recorded in the said register in relation to any director by reason of a transaction entered into after the commencement of this Act and while he is a director, the register shall also show the date of, and price or other consideration for, the transaction:

Provide that where there is an interval between the agreement for any such transaction and the completion thereof, the date shall be that of the agreement.

(3) The nature and extent of a director's interest or right in or over any shares or debentures recorded in relation to him in the said register shall, if he so requires, be indicated in the register.

(4) The company shall not, by virtue of anything done for the purposes of this section, be affected with notice of or put upon inquiry as to, the rights of any person in relation to any shares or debentures.

(5) The said register shall, subject to the provisions of this section, be kept at the company's registered office and shall be open to inspection during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) as follows -

- (a) During the period beginning fourteen 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 Minister.

In computing the fourteen days and the three days mentioned in

this sub-section any day which is a Saturday or Sunday or public holiday shall be disregarded.

(6) The Registrar may at any time require a copy of the said register, or any part thereof.

(7) The said register shall 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.

(8) If default is made in complying with sub-section (1) or (2) of this section the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand rand.

(9) If default is made in complying with sub-section (5) or (7) of this section the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand and the court, including the court convicting, may by order compel an immediate inspection of the register.

(10) For the purposes of this section -

(a) any person in accordance with whose directions or instructions the directors of a company are accustomed to act shall be deemed to be a director of the company; and

(b) a director of a company shall be deemed to hold, or to have an interest or right in or over, any shares or debentures if a body corporate other than the company holds them or has that interest or right in or over them, and either -

(i) that body corporate or its directors are 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.

(11) It shall be the duty of every director of a company, and of every person deemed to be a director under paragraph (a) of sub-section (10) of this section to give notice to the company of such matters relating to himself as may be necessary for the purposes of this section. Any such notice shall be in writing and if it is not given at a meeting of directors the person giving it shall take reasonable steps to secure that it is given. Any person who

makes default in complying with the provisions of sub-section shall be guilty of an offence and liable on conviction to a fine not exceeding two years or to both such fine and such imprisonment.

154. (1) Notwithstanding anything in the articles of association the directors of a company shall not be empowered without the approval of the company in general meeting-

- (a) to issue or allot reserve shares or new shares to any director or his nominee save in so far as they are issued or allotted to him or to such nominee as a member on the same terms and conditions as have been simultaneously offered in respect of the said issue or allotment of shares to all the members of the company in proportion to their existing holdings;
- (b) to dispose of the undertaking of the company or the whole or the greater part of the assets of the company.

Prohibition of allotment of shares to directors save on same terms as to all members, and restriction on sale of by directors undertakings

(2) No resolution of the company shall be effective as approving of the differential issue or allotment of shares to a director or of a disposal in terms of paragraph (b) of sub-section (1) of this section unless it authorises, in terms, the specific transaction proposed by directors.

155. (1) In any accounts of a company laid before it in general meeting, or in a statement annexed thereto, there shall, subject to and in accordance with the provisions of this section, be shown so far as the information is contained in the company's books and papers or the company has the right to obtain it from the persons concerned -

Particulars in accounts of directors' salaries, pensions, etc.

- (a) the aggregate amount of the directors' emoluments;
- (b) the aggregate amount of directors' or past directors' pensions; and
- (c) the aggregate amount of any compensation to directors or past directors in respect of loss of office.

(2) The amount to be shown under paragraph (a) of sub-section (1) of this section -

- (a) shall include any emoluments paid to or receivable by any person in respect of his services, while director of the company, as director of any subsidiary thereof or otherwise in connection with the management of the affairs of the company or any subsidiary thereof; and

- (b) shall distinguish between emoluments in respect of services as director, whether of the company or its subsidiary, and other emoluments;

and for the purposes of this section the expression 'emoluments' in relation to a director, includes fees and percentages, any sums paid by way of expenses allowances in so far as those sums are deemed under any law to be taxable income of the recipient, any contribution paid in respect of him under any pension scheme and the estimated money value of any other benefits received by him otherwise than in cash.

(3) The amount to be shown under paragraph (b) of sub-section (1) of this section-

- (a) shall not include any pension paid or receivable under a pension scheme is such that the contribution thereunder are substantially adequate for the maintenance of the scheme, but save as aforesaid shall include any pension paid or receivable in respect of any such services of a director or past-director of the company as are mentioned in sub-section (2) of this section, 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; and

- (b) shall distinguish between pensions in respect of services as director, whether of the company or its subsidiary, and other pensions;

and for the purposes of this section the expression "pension" includes any superannuation allowance, superannuation gratuity or similar payment, and the expression "pension scheme" means a scheme for the provision of pensions in respect of services as director or otherwise which is maintained in whole or in part by means of contributions, and the expression "contribution", in relation to 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 persons rendering services in respect of which pensions will or may become payable under the scheme, except that it does not include any payment in respect of two or more persons if the amount paid in respect of them is not ascertainable

(5) the amount to be shown under each paragraph of sub-section (1) of this section –

- (a) shall include any sums paid to or receivable by a director or past director by way of compensation for the loss of office as director of the company, or for the loss, while director of the company or on or in connection with his ceasing to be a director of the

company, of any other office in connection with the management of the company's affairs or of any office as director or otherwise in connection with the management or the affairs of any subsidiary thereof; 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;

and for the purposes of this section reference to compensation for loss of office shall include sums paid as consideration for or in connection with a person's retirement from office.

(5) The amounts to be shown under each paragraph of sub-section (1) of this section -

- (a) shall include all relevant sums paid by or receivable from -
  - (i) the company; and
  - (ii) the company's subsidiaries; and
  - (iii) any other person;

except sums to be accounted for to the company or any of its subsidiaries or, by virtue of section one hundred and fifty-one, to past or present members of the company or any of its subsidiaries or any class of those members; and

- (b) shall distinguish, in the case of the amount to be shown under paragraph (c) of sub-section (1) of this section between the sums respectively paid by or receivable from the company, the company's subsidiaries and persons other than the company and its subsidiaries.

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

- (a) any sums are not shown in the accounts for the relevant financial year on the ground that the person receiving them is liable to account therefore as mentioned in paragraph (a) of sub-section (5) of this section, but the liability is thereafter wholly or partly released or is not enforced within a period of two years; or
- (b) any sum paid by way of expenses allowance are included in the recipient's taxable income after the end of the relevant financial year;

those sums shall, to the extent to which the liability is

released or not enforced or they are included as aforesaid, as the case may be, be shown in the first accounts in which it is practicable to show them or in a statement annexed thereto and shall be distinguished from the amount to be shown therein apart from this provision.

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

(8) If in the case of any accounts the requirements of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report thereon, so far as they are reasonably able to do so, a statement giving the required particulars.

(9) In this section any reference to a 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, of any other body corporate, shall, subject to the following paragraph, include that body corporate, whether or not it is or was in fact the company's subsidiary; and

(c) shall for the purposes of sub-sections (2) and (3) of this section be taken as referring to a subsidiary at the time the services were rendered, and for the purposes of sub-section (4) of this section be taken as referring to a subsidiary immediately before the loss of office as director of the company.

(10) It shall be duty of every director of a company and of every person who has at any time during the preceding two years been a director to give notice to the company of such matters relating to himself as may be necessary for the purposes of this section; and if he makes default in complying with such duty he shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand.

Particulars in  
accounts of  
loans to  
officers, etc.

156. (1) Save in the case of private companies the accounts which in pursuance of this Act are to be laid before every company in general meeting shall, subject to the provisions of this section, contain particulars showing-

(a) the amount of any loans which during the period to which the accounts relate have been made either by the company or by any subsidiary company or by any other person under a guarantee from or on a security provided by the company or a subsidiary thereof to any director or other officer of the company, including any such loans which were repaid during the said period;

(b) the amount of any loans made in manner aforesaid to any director or officer at any time before the period aforesaid and outstanding at the expiration thereof.

(2) The provisions of sub-section (1) of this section with respect to loans shall not apply-

(a) in the case of a company or subsidiary thereof the ordinary business of which includes the lending of money, to a loan by the company or the subsidiary in the ordinary course of its business; or

(b) to a loan made by the company or the subsidiary to any employee of the company if the loan does not exceed four thousand rand and is certified by the directors of the company or the subsidiary, as the case may be, to the company or the subsidiary with respect to loans to its employees.

(3) The provisions of sub-section (1) of this section with respect to loans shall apply to a loan to any person who has during the company's financial year been a director or other officer of the company made before he became a director or officer, as it applies to a loan to a director or officer of the company.

(4) If in the case of any such accounts as aforesaid the provisions of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report on the balance sheet of the company, so far as they are reasonably able to do so, a statement giving the required particulars.

(6) References in this section to a subsidiary shall be taken as referring to a subsidiary at the end of the company's financial year (whether or not a subsidiary at the date of the loan).

(7) It shall be the duty of the every director and of every other officer of a company and of every person who had at any time within the previous two years been a director or officer to give notice to the company of any such matters relating to himself as may be necessary for the purposes of this section; and if he makes default in complying with such duty he shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand.

157. (1) Subject to the provisions of this section, it shall be the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company to declare the nature and full extent of his interest at a meeting of the directors of the company.

Disclosure by  
directors of  
interests in  
contracts

(2) In the case of a proposed contract the declaration required by this section to be made by the director shall be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration, or if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he became so interested, and in a case where the director becomes interested in a contract after it is made, the said declaration shall be made at the first meeting of the directors held after the director becomes so interested.

(3) For the purpose of this section, a general notice given to the directors of a company by a director to the effect that he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm shall be deemed to be a sufficient declaration of interest in relation to any contract so made:

Provided that no such notice shall be of effect unless either it is given at a meeting of the directors or the director takes reasonable steps to secure that it is brought up and read at the next meeting of the directors after it is given.

(4) Any director who fails to comply with the provisions of this section shall be guilty of an offence, and liable on conviction to a fine not exceeding two hundred rand.

(5) Nothing in this section shall be taken to affect the operation of any rule of law restricting directors of a company from having any interest in contracts with the company.

158. (1) Every company shall keep at its registered office a register of its directors and secretaries, containing with respect to each of them the following particulars: -

(a) In the case of an individual, his present forenames

Register of  
directors and  
secretaries



and surname, and if he has changed his name or names, and his former forenames and surname and when and where the change took place, his nationality, his usual residential address, his business occupation, if any, and particulars of any other directorships; and

(b) In the case of a body corporate, its corporate name and registered or principal office.

(2) The company shall within the periods respectively mention in this sub-section, send to the Registrar a return in duplicate in the prescribed form, if any, containing the particulars specified in the said register and a notification of any change among its directors or secretaries or in any of the particulars contained in the register and of the date of any such change.

The period within which the said return is to be sent shall be twenty-one days from the appointment of the first directors the company, or in the case of an existing company, ninety days after the commencement of this Act and the period within which the said notification of a change is to be sent shall be fourteen days from the happening thereof.

(3) The register to be kept under this section shall, during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection, be open to the inspection of any member of the company without charge, and of any other person on payment of twenty cents, or such less sum as the company may prescribe, for each inspection.

(4) If any inspection required under this section is refused, or if default is made in complying with sub-section (1) or (2) of this section the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine not exceeding ten rand for every day during which the offence continues, and in the case of any such refusal the court, including the court convicting, may be order compel an immediate inspection of the register.

159. (1) Every company shall in all trade catalogues, trade circulars, and business letters on or in which the company's name appears and which are issued or sent by the company of any person state in legible characters with respect to every director his present forenames or the initials thereof, his present surname, and his nationality in full or abbreviated form:

Particulars of directors in trade catalogues, circulars, etc.

Provided that the Minister may by order grant exemption from the provisions of this sub-section subject to such conditions as he may prescribe in the order to any company.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand.

### **Avoidance of Provisions in Articles or Contracts Relieving Officers from Liability**

160. Subject as hereinafter provided, any provision, whether contained in the articles of a 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 law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void:

Provisions as to liability of officers and auditors

Provided that –

- (i) In relation to any such provision which is in force at the date of the commencement of this Act, this section shall have effect only on the expiration of a period of six months from that date; and
- (ii) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force; and
- (iii) notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid, indemnify any such officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under section **three hundred and three** in which relief is granted to him by the court.

### **Arrangement and Reconstruction**

Power to compromise with creditors and members

161. (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between a company and its members or any class of them, the court may, on the application of the company or of any creditor or member of the company, 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 manner as the court directs.

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

(3) An order made under sub-section (2) of this section shall have no effect until a copy of the order certified by the Registrar of the court has been delivered to the Registrar for registration, and copy of every such order shall be annexed to every copy of the memorandum of the company after the order has been made.

(4) If a company makes default in complying with subsection (3) of this section, the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine not exceeding two rand for each copy in respect of which default is made.

(5) In this section the expression “company” means any company or external company liable to be wound up under this Act and the expression “arrangement” includes a reorganisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods.

162. (1) Where a meeting of creditors any class of creditors or of members or any class of members is summoned under section **one hundred and sixty-one** 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 in a 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 thereof of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons; and
- (b) in every notice summoning the meeting which is given by advertisement, be included either such a

statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain one copy each of such a statement as aforesaid.

(2) Where the compromise or arrangement affect the rights of debenture holders of the company, the said statement shall give the like explanation as respects the trustees of any deed for securing the issue of the debentures 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 effect 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, every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand rand, and for the purpose of this sub-section any liquidator of the company and any trustee of a deed for securing the issue of debentures of the company shall be deemed to be an officer of the company:

Provided that a person shall not be liable under this sub-section if that person shows that the default was due to the refusal of any other person, being a director or trustee for debenture holders, to supply the necessary particulars as to his interests.

(5) It shall be the duty of any director of the company and of any trustee for debenture holders of the company of such matters relating to himself as may be necessary for the purposes of this section, and any person who makes default in complying with this sub-section shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand.

163. (1) Where an application is made to the court under section **one hundred and sixty-one** for the sanctioning of a compromise or arrangement proposed between a company and any such person as are mentioned in that section, and it is shown to the court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking, or the property of any company concerned in the scheme (in this section referred to as a transferor company), is to be transferred to another

company (in this section referred to as the transferee company), the court may either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters:-

- (a) The transfer to the transfer 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 any shares, debentures, policies or other like interest in that company, which under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person;
- © the continuation by or against the transferee company of any legal proceedings pending by or any transferor company;
- (d) the dissolution, without winding up, of any transferor company;
- (e) the provisions to be made for any persons who, within such time and in such manner as the court directs, dissent from the compromise or arrangement;
- (f) such incidental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of order, be transferred to and become the liabilities of, the transferee company, and, in the case of any property, if the order so directs freed from any pledge or hypothecation which is, by virtue of the compromise or arrangement, to cease to have effect.

The transfer under this Sub-section of any immovably property or mining claims shall be made in accordance with the provisions of any governing the transfer thereof.

(3) Where an order is made under this section, every company in relation to which the order is made shall cause a copy thereof certified by the Registrar of the Court to be delivered to the Registrar for registration within thirty days after the making of the order, and if default is made in complying with this sub-

section, the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine not exceeding ten rand for every day during which the offence continues.

(4) In this section the expression “property” includes property, rights and powers of every description, and the expression “liabilities” includes duties.

(5) Notwithstanding the provisions of sub-section (5) of section **one hundred and sixty-one**, the expression “company” in this section does not include any company other than a company within the meaning of this Act.

164. (1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as the transferor 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 not less than nine-tenths in value of the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee 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 member that it desires to acquire his shares, and when such a notice is given 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 member that it desires to acquire his shares, and when such a notice is given, the transferee company shall, unless on an application made by the dissenting member within one month from date on which the notice was given the court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving members are to be transferred to the transferee company:

Power to acquire shares of members dissenting from scheme or contract approved by majority

Provided that where shares in transferor company of the same class or classes as the shares whose transfer is involved are already held as aforesaid to a value greater than one tenth of the aggregate of their value and that of the shares (other than those already held as aforesaid) whose transfer is involved, the foregoing provisions of this subsection shall not apply unless –

- (a) the transferee company offers the same terms to all holders of the shares (other than those already held as aforesaid) 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 contract, besides holding not less than nine-tenths in value of the shares (other than those already held as aforesaid) whose transfer is involved, are not less than three-fourths in number of the holders of those shares.

(2) Where in pursuance of any such scheme or contract as aforesaid, 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 nominee for, the transferee company or its subsidiary at the date of the transfer comprise or include nine-tenths in value of the shares, in the first-mentioned company or of any class of those shares, then –

- (a) the transferee company shall within one month from the date of the transfer (unless on a previous transfer 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 holders 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; and

- (b) any such holder may within three months from the giving of the notice to him require the transferee company to acquire the shares in question;

and where a member gives notice under paragraph (b) of this subsection with respect to shares, the transferee company shall be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving members were transferred to it, or on such other terms as may be agreed or as the court on the application of either the transfer company or the member thinks fit to order.

(3) Where a notice has been given by the transferee company under sub-section (1) of this section and the court has not, on an application made by the dissenting member, ordered to the contrary the transferee company shall, 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 member 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 the transfer executed on behalf of the member by any person appointed by the transferee company and on its own behalf by the

transferee company, and pay or transfer to the transferor company the amount or other consideration representing the rice 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.

(4) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and other consideration so received shall be held by that company in trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(5) In this section the expression “dissenting member” includes a member who has not assented to the scheme or contract and any member who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

### Minorities

165. (1) any member of a company who complains that the affairs of the company are being conducted in a manner oppressive to some part of the members (including himself), may make an application to the court for an order under this section: and in a case falling within sub-section (2) of section **one hundred and thirty-three** the Minister may make the like application.

Alternative  
remedy to  
winding up in  
cases of  
oppression

(2) If on any such application the court is of opinion –  
(a) that the company’s affairs are being conducted as aforesaid; and

(b) that to wind up the company or to make an order for judicial management would unfairly prejudice that part of the members, but otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up, or an order for judicial management on the ground that such order was desirable;

the court may, with a view to bringing to an end the matters complained of, make such order as it thinks fit, whether for regulating the conduct of the company’s affairs in future, or for the purchase of the shares of any members of the company by other members of the company or by the company, and in the case of a purchase by the company, for the reduction accordingly of the company’s capital, or otherwise.

(3) Where an order under this section makes any



alternation or addition to any company's memorandum or articles, then notwithstanding anything in this Act but subject to the provisions of the order the company concerned shall not have power without the leave of the court to make any further alteration in or addition to the memorandum or articles inconsistent with the provisions of the order but, subject to the foregoing provisions of this sub-section, the alterations or additions made by the order shall be of the same effect as if duly made by resolution of the company and this Act shall apply to the memorandum or articles as so altered or added to.

(4) A copy of any order under this section altering or adding to, or giving leave to alter or add to, a company's memorandum or articles shall, within fourteen days after the making thereof, be delivered by the company to the Registrar for registration; and if a company makes default in complying with this sub-section, the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine not exceeding ten rand for every day during which the offence continues.

## **PART IV WINDING UP AND JUDICIAL MANAGEMENT**

### **Preliminary**

Modes of winding up

166. (1) The winding up of a company may be either –  
(b) by the court; or  
(c) voluntary.

(2) The Provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company by either of those modes.

167. For purposes of the winding up or judicial management of companies the Master shall have the jurisdiction conferred on him by this Part.

Jurisdiction of Master

### **Contributories**

168. In the event of a company being wound up, every present and past member shall, subject to the provisions of this section, be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories amount themselves, subject to the following qualifications:-

Liability as contributories of present and past members

(a) In the case of a company limited by shares no contributions shall be required from any member

exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;

- (b) In the case of a company limited by guarantee no contribution shall be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;
- (c) A past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up;
- (d) A past member shall not be liable to contribute unless at the commencement of the winding up there is unsatisfied debt or liability of the company contracted before he ceased to be a member;
- (e) a past member shall not be liable to contribute unless it appears to the court that the present members are unable to satisfy the contributions required to be made by them in pursuance of this Act;
- (f) a past member shall not be liable to contribute in respect of any debt or liability of the company other than a debt or liability contracted before he ceased to be a member and unsatisfied at the commencement of the winding up, or in respect of the costs, charges and expenses of the

winding up, except in so far as these been occasioned by the necessity of recovering a contribution from him under this section;

- (g) a past member shall not be liable to contribute in respect of the adjustment of the rights of the contributories among themselves;
- (h) anything in this section to the contrary notwithstanding, no transfer of shares improperly issued as fully or partly paid up shall relieve the transferor of any liability which he would have had to contribute in respect to the amount improperly credited as paid on the shares had he not transferred them; but in so far as the present member is liable to contribute in respect of the

amount improperly credited, such liability shall be a joint and several liability of such transferor and the present member;

- (i) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract, whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;
- (j) a sum due to any member of a company, in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of a competition between himself and any other creditor not a member of the company; but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

Definition of  
“contributory”

169. The term “contributory” means any 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, includes any person alleged to be a contributory.

Nature of  
liability of  
contributory

170. The liability of a contributory shall constitute a debt accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

Contributories  
in case of death  
or insolvency

171. (1) If a contributory dies before or after he has been placed on the list of contributories then either –

- (a) his executor shall, as such, be placed on the list of contributories in his stead and be liable accordingly; or
- (b) if his estate has passed into the hands of his heirs or legatees they shall be liable for his contribution to such extent and in such proportions as they would, by law, respectively be liable for debts of the estate payable but unprovided for at the time of distribution thereof, and shall be placed on the list of contributories accordingly.

(2) If a contributory becomes insolvent or assigns his estate under the law relating to insolvent estates, either before or after he has been placed on the list of contributories, the –

- (a) his trustee in insolvency or his assignee, as the case may be, shall represent him for all the purposes of the winding up, and shall be a contributory accordingly; and
- (b) there may be proved against the estate of the insolvent or of the debtor who has assigned his estate the estimated value of his liability to future calls, as well as calls already made.

172. A company shall be deemed to be unable to pay its debts –

- (a) if a creditor, by cession or otherwise, to whom the company is indebted in a sum exceeding one hundred rand then due, has served on the company a demand requiring it to pay the sum so due by leaving the demand at its registered office, and if the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or
- (b) if the execution of other process issued, on a judgement, decree or order of any competent court that the company is unable to pay its debts, and in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.
- (c) If it is proved to the satisfaction of the court that the company is unable to pay its debts, and in determining company is unable to pay its debts, the court, shall take into account the contingent and prospective liabilities.

When a company deemed unable to pay its debts

### **Winding up by the Court**

173. A company may be wound up by court –

Circumstance in which company may be wound up by court

- (a) if the company has by special resolution resolved that the company be wound up the court;
- (b) if default is made in lodging the statutory report or in holding the statutory meeting;
- (c) if the company does not commence its business within a year from its incorporation, or suspends

its business for a whole year;

- (d) if the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven;
- (e) if seventy-five percent of the paid up share capital of the company has been lost, or has become useless for the business of the company;
- (f) if the company is unable to pay its debts;
- (g) if the court is of opinion that it is just and equitable that the company should be wound up.

174. (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 the company or by any creditor or creditors), contributory or contributories or by all or any of those parties together or separately or, in a case falling within sub-section (2) of section one hundred and thirty-three, by the Minister accompanied, save in the case of a petition by the Minister, by a certificate of the Master that due security has been found for payment of all fees and charges necessary for the prosecution of all proceedings until the appointment of a liquidator.

Petition for winding up a company

Provided that:-

- (i) a contributory shall not be entitled to present a petition for a winding up a company unless –
  - (a) the number of members is reduced in the case of a private company below two, or in the case of any other company below seven; or
  - (b) the shares in respect of which he is contributory, or some of them, either were originally allotted to him or have been held by him and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved upon him through the death of a former holder;
- (ii) a petition for winding up a company on the ground of default in lodging the statutory report or in holding the statutory meeting shall not be presented by any person except a member, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held; and
- (ii) the court shall not grant a petition for winding up a company by a contingent or prospective

creditor until a Prima facie case for winding up has been established to the satisfaction of the court.

(2) Where a company is being wound up voluntarily, a petition may be presented by the Master, or by any other person authorised in that behalf under the other provisions of this section, but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories.

175. (1) On hearing the petition the court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally, or make any interim order or any other order that it deems just, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been hypothecated to an amount equal to or in excess of those assets, or that the company also has no assets.

Powers of  
court on  
hearing  
petitions

(2) Where the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up the court if it is of the opinion –

- (a) that the petitioners are entitled to relief either by winding up the company or by some other means or
- (b) that in the absence of any other remedy it would be just and equitable that the company should be wound up;

shall make a winding-up order, unless it is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

(3) Where the petition is presented on the ground of default in delivering the statutory report to the Registrar or in holding statutory meeting, the court may –

- (a) instead of making a winding-up order, direct that the statutory report shall be delivered or that a meeting shall be held; and
- (b) order the costs to be paid by any persons who, in the opinion of the court, are responsible for the default.

176. At any time after the presentation of a petition for

Court may stay or restrain proceedings against company

winding up and before a winding-up order has been made, the company or any creditor or contributory may –

- (a) where any action or proceeding by or against the company is pending in any court of law in Lesotho, apply to such court for a stay of proceedings therein; and
- (b) where any other action or proceeding is being or about to be instituted against the company, apply to the court to which the petition for winding up has been presented for an order restraining further proceedings in the action or proceeding;

and the court to which application is so made may, as the case may be stay or restrain the proceedings accordingly on such terms as it thinks fit.

Commencement of winding up by court

177. (1) Where before the presentation of a petition for the winding up of a company by the court a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution.

(2) In Any other case, the winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up.

Court may adopt proceedings of voluntary winding up

178. Where a company is being would up voluntary, and an order is made for its winding up the court, the court may, if it thinks fit, by the same or any subsequent order, confirm all or any subsequent order, confirm all or any of the proceedings in the voluntary winding up.

### **Consequences of winding up Order**

Effect of winding-up order

179. 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 the petition had been presented by all creditors and contributories jointly.

180. In a winding up by the court –

- (a) no action or proceeding shall be proceeded with or commenced against the company except by leave of the court and subject to such terms as the court may impose;

Action stayed and avoidance of certain attachments,

- (b) any attachment or execution put in force against the assets of the company after the commencement of the winding up shall be void;
- (c) every disposition of the property (including rights of action) of the company, and every transfer of shares or alteration in the status of its members, made after the commencement of the winding up shall, unless the court otherwise orders, be void.

executions and dispositions and alteration of status

181. (1) The Registrar of the court shall forth with transmit a copy of every provisional and final winding-up order, and of every order amending or setting aside the same to the Registrar, to the Master and to the Sheriff of Lesotho, and –

Transmission of winding-up order to certain officers

- (a) in respect of any right in immovable property within Lesotho which appears to be an asset of the company, to the Registrar of Deeds; and
- (b) to the messenger of every subordinate court by the order whereof it appears that property of the company is under attachment:

Provided that when the assets of the company are under four hundred rand and value, and the court so orders, the movable assets may remain in the custody of such person as the court may order upon such terms as to security as the court may direct, and in that case it shall not be necessary to transmit a copy of any order to the Sheriff or any messenger.

(2) Upon receipt by the Registrar of Deeds of winding-up order he shall enter a caveat against the transfer of any right in immovable property or the cancellation or cession of any bond registered in the name of or belonging to the company.

(3) Every such public officer concerned shall register every copy of an order transmitted to him and note thereon the day and hour when it is received.

(4) Upon receipt of a copy of any winding-up order, the Master shall give notice thereof in the **Gazette**.

182. (1) Where the court has made a winding-up order, there shall be made and submitted to the Master a statement in duplicate as to the affairs of the company in the prescribed form, if any, showing as at the date of the winding-up order or such other convenient date as the Master shall allow, the particulars of its assets, debts and liabilities, the names, addresses and occupations of its creditors, the securities held by them

Statement of company's affairs to Master



respectively, the dates when the securities were respectively given, and such further or other information as the Master shall transmit the duplicate of such statement to the liquidator on his appointment.

(2) The statement shall be submitted and verified by affidavit by one or more of the persons who are at the relevant date directors and by the person who is at that date the secretary of the company, or by such of the persons hereinafter in this subsection mentioned as the Master may require to submit and verify the statement that is to say, persons –

- (a) who are or have been officers of the company;
- (b) who have taken part in the formation of the company at any time within one year before the relevant date;
- (c) who are in the employment of the company, or have been in the employment of a company which and are in the opinion of the Master capable of giving the information required;
- (d) who are or have been within the said year officers of or in the employment of a company which is, or within the said year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within fourteen days from the date of the order, or within such extended time as the master or the court may for special reasons allow.

(4) Any person making or concurring in making the statement and the affidavit required by this section shall be allowed, and shall be paid 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 Master may consider reasonable.

(5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be guilty of an offence and liable on conviction to a fine not exceeding twenty rand for every day during which the offence continues.

(6) Any person shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.

183. Where the court has made a winding-up order the

Master may, if he thinks fit, make a report to the court, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company or its creditors since the formation thereof and any other matters which in his opinion it is desirable to bring to the notice of the court.

Report by  
Master

### **Provisions Specially applicable in a Winding up by the Court**

184. The provisions contained in sections one hundred and eighty-five to two hundred and eight, inclusive, shall apply in relation to the winding up of a company by the court.

185. (1) For the purpose of conducting the proceedings in a winding up by the court the Master shall, subject to the provisions of sections **one hundred and eighty-six** and **two hundred and forty-one**, appoint a liquidator or liquidators.

Application of  
sections

(3) On a winding-up or being made or thereafter when, for whatever cause, there is no person acting as liquidator of the company –

Custody of  
property and  
appointment of  
liquidator

- (a) all the property of the company shall be deemed to be in the custody or control of the Master until a liquidator or provisional liquidator is appointed and is capable of acting as such;
- (b) subject to the provisions of section two hundred and forty-one the Master may appoint any fit person or shall appoint any person whom the court has directed to be appointed as a provisional liquidator of the company to hold office until the appointment of a liquidator, and may, or shall, as so ordered by the court, restrict his powers by the terms of his letter of appointment.

(3) When a vacancy occurs in the office of liquidator the Master shall fill the vacancy by making an appointment under the provisions of section one hundred eighty-six and two hundred and forty-one.

186. (1) When a final winding-up order has been made by the court, the Master shall summon separate meetings -

- (a) of the creditors of the company for the proof of claims against the company and for the purpose of determining the person or persons whose names shall be submitted for appointment as liquidator or

Meetings of  
creditors and  
contributories

liquidators; and

- (b) of the contributories of the company for the purpose of determining the person or persons whose names shall be submitted for appointment as liquidator or liquidators.

(2) Where in regard to the said appointment there is no difference between the determination of the meetings of the creditors and contributories, or where there is a determination of the meeting of the creditors only or of the meeting of the contributories only, the Master may make any appointment required to give effect to any such determination.

(3) Where there is a difference between the determinations of the meeting of the creditors and of the contributories the Master shall call a joint meeting of the creditors and contributories with a view to reaching an agreement and, if no agreement is reached the master shall make such appointment as he may think fit. Any such appointment shall be subject to an appeal within fourteen days to a judge in chambers, made by the creditors or contributories or both. On any such appeal a judge may make such order thereon and as to costs as he may think fit.

(4) Meetings of creditors and contributories shall, unless otherwise in this Act specially provided, be convened and held in the manner prescribed in the rules framed under section three hundred and eleven.

187. (1) All claims against a company being wound up by the court shall be proved at a meeting of creditors called and held as nearly as possible in the manner provided by the law relating to insolvent estates for the proof of claims against an insolvent estate and subject to the provisions of section two hundred and fifty-four.

Proof of  
claim

(2) The Master, on the application of the liquidator, may fix a time or times within which creditors of the company are to prove their claims or to be excluded from the benefit of any distribution under any account lodged with the Master before those debts are proved.

188. (1) The liquidator in a winding up by the court shall have the following powers:-

- (a) to execute in the name and on behalf of the company all deeds, receipt and other documents, and for that purpose to use the company's seal;
- (b) to prove a claim in the estate of any contributory or debtor and receive payment in full or a dividend in

Powers of  
Liquidator

respect thereof;

- © to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company, but so as not, except with the leave of the court or the authority mentioned in sub-section (4) of this section or for the purpose of carrying on the business of the company in terms of paragraph (e) of sub-section (2) of the is section, to impose any additional liability upon the company.

(2) He shall have power, with the leave of the court or with the authority mentioned in sub-section (4) of this section.

- (a) to bring or defend in the name and on behalf of the company any action or other legal proceeding of a civil nature, and subject to the provisions of any law relating to criminal procedure any criminal proceeding: Provided that immediately upon the appointment of a liquidator or a provisional liquidator, the Master may authorise upon such terms as he thinks fit legal proceedings for the recovery of any outstanding accounts, the collection of which appears to him to be urgent;
- (b) to agree to any offer of composition made to the company by any debtor or contributory, and take any reasonable part of the debt in discharge of the whole or give reasonable time, regard being had to the provisions of section two hundred and forty-six;
- © to compromise or admit any claim or demand against the company, including an unliquidated claim;
- (d) to submit to the determination of arbitrators any dispute concerning the company or any claim or demand by or upon the company;
- (e) to carry on or discontinue any part of the business for the company in so far as may be necessary for the beneficial winding up thereof: Provided that if necessary the liquidator may carry on or discontinue the same before he has obtained the leave of the court or the authority aforesaid, but it shall not then be competent for him as between himself and the creditors or contributories to charge the winding up with the cost of any goods purchased by him unless the same have been necessary for the immediate purpose of carrying on the business and there are funds available for payment of the same after providing for the cost of winding up or unless the court otherwise orders;

- (f) in the case of a company unable to pay its debts, to elect to adopt or to abandon any contract entered into by the company before the commencement of the winding up to by or receive in exchange any immovable property, transfer of which has not been effected in favour of the company:

Provided that -

- (i) if the liquidator does not make his election within six weeks after being required in writing to do so, the person entitled under the contract may apply by motion to the court for cancellation of the contract and delivery of possession of the immovable property and the court may make such order as it thinks fit;
  - (ii) nothing in this paragraph contained shall affect any concurred claim against the company for damages for non-fulfilment of the contract;
- (e) to terminate any lease entered into by the company as lessee by notice in writing to the lessor, subject however to the following terms and conditions:-
    - (i) nothing in this paragraph contained shall affect any claim by the lessor against the company for damages he may have sustained by reason of the non-performance of the terms of the lease;
    - (ii) if the liquidator does not within three months of his apparent notify the lessor that he is prepared to continue the lease on behalf of the company, he shall be deemed to have terminated the lease at the end of such three months;
    - (iii) the rent due under any lease so terminated from the date of the commencement of the winding up to the termination of the lease by the liquidator shall be included in the costs of administration;
    - (iv) the fact that a lease has been terminated by the liquidator shall deprive him of any right to compensation for improvements made during the period of the lease.
  - (h) to sell, by public auction or otherwise, deliver or transfer the movable and immovable property of the company.

(3) He shall have power, with the leave of the court, to raise money on the security of the assets of the company or to do any other thing which the court may consider necessary for winding up the affairs of the company and distributing its assets.

(4) he may, with the authority of a resolution of creditors and contributories, duly passed at a joint meeting thereof, do any act or exercise any power for which he is not by this Act expressly required to obtain the leave of the court.

189. (1) The liquidator of a company which is being wound up by the court shall, in the administration of the assets of the company, take into account any directions that may be given by resolution of the creditors or resolution of the contributories at any general meeting.

Exercise of liquidator's powers

(2) In regard to any matter which has been submitted by the liquidator for the directions of creditors and contributories in general meeting, but as to which no directions have been given or as to which there is a difference between the direction of creditors and contributories, the liquidator may apply to the court for directions and the court shall decide the matter and may make such order therein as it shall think fit.

(3) Any persons aggrieved by any act or decision of the liquidator may apply to the court after notice of motion to the liquidator and thereupon the court may make such order as it thinks fit.

190. (1) The Master 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 statute, rules, or otherwise with respect to the master by any creditor or contributory in regard thereto the Master shall enquire into the matter and take such action thereon as he may think expedient.

Control by Master over liquidator

(2) The Master may at any time require any liquidator of a company which is being wound up by the court to answer any enquiry in relation to any winding up in which such liquidator is engaged, and may, if he thinks fit, examine such liquidator or any other person on oath concerning the winding up.

(3) The master may also direct an investigation to be made of the books and vouchers of the liquidator.

(4) Any expenses incurred by the Master in carrying out any provision of this section shall be part of the costs of the winding up, but the court may order the liquidator to pay such expenses to the company de **bonis propriis**.

191. (1) Immediately after his appointment the liquidator of a company which is being wound up by the court shall open an account in the name of the company in liquidation, with a bank within Lesotho and shall deposit therein to the credit of the company from time to time all moneys received by him on its behalf. All cheques or orders which may be drawn upon the account shall contain the name of the payee and the cause of payment and shall be drawn to order and signed by the liquidator or by his agent.

Banking  
account

(2) Immediately after opening the account the liquidator shall give the Master written particulars of the bank and the branch of the bank with which the account has been opened, and he shall not, without the written permission of the Master, transfer the account from that branch.

(3) The Master and any surety for the liquidator or any person authorised by such surety shall have the same right to information in regard to the account as the liquidator himself possesses and may examine all vouchers in relation thereto whether in the hands of the bank or of the liquidator.

(4) The Master may after notice to the liquidator direct the manager of the said branch of the bank, in writing, to pay into the Guardian's Fund all money standing to the credit of the account at the time of the receipt, by the said manager, of that direction and all moneys which may thereafter be paid into the account and the said manager shall carry out such directions.

(5) If any liquidator, without lawful excuse, retains any sum of money belonging to the company exceeding forty rand or knowingly permits his co-liquidator to retain such a sum of money longer than the earliest day after its receipt on which it was reasonable for him or his co-liquidator to pay the money into the bank or uses or knowingly permits his co-liquidator to use any assets of the company except for the benefit thereof he shall, in addition to any other penalty to which he may be liable, be liable to pay to the company an amount not exceeding double the sum so retained or double the value of the assets so used.

The amount which the liquidator is so liable to pay may be recovered by action in any competent court at the instance of his co-liquidator, the Master or any creditor or contributory.

192. (1) When the liquidator of a company which is being wound up by the court has realised all the assets of the company and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, he may apply to the Master for release, and upon such liquidator giving by advertisement in the Gazette not less than three weeks' prior

Release of  
liquidator

notice of his application, the Master shall take into consideration any objection to the release of the liquidator lodged by any creditor, contributory or other person interested and upon consideration of the objections, if any, the Master may either grant or withhold the release.

(2) The release of the liquidator by the Master shall discharge the liquidator from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such release may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(3) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

(193) (1) In a winding up by the court every liquidator shall be entitled to a reasonable remuneration for his services, to be taxed by the Master according to the table of fees prescribed in the Seventh Schedule:

Provided that the Master may for good cause reduce or increase his remuneration; provided further, that the Master may disallow his remuneration either wholly or in part on account of any failure or delay in the discharge of his duties.

Remuneration  
of liquidator

(2) No person who employs or is a fellow-employee of or is in the ordinary employment of the liquidator shall be entitled to receive any remuneration out of the assets of the company for services rendered in the winding up, and no liquidator shall be entitled either by himself or by his partner to receive out of the assets of the company any remuneration for his services except the remuneration to which under this Act he is entitled.

### **General Powers of the Court in Case of a Winding up by the Court**

194. The court may at any time after the making of an order for winding up, on the application of the liquidator or of any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed or set aside, make an order staying or setting aside the proceedings on such terms and conditions as the court deems fit.

Court may stay  
or set aside  
winding up

195. (1) As soon as may be after making a winding-up order, the court shall settle a list of contributories with power to rectify the register of members in all cases where such rectification is required in pursuance of this Act:



Provided that, where it appears to the court that it will not be necessary to make calls on or adjust the rights of contributories, the court may dispense with the settlement of a list of contributories.

(2) In settling the list of contributories, the court shall distinguish between persons who are contributories directly and persons who are contributories as being representatives of or liable for the debts of others.

196. The court may at any time after making a winding-up order require any contributory for the time being settled on the list of contributories, and any trustee, banker, agent or officer of the company, to pay, deliver, convey surrender or transfer forthwith, or within such time as the court directs, to the liquidator any money, property or books and papers in his hands to which the company is prima facie entitled.

Requiring  
delivery of  
property

197. (1) The court may, at any time after making a winding-up order make an order on any contributory settled on the list of the contributories to pay, in manner directed by the order, any money due from him, or from the estate of the person whom he represents, to the company exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

Ordering  
payment of  
debt by  
contributory

(2) When all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

198. (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 call on and order payment thereof by all or any of the contributories settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of contributories among themselves.

Making calls  
and ordering  
payment

(2) In making a call, the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

199. (1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into a bank to be named by the court, to the account of the liquidator instead of to the liquidator, and such order be enforced in the same manner as if it had directed payment to the liquidator.

Ordering

payment into  
Bank

(2) All moneys and securities paid or delivered into a bank as aforesaid in the event of a winding up by the court shall be subject in all respects to the orders of the court.

200. (1) An order made by the court on a contributory shall subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

Order on  
contributory  
conclusive  
evidence

(2) All other pertinent matters stated in such order shall be taken **prima facie** as truly stated as against all persons and in all proceedings whatsoever.

201. The court shall adjust the rights of contributories among themselves, and apportion any surplus among the persons entitled thereto.

202. (1) The court may, at any time after making a winding-up order, make such order for inspection of the books and papers of the company by creditors and contributories as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly but not further or otherwise.

Court to adjust  
rights of  
contributories

(2) Nothing in this section shall be taken to exclude or restrict any statutory rights of a government department or of a person acting under the authority of a government department

Inspection of  
books by  
Creditors and  
contributories

203. (1) When the affairs of a company have been completely wound up, the court shall upon the application of the Master make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(3) A copy of the order shall forthwith be transmitted by the Registrar of the court –

Dissolution of  
company

- (a) to the Registrar, who shall make a minute in his books of the dissolution of the company and shall public notice thereof in the **Gazette**; and
- (b) to the Master.

(3) An application made the Master under this section may be by way of a report submitted to the court through the Registrar thereof.

(4) Notwithstanding any dissolution in terms of this section, in the event of any property thereafter becoming available which would have accrued to the company if not dissolved the Master shall give instructions for the realisation thereof and for the distribution of the proceeds, less the cost of the realisation and

distribution to such persons as would have been entitled thereto in the winding up; and the same shall apply to any moneys becoming so available.

204. (1) The court may, after it has made a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs, or property of the company.

Summoning persons suspected of having property of company

(2) The court may examine him on oath, either orally or by written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The court may require him to produce any books and papers in his custody or power relating to the company, but where he claims any lien on books or papers produced by him, the production shall be without prejudice to such lien, and the court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, fails to come before the court at the time appointed without reasonable excuse, 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.

205. (1) When an order has been made for winding up a company by the court, and the Master has made a report under this Act, showing that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by a director or officer of the company, in relation to the company or any creditor thereof since its formation, the court may direct that any 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 dealings as director or officer thereof.

Ordering public examination of promoters, directors, etc.

(2) The Master may take part in the examination, and for that purpose may employ an attorney or counsel.

(3) The liquidator, and any creditor of contributory, may also take part in the examination, either personally or by attorney or counsel.

(4) The person ordered to be examined on oath and shall answer all such questions as the court may put or allow to be put to him notwithstanding that any answer may tend to incriminate

him.

(5) A person ordered to be examined under this section shall, before his examination, be furnished at his request with a copy of the Master's report, and may at his own cost employ an attorney or counsel, who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him:

Provided that, if he is, in the opinion of the court, exculpate from any charges made or suggested against him, the court may allow him such costs as in its discretion it may think fit.

(6) 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.

206. The court, at any time before or after making a winding-up order, on proof that there is reason to believe that a contributory is about to quit Lesotho or otherwise to abscond, or to remove or conceal any property for the purpose of evading payment of call or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested, and his books and papers and movable property to be seized, and him and them to be safely kept until such time as the court may order.

Arrest of  
absconding  
contributory

207. Any powers by this Act conferred on the court shall be deemed to be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtors of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

### **Appeal from Orders**

Powers to be  
cumulative

208. An appeal from any order or decision made or given fro or 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

### **Voluntary Winding up of Company**

Appeal from  
any Order

209. A company may be wound up voluntarily –

- (a) when the period, if any, fixed for the duration of the company by the article expires, or the event, if any, occurs on the occurrence of which the articles provide that the company is to be dissolved, and the company in general

Circumstances

meeting has passed a resolution requiring the company to be wound up voluntarily.

in which company may be wound up voluntarily

- (b) if the company resolves by special resolution that the company be wound up voluntarily.

210. (1) When a company has passed a resolution for voluntary winding up, it shall, within fourteen days after the passing thereof –

- (a) give notice of the resolution by advertisement in the Gazette;
- (b) give written notice of the resolution to the Master, to the Registrar and, if any right in immovable property within Lesotho appears to be an asset of the company, to the Registrar of Deeds.

Notice of resolution for voluntary winding up

(2) If default is made by a company in complying with the requirements of this section, the company and every officer of the company who is in default, shall be guilty of an offence and liable on conviction to a fine not exceeding ten rand for every day during which the offence continues and for the purposes of this sub-section the liquidator of the company shall be deemed to be an officer of the company.

211. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up.

212. When a company is wound up voluntarily the company shall, from the commencement of the winding up, cease to carry on its business, except in so far as may be required for the beneficial winding up thereof:

Commencement of voluntary winding up

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything in its articles, continue until it is dissolved.

Effect of voluntary winding up on business and status of company

### **Provision and Effect of Security for Payment of Debts**

213. (1) If it is proposed to wind up a company voluntarily, the directors of the company may, prior to the date of the notices of the meeting at which the resolution for the winding up of the company is to be proposed, furnish security to the satisfaction of the Master for the payment of the debts of the company within a period not exceeding twelve months from the commencement of the winding up, and may recover from the company any costs reasonably incurred by them in furnishing such security:

Provision and effect of security

Provided that the Master may dispense with such security if the majority of the directors of the company furnish him with a sworn statement supported by a

certificate from the auditors of the company that the company has no liabilities.

(2) A winding up in the case of which such security has been furnished or dispensed with in accordance with this section is in this Act referred to as a members' voluntary winding up, and a winding up in the case of which security has neither been furnished nor dispensed with as aforesaid is in this Act referred to as a creditor's voluntary winding up.

### **Provisions Specially Applicable to a Member's Voluntary Winding up**

214. The provisions contained in sections **two hundred and fifteen to two hundred and seventeen**, inclusive, shall apply in relation to a members' voluntary winding up.

Application of sections

215. (1) The company in general meeting shall, subject to the provisions of section **two hundred and forty-one**, 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. If the company fails to fix the remuneration, the provisions of section **one hundred and ninety-three** shall apply.

Appointment, powers and remuneration of liquidator

(2) On the appointment of a liquidator in terms of this section all the powers of the directors shall cease except so far as the liquidator or the company in general meeting sanctions their continuance.

(3) The liquidator may, without the sanction of the court, exercise all the powers given by section **one hundred and eighty-eight** to the liquidator in a winding up by the court, subject to such directions as may be given by the company in general meeting.

216. (1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to the provisions of section **two hundred and fifteen**, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory, or by the continuing liquidator or liquidators, if any.

Power to fill vacancy in office of liquidator

(3) The meeting shall be held in the manner prescribed by the articles or in such manner as may, on application by any contributory or by the continuing liquidator or liquidators, be determined by the court.

217. (1) Where a company is proposed to be or is being wound up voluntarily and the whole or part of its business or property is proposed to be transferred or sold to another company, whether registered under this Act or not (in this section called the

transferee company) the liquidator of the first-mentioned (in this section called the transferor company) may, with the sanction of a special resolution of that company conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may in lieu of receiving cash, shares, policies or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

Liquidator may accept shares, etc., as consideration for sale of property of company

(2) Any sale or arrangement made in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company, who did not vote in favour of the special resolution, expresses his dissent therefrom in writing addressed to the liquidator and left at the registered office of the company within seven days after passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration under the provisions of any law in force in Lesotho concerning arbitration.

(4) If the liquidator elects to purchase the member's interest, the purchase price shall be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but if an order is made within a year for winding up the company by the court, the special resolution shall not be valid unless sanctioned by the court.

### **Provisions Specially Applicable to a Creditors Voluntary Winding**

218. The provisions contained in sections **two hundred and nineteen to two hundred and twenty-one**, inclusive, shall apply in relation to a creditors' voluntary winding up.

219. (1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the said meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the said meeting of the company.

Application of sections

(2) The company shall cause not less than seven days' notice of the meeting of the creditors to be advertised once in the Gazette and once at least in a newspaper circulating in the Gazette and once at least in a newspaper circulating in the district where the registered office or principal place of business of the company is situate.

(3) The directors of the company shall -

- (a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of creditors to be held as aforesaid; and
- (b) appoint one of their number to preside at the said meeting, and it shall be his duty to do so.

(4) If the meeting of the company, at which the resolution for voluntary winding up is to be proposed, is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of sub-section (1) of this section shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

(5) If default is made -

- (a) by the company in complying with sub-section (1) or (2) of this section.
- (b) by any director of the company in complying with sub-section (3) of this section.

the company or director, as the case may be, shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand.

(6) The creditors and the company at their respective meetings mentioned in this section may nominate a person to be liquidator subject to the provisions of section **two hundred and forty-one** for 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, subject to the provisions of section **two hundred and forty-one** as aforesaid:

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 person nominated as liquidator by the company shall be liquidator instead of or



jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors, and the court may thereupon make such order as it thinks fit.

(7) If a vacancy occurs by death resignation or otherwise in the office of a liquidator appointed by the creditors on a creditors' voluntary winding up, the vacancy shall be filled in the same manner as is provided in sub-section (6) of this section.

(8) The provisions of section **one hundred and ninety-three** shall apply to every liquidator appointed in a creditor's voluntary winding up.

220. (1) All the powers of the directors shall cease except so far as the liquidator or the creditors of the company sanction their continuance.

(2) The liquidator may, without the sanction of the court and without requiring the authority of the contributories, exercise all powers given by section **one hundred and eighty-eight** to the liquidator in a winding up by the court, subject to such directions as may be given by the creditors.

Powers of liquidator

221. The provisions of section **two hundred and seventeen** shall apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up with the modification that the powers of the liquidator under the said section shall not be exercised save with the consent of three-fourths in number and according to the value of their claims, of the creditors present or represented at a meeting called by the liquidator for that purpose and of which at least fourteen days' notice has been given or with the sanction of the court.

Application of Section 217

### **Provisions Applicable to Both Modes of Voluntary Winding up**

222. The provisions contained in sections **two hundred and twenty-three to two hundred and thirty-two**, inclusive, shall apply in relation to both modes of voluntary winding up.

223. The following consequences shall ensue on the voluntary winding up of a company:-

Application of Sections

(a) the property of the company shall, subject to the provisions of section **two hundred and fifty-six** and unless the articles otherwise provide, be distributed amongst the members according to their rights and interest in the company;

Consequences of voluntary winding up

(b) the liquidator may exercise the powers of the court under this Act of settling a list of contributories and of making calls, and shall adjust the rights of the contributories among themselves;

(c) the list of the contributories shall be prima facie evidence of the liability of the persons named therein to be contributories;

(d) when several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two;

(e) if from any cause whatever there is no liquidator acting, the Master may, on the application of a contributory, or creditor, and subject to the provisions of section **two hundred and forty-one**, appoint a provisional liquidator.

224. In a voluntary winding up, every transfer of shares, except transfers made to or with the sanction of the liquidator, and every alteration in the status of the members of the company, made after the commencement of the winding up, shall be void.

225. Every person appointed liquidator, whether alone or jointly with any other person or persons, in a voluntary winding up shall, within seven days after his appointment, lodge with the Master a notice of his appointment in the prescribed form.

Avoidance of transfers after commencement of winding up

If he fails to comply with the requirement of this section he shall be guilty of an offence and liable on conviction to a fine not exceeding ten rand for every day during which the offence continues.

Notice by liquidator of his appointment

226. (1) In a voluntary winding up, all claims against the company shall be proved to the satisfaction of the liquidator, by affidavit, as nearly as may be in the form of and containing the particulars prescribed by rules made under section **three hundred**

**and eleven**. If the claim is rejected by the liquidator, the claimant may apply to the court by motion to set aside the rejection.

Proof of claims

(2) The liquidator may with the approval of the Master fix a time or times within which creditors of the company are to prove their claims or to be excluded from any distribution under any account lodged with the Master before those claims are proved.

227. (1) Any arrangement entered into between a company about to be, or being, wound up voluntarily and creditors shall, subject to any right of review under this section, be binding on the company if sanctioned by a special resolution, and on the creditors if acceded to be three-fourths in value of the creditors present or represented at a meeting duly called by the liquidator for that purpose.

(2) Any creditor or contributory may, within twenty-eight days from the completion of the arrangement, bring it under

Arrangement when binding on company

review by the court, and the court may thereupon, as it thinks fit, amend, vary, set aside or confirm the arrangement. and creditors

228. In a voluntary winding up, meetings of creditors and contributories shall, unless otherwise in this Act specially provided, be convened and held in the manner prescribed by rules made under section **three hundred and eleven**.

229. (1) Where a company is being wound up voluntarily, the liquidator or any contributory or creditor of the company may apply to the court to determine any question arising in the winding up, or to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court. Meetings of creditors and contributories

(2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as the court thinks fit, or may make such other order on the application as the court thinks fit. Power to apply to court

230. (1) Where a company is being wound up voluntarily, the liquidator may summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or for any other purposes he may think fit.

(2) In the event of the winding up continuing for more than six months, the liquidator shall summon a general meeting of the company and a meeting of creditors each to be held within thirty days after the expiration of the first six months from the commencement of the winding up and within thirty days after the expiration of each succeeding period of six months and shall lay before the meeting an account of his acts and dealings and of the progress of the winding up during the preceding period of six months. Duty of liquidator to call meetings of company

(3) If the liquidator fails to comply with sub-section (2) of this section, he shall be guilty of an offence and liable on conviction to a fine not exceeding ten rand for every day during which the office continues.

231. Immediately after the confirmation of the final account the Master shall give notice thereof in writing to the Registrar, who shall forthwith register it, and on the expiration of three months from the registration of the notice the company shall be deemed to be dissolved, but without prejudice to the duties of the liquidator or the powers of the Master under sections **two hundred and fifty-one** and **two hundred and fifty-two**:

Notice to Registrar of confirmation of final account

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 from such time as the

court thinks fit: Provided further that, notwithstanding any dissolution as aforesaid, in the even of any property thereafter becoming available the Master shall give instructions for the realisation thereof and the distribution of the proceeds, less the cost of realisation and distribution, to such persons as would have been entitled thereto in the winding up; and the same shall apply to any moneys becoming so available.

232. The voluntary winding up of a company shall not bar the right of any creditor or contributory at any time before its dissolution to have it wound up by the court, but in the case of an application by a contributory the court shall be satisfied that the rights of the contributory will be prejudiced by a voluntary winding up.

### **Provisions Applicable to Every Mode of Winding up a Company unable to pay its Debts**

Saving of rights of creditors and contributories

233. The provisions contained in sections **two hundred and thirty-four to two hundred and thirty-seven, inclusive**, shall apply in relation to a company being wound up and unable to pay its debts.

Application of sections

234. (1) In every winding up of a company unable to pay its debts, all the directors of the company, including, if the Master so directs, any person who has been a director within a period of six months preceding the date on which the winding up commenced, shall, if required so to do by the Master in writing, attend the first and second meetings of creditors and every adjourned first and second such meetings.

Summoning directors and others to attend meetings of creditors

The directors shall also attend any subsequent meeting of creditors if required to do so by written notice from the liquidator.

(2) The Master or other officer in the public service who is to preside or presides at any meeting of creditors may summon any person, who is known or, on reasonable grounds, believed to be in possession of any property which belongs or belonged to the company or to be indebted to the company or any person who in the opinion of the Master or such other officer may be able to give any material information concerning the company or its affairs, whether before or after the commencement of the winding up, to appear at such meeting or adjourned meeting for the purpose of being interrogated under section **two hundred and thirty-five**.

(3) The Master or such other officer may also summon any person, who is known or, upon reasonable grounds, believed to have in his possession, custody or under his control any book or document containing any such information as is mentioned in subsection (2) of this section, to produce that book or document or an extract therefrom at any such meeting of creditors.

(4) Any person summoned by the Master or other officer in terms of sub-section (2) or (3) of this section who fails without valid excuse.

(a) to attend any meeting to which he has been so summoned; or

(b) to produce any book or document or extract from any book or document in his possession, custody or control; shall be guilty of contempt of the court.

235. (1) At any meeting of creditors of a company being wound up and unable to pay its debts, the Master or other officer in the public service presiding thereat may call and administer the oath to any director and any other person present at the meeting, who was or might have been summoned in terms of sub-section (2) of section **two hundred and thirty-four**, and the Master, such other officer, the liquidator and any creditor, who has proved a claim against the company or the agent of any of them, may interrogate al person so called and sworn concerning all matters relating to the company or its business or affairs, whether before or after the commencement of the winding up, and concerning any property belonging to the company:

Examination of  
directors and  
others at  
meeting of  
creditors

Provided that the presiding officer shall disallow any question which is irrelevant and may disallow any question which would prolong the interrogation unnecessarily.

(2) In connection with the production of any book or document in compliance with a summons issued under sub-section (3) of section **two hundred and thirty-four** or at an interrogation of a person under sub-section (1) of this section, the law relating to privilege as applicable to a witness summoned to produce a book or document or giving evidence in a court of law, shall apply:

Provided that a banker at whose bank the company in question keeps or at any time kept an account, shall be obliged to produce, if summoned to do so under sub-section (3) of section **two hundred and thirty-four**, any cheque, promissory note or bill of exchange in his possession which was drawn or accepted by the company within one year before the commencement of the winding up, or if any cheque, promissory note or bill of exchange so drawn is not available, then any cheque, promissory note or bill of exchange which may be available to him, or a copy of such a record and, if called upon to do so, to give any other information available to him in connection with such cheque, promissory note or bill of exchange or the account of the company.

(3) The presiding officer shall reduce to writing or cause to be reduced to writing the statement of any person given evidence under this section.

(4) Any evidence given under this section shall be admissible in any proceedings instituted against the person who gave evidence.

(5) Any person called upon to give evidence under this section may be represented at his interrogation by an accountant or by an attorney or counsel.

(6) Any person summoned to attend a meeting of creditors for the purpose of being interrogated under this section (other than the directors or other officers of the company) shall be entitled to such witness fees, to be paid out of the funds of the company, as he would be entitled to if he were a witness in any civil proceedings in a subordinate court.

(7) If any director or other officer of the company is called upon to attend any meeting of creditors, he shall, if the Master so approves and subject to a right of appeal to the court, be entitled to an allowance out of the funds of the company to defray his necessary expenses in connection with such attendance.

(8) Any person interrogated under the provisions of this section who refuses, on any ground other than that the answer may tend to incriminate him, to answer any question (save any question which the presiding officer may see fit to disallow) put to him, shall be guilty of contempt of court.

236. (1) Every disposition of its property which, if made by an individual, could for any reason be set aside in the event of his insolvency, may, if made by a company, be set aside in the event of the company being wound up and unable to pay its debts, and the provisions of the law relating to insolvent estates shall **mutatis mutandis** apply to any such disposition.

Voidable and  
undue  
preferences

(2) For the purposes of this section the event which shall be deemed to correspond with the sequestration order in the case of an individual shall be -

- (a) in the case of a winding up by the court, the presentation of the petition, unless that winding up has superseded a voluntary winding up, when it shall be the passing of the resolution to wind up the company;
- (b) in the case of a voluntary winding up, the passing of the resolution to wind up.

(3) Any cession or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

237. In the case of every winding up of a company unable to pay its debts a secured creditor and the liquidator shall have the same right respectively to take over such creditor's security as a secured creditor and a trustee would have under the law relating to

insolvent estates.

### Provisions Applicable to every Mode of Winding up

238. The provisions contained in sections **two hundred and thirty-nine to two hundred and sixty-three**, inclusive, shall apply in relation to every company being wound up by whatever mode.

Application of certain provisions of the insolvency proclamation

239. (1) Each of the following persons shall be disqualified for being elected or appointed a liquidator of a company that is being wound up:-

- (a) an insolvent;
- (b) a minor;
- (c) any other person under legal disability;
- (d) a body corporate;
- (e) a person declared under sub-section (2) of section **two hundred and forty** to be incapacitated for appointment as liquidator while such incapacity lasts;
- (f) a person who is the subject of an order under this Act disqualifying him as a director of any company;
- (g) a person who has, by reason of misconduct, been removed by the court from an office of trust;
- (h) any person who, in order to obtain, or in return for the vote of any creditor or contributory, or in order to exercise any influence upon his election as liquidator of the company has –
  - (i) procured or allowed the wrongful insertion or omission of the name of any person in or from any list or schedule by the Act required; or
  - (ii) procured or allowed the wrongful or inaccurate statement of the claim of any creditor or contributory; or
  - (iii) directly or indirectly given or agreed to give any person any consideration; or
  - (iv) offered or agreed with any person to abstain from investigating any transactions of or relating to the company or of any of its officers; or
  - (v) been guilty of or allowed the splitting of claims in such manner as to increase the number or value of votes of the person whose claim has been so split;

Application of Sections

Persons disqualified for appointment as liquidator

- (i) a person who has at any time been convicted (whether in Lesotho or elsewhere) of theft, fraud, forgery or uttering a forged document or of perjury and has been sentenced therefore to serve a term of imprisonment without the option of a fine or to fine exceeding one hundred rand.

(2) Any person who in order to obtain or in return for the vote of any creditor or contributory or in order to exercise any influence upon his election as a liquidator of a company does nay of the acts mentioned in sub-paragraph (i), (ii), (iii), (iv) or (v) of paragraph (h) of sub-section (1) of this section shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand or to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment.

(3) Any person who procures or tries to procure or tries to procure the appointment as liquidator of any person, knowing that such person is disqualified for such appointment under the terms of sub-section (1) of this section shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand or to imprisonment for a period not exceeding two hundred rand or to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment.

240. (1) The court, on the application of the Master or any person have an interest in the winding up -

- (a) may declare that any person proposed or appointed as liquidator is disqualified under the provisions of section **two hundred and thirty-nine** for holding the office and if he has been appointed may remove him therefrom;

Power of court to declare person disqualified for being liquidator or to remove a liquidator

- (b) may remove any liquidator from his office upon any of the following grounds:-
  - (i) ill-health or any other factor tending to interfere with the performance of his duties as liquidator;
  - (ii) that he has accepted or offered or agreed to accept or has solicited from any auctioneer, agent or other person employed on behalf of the company any share of the commission or remuneration or of any other benefit whatever accruing to such auctioneer, agent or other person;
  - (iii) misconduct, including any failure to satisfy a lawful demand of the Master or of a commissioner appointed by the court;



- (iv) failure to perform any of the duties imposed on him by the Act; or
- (v) any other good cause.

(2) The court may, in respect of any person removed by it -

- (a) under the provisions of paragraph a) of sub-section (1) of this section as a person disqualified for reasons set out in paragraph (h) of sub-section (1) of section **two hundred and thirty-nine**; or
- (b) under the provisions of sub-paragraphs (ii), (iii) or (iv) of paragraph (b) of sub-section (1) of this section;

declare such person to be incapable of being appointed a liquidator, under this Act during his lifetime or any other period.

(3) The Master shall give notice in the **Gazette** of the removal of any liquidator from his lifetime or any other period.

241. (1) In every winding up a company each liquidator, including a co-liquidator or a provisional liquidator, shall furnish security to the satisfaction of the Master for the due performance of his duties as such and shall choose some address for service within Lesotho. Until he has complied with the foregoing conditions he shall not be capable of acting as liquidator, co-liquidator or provisional liquidator as the case may be; and if these conditions are not complied with within a time to be fixed by the Master he shall be deemed to have resigned his office:

Provided that no such security will be required in the case of a member's voluntary winding up if the company so resolves.

Liquidator to give security, and to choose address for service

(2) The cost of giving the aforesaid security, provided it is furnished in the prescribed form, if any, by a fidelity company or an association approved by the Master, shall be a cost in the winding up.

(3) When a liquidator has, in the course of winding up a company, accounted to the Master to his satisfaction for any property belonging to the company the Master may consent to a reduction of the security mentioned in sub-section (1) of this section if he is satisfied that the reduced security will suffice to indemnify the company, its creditors and contributories against any maladministration by the liquidator of the remaining property belonging to the company.

242. (1) The Master may, whenever he deems it desirable, appoint a co-liquidator to act jointly with any other liquidator.

(2) When two or more liquidators have been appointed they shall act jointly in performing their functions as liquidators and each of them shall be jointly and severally liable for every act performed by them jointly.

Co-liquidator

243. (1) A liquidator shall be described by the style of the liquidator of the particular company in respect of which he is appointed and not by his individual name.

(2) The liquidator shall proceed forthwith to recover and reduce into possession all the assets and property of the company, movable and immovable.

Title and Acts  
of liquidators

(3) Every liquidator shall give the Master such information and such access to and facilities for inspecting the books and documents of the company and generally such aid as may be requisite for enabling that officer to perform his duties under this Act.

(4) The acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

244. The liquidator shall, as soon as practicable, and unless with the consent of the Master, not later than three months after the date of his appointment, submit to general meetings of creditors and contributories a report -

General  
meetings to  
hear  
liquidator's  
report

- (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 cause of the failure;
- (c) whether in his opinion further enquiry is desirable as to any matter relating to the promotion, formation or failure of a company or the conduct of its business;
- (d) whether the company has kept the books and accounts required by section **one hundred and twelve**, and if not in what respect such requirement has not been complied with;
- (e) as to the progress and prospects of the liquidation; and
- (f) as to any other matter which he may think fit or in regard to which he may desire the directions of the creditors or the contributories.

245. (1) From the beginning of his appointment and during the whole period of his office the liquidator shall punctually keep proper books and records of all transactions of the liquidation.

(2) The Master may at any time in writing order the liquidator to produce the said books or records for inspection.

(3) Any creditor or contributory may, at all reasonable times, personally or by his agent, but subject to the control of the Master inspect such books or records.

### **Liquidator's Accounts**

246. (1) Every liquidator shall, unless he receives an extension of time as hereinafter provided, frame and lay before the Master, not later than six months after his appointment, an account of his receipts and payments and a plan of distribution, or, if there is a liability among creditors to contribute towards the costs in the winding up, a plan of contribution apportioning their liability. If the account is not the final account, the liquidator shall from time to time, and as the Master may direct, but at least once in every six months (unless he receives an extension of time), frame and lay before the Master a further account and plan of distribution.

(2) The account shall be in the prescribed form, shall be made in duplicate, shall be fully supported by vouchers, including the liquidator's bank statement or a certified extract from his bank account, and shall be verified by an affidavit in the prescribed form.

(3) The Master may require the liquidator to lay a duplicate of the account before an officer of the public service appointed in that behalf by the Master.

247. (1) The Master, at any time when he considers that the liquidator has funds in hand that ought to be distributed, and the Master or any person interested in the company when a full and true account has not been lodged within the periods prescribed for the lodging of such an account, may apply to the court for an order compelling the liquidator to lodge his account:

Provided that -

- (i) the Master or that other person shall, not later than fourteen days before making the application, require the defaulting liquidator by notice in writing to lodge his account in accordance with this Act;

Books to be kept by liquidator and inspection thereof

Liquidator to lodge with Master accounts in winding up

Application to court to compel liquidator to lodge account

