

# **Companies Bill, 2018**

## ARRANGEMENT OF SECTIONS

### CHAPTER ONE

#### **PRELIMINARY PROVISIONS**

*Section*

1. Application of Act
2. Application of particular chapters
3. Prohibition of association exceeding twenty members
4. Companies formed for special purposes
5. Saving of equity and common law

### CHAPTER TWO

#### **PROVISIONS APPLICABLE TO ALL COMPANIES**

*Part A: Formation and Incidental Matters*

6. Right to form a company
7. Types of companies
8. Companies limited by guarantee
9. Conversion of company limited by shares to company limited by guarantee
10. Duties of promoters
11. Pre-incorporation contracts

*Part B: Incorporation of Companies*

12. Right to apply for incorporation
13. Application for incorporation
14. Incorporation
15. Certificate of incorporation
16. Certificate of incorporation and winding up
17. Error or omission in document

*Part C: Capacity of Companies*

18. Powers of companies
19. Limits of company's authority
20. Alteration of objects or business
21. Names of companies
22. Reservation of name

## **Companies Bill, 2018**

### *Part D: The Company's Constitution*

23. Option to have a registered constitution
24. Effect of Act on company that has lodged a registered constitution
25. Effect of Act on company without a registered constitution
26. Contents of registered constitution
27. Form of constitution
28. Subscription to constitution
29. Effect of company constitution
30. Adoption, amendment and revocation of constitution
31. Registration of consolidated constitution
32. Copies of registered constitution

### *Part E : Membership of Companies*

33. Members of a company
34. Right of member to attend and vote
35. Register of members
36. Inspection of register
37. Power to close register
38. Rectification of register
39. Register to be evidence
40. Liability of members
41. Companies ceasing to have members

### *Part F: Shares*

42. Legal nature of shares
43. No par value shares
44. Issue of shares
45. Payment of shares
46. Return of issues
47. Penalties for non-compliance with section 45 or 46
48. Meaning of payment in cash
49. Classification of shares
50. Variation of class rights
51. Preference and equity shares
52. Suspension of voting rights of preference shares
53. Votes of equity shares

## **Companies Bill, 2018**

54. Canons of construction of class rights
55. Issue of share certificates
56. Effect of share certificates
57. Reserve liability
58. Prohibited transactions in shares
59. Alteration of number of shares
60. Financial assistance for acquisition of shares
61. Acquisition by company of its own shares
62. Redemption of redeemable preference shares
63. Purchase by a company of its own shares
64. Limit on number of shares acquired
65. Share deals account
66. Modification of sections 61 to 65 in relation to authorised mutual funds
67. Acquisition of shares of holding company

### *Part G: Stated Capital and Dividends*

68. Meaning of “stated capital”
69. Reduction of stated capital
70. Meaning of “surplus”
71. Meaning of “income surplus”
72. Legality of dividend payments
73. Unclaimed dividend accounts
74. Management by Registrar of unclaimed dividend account
75. Prohibition of payment of dividends by companies limited by guarantee
76. Declaration of dividends
77. Capitalisation issues and non-cash dividends

### *Part H: Resolutions Reducing Capital, Shares or Liability*

78. Resolutions requiring confirmation of Court
79. Application for confirming order
80. Order confirming the resolution
81. Order and minute to be registered
82. Protection of creditors

## **Companies Bill, 2018**

### *Part I: Debentures and Debenture Stock*

83. Issue of debentures or debenture stock
84. Specific performance of contract for debentures
85. Documents of title to debentures
86. Effect of statements in debentures
87. Perpetual debentures
88. Convertible debentures
89. Secured or naked debentures
90. Meaning of “floating charge”
91. Powers of the Court
92. Payment of preferential creditors out of assets subject to a floating charge
93. Limitation of efficacy of floating charges in liquidations
94. Application of sections 244 to 256
95. Trustees for debenture holders
96. Meetings of debenture holders
97. Re-issue of redeemed debentures

### *Part J: Transfer of Shares and Debentures*

98. Restrictions on transferability of shares
99. Register of debentures
100. Restrictions on transferability of debentures
101. Registration of transfers
102. Transmission of shares or debentures by operation of law
103. Protection of beneficiaries
104. Certification of transfers
105. Company’s lien on shares

### *Part K: Branch Registers*

106. Power of company to keep branch register
107. Regulations as to branch registers
108. Stamp duties in case of securities registered in branch registers
109. Provisions as to branch registers kept in the Republic

### *Part L: Registration of Particulars of Charges*

110. Registration of particulars of charges created by companies
111. Charges to secure fluctuating amounts
112. Charges on property acquired
113. Existing charges

## **Companies Bill, 2018**

- 114. Duty of company to deliver particulars for registration
- 115. Register of particulars of charges
- 116. Endorsement of registration on debentures of a series
- 117. Entry of satisfaction on discharge
- 118. Rectification of register of particulars of charges
- 119. Registration of enforcement of security
- 120. Copies of charges to be kept by company
- 121. Registration constituting notice

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

- 122. Registered office
- 123. Notice of situation of registered office
- 124. Requirement to change registered office
- 125. Publication of name of company
- 126. Annual return

### *Part N: Accounts and Audit*

- 127. Keeping of books of account and preparation of financial statements
- 128. Circulation of financial statements and reports
- 129. First financial statement after incorporation
- 130. Balance sheet
- 131. Consolidated financial statements
- 132. Particulars of directors' emoluments and pensions
- 133. Particulars of amounts due from officers
- 134. Provisions supplemental to sections 127 to 133
- 135. Signing and publication of financial statements
- 136. Directors' report
- 137. Auditors' report
- 138. Qualification of auditors
- 139. Appointment of auditors
- 140. Remuneration of auditors
- 141. Removal of auditors
- 142. Functions of auditors
- 143. Auditor to avoid conflict of interest

### *Part O: Acts by or on behalf of the Company*

- 144. Division of powers between general meeting and board of directors

## **Companies Bill, 2018**

145. Major transactions
146. Delegation to committees and managing directors
147. Acts of the company
148. Acts of officers or agents
149. No constructive notice of registered documents
150. Presumption of regularity
151. Liability of company not affected by officer's fraud or forgery
152. Form of contracts
153. Bills of exchange and promissory notes
154. Authentication of documents
155. Execution of deeds abroad
156. Official seal for use abroad

### *Part P: General Meetings and Resolutions*

157. Annual general meetings
158. Extraordinary general meetings
159. Place of meetings
160. Notice on proxy
161. Compliance with proxy arrangements
162. Power of Court to order meeting
163. Written resolutions
164. Application of provisions on general meetings to class meetings
165. Registration of copies of certain resolutions
166. Minutes of general meetings
167. Inspection of minute books
168. Members' circulars
169. Proceedings at meetings

### *Part Q: Directors, Secretary and Other Officers of a Company*

170. Meaning of "directors"
171. Number of directors
172. Appointment of directors and filling of vacancy
173. Qualification of directors
174. Directors' share qualification
175. Vacation of office of director
176. Removal of directors
177. Restraining fraudulent persons from managing companies
178. Duty of director to report disqualification
179. Duty of company to fill vacancy of disqualified director

## **Companies Bill, 2018**

180. Substitute directors
181. Alternate directors
182. Presence of directors in the Republic
183. Executive directors
184. Managing directors
185. Remuneration and other benefits of directors
186. Publication of names of directors
187. Prohibition of assignment of offices
188. Proceedings and minutes of directors' meetings
189. Limitations on the powers of directors
190. Duties of directors
191. Exercise of directors' powers
192. Conflicts of duty and interest
193. Consent of company
194. Contracts in which directors are interested
195. Disclosure of interest by directors
196. Company to maintain Interests Register
197. Directors to act professionally
198. Use of company information
199. Civil liabilities for breach of duty
200. Legal proceedings to enforce liabilities
201. Derivative actions
202. Costs of derivative action to be met by company
203. Powers of Court where leave is granted
204. Compromise, settlement or withdrawal of derivative action
205. Representative actions
206. Payments to directors for loss of office
207. Payments to directors in connection with take-over bids
208. Provisions supplemental to sections 206 and 207
209. Duties of directors in sales or purchases of the company's securities
210. Register of directors' holdings
211. Company Secretary
212. Duties of a Company Secretary
213. Avoidance of acts in dual capacity as director and company secretary
214. Prohibition of tax-free payments
215. Register of directors and Company Secretary
216. Registration of particulars of directors and Company Secretaries
217. General saving of existing law relating to officers

## **Companies Bill, 2018**

### *Part R: Protection Against Illegal or Oppressive Action*

- 218. Injunction or declaration in the event of illegal or irregular activity
- 219. Remedy against oppression
- 220. Shareholder's requirement of company to purchase shares
- 221. Notice requiring purchase of shares
- 222. Purchase of shares by company
- 223. Determination of fair and reasonable price for purchase of shares by company
- 224. Application to court for exemption on grounds of insolvency
- 225. Purchase of shares by third party
- 226. Reinstatement of shares
- 227. Application to court for exemption

### *Part S: Inspection and Investigation of Companies*

- 228. Enquiries by the Registrar
- 229. Appointment of inspector under order of the Court
- 230. Appointment of inspector on special resolution of the company
- 231. Power to carry investigation into the affairs of associated companies
- 232. Production of documents and evidence
- 233. Inspectors' report
- 234. Proceedings after investigations
- 235. Expenses of investigations
- 236. Request for information as to persons interested in shares or debentures
- 237. Saving for legal practitioners and bankers

### *Part T: Arrangements and Mergers*

- 238. Arrangement and merger by sale of undertaking
- 239. Arrangement or merger with Court approval
- 240. Powers of the Court for facilitating arrangements or mergers
- 241. Information as to arrangements and mergers
- 242. Acquiring shares of minority on acquisition of subsidiary company
- 243. Rights of minority on acquisition of subsidiary company

### *Part U: Receivers and Managers*

- 244. Eligibility for appointment as receiver or manager
- 245. Power to appoint Official Trustee
- 246. Duties of receivers



## **Companies Bill, 2018**

- 247. Duties of managers
- 248. Absence of defence or immunity
- 249. Powers of receivers and managers
- 250. Receivers and managers appointed by Court
- 251. Receivers and managers appointed out of Court
- 252. Liabilities of receivers and managers on contracts
- 253. Notification that receiver or manager has been appointed
- 254. Accounts where manager appointed to enforce a floating charge
- 255. Delivery to Registrar of accounts of receivers
- 256. Enforcement of receivers' duties

### *Part V: Winding Up*

- 257. Modes of winding up
- 258. Affidavit of solvency
- 259. Procedure on resolution for liquidation
- 260. Statements and accounts of final financial year
- 261. Resolution for appointment and removal of liquidator
- 262. Remuneration of liquidator
- 263. Disqualification of liquidator
- 264. Status of liquidator
- 265. Cessation of directors' powers
- 266. Powers of liquidator
- 267. Books and accounts during private liquidation
- 268. Liquidation account
- 269. Duty of liquidator in case of insolvency
- 270. Stay of proceedings
- 271. Dissolution of companies
- 272. Dissolution without full winding up

### *Part W: Documents*

- 273. Service of documents by company
- 274. Service of documents on company
- 275. Additional provisions relating to service
- 276. Books and registers

### *Part X : Invitations to the Public*

- 277. Control of public invitations
- 278. Meaning of "invitations to the public"
- 279. Offers for sale deemed to be made by company

# **Companies Bill, 2018**

## CHAPTER THREE

### **ADDITIONAL PROVISIONS APPLICABLE TO PRIVATE COMPANIES ONLY**

- 280. Default in complying with conditions constituting a private company
- 281. Documents to be annexed to the annual return of a private company
- 282. Requisitioning extraordinary general meetings of a private company
- 283. Appointment and removal of directors of private companies
- 284. Unanimous agreement by shareholders
- 285. Conversion of private company to public company

## CHAPTER FOUR

### **ADDITIONAL PROVISIONS APPLICABLE TO PUBLIC COMPANIES ONLY**

#### *Part A : Prospectuses and Statements in Lieu of Prospectus*

- 286. Statement in lieu of prospectus
- 287. Prospectus on invitations to the public to acquire or dispose of securities
- 288. General and restricted invitations to the public
- 289. Certificates of exemption
- 290. Expert's consent
- 291. Registration of prospectus
- 292. Waiting period
- 293. Withdrawal of applications after the offer period
- 294. Invitations in respect of securities to be dealt in on a stock exchange
- 295. Minimum subscription
- 296. Civil remedy for mis-statements or omissions in a prospectus
- 297. Rescission for mis-statements in a prospectus
- 298. Voting rights of shares offered to the public
- 299. Public invitations to deposit money with public companies
- 300. Prohibition of waiver and notice clauses
- 301. Criminal liability for mis-statements

## **Companies Bill, 2018**

302. Registrar to waive or modify the application of Part A of Chapter Four

### *Part B: Dividends and Transfers*

303. Limitation on liability of shareholders in public companies to restore illegal dividends  
304. Interim dividends  
305. Restrictions on the transferability of securities of public companies

### *Part C: Documents Accompanying Annual Returns*

306. Documents to be annexed to annual returns of a public company

### *Part D: Extraordinary General Meetings*

307. Extraordinary general meetings of public companies

### *Part E: Directors*

308. Rotation of directors of a public company  
309. Voting for directors of a public company  
310. Cumulative voting for directors of a public company  
311. Prohibition of loans by public companies to directors

## CHAPTER FIVE

### **PROVISIONS APPLICABLE TO EXTERNAL COMPANIES**

312. Meaning of “external company”  
313. Documents to be delivered to Registrar by external company  
314. Notice of alteration of registered particulars  
315. Local manager and local agent  
316. Service on external company  
317. Financial statements of external company  
318. Obligation to state name of external company  
319. Publication of names of local managers or local agents  
320. Registration of particulars of charges  
321. Winding up of external company  
322. Winding up of external company in specified business  
323. Cessation of business of external company

## **Companies Bill, 2018**

- 324. Penalties and disabilities
- 325. Control of public invitations relating to external companies
- 326. Control of public invitations relating to other non-Ghanaian companies

### CHAPTER SIX

### **SUPPLEMENTARY**

#### *Part A: Miscellaneous Offences*

- 327. Inducing persons to invest
- 328. Penalty for false statements
- 329. Penalty for improper use of “incorporated” or “limited”
- 330. Publication of misleading statements regarding shares or capital

#### *Part B: Legal Proceedings*

- 331. Costs in actions by limited companies
- 332. Contribution between joint wrongdoers
- 333. Power to grant relief

#### *Part C: Establishment of the Office of the Registrar of Companies*

- 334. Establishment of the Office of the Registrar of Companies
- 335. Status of the Office of the Registrar
- 336. Object and functions of the Office of the Registrar
- 337. Governing body of the Office of the Registrar
- 338. Tenure of office of members
- 339. Meetings of the Board
- 340. Disclosure of interest
- 341. Establishment of committees
- 342. Fees and allowances
- 343. Regional offices
- 344. Ministerial directives

#### *Part D : Administrative and Financial Provisions of the Office of the Registrar*

- 345. Appointment of Registrar of Companies
- 346. Appointment of other staff

## **Companies Bill, 2018**

- 347. Funds of the Office of the Registrar
- 348. Management of the Office of the Registrar's finances
- 349. Loans, bank accounts and investments
- 350. Accounts and audit
- 351. Annual report and other reports

### *Part E: General Provisions*

- 352. Periodical reports by Registrar
- 353. Companies Bulletin
- 354. Fees
- 355. Documents to be translated
- 356. Registration of documents
- 357. Prescribed forms
- 358. Inspection, copies and evidence of registered documents
- 359. Authentication of documents issued by Registrar
- 360. Enforcement of duty to make returns
- 361. Electronic transactions
- 362. Registrar's power to obtain directions of the Court
- 363. Extension to unregistered companies
- 364. Regulations
- 365. Interpretation
- 366. Repeal and savings
- 367. Transitional provisions
- 368. Modification
- 369. Commencement

### ***SCHEDULES***

# **Companies Bill, 2018**

## **FIRST SCHEDULE**

*Definitions*

## **SECOND SCHEDULE**

*Constitution for a Private Company Limited by Shares*

## **THIRD SCHEDULE**

*Constitution for a Public Company Limited by Shares*

## **FOURTH SCHEDULE**

*Constitution for a Company Limited by Guarantee*

## **FIFTH SCHEDULE**

*Contents of Annual Return*

## **SIXTH SCHEDULE**

*Financial Statements*

## **SEVENTH SCHEDULE**

*Matters to be Expressly Stated in Auditor's Report*

## **EIGHTH SCHEDULE**

*Procedure for General Meetings*

## **NINTH SCHEDULE**

*Form of Statement in Lieu of Prospectus and Financial Statement and Report to Accompany the Statement*

## **TENTH SCHEDULE**

*Contents of Prospectus on General Invitation*

## **ELEVENTH SCHEDULE**

*Fees payable to the Registrar*

## Companies Bill, 2018

### COMPARATIVE TABLE

COMPANIES ACT, 1963 (ACT 179)	COMPANIES BILL, 2018	COMPANIES ACT, 1963 (ACT 179)	COMPANIES BILL, 2018
1	369	17	27
2	365	18	28
3	1	19	25
4	2	20	-
5	3	21	29
6	4	22	30
7	5	-	31
8	6	23	32
9	7	24	18
10	8	25	19
11	9	26	20
12	10	27	13 & 14
13	11	28	16
14	12 -15	29	17
15	21	30	33
16	26	31	34
-	23	32	35
-	24	54	56
33	36	55	57
34	37	56	58
35	38	57	59
36	39	58	60
37	40	59	61
38	41	60	62
39	42	61	63
40	43	62	64
41	44	63	65
42	45	64	66
43	46		
-	22		

## Companies Bill, 2018

COMPANIES ACT, 1963 (ACT 179)	COMPANIES BILL, 2018	COMPANIES ACT, 1963 (ACT 179)	COMPANIES BILL, 2018
44	47	65	67
45	48	66	68
46	49	67	69
47	50	68	-
48	51	69	70
49	52	70	71
50	53	71	72
51	54	-	73
52	-	-	74
53	55	72	75
73	76	94	97
74	77	95	98
75	78	96	99
76	79	97	100
77	80	98	101
78	81	99	102
79	82	100	103
80	83	101	104
81	84	102	105
-	85	103	106
83	86	104	107
84	87	105	108
85	88	106	109
86	89	107	110
87	90	108	111
88	91	109	112
89	92	110	113
90	93	111	114
91	94	112	115
92	95	113	116
93	96	114	117



## Companies Bill, 2018

COMPANIES ACT, 1963 (ACT 179)	COMPANIES BILL, 2018	COMPANIES ACT, 1963 (ACT 179)	COMPANIES BILL, 2018
115	118	134	139 & 140
116	119	135	141
117	120	136	142
118	121	137	144
119	122	-	145
120	123	138	146
-	124	139	147
121	125	140	148
122	126	141	149
123	127	142	150
124	128	143	151
125	129	144	152
126	130	145	153
127	131	146	154
128	132	147	155
129	133	148	156
130	134	149	157
131	135	150	158
132	136	151	159

## Companies Bill, 2018

COMPANIES ACT, 1963 (ACT 179)	COMPANIES BILL, 2018	COMPANIES ACT, 1963 (ACT 179)	COMPANIES BILL, 2018
—	EIGHTH SCHEDULE	—	EIGHTH SCHEDULE
152	Paragraph 1	169	Paragraph 15
153	Paragraph 2	170	Paragraph 16
153(4)	161	171	Paragraph 17
154	Paragraph 1(f)	172	Paragraph 18
155	Paragraph 3	173	Paragraph 19
156	Paragraph 4	174	163
157	Paragraph 5	175	164
158	Paragraph 6	176	165
159	168	177	166
160	Paragraph 7	178	167
161	Paragraph 8	-	168
62	64	-	169
162	162	179	170
163	Paragraph 9	180	171
164	Paragraph 10	181	172
165	Paragraph 11	182	173
166	Paragraph 12	183	174
167	Paragraph 13	184	175
168	Paragraph 14	185	176

## Companies Bill, 2018

COMPANIES ACT, 1963 (ACT 179)	COMPANIES BILL, 2018	COMPANIES ACT, 1963 (ACT 179)	COMPANIES BILL, 2018
-	178	205	192
-	179	206	193
187	180	207	194
188	181	-	195
189	182	-	196
190	211	208	197
191	213	-	198
192	183	209	199
193	184	210	200
194	185	-	201
195	214	-	202
196	215	-	203
197	216	-	204
198	186	211	206
199	187	212	207
200	188	213	208
201	188	214	209
202	189	215	210
204	191	216	217
218	219	217	218
-	220	230	238
-	221	231	239
-	222	232	240
-	223	233	241
-	224	234	242
-	225	235	243
-	226	236	244
-	227	237	245
-	228	-	246
219	229	-	247
220	-	-	248

## Companies Bill, 2018

COMPANIES ACT, 1963 (ACT 179)	COMPANIES BILL, 2018	COMPANIES ACT, 1963 (ACT 179)	COMPANIES ACT, 2018
221	230	238	249
222	231	239	250
223	232	240	251
224	233	241	252
225	234	242	253
226	235	243	254
227	236	244	255
228	237	245	256
229	-	246	257
247	258	265	277
248	259	266	278
249	260	267	279
250	261	268	280
251	262	269	281
252	263	270	138
253	264	271	282
254	265	272	283
255	266	-	284
256	267	273	285
257	268	274	286
258	269	275	287
259	270	276	288
260	271	277	289
261	272	278	290
262	273	279	291
263	274	280	-
-	275	281	292
264	276	282	293
283	294	302	312
284	295	303	313
285	-	304	314

## Companies Bill, 2018

COMPANIES ACT, 1963 (ACT 179)	COMPANIES BILL, 2018	COMPANIES ACT, 1963 (ACT 179)	COMPANIES BILL, 2018
286	296	305	315
287	297	306	316
288	298	307	317
289	299	308	318
290	300	309	319
291	301	310	320
291A	302	311	321
292	303	-	322
293	304	312	323
294	305	313	324
295	306	314	325
296	138	315	326
297	307	316	-
298	308	317	-
299	309	318	-
300	310	319	-
301	311	320	327
321	328	-	348
322	329	-	349
323	330	-	350
324	205	-	351
325	331	-	353
326	332	328	345
327	333	329	354
		330	355

## Companies Bill, 2018

COMPANIES ACT, 1963 (ACT 179)	COMPANIES BILL, 2018	COMPANIES ACT, 1963 (ACT 179)	COMPANIES BILL, 2018
-	335	332	357
	336	333	358
-	338	334	359
-	339	335	360
-	340	-	361
-	341	336	364
-	342	337	362
-	343	338	352
-	344	339	363
-	347	340	366
		-	367
		-	368

*Companies Bill, 2018*

A  
**BILL**

ENTITLED

**THE COMPANIES ACT, 2018**

AN ACT to amend and consolidate the law relating to companies; to establish the Office of the Registrar of Companies; and to provide for related matters.

PASSED by Parliament and assented to by the President:

**CHAPTER ONE—PRELIMINARY PROVISIONS**

**Application of Act**

1. (1) Except where otherwise provided, this Act applies to companies formed in the Republic, whether before or after the commencement of this Act.

(2) This Act does not affect the validity of anything done before the date when the Act comes into operation.

**Application of particular chapters**

2. (1) Chapter Two applies to all companies.  
(2) Chapter Three applies to private companies.  
(3) Chapter Four applies to public companies.  
(4) Chapter Five applies to external and non-Ghanaian companies.

**Prohibition of association exceeding twenty members**

3. A company, or an association consisting of more than twenty persons shall not be formed for the purpose of carrying on a business that has for its object the acquisition of gain by the company or association or by its individual members, unless it is registered as a company under this Act or is formed in pursuance of any other enactment.

**Companies formed for special purposes**

4. This Act does not abrogate or affect legislation relating to companies carrying on the business of banking, insurance or any other business which is subject to special regulation.

**Saving of equity and common law**

5. The rules of equity and of common law applicable to companies shall continue in force unless they are inconsistent with a provision of this Act.

**CHAPTER TWO—PROVISIONS APPLICABLE  
TO ALL COMPANIES**

*Part A: Formation and Incidental Matters*

**Right to form a company**

6. One or more persons may form an incorporated company by complying with this Act.

**Types of companies**

7. (1) An incorporated company may be
- (a) a company limited by shares;
  - (b) a company limited by guarantee;
  - (c) an unlimited company; or
  - (d) an external company.
- (2) For the purposes of subsection (1),
- (a) a company limited by shares is a company which has the liability of its members limited to the amount unpaid on the shares respectively held by them;
  - (b) a company limited by guarantee is a company which has the liability of its members limited to an amount that the



*Companies Bill, 2018*

members may respectively undertake to contribute to the assets of the company in the event of its being wound up;

- (c) an unlimited company is a company which does not have a limit on the liability of its members; or
- (d) an external company is a company as defined in section 312.

(3) A company limited by shares and an unlimited company shall for the purposes of incorporation be registered with shares.

(4) A company of a type specified in paragraph (a) of subsection (1), may be a private company or a public company.

(5) A private company is a company which by virtue of its constitution

- (a) restricts the right to transfer its shares,
- (b) limits the total number of its members and debenture holders to, not including
  - (i) persons who are genuinely in the employment of the company, and
  - (ii) persons who, having been formerly in the employment of the company, were while in that employment, and have continued after the determination of that employment to be members or debenture holders of the company;
- (c) prohibits the company from making an invitation to the public to acquire shares or debentures of the company; and
- (d) prohibits the company from making an invitation to the public to deposit money for fixed periods or payable at call, whether bearing or not bearing interest.

(6) Where two or more persons hold one or more shares or debentures jointly, they shall, for the purposes of subsection (3) be treated as a single member or debenture holder.

(7) A company which is not a private company is a public company.

(8) A company limited by guarantee shall not for the purposes of incorporation be registered with shares and shall not create or issue shares.

**Companies limited by guarantee**

8. (1) A company limited by guarantee shall not lawfully be incorporated with the object of carrying on business for the purpose of making profits other than making profits for the furtherance of its objects.

(2) Where a company limited by guarantee carries on business for the purpose of making profits, other than for the furtherance of its objects, the officers and members of that company who are cognisant of the fact that it is so carrying on business are jointly and severally liable for the payment and discharge of the debts and liabilities of the company incurred in carrying on that business, and the company and those officers and members are each liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the company carries on that business.

(3) The total liability of the members of a company limited by guarantee to contribute to the assets of the company in the event of its being wound up shall not at any time be less than the amount of money specified in the application required for incorporation.

(4) Where in breach of subsection (3), the total liability of the members of a company limited by guarantee is at any time, less than the amount specified in the application required for incorporation, every director and member of the company who is cognisant of the breach is liable to pay to the Registrar an administrative penalty of five hundred penalty units.

**Conversion of company limited by shares to company limited by guarantee**

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

- (a) the liability on any of its shares is fully paid;
- (b) its members agree in writing to the conversion and to the voluntary surrender to the company for cancellation of the shares held by them immediately before the conversion;
- (c) a new constitution, appropriate to a company limited by guarantee, is adopted by the company pursuant to section 30; and
- (d) a member agrees or the members agree in writing to contribute to the assets of the company, in the event of its being wound up, to an amount of money not less than that prescribed by subsection (3) of section 8.

*Companies Bill, 2018*

(2) On delivery to the Registrar for registration of a statutory declaration by a director and the secretary of the company confirming that the conditions of subsection (1) have been complied with, the Registrar shall issue a new certificate of incorporation altered to meet the circumstances of the case.

(3) From the date stated in the certificate

- (a) the company is converted into a company limited by guarantee,
- (b) the shares in the company shall be validly surrendered and cancelled despite the provisions of section 58, and
- (c) the members of the company who have not agreed to contribute to the assets of the company in the event of its being wound up cease to be members of the company.

(4) Except in accordance with subsection (4) of section 21, the company shall not change the name under which it was registered before the conversion.

(5) The omission of words

- (a) “(plc) Public Liability Company”, or
- (b) “(ltd) Private Company Limited”

as the last words of the name of the company after conversion shall not be regarded as a change of name.

(6) If the Registrar is of the opinion that the name under which the company is registered will be misleading or undesirable on its conversion to a company limited by guarantee, the Registrar shall in accordance with subsection (6) of section 21, direct the company to change its name and shall not issue a new certificate of incorporation until the direction has been complied with or cancelled in accordance with that subsection.

(7) Until a new certificate of incorporation is issued under subsection (2), neither the surrender of the shares of the company nor the agreement to contribute to the assets of the company in the event of its being wound up shall take effect.

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

**Duties of promoters**

**10.** (1) A person who is or has been engaged or interested in the formation of a company is a promoter of that company.

(2) A person acting in a professional capacity for persons engaged in procuring the formation of a company is not a promoter of that company.

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

- (a) stand in a fiduciary relationship to the company;
- (b) observe the utmost good faith towards the company in a transaction with it or on its behalf; and
- (c) compensate the company for any loss suffered by it by reason of the promoter's failure to observe the utmost good faith.

(4) A promoter that acquires property or information in circumstances in which it was the promoter's duty as a fiduciary to acquire it on behalf of the company, shall account to the company for the property or information and for the profit which the promoter may have made from the use of that property or information.

(5) A transaction between a promoter and the company may be rescinded by the company unless, after full disclosure of the material facts known to the promoter, the transaction has been entered into or ratified on behalf of the company,

- (a) if all the company's directors are independent of the promoter, by the company's board of directors;
- (b) by all the members of the company; or
- (c) by the company at a general meeting at which neither the promoter nor the holders of the shares in which the promoter is beneficially interested have voted on the resolution to enter into or ratify that transaction.

(6) A period of limitation shall not apply to proceedings brought by a company to enforce a right under this section.

(7) In proceedings under subsection (6), the Court may relieve a promoter in whole or in part and on the terms that it considers fit from liability if in the circumstances, including lapse of time, the Court considers it equitable so to do.

*Companies Bill, 2018*

**Pre-incorporation contracts**

11. (1) A contract or any other transaction purporting to be entered into by a company before its formation, or by a person on behalf of the company before its formation, may be ratified by the company within eighteen months after the company's formation.

(2) On ratification under subsection (1), the company shall become bound by, and entitled to the benefit of, that contract or that transaction as if the company has been in existence at the date of that contract or other transaction and had been a party to the contract or other transaction.

(3) Before ratification by a company, the person who purported to act in the name or on behalf of the company is, in the absence of express agreement to the contrary, personally bound by the contract or other transaction and is entitled to the benefit of the contract or other transaction.

*Part B: Incorporation of Companies*

**Right to apply for incorporation**

12. Subject to this Act, a person of the age of eighteen years and above may apply for the incorporation of a company under this Act.

**Application for incorporation**

13. (1) An application for incorporation shall be made in the prescribed form and delivered to the Registrar.

(2) The application shall include

- (a) the name of the company as required by section 21;
- (b) an indication of the type of proposed company;
- (c) the nature of the proposed business in the case of a company registered with an object;
- (d) the addresses of the proposed company's registered office and principal place of business in the Republic, its telephone number and the post office box or private mail bag of its registered office;
- (e) the electronic mail address and website of the company, if available;
- (f) the following particulars of each subscriber:
  - (i) the date and place of birth;
  - (ii) the present full name and any former name;

*Companies Bill, 2018*

- (iii) the residential, occupational, postal and electronic mail addresses and telephone contact; and
- (iv) the nationality;
- (g) the following particulars of each proposed director of the proposed company:
  - (i) the present full name and any former name;
  - (ii) the particulars of any business occupation and other directorships held by the director as provided by section 215; and
  - (iii) the residential, occupational, postal and electronic mail addresses and telephone contact;
- (h) the following particulars of the proposed Company Secretary of the proposed company:
  - (i) the present full name and any former name;
  - (ii) the usual postal, occupational and electronic mail addresses;
  - (iii) the residential address in the case of an individual; and
  - (iv) the business occupation as provided by section 215;
- (i) the following particulars of the proposed auditor of the proposed company:
  - (i) the present full name and any former name;
  - (ii) the postal and electronic mail addresses and telephone contact;
  - (iii) the residential address in the case of an individual; and
  - (iv) the consent of the auditor;
- (j) the following particulars of each subscriber for a proposed company with shares:
  - (i) the full name and any former or other name;
  - (ii) the date and place of birth;
  - (iii) the telephone number;
  - (iv) the nationality and proof of identity;
  - (v) the residential, postal and email address, if any;
  - (vi) place of work and position held;

*Companies Bill, 2018*

- (k) the following particulars in respect of each beneficial owner of the proposed company:
  - (i) the full name and any former or other name;
  - (ii) the date and place of birth;
  - (iii) the telephone number;
  - (iv) the nationality, national identity number, passport number or other appropriate identification and proof of identity;
  - (v) the residential, postal and email address, if any;
  - (vi) place of work and position held;
  - (vii) the nature of the interest including the details of the legal, financial, security, debenture or informal arrangement giving rise to the beneficial ownership; and
  - (viii) confirmation as to whether the beneficial owner is a politically exposed person;
- (l) the following details in the case of a company that has shares:
  - (i) the amount of proposed stated capital, as defined in section 68;
  - (ii) the number of its authorised shares for each class; and
- (m) in the case of a proposed company limited by guarantee the specified amount up to which the member undertakes to contribute to the assets of the company, in the event of its being wound up while that person is a member or within a stipulated period after ceasing to be a member, for payment of the costs, charges and expenses of winding up, and the adjustments of the rights amongst members.

(3) The application shall be signed by the subscriber or each subscriber if more than one, for shares of the company by writing opposite to the subscriber's name, the number of shares the subscriber takes and the cash price payable for the shares and the subscriber shall take at least one share.

(4) The provisions of subsection (3) shall apply to an application for incorporation of a company that proposes to register a constitution.

*Companies Bill, 2018*

- (5) The application for incorporation may be effected by
- (a) the delivery of the completed application form as required by subsection (2); or
  - (b) the delivery of the completed application form as required by subsection (2) accompanied with a proposed constitution.

(6) Without limiting the provisions of subsection (2), the applicant shall furnish the Registrar with appropriate evidence of the applicant's identity and place of residence at the time of the delivery of the completed application form for incorporation.

**Incorporation**

**14.** (1) Where the Registrar is satisfied that the application for incorporation of a company complies with this Act, the Registrar shall after payment of the prescribed fee, certify under the Registrar's seal that the company is incorporated and in the case of a limited liability company, that the liability of its members is limited.

(2) From the date of incorporation, the company becomes a body corporate by the name contained in the application for incorporation and, subject to section 13, is capable of performing the functions of an incorporated company.

**Certificate of incorporation**

**15.** The certificate of incorporation, or a copy of that certificate, certified as correct by the Registrar, is conclusive evidence that the company has been duly incorporated under this Act and proceedings shall not be brought in a Court to cancel or annul the incorporation.

**Certificate of incorporation and winding up**

**16.** Section 15 does not preclude the institution of proceedings to wind up the company in accordance with section 257.

**Error or omission in document**

**17.** (1) Where there is an error or omission in a document containing particulars delivered to the Registrar under section 13, the company and every signatory of the document is without limiting section 329, liable to pay to the Registrar an administrative penalty of one hundred and fifty penalty units.



*Companies Bill, 2018*

*Part C: Capacity of Companies*

**Powers of companies**

**18.** (1) Subject to this Act and to any other enactment, a company shall have

- (a) full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction; and
- (b) full rights, powers and privileges for the purposes of paragraph (a).

(2) Without limiting subsection (1), and despite the provisions of any other enactment, a company shall be capable of giving and entering into and being bound by and claiming all rights under a deed or mortgage or other instrument.

(3) The registered constitution of a company may contain a provision regarding the capacity, rights, powers or privileges of the company if the provision restricts the capacity of the company or those rights, powers and privileges.

**Limits of company's authority**

**19.** (1) Where the constitution of a company sets out the nature of business or objects of the company, there is deemed to be a restriction in the constitution on the business or activities in which the company may engage, unless the constitution expressly provides otherwise.

(2) Where the registered constitution of a company provides for any restriction on the business or activities in which the company may engage

- (a) the capacity and powers of the company shall not be affected by that restriction; and
- (b) an act of the company, a contract or other obligation entered into by the company and a transfer of property to or by the company shall not be invalid by reason only of the fact that it was done in contravention of that restriction.

(3) Subsection (1) shall not affect the application of the provisions of subsection (5) and sections 200, 219 and 258.

(4) Despite subsection (1), an act of a company and a conveyance or transfer of property to, or by, a company is not invalid by reason of the fact that the act, conveyance or transfer was not done or made for the furtherance of any of the authorised businesses or that the company was otherwise exceeding its objects or powers.

*Companies Bill, 2018*

- (5) On the application of
- (a) a member of the company, or
  - (b) the holder of a debenture secured by a floating charge over all or any of the company's property or by the trustee for the holders of those debentures, the Court may prohibit, by injunction, the doing of an act or the conveyance or transfer of a property in breach of subsection (1).
- (6) Where the transactions sought to be prohibited in proceedings under subsection (5) are being, or are to be, performed or made in accordance with a contract to which the company is a party, the Court may,
- (a) if the Court considers it equitable and if all the parties to the contract are parties to the proceedings, set aside and prohibit the performance of the contract, and
  - (b) allow for the payment of compensation to the company or to the other parties to the contract for the loss or damage sustained by the company or the other parties by reason of the setting aside or prohibition of the performance of the contract, but not compensation for loss of anticipated profits to be derived from the performance of the contract.
- (7) The capacity of the company to do an act shall not be affected by the fact that the act is not, or would not be, in the best interests of a company.

**Alteration of objects or business**

**20.** (1) Where applicable, a company may change the business for which it was incorporated to carry on, or in the case of a company not formed for the purpose of carrying on a business, its objects by special resolution.

(2) Within twenty-eight days of the passing of the special resolution under subsection (1), notice of the resolution shall be given in the prescribed form to the holders of the debentures secured by a floating charge over any of the company's property and to the trustees for the debenture holders.

(3) Where a company defaults in giving a notice as required by this section, the company and every officer of that company that is in default is liable to pay to the Registrar an administrative penalty of fifty penalty units.

**Names of companies**

21. (1) The last words of the name of a
- (a) private company limited by shares shall be “Limited Company” or the abbreviation “LTD”;
  - (b) public company limited by shares shall be “Public Limited Company” or the abbreviation “PLC”;
  - (c) company limited by guarantee shall be “Limited by Guarantee” or the abbreviation “LBG”; and
  - (d) public company unlimited by shares shall be “Public Unlimited Company” or the abbreviation “PUC”.
- (2) A company shall not be registered by a name which, in the opinion of the Registrar, is misleading or undesirable.
- (3) A company shall not be registered with a name of a company that has been dissolved within the preceding five years of the intended registration.
- (4) A company may change its name by special resolution and with the approval of the Registrar signified in writing.
- (5) If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name is registered by a name which, in the opinion of the Registrar, is misleading or undesirable, the company may change its name with the approval of the Registrar.
- (6) Where the Registrar so directs within six months of the company being registered by that name, the company shall change the name within a period of six weeks from the date of the direction.
- (7) Where the Registrar is of the opinion that by reason of a change in the objects of, or the nature of the business carried on by a company the name under which it is registered is misleading or undesirable, the Registrar may direct the company to change its name and the company shall change its name within six weeks of the direction, unless within that time the company has lodged an appeal to the Court against the direction.
- (8) The Court shall cancel or confirm the direction and if the direction is confirmed, the company shall change its name within six weeks of the confirmation.
- (9) Where a company defaults in complying with a direction under subsection (6), (7), or (8) the Registrar shall change the name of the company in the Register.

*Companies Bill, 2018*

(10) Where a company defaults in complying with a direction under subsection (5), (6), (7) or (8), the company and any of the directors of the company that are cognisant of the default is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units and a further penalty of fifty penalty units for each day that the default continues.

(11) Where a company changes its name under this section, the Registrar shall record the new name in place of the former name, and shall issue a certificate of incorporation that indicates the change of name.

(12) Pursuant to subsection (11), the Registrar shall advertise the change in the *Companies Bulletin*, the website of the Registrar-General's Department and in one daily newspaper published in the Republic and circulating in the district in which the registered office of the company is situated.

(13) A certificate or an advertisement in the *Companies Bulletin* under this section is conclusive evidence of the change to which it relates.

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

(15) A company limited by shares existing at the commencement of this Act has six months within which to comply with paragraphs (b) and (c) of subsection (1).

**Reservation of name**

**22.** (1) An application for reservation of the name of a company may be sent or delivered to the Registrar, and shall be in a form approved by the Registrar.

(2) The Registrar may, after receipt of the application and on payment of the prescribed fee, reserve a name pending registration of a company or a change of name by a company.

(3) A reservation under subsection (2) shall not exceed two months and may be renewed for a further period of two months.

(4) A company shall not be registered under a reserved name or under any other name which in the opinion of the Registrar is similar to the reserved name.

*Companies Bill, 2018*

*Part D: The Company's Constitution*

**Option to have a registered constitution**

23. (1) A company has the option to have a registered constitution.
- (2) Where a company opts to have a registered constitution, the document that represents the constitution shall be
- (a) signed by one or more subscribers or the Company Secretary, and
  - (b) delivered to the Registrar by the subscriber before incorporation; or
  - (c) delivered to the Registrar by the Company Secretary or director after incorporation.

**Effect of Act on company that has lodged a registered constitution**

24. (1) Where a private company has delivered to the Registrar its document intended to be the registered constitution, the rights, powers, duties and obligations of the company, the Board, each director and each shareholder of the company shall have effect as provided in the Second Schedule, unless they are restricted, limited or modified by the registered constitution.

(2) Where a public company has duly delivered its document intended to be its registered constitution, the rights, powers, duties and obligations of the company, the Board, each director and each shareholder of the company shall have effect as provided in the Third Schedule, unless they are restricted, limited or modified by the registered constitution of the company duly delivered in accordance with this Act.

(3) Where a company limited by guarantee has duly delivered its document intended to be its registered constitution, the rights, powers, duties and obligations of the company, the Board, each director and each shareholder of the company shall have effect as provided in the Fourth Schedule, unless they are restricted, limited or modified by the registered constitution of the company duly delivered in accordance with this Act.

**Effect of Act on company without a registered constitution**

25. (1) Where a private company does not have a registered constitution, the rights, powers, duties and obligations of the company, the Board, each director and each shareholder of the company shall be as provided in the Second Schedule and be deemed accordingly to be the constitution of the company, unless they are restricted, limited or modified by a registered constitution of the company duly delivered after incorporation in accordance with this Act.

*Companies Bill, 2018*

(2) Where a public company does not have a registered constitution, the rights, powers, duties and obligations of the company, the Board, each director and each shareholder of the company shall be as provided in the Third Schedule, and be deemed accordingly to be the constitution of the company, unless they are restricted, limited or modified by the registered constitution of the company duly delivered after incorporation in accordance with this Act.

(3) Where a company limited by guarantee does not have a registered constitution, the rights, powers, duties and obligations of the company, the Board, each director and each member of the company shall be as provided in the Fourth Schedule and be deemed accordingly to be the constitution of the company, unless they are restricted, limited or modified by the registered constitution of the company duly delivered after incorporation in accordance with this Act.

**Contents of registered constitution**

**26.** (1) Where at incorporation, a company opts to have a registered constitution, the registered constitution of that company shall state,

- (a) the name of the company, with the last words of the name as required by section 21(1);
- (b) the names of the first directors of the company; and
- (c) that the powers of the directors are limited in accordance with section 189.

(2) Where a company has been incorporated in accordance with this Act and subsequently opts to have a registered constitution, it

- (a) may state the nature of the business in that constitution which the company is authorised to carry on, or if the company is not formed for the purpose of carrying on a business, the nature of the objects for which it is incorporated; and
- (b) shall deliver to the Registrar
  - (i) the constitution, and
  - (ii) a special resolution of the company to indicate the intention to have the registered constitution.

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

(4) A registered constitution may contain any other lawful provisions relating to the structure and administration of the company.

*Companies Bill, 2018*

(5) In the case of a company that does not have a registered constitution, the company shall be deemed to have as part of its constitution under section 25 the matters with respect to the

- (a) name of the company,
- (b) names of its first directors,
- (c) number of shares with which the company is registered, and
- (d) number of shares subscribed by each shareholder on the incorporation of the company and the consideration to be respectively paid for those shares as are respectively stated in the application for incorporation under section 13.

**Form of constitution**

27. (1) Every unlimited company shall have a registered constitution and the form of the constitution shall be in accordance with the form set out in the

- (a) Second Schedule, if a private company unlimited by shares, or
- (b) Third Schedule, if a public company unlimited by shares, or as near to those constitutions as circumstances may admit, but with a statement that the liability of the members is unlimited and with the modifications that are necessary having regard to the fact that the liability of the members is unlimited.

(2) The registered constitution of a company may adopt any of the provisions of the appropriate Schedule and subject to subsection (3), in so far as the constitution does not exclude or modify those provisions they shall, so far as applicable, be part of the registered constitution of the company.

(3) The registered constitution of every company shall contain the matters set out in

- (a) subsection (1) of section 26, and
- (b) clauses
  - (i) 3 and 12 of the Second Schedule in the case of a private company,
  - (ii) 1 and 2 of the Third Schedule in the case of a public company, and
  - (iii) 1, 4, 5, 6 and 7 of the Fourth Schedule in the case of a company limited by guarantee.

(4) The registered constitution shall be printed, type written, hand-written or be in any other legible form acceptable to the Registrar.

**Subscription to constitution**

**28.** The constitution of a company shall be signed by one or more shareholders in the presence of a witness, who shall attest to the signing.

**Effect of company constitution**

**29.** (1) Subject to this Act, the constitution has the effect of a contract under seal

- (a) between the company and each member or officer; and
- (b) between the members or officers themselves by which they agree to observe and perform the functions contained in the constitution as amended from time to time, in so far as they relate to the company, the members or the officers.

(2) Where the constitution empowers a person to appoint or remove a director or any other officer of the company, that power is enforceable by that person although that person is not a member or officer of the company.

(3) In an action by a member or an officer to enforce an obligation owed under the constitution to that member or officer and any other member or officer, that member or officer shall, if any other member or officer is affected by the alleged breach of the obligation, sue in a representative capacity on behalf of that member or officer and all other members or officers who may be affected other than any who are defendants and the provisions of section 205 shall apply.

(4) The registered constitution of a company shall be void to the extent that it contravenes or is inconsistent with this Act.

(5) A registered constitution shall not be subject to a stamp duty.

**Adoption, alteration and revocation of constitution**

**30.** (1) The shareholders or members of a company may, by special resolution

- (a) adopt a registered constitution where a company does not have a registered constitution; or
- (b) alter or revoke the constitution of the company subject to this Act.

(2) For the purposes of subsection (1) (b),

- (a) the name of the company shall not be altered except with the consent of the Registrar in accordance with section 21;



*Companies Bill, 2018*

- (b) the number of the company's shares may be altered in accordance with sections 9, 59 to 65, 78 to 82, 219, or 239 but not otherwise;
- (c) the businesses for which the company is incorporated to carry on or, if the company is not formed for the purpose of carrying on a business, the objects for which it is incorporated may be amended in accordance with section 15 or 239 but not otherwise where the business or object is indicated at incorporation;
- (d) an amendment shall not be made which shall conflict with an order of the Court made under section 219;
- (e) if at any time the shares of the company are divided into different classes, the rights attached to a class may be amended in accordance with section 50 or 239 but not otherwise;
- (f) the constitution may restrict or exclude the company's power to amend all or any of the provisions of its constitution or to add to the provisions of the constitution, or may impose conditions for the amendment of the constitution, in which event the constitution shall not be amended except in accordance with the constitution or section 239;
- (g) the constitution as amended shall be in accordance with this Act and shall contain the requirements under section 26;
- (h) except in accordance with section 239, a member of the company is not bound by an amendment made in the constitution after the date on which that person became a member, if and in so far as the amendment requires that member to take more shares than the number held by that member on the date on which the amendment is made or in any way increase that member's liability as at that date to pay money to the company, or which increases or imposes restrictions on the right to transfer the shares held by that member at the date of the amendment, unless that member agrees in writing, before or after the amendment is made, to be bound by the amendment;

*Companies Bill, 2018*

- (i) an amendment shall not be made which would have the effect of converting an unlimited company into a limited company or a company limited by guarantee into a company limited by shares; and
- (j) an amendment may be restrained or cancelled by the Court in accordance with section 229 or 230.

**Registration of consolidated constitution**

31. (1) Where the Registrar is of the opinion that, due to the numerous amendments to a company's registered constitution, the amendments should be consolidated in a single document, the Registrar may by notice in writing require a company to deliver to the Registrar a single document that incorporates the company's registered constitution as amended.

(2) The Board shall within twenty-eight days after receipt by the company of the notice, cause to be delivered to the Registrar

- (a) the document for registration;
- (b) a certificate signed by a director or Company Secretary authorised by the Board to the effect that the document referred to in paragraph (a) complies with subsection (1) or (2), as the case may be.

(3) On receipt of the document referred to in subsection (2), the Registrar shall register the document.

**Copies of registered constitution**

32. (1) A company shall, on being required by a member, send to that member a copy of its registered constitution on payment of the fee prescribed by the company.

(2) Where an amendment is made to the registered constitution, each copy of the constitution issued after the date of the amendment and whether to a member or to any other person, shall be in accordance with the amendment.

(3) Where a company defaults in complying with this section, the company and every officer of the company that is in default commits an offence and is liable on summary conviction for each offence to a fine of not less than twenty-five penalty units and not more than fifty penalty units.

*Companies Bill, 2018*

*Part E: Membership of companies*

**Members of a company**

33. (1) The subscribers to the documents for the incorporation of a company are members of the company and on its incorporation shall be entered as members in the register of members referred to in section 35.

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

(3) A member has the rights, duties and liabilities that are by this Act and where applicable, by the registered constitution of the company conferred and imposed on the members.

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

(5) A holder of a share is a member of the company.

(6) Membership of a company with shares continues until

(a) a valid transfer of the shares held by the member is registered by the company,

(b) the shares are transmitted by operation of law to another person, or forfeited for non-payment of calls; or

(c) the member of the company dies.

(7) Membership of a company limited by guarantee continues until the member dies, or validly retires or is excluded from membership.

**Right of member to attend and vote**

34. (1) Subject to subsection (2), and section 52, a member has the right to attend a general meeting of the company and to speak and vote on a resolution before the meeting.

(2) Despite subsection (1), a company's registered constitution may provide that a member is not entitled to attend and vote unless the calls or any other sums of money presently payable by that member in respect of shares in the company have been paid.

**Register of members**

35. (1) Subject to the Central Securities Depository Act, 2007 (Act 733) and any other enactment, a company shall keep in the Republic a register of its members and shall enter in the register

*Companies Bill, 2018*

- (a) in respect of members of the company
  - (i) the names and addresses of the members and, in the case of a company having shares, a statement of the shares held by each member, and of the amount paid, or agreed to be considered as paid, on the shares of each member, and of the amount remaining payable on the shares;
  - (ii) the date at which a person was entered in the register as a member;
  - (iii) the nature of the interest of each member; and
  - (iv) the date at which a person ceased to be a member; and
- (b) in respect of each beneficial owner of the company
  - (i) the full name and any former or other name of the beneficial owner;
  - (ii) the date and place of birth;
  - (iii) the telephone number;
  - (iv) the nationality, national identity number, passport number or other appropriate identification, and proof of identity;
  - (v) residential, postal and email address, if any;
  - (vi) place of work and position held;
  - (vii) the nature of the interest including the details of the legal, financial, security, debenture or informal arrangement giving rise to the beneficial ownership; and
  - (viii) a confirmation as to whether the beneficial owner is a politically exposed person.

(2) For the purpose of paragraph (b) of subsection (1), where a member of a company is not the beneficial owner, that member shall

- (a) provide the company with the particulars of the beneficial owner at the time of becoming a member as set out in paragraph (b); and
- (b) update the company within twenty-eight days of a change in the particulars submitted under paragraph (a).

(3) The entry required under subparagraphs (i) and (iii) of paragraph (a) of subsection (1) shall be made within twenty-eight days of the conclusion of the agreement with the person to become a member.

*Companies Bill, 2018*

(4) The entry required under subparagraph (iv) of paragraph (a) of subsection (1) shall be made within twenty-eight days of the date when the person concerned ceased to be a member, or, if that person ceased to be a member otherwise than as a result of an action by the company, within twenty-eight days of production to the company of evidence satisfactory to the company of the occurrence of the event by which that person ceased to be a member.

(5) The entry required under paragraph (b) of subsection (1) shall be made within twenty-eight days of receipt of the necessary particulars under subsection (2).

(6) A company shall, within twenty-eight days of making an entry required under paragraph (b) of subsection (1) and subsection (5), submit particulars of the entry to the Registrar for registration and indicate the members or beneficial owners who are politically exposed persons.

(7) The entries relating to a person who has ceased to be a member may be deleted from the register after the expiration of six years from the date when the person ceased to be a member.

(8) Where a company has more than fifty members, the register shall contain an index of the names of the members and the names of beneficial owners in a form that enables the account of each member to be readily found.

(9) An existing company shall, within twenty-eight days of a change in the place at which its register of members is kept, send notice of the change to the Registrar.

(10) A company is not bound to send notice where the register has, since the company came into existence, been kept at the registered office of the company.

(11) An existing company shall, within two months after the coming into force of this Act, submit the information required under paragraph (b) of subsection (1) to the Registrar for registration.

(12) The company may arrange with any other person, to be known as the registration officer, for the making up of the register to be undertaken on behalf of the company by the registration officer at that officer's office, and if by reason of a default of the registration officer the company defaults in complying with this section or with section 36, the registration officer is liable to the same penalties as if the registration officer were an officer of the company.

*Companies Bill, 2018*

(13) The power of the Court under subsection (6) of section 36 shall extend to the making of orders against the registration officer and the officers and employees of the registration officer.

(14) A person who

(a) fails to provide the information required under subsection (2), or

(b) provides false or misleading information to the Registrar commits an offence and is liable on summary conviction to a fine of not less than one hundred and fifty penalty units and not more than two hundred and fifty penalty units or to a term of imprisonment of not less than one year and not more than two years or to both.

(15) Where a company defaults in complying with this section, the company and every officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the default continues.

**Inspection of register**

**36.** (1) Except when the register of members is closed in accordance with section 37, the register, the index of the names of the members of the company and the index of the names of beneficial owners of the company shall, during business hours, and subject to reasonable restrictions that the company may impose, be open to the inspection of

(a) a member without charge, and

(b) any other person on payment of a reasonable fee prescribed by the company, for each inspection.

(2) Not less than two hours each day, other than a Saturday, Sunday or a public holiday, shall be allowed for inspection under subsection (1).

(3) A member or any other person may require a copy of the register or a part of the register on payment of a fee prescribed by the company.

(4) The company shall send the copy so required by a person to that person within a period of ten days commencing on the day next after the day on which the requirement is received by the company.

## *Companies Bill, 2018*

(5) Where an inspection required under this section is refused, or where a copy required under this section is not sent within the proper period, the company and every officer of the company that is in default, is liable in respect of each default to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the default continues.

(6) In the case of a refusal or default, the Court may order the immediate production of the register for inspection or direct that the copies required be sent to the person requiring them.

### **Power to close register**

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

### **Rectification of register**

**38.** (1) A person aggrieved, a member of the company, or the company, may apply to the Court for rectification of the register where

- (a) the name of a person is, without sufficient cause, entered in or omitted from the register of members of a company, or
- (b) default is made in entering on the register any of the particulars which, under section 35, are required to be entered on the register.

(2) Where an application is made under subsection (1), the Court may refuse the application or may order rectification of the register and payment by the company of compensation for the loss sustained by the party aggrieved.

(3) Where an application is made under subsection (1), the Court may decide a question relating to the entitlement of a person who is a party to the application to have that person's name entered in or omitted from the register, whether, the question arises

- (a) between members or alleged members, or
- (b) between members or alleged members on the one hand and the company on the other hand;

and generally the Court may decide a question necessary or expedient to be decided for rectification of the register.

*Companies Bill, 2018*

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

**Register to be evidence**

**39.** (1) The register of members is prima facie evidence of the matters which by this Act are directed or authorised to be inserted in the register.

(2) Subsection (1) shall not where the circumstances admit, apply to shares of a company that are held in a depository under a scheme provided under the Central Securities Depository Act, 2007 (Act 733).

**Liability of members**

**40.** (1) Before the winding up of the company, a member of a company with shares is liable to contribute the balance of the amount payable in respect of the shares held by that member in accordance with the terms of the agreement under which the shares were issued, or in accordance with a call validly made by the company.

(2) Where a contribution has become due and payable in accordance with subsection (1), or where, under the terms of an agreement with the company, a member has undertaken personal liability to make future payments in respect of shares issued to that member, the liability of the member shall continue although the shares held by that member are subsequently transferred or forfeited but the member's liability shall cease if and when the company receives payment in full of all the moneys in respect of the shares.

(3) Subject to subsections (1) and (2), a member or past member is not liable to contribute to the assets of the company except in the event of its being wound up.

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



*Companies Bill, 2018*

- (a) a past member is not liable to contribute if that member has ceased to be a member for a period of not less than one year before the commencement of the winding up;
- (b) a past member is not liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this section;
- (c) in the case of a company limited by shares, a contribution shall not be required from a member or past member exceeding the amount of money unpaid on the shares in respect of which that member is liable as a present or past member;
- (d) in the case of a company limited by guarantee, a contribution shall not be required from a member or past member exceeding the amount of money undertaken to be contributed by that member to the assets of the company in the event of its being wound up; or
- (e) a sum of money due from the company to a member or past member, in the character of a member, by way of dividends or otherwise shall not be set-off against the amount of money for which that member is liable to contribute in accordance with this section, but that amount of money shall be taken into account for the purposes of final adjustment of the rights of the members and former members amongst themselves.

(5) For the purposes of this section, “past member” includes the estate of a deceased member and where a person dies after becoming liable as a member or past member, the liability is enforceable against the estate of that member.

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

**Companies ceasing to have members**

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

*Companies Bill, 2018*

*Part F: Shares*

**Legal nature of shares**

**42.** (1) The shares of a member in a company is a personal estate and is not in the nature of real estate or immovable property.

(2) The number of shares in a company and the rights and liabilities attaching to the shares are dependent on the terms of issue.

**No par value shares**

**43.** The shares created or issued under this Act are shares of no par value.

**Issue of shares**

**44.** (1) Subject to the registered constitution of a company, different classes of shares may be issued in a company at the times and for the consideration that the company shall determine and shall be paid for, at the times that are agreed between the member and the company.

(2) On the winding up of the company, every past and present shareholder of the company is liable to contribute to the assets of the company to the extent referred to in section 40.

**Payment of shares**

**45.** (1) Except on a capitalisation issue pursuant to subsection (1) of section 77, shares shall not be issued otherwise than for valuable consideration paid or payable to the company and unless otherwise agreed, shares shall be paid for in cash.

(2) Where a company agrees to accept payment for shares otherwise than wholly in cash, the company shall, within twenty-eight days after the allotment of the shares, deliver to the Registrar for registration a contract in writing duly stamped evidencing the terms of the agreement and the true value of the consideration or, if the agreement has not been reduced to writing, particulars in the prescribed form of the agreement duly stamped, as if it were a written agreement.

(3) The particulars referred to in subsection (2) shall not be required on a capitalisation issue of shares pursuant to subsection (1) of section 77.

(4) The statement in the agreement of the value of the non-cash consideration is sufficient evidence of the true value of the consideration, but when a company limited by shares is in the course of being wound up under the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180),

## *Companies Bill, 2018*

or a statutory modification or re-enactment of the Act, the liquidator or a creditor may apply to the Court and if the Court is satisfied that the true value of the consideration was less than stated, it may direct that the shares shall be treated as unpaid to the amount of money that it shall direct.

### **Return of issues**

**46.** Where a company issues shares, other than a re-issue of treasury shares as defined in subsection (3) of section 61, the company shall, within twenty-eight days after the issue, deliver to the Registrar for registration a return in the prescribed form showing, as at the date of the return,

- (a) the amount of its stated capital, attributable to each of the items specified in subsection (1) of section 68;
- (b) the number of its authorised shares of each class;
- (c) the total number of its issued shares of each class and the amount of money paid on the shares, distinguishing between the amount paid in cash and the amount paid otherwise than in cash and, in the case of a company limited by shares, the amount of money remaining payable on the shares, distinguishing between the amount presently due for payment and the amount not yet due for payment; and
- (d) the total number of its treasury shares of each class.

### **Penalties for non-compliance with section 45 or 46**

**47.** Where a company defaults in delivering a document required under section 45 or 46, the company and every officer of the company who is in default is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the default continues.

### **Meaning of payment in cash**

**48.** (1) For the purposes of this Act, shares have not been paid for in cash except to the extent that the company has actually received cash for the shares at the time of, or subsequently to the agreement to issue the shares.

(2) Where shares are issued to a person who has sold or agreed to sell property or rendered or agreed to render services to the company or to persons nominated by that person, the amount of money of a payment

*Companies Bill, 2018*

made for the property or services shall be deducted from the amount of a cash payment made for the shares and only the balance shall be treated as having been paid in cash for the shares despite an exchange of cheques or any other securities for money.

**Classification of shares**

**49.** (1) The registered constitution of a company may provide for different classes of shares by attaching to certain of the shares preferred, deferred or any other special rights or restrictions, whether as regards dividend, voting, repayment or otherwise.

(2) Shares are not of the same class unless they rank at the same rate for all purposes.

**Variation of class rights**

**50.** (1) Where at any time the shares of a company are divided into different classes, the rights attached to a class shall not be varied unless otherwise expressly provided for in the constitution of a company.

(2) Where the constitution of a company expressly forbids a variation of the rights of a class, or contains provisions regarding that variation and expressly forbids an amendment of the provision, in respect of the variation of rights, the rights shall not be varied and the provision for variation shall not be amended except with the sanction of the Court under a scheme of arrangement in accordance with section 239.

(3) Except as provided in subsection (2), a company may, by special resolution, amend its constitution by inserting in the constitution provisions regarding the variation of the rights of a class, or by modifying the terms of those provisions.

(4) An amendment under this section requires the prior written consent of the holders of at least three-fourths of the issued shares of each class or the sanction of a special resolution of the holders of the shares of each class and shall be deemed, to be a variation of the rights of each class.

(5) Despite a provision in a company's constitution to the contrary, the rights attached to a class of shares shall not be varied except with the written consent of the holders of at least three-fourths of the issued shares of that class, or the sanction of a special resolution of the holders of the shares of that class.

(6) A resolution of a company the implementation of which would have the effect

*Companies Bill, 2018*

- (a) of diminishing the proportion of the total votes exercisable at a general meeting of the company by the holders of the existing shares of a class, or
- (b) of reducing the proportion of the dividends or distributions payable at any time to the holders of the existing shares of a class,

is for the purposes of this Act, a variation of the rights of that class.

**Preference and equity shares**

51. (1) In this Act, “preference share” means a share, which does not entitle the holder of the share to a right to participate beyond a specified amount of money in a distribution whether by way of dividend, on redemption, in a winding up, or otherwise; and any other share shall be referred to as an “equity share”.

(2) A share that is not a preference share shall be referred to as an “equity share”.

(3) The meaning of ‘preference share’ under subsection (1) shall apply to whatever name a company may designate in its constitution.

**Suspension of voting rights of preference shares**

52. (1) Despite section 34, the right of holders of preference shares to attend and vote at a general meeting of the company may be suspended on conditions.

(2) Despite a provision to the contrary in a company’s constitution, preference shares carry the right to attend general meetings and on a poll at those meetings to at least one vote per share in the following circumstances, but not otherwise:

- (a) on a resolution during the period that the preferential dividend or a part of the preferential dividend remains in arrears and unpaid, the period starting from a date not more than twelve months, or a lesser period that a company’s constitution may provide, after the due date of the dividend;
- (b) on a resolution which varies the rights attached to those shares;
- (c) on a resolution to remove an auditor of the company or to appoint another person in place of that auditor; or
- (d) on a resolution for the winding up of the company or during the winding up of the company.

*Companies Bill, 2018*

(3) Apart from the circumstances in section 34 and subject to subsections (1) and (2) of this section, preference shares carry the right on a poll at a general meeting of the company to one vote, only, in respect of each share.

(4) A special resolution of a company increasing the number of shares of a class may validly resolve that an existing class of preference shares shall carry the right to the votes specified in subsection (3) additional to one vote per share as shall be necessary in order to preserve the existing ratio which the votes exercisable by the holders of those preference shares at a general meeting of the company bear to the total votes exercisable at the meeting.

(5) For the purposes of subsection (2), a dividend is due

- (a) on the day immediately following the expiration of the year or other period; or
- (b) where a company has a registered constitution, on the date appointed in the constitution for the payment of the dividend for a year or other period whether or not the dividend has been earned or declared.

**Votes of equity shares**

**53.** (1) Despite a provision to the contrary in a company's constitution, equity shares carry the right on a poll at a general meeting of the company to one vote only, in respect of each share subject to section 34.

(2) For the purposes of subsection (1), an alteration of the rights of issued preference shares so that they become equity shares is an issue of equity shares.

**Canons of construction of class rights**

**54.** In construing the provisions of a company's constitution in respect of the rights attached to shares, the following canons of construction shall be observed:

- (a) unless the contrary intention appears, a dividend is not payable on any shares unless the company resolves to declare that dividend;
- (b) unless the contrary intention appears, a fixed preferential dividend payable on a class of shares shall be cumulative; that is to say, a dividend is not payable on any shares ranking subsequent to that class of shares until all the arrears of the fixed dividend have been paid;

*Companies Bill, 2018*

- (c) unless the contrary intention appears, in a winding up, arrears of a cumulative preferential dividend whether or not earned or declared is payable up to the date of actual payment in the winding up;
- (d) if a class of shares is expressed to have a right to a preferential dividend, then, unless the contrary intention appears, that class does not have a further right to participate in dividends;
- (e) if a class of shares is expressed to have preferential rights to payment out of the assets of the company in the event of winding up, unless the contrary intention appears, that class does not have a further right to participate in the distribution of assets in the winding up;
- (f) in determining the rights of the various classes to share in the distribution of the company's property on a winding up, consideration shall not be given unless the contrary intention appears, to whether or not the property represents accumulated profits or surplus which would have been available for dividend while the company remained a going concern; and
- (g) subject to this section, the shares rank equally in all respects unless the contrary intention appears.

**Issue of share certificates**

**55.** (1) Subject to the Central Securities Depository Act, 2007 (Act 733), a company shall, within two months after the issue of any of its shares or after the registration of the transfer of a share, deliver to the registered holder of the share, a certificate certified by one director and the Company Secretary indicating

- (a) the number and class of shares held by that holder and the definitive numbers of the shares,
- (b) the amount of money paid on the shares and the amount remaining unpaid, and
- (c) the name and address of the registered holder.

(2) Where a share certificate is defaced, lost or destroyed, the company at the request of the registered holder of the shares, shall renew the certificate on payment of a fee prescribed by the company and on the terms as to evidence and indemnity and the payment of the company's out-of-pocket expenses of investigating evidence that the company may reasonably require.

## *Companies Bill, 2018*

(3) Where a company defaults in complying with this section, the company and an officer of the company who is in default are liable to pay to the Registrar, an administrative penalty of fifty penalty units.

(4) Where an application is made to the Court by a person entitled to have the certificate delivered to that person, the Court may order the company to deliver the certificate and may require the company and that officer to bear the costs of, and incidental to the application.

### **Effect of share certificates**

**56.** (1) Statements made in a share certificate under the common seal of the company or as certified by two directors and the company secretary of the company, are prima facie evidence of the title to the shares of the person named in the certificate as the registered holder and of the amounts of money paid and payable on the certificate.

(2) Where a person changes a position to that person's detriment in reliance in good faith on the continued accuracy of the statements made in the certificate, the company is estopped in favour of that person from denying the continued accuracy of those statements and shall compensate that person for the loss suffered by that person in reliance on those statements and which that person would not have suffered had the statement been or continued to be accurate.

(3) Subsections (1) and (2) do not affect a right the company may have to be indemnified by any other person.

(4) The provisions of subsections (1) to (3) do not apply in the case of shares which can be transferred through a scheme of a central depository under the Central Securities Depository Act, 2007 (Act 733) or any other relevant enactment.

### **Reserve liability**

**57.** (1) A company limited by shares may, by special resolution, determine that a portion of the unpaid liability on its shares which has not already been called up shall not be capable of being called up except in the event, and for the purpose, of the company being wound up.

(2) Where a resolution is passed, that portion shall not be capable of being called up except in the event and for the purpose stated in that subsection.



**Prohibited transactions in shares**

- 58.** (1) Except as provided in this Act, a company shall not,
- (a) alter the number of its shares or the amount of money remaining payable on those shares;
  - (b) release a shareholder or former shareholder from a liability on the shares;
  - (c) provide financial assistance, directly or indirectly, for the subscription or purchase of its shares or the shares of its holding company; or
  - (d) acquire, by way of purchase or otherwise, any of its issued shares or any shares of its holding company.

(2) For the purposes of paragraph (d) of subsection (1), shares are acquired by the company if they purport to be held in trust for the company although they are registered in the names of nominees.

(3) Subsection (1) does not prohibit a company from voluntarily acquiring its own shares on its conversion to a company limited by guarantee in accordance with section 9.

- (4) In the event of a breach of this section,
- (a) if the breach is of paragraph (a) or (b) of subsection (1), the purported alteration or release is void and every officer of the company who is in default is liable to pay to the Registrar, an administrative penalty of five hundred penalty units;
  - (b) if the breach is of paragraph (c) or (d) of subsection (1), then,
    - (i) knowledge of the breach, voidable by the company and a payment made by the company in respect of that transaction is immediately repayable with interest at the yearly interest rate applicable to the ninety-one day government treasury bill or a higher rate that the Court may order,
    - (ii) whether or not the transaction is avoided, every officer of the company who is in default is liable to pay to the Registrar, an administrative penalty of five hundred penalty units or twice the amount of money of a provision or payment made by the company in respect of the transaction, whichever is the greater.

**Alteration of number of shares**

- 59.** (1) Subject to subsection (3), a company may
- (a) increase the number of its shares by creating new shares; or
  - (b) reduce the number of its shares by cancelling shares which have not been taken or agreed to be taken by a person or by consolidating its existing shares, whether issued or not, into a smaller number of shares.
- (2) On a consolidation of shares
- (a) the amounts of money paid,
  - (b) an unpaid liability on the shares, and
  - (c) a fixed sum of money by way of dividend or repayment to which the shares were entitled

shall also be consolidated.

(3) Unless otherwise provided in the constitution of a company, the directors may issue shares with rights or restrictions as may be determined by the directors, subject to the provisions of this Act.

**Financial assistance for acquisition of shares**

- 60.** Section 58 does not prohibit any of the following transactions:
- (a) the payment of commission or brokerage to a person in consideration of that person subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares in the company, where the payment of commission or brokerage does not exceed ten per cent of the price at which the shares are issued or a lesser rate as may be specified in a company's constitution;
  - (b) where the lending of money is part of the ordinary business of the company, or lending of money is the ordinary course of business although the money may be used for the subscription or purchase of shares in the company or its holding company;
  - (c) the provision by a company of money for the purchase or subscription of shares to be held for the benefit of persons genuinely in the employment of the company or an associated company including a director holding a salaried employment in the company or an associated company in accordance with a scheme for the time being in force;

*Companies Bill, 2018*

- (d) the advancing by a company of loans to persons, other than directors, genuinely in the employment of the company or an associated company with a view to enabling those persons to purchase or subscribe for shares to be held by themselves beneficially and not as nominees for the company or any other person;
- (e) the payment by a company of a lawful dividend on its shares although the dividend received by a shareholder is used to discharge a liability on that shareholder's shares or to repay money borrowed for the purpose of subscribing or purchasing shares;
- (f) in the case of a public company some or all of whose equity shares are dealt with on an approved stock exchange, or in respect of which an application has been made to an approved stock exchange for permission to deal in those shares, the payment of any commissions, fees, costs and expenses and the giving of any indemnities and warranties in each case to a person arranging or otherwise involved in an underwriting, placing or sale of securities in the company or any other similar transaction, where
  - (i) an application for permission to deal in those securities has been or is to be made to an approved stock exchange, and
  - (ii) any other financial assistance is given in good faith in the interests of the company.

**Acquisition by company of its own shares**

- 61.** (1) Despite section 58 a company may,
- (a) create and issue preference shares which are, or at the option of the company are liable, to be redeemed and may convert existing shares, whether issued or not, into those redeemable preference shares subject to sections 62 to 65;
  - (b) purchase its own shares subject to sections 63 to 67;
  - (c) acquire its own shares by a voluntary transfer to it or to nominees for it subject to compliance with sections 62 to 65; and
  - (d) acquire its own shares pursuant to the buy-out provisions in section 222.

*Companies Bill, 2018*

(2) For the purposes of subsection (1), shares shall not be redeemed, purchased or acquired by the company so long as there is an unpaid liability on those shares.

(3) A company may forfeit the shares issued with an unpaid liability for non-payment of the sums of money due and payable on those shares.

(4) On redemption, purchase, acquisition or forfeiture, shares shall be available for re-issue by the company unless a company by amendment of its constitution cancels those shares.

(5) Shares which are cancelled by virtue of a company's constitution, shall until re-issued or cancelled, be referred to as treasury shares.

(6) Except as provided in section 69, a redemption, purchase, an acquisition or a forfeiture by the company of its shares, or the cancellation of shares so redeemed, purchased, acquired or forfeited shall not reduce the stated capital of the company.

(7) Voting rights shall not be exercised and dividends shall not be payable on treasury shares, and except where otherwise stated, treasury shares shall not be treated as issued shares within the meaning of this Act.

**Redemption of redeemable preference shares**

**62.** (1) Despite a provision in a company's constitution to the contrary, a company shall not redeem any of its redeemable preference shares except,

- (a) out of a credit balance on the share deals account referred to in section 65 or out of transfers to that account in the manner referred to in that section from income surplus as defined in section 71; or
- (b) out of the proceeds of a fresh issue of shares made for the purposes of the redemption not more than twelve months before the date of redemption.

(2) Where redeemable preference shares have become redeemable and the funds of the company are sufficient to entitle the company to redeem the whole of the shares due for redemption, the holder of those shares may serve notice on the company requiring it to effect the redemption.

*Companies Bill, 2018*

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

(4) Section 205 shall apply to an application to the Court under subsection (3).

**Purchase by a company of its own shares**

**63.** Despite a provision of a company's constitution to the contrary, a company shall not purchase any of its own shares except where

- (a) shares are only purchased out of a credit balance on the share deals account referred to in section 65, or out of transfers to that account in the manner referred to in that section from income surplus;
- (b) redeemable preference shares are not purchased at a price greater than the lowest price at which they are then redeemable or will be redeemable at the next date at which they are due or liable to be redeemed; or
- (c) the purchase is not made in breach of section 64.

**Limit on number of shares acquired**

**64.** (1) A transaction shall not be entered into by or on behalf of a company by which the total number of its shares, or of its shares of any one class, held by persons other than the company or its nominees becomes less than eighty-five per cent of the total number of shares, or of shares of that class, which have been issued.

(2) For the purposes of subsection (1), redeemable preference shares shall be disregarded.

(3) Where, after shares of a class have been issued and the number of those shares has been reduced, subsection (1) shall apply as if the number originally issued, including shares of the class cancelled before the reduction took effect, had been the number as so reduced.

**Share deals account**

65. (1) When a company first redeems or purchases any of its shares, otherwise than on a redemption of redeemable preference shares out of the proceeds of a fresh issue of shares in accordance with paragraph (b) of subsection (1) of section 62, it shall open a share deals account and shall credit to that account a sum of money not less than the amount of money to be expended on the redemption or purchase by transferring that sum from income surplus as defined in section 71.

(2) There shall be debited to the share deals account the sums of money which the company shall from time to time expend on the redemption or purchase of any of its shares, otherwise than on a redemption of redeemable preference shares out of the proceeds of a fresh issue of shares in accordance with paragraph (b) of subsection (1) of section 62.

(3) The net price or the value of the consideration received by the company on the re-issue of any of its treasury shares shall be credited to the share deals account.

(4) If at any time the total amount of money to be debited to the share deals account under subsection (2) exceeds the amount of money credited to that amount in accordance with subsections (1), (2) and (3), an amount of money equal to the excess shall be transferred to the credit of that account from income surplus, and a purchase or redemption, otherwise than a redemption of redeemable preference shares out of the proceeds of a fresh issue of shares in accordance with paragraph (b) of subsection (1) of section 62, shall not be made by the company unless its income surplus is sufficient to enable the transfer to be made.

(5) An amount of money shall not be debited or credited to the share deals account, otherwise than in accordance with subsections (1), (2), (3) and (4) except on a transfer to stated capital in accordance with section 68 or under an order of the Court under section 80 or 239.

(6) A true copy of the share deals account, showing the class and number of shares involved in each transaction and the price paid or received for those shares, shall be kept in a separate book at the registered office of the company and shall during business hours, be open to the inspection of a member without charge and of any other person on payment of a fee prescribed by the company for each inspection unless otherwise subject to reasonable restrictions expressed in a company's constitution.

*Companies Bill, 2018*

(7) Not less than two hours in each day, other than a Saturday, Sunday or a public holiday shall be allowed for the inspection.

(8) A member or any other person is entitled to be furnished, within ten days after the member or that person has made a request in that behalf to the company, with a copy of the share deals account or a part of the share deals account at a fee prescribed by the company.

(9) Where an inspection required under subsection (6) is refused, or where a copy required to be sent under subsection (8) is not sent within the proper time, the company and every officer of the company who is in default is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the default continues, and the Court may order an immediate inspection or furnishing of a copy.

**Modification of sections 61 to 65 in relation to authorised mutual funds**

**66.** In relation to a company which is for the time being an authorised mutual fund as defined in section 216 of the Securities Industry Act, 2016 (Act 929), any of the provisions of sections 61 to 65 may be waived or modified by order of the Registrar.

**Acquisition of shares of holding company**

**67.** (1) Despite section 58, a company which is a subsidiary may acquire shares in its holding company, where the subsidiary company is concerned as a personal representative or trustee unless the holding company or a subsidiary of the holding company is beneficially interested otherwise than by way of security for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

(2) A subsidiary which is a holder of shares of its holding company or a subsidiary which acquired shares in its holding company before it became a subsidiary of that holding company may continue to hold those shares but, subject to subsection (1), shall not have a right to vote at meetings of the holding company or a class of shareholders of the holding company, and shall not acquire any future shares in the holding company, except on a capitalisation issue in accordance with subsection (1) of section 77.

*Companies Bill, 2018*

*Part G: Stated Capital and Dividends*

**Meaning of “stated capital”**

**68.** (1) The stated capital of a company with shares consists of the sum of the following items:

- (a) the total proceeds of every issue of shares for cash, including the amounts paid on calls made on shares issued with an unpaid liability, without the deductions for expenses or commissions,
- (b) the total value of the consideration, as stated in the agreement, received for every issue of shares otherwise than for cash, and
- (c) the total amount of money which the company by special resolution resolves to transfer to stated capital from surplus, as defined in section 70 including the credit balance on the share deals account referred to in section 65.

(2) Paragraph (a) or (b) of subsection (1) does not require the proceeds or value of the consideration received on the re-issue of treasury shares to be added to stated capital.

(3) For the purpose of subsection (2), when a company having treasury shares makes an issue of shares, the issue is, until the number of treasury shares of that class is exhausted, an issue of those treasury shares and not a first issue of further shares, unless the company otherwise determines.

(4) The amount of the stated capital may be reduced to the extent and in the manner provided by section 69 and in the buy-out provisions in sections 220 to 226.

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

(6) Where the company defaults in delivering to the Registrar the particulars required under subsection (5), the company and every officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the default continues.



**Reduction of stated capital**

**69.** (1) Despite subsection (4) of section 61, the stated capital of a company shall be deemed to be reduced by the amount of money by which a redemption of redeemable preference shares is made out of the proceeds of a fresh issue of shares made for the purposes of the redemption not more than twelve months before the date of redemption.

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

(3) Subject to subsections (1) and (2) and to section 66, a company may not reduce its stated capital except in accordance with sections 78 to 82.

**Meaning of “surplus”**

**70.** The surplus of a company with shares is the amount of money by which its assets, other than unpaid calls and other sums of money payable in respect of its shares and not including treasury shares, less its liabilities, as shown in its accounts prepared and audited in accordance with sections 127 to 142, exceed its stated capital.

**Meaning of “income surplus”**

**71.** The income surplus of a company with shares is the surplus, as defined in section 70, less the amounts of money attributable to

- (a) an unrealised appreciation in the value of an asset of the company, other than an appreciation in the value of an asset as would, under normal accounting principles, be credited to the income statement, unless the amount of the appreciation has been transferred to stated capital; and
- (b) a balance standing to the credit of the share deals account immediately before the ascertainment of the income surplus.

**Legality of dividend payments**

**72.** (1) Except in a winding up, a company shall not pay a dividend to its shareholders or, except in accordance with sections 78 to 82 make a return or distribution of any of its assets to its shareholders unless, the company has complied with the distribution test.

*Companies Bill, 2018*

(2) Where a payment, return or distribution is made in contravention of this section,

- (a) every director of the company who is in default is jointly and severally liable to restore to the company the total amount of money by which the payment, return or distribution contravenes this section, with interest on that amount at the yearly interest rate of the ninety-one day government treasury bill;
- (b) unless, within twelve months after the date of the payment, return or distribution, the total amount of money with interest on the payment return or distribution is restored to the company by the directors in accordance with paragraph (a) of this subsection, every shareholder is liable to restore to the company, the amount of money received by the shareholder in contravention of this section; and
- (c) if the directors of the company make a restoration to the company in accordance with paragraph (a) of this subsection, they shall have a right to be indemnified by a shareholder who has received an amount of money knowing that it contravenes this section to the extent of the amount received by the shareholder with interest on that account at the yearly interest rate of the ninety-one day government treasury bill.

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

(4) An application by a shareholder or creditor shall be made in a representative capacity on behalf of the shareholder or the creditor and the other shareholders or creditors of the company and section 205 shall apply.

(5) In relation to public companies, paragraph (b) of subsection (2) shall be modified as stated in section 303.

**Unclaimed dividends accounts**

73. (1) Where any dividend declared by a company cannot be paid by reason of the dividends being unclaimed by the member entitled to the dividend and remains unclaimed for a period of three months, the company shall forthwith

- (a) open an interest bearing unclaimed dividend account, and
- (b) credit to that account the total amount of the unclaimed dividend of its shareholders unless that account has already been opened.

(2) Where the payment of a dividend cannot be made or is not claimed within a further period of twelve months after the transfer made under paragraph (b) of subsection (1), the company shall pay to the Registrar the total amount of the unclaimed dividend plus interest accrued on the amount.

(3) The Registrar shall pay into the account under subsection (4)

- (a) the amount received under subsection (2), and
- (b) the amount received under subsection (3) of section 74.

(4) The Registrar shall with the approval of the Board open an interest bearing bank account for the safe keeping of moneys received from any company under subsection (2).

(5) The Registrar is responsible for the moneys lodged and disbursed from the interest bearing account.

(6) The company shall on the date of the payment under subsection (2), notify the respective shareholder or the estate of the shareholder at the last address known to the company of the payment made in respect of the dividend.

(7) The shareholder or the estate of the shareholder shall on providing satisfactory evidence, be entitled to make a claim for the dividend and any accrued interest during the period that the

- (a) company had possession of the dividend under subsection (1); and
- (b) Registrar had possession of the dividend under subsection (3).

(8) The Registrar shall publish annually in the *Companies Bulletin* and in a state-owned newspaper of national circulation, details of shareholders whose dividends have been transferred to the Registrar for safe keeping.

**Management by Registrar of unclaimed dividend account**

**74.** (1) The Registrar shall keep unclaimed dividends lodged in the account under subsection (4) of section 73 for, seven years.

(2) The Registrar shall on the expiration of the seven year period referred to in subsection (1)

(a) transfer to the Consolidated Fund fifty percent of the total amount of money lodged in the interest bearing account under subsection (4) of section 73, for the purpose of investor education, research, entrepreneurial development and advancement in company law; and

(b) donate fifty percent of the total amount of money lodged in the interest bearing account under subsection (4) of section 73, for the purpose of investor education, research, entrepreneurial development and advancement in company law.

(3) Where a company on the commencement of this Act has in its possession unclaimed dividends, it shall immediately transfer the total amount of the dividends to the Registrar for safe-keeping.

**Prohibition of payment of dividends by companies limited by guarantee**

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

(2) Where a payment, distribution or return is made in contravention of subsection (1), a member to whom it is made shall restore the same to the company with interest at the yearly interest rate of the ninety-one day government treasury bill, and every officer of the company who is in default is liable to pay to the Registrar, an administrative penalty of five hundred penalty units.

**Declaration of dividends**

**76.** (1) Subject to sections 72 and 75, and in the case of a private company, its registered constitution where applicable, a company may, by ordinary resolution, declare dividends in respect of a year or any other specified period, but a dividend shall not exceed the amount recommended by the directors.

(2) In relation to public companies, subsection (1) shall be supplemented by section 304.

(3) A dividend shall be paid within sixty days after the shareholders' resolution confirming payments or after dividends have become payable.

*Companies Bill, 2018*

(4) Where a dividend is to be paid in accordance with subsection (3), the shareholders shall be notified of the amount of dividend recommended by directors as payment as dividend.

(5) A company's registered constitution may prescribe modes for the payment of dividend without reference to the shareholders' resolution.

**Capitalisation issues and non-cash dividends**

77. (1) When a company resolves to transfer a sum of money from surplus to stated capital pursuant to paragraph (c) of subsection (1) of section 68, the company, on the recommendation of the directors may, by the same or a subsequent special resolution, resolve that unissued shares in the company be issued and credited as fully paid to the members who would have been entitled to receive that sum of money had it been lawfully distributed by way of dividend and in the same proportions and so that the sum of money so transferred to stated capital shall be deemed to be paid, otherwise than in cash, on the shares.

(2) An issue under subsection (1) shall be referred to as a capitalisation issue.

(3) A company, on the recommendation of the directors, may resolve that a sum of money standing to the credit of the company's income surplus, and which could have lawfully been distributed by way of dividend shall be applied, on behalf of the members who would have been entitled to receive the same if it had been distributed by way of dividend, in paying up amounts of money for the time being unpaid on the shares held by them, and that sum shall be deemed to have been paid on a call made on those shares and shall be transferred to stated capital pursuant to paragraph (a) of subsection (1) of section 68.

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

(5) The directors shall give effect to the resolution and

(a) may make a provision that they think fit for the case of the shares, debentures, or securities for money becoming distributable in fractions,

*Companies Bill, 2018*

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

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

*Part H: Resolutions Reducing Capital, Shares or Liability*

**Resolutions requiring confirmation of Court**

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

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

(2) A resolution under subsection (1) shall in this Act be referred to as a resolution requiring confirmation.

(3) Where the resolution requiring confirmation varies the rights attached to a class of shares, the resolution shall not be effective unless section 50 has been complied with.

(4) This section does not require confirmation by the Court of a transaction validly effected under sections 72 and 75 to 77.

(5) The provisions of this section and sections 139 to 141 and 156 are subject to the Securities Industry Act, 2016 (Act 929).

**Application for confirming order**

79. (1) Where a company passes a resolution requiring confirmation, it may apply to the Court for an order confirming the resolution.

(2) Where the resolution requiring confirmation involves diminution of liability in respect of shares with an unpaid liability, or a payment or return to any shareholder, and in any other case if the Court so directs, the following provisions shall have effect unless, having regard to the special circumstances of the case, the Court otherwise directs

- (a) a creditor of the company who at the date fixed by the Court is entitled to a debt or claim which if that date were the commencement of the winding up of the company, would be admissible in proof against the company, is entitled to oppose the confirmation;
- (b) the Court shall settle a list of creditors so entitled to oppose, and for that purpose shall ascertain, as far as possible without requiring an application from a creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered, or are to be excluded from the right of opposing the confirmation; or
- (c) where a creditor entered on the list whose debt or claim is not discharged or has not determined, does not consent to the confirmation, the Court may dispense with the consent of that creditor on the company securing payment of that creditor's debt or claim by appropriating, as the Court may direct, the following amount, that is to say,
  - (i) if the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim; or
  - (ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the Court after the like

*Companies Bill, 2018*

inquiry and adjudication as if the company were being wound up under the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) or a statutory modification or re-enactment of that Act.

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

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

**Order confirming the resolution**

**80.** The Court may make an order confirming the resolution on the terms and conditions specified by the Court, if satisfied,

- (a) with respect to every creditor of the company who under section 79 is entitled to oppose, that the creditor's consent has been obtained or that the debt or claim of that creditor has been discharged or secured,
- (b) that sections 78 and 79 have been duly complied with, and
- (c) that the resolution requiring confirmation is fair and equitable.

**Order and minute to be registered**

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

- (a) the new stated capital of the company,
- (b) the number of authorised and issued shares and the classes into which they are divided, and
- (c) the amount of money deemed to be paid and the unpaid liability on the issued shares, distinguishing the amount paid in cash and the amount paid otherwise than in cash, shall register the order and the minute and publish the particulars stated in the minute in the *Gazette*.

(2) On registration of the order and minute, the resolution for reduction shall take effect.

(3) The Registrar shall personally certify the registration of the order and the minute, and the certificate is conclusive evidence that the



*Companies Bill, 2018*

requirements of this Act with respect to the resolution requiring confirmation have been complied with and that the stated capital and shares of the company are as stated in the minute.

**Protection of creditors**

**82.** (1) Where a creditor, entitled in respect of a debt or claim to oppose the confirmation, is by reason of ignorance of the proceedings for confirmation, or of their nature and effect with respect to the claim of that creditor, not entered on the list of creditors and, after the confirmation, the company fails to pay the amount of that creditor's debt or claim, then,

- (a) a person who was a member of the company at the date of the registration of the order and minute, is liable to contribute for the payment of that debt or claim, an amount of money not more than the amount which that person would have been liable to contribute on the winding up of the company had that commenced immediately before the date of the registration; and
- (b) where the company is wound up, the Court, on the application of that creditor and proof of the creditor's ignorance, may settle a list of persons so liable to contribute and make and enforce calls and orders on those persons as if they were members liable to contribute in accordance with section 40.

(2) Subsection (1) does not affect the rights of the members among themselves and, except as provided in subsection (1), a member or past member after the date of the registration of the order and minute is not liable in respect of a share to a call or contribution exceeding in amount the unpaid liability on that share as set out in the minute.

- (3) An officer of the company who,
  - (a) wilfully conceals the name of a creditor entitled to oppose the confirmation, or
  - (b) wilfully misrepresents the nature or amount of the debt or claim of a creditor, or
  - (c) aids, abets, or is privy to a concealment or misrepresentation,
    - (i) commits an offence and is liable on summary conviction to a fine of not less than two hundred and fifty penalty units and not more than five hundred penalty units or to a term of imprisonment of

*Companies Bill, 2018*

- not less than one year and not more than two years or to both the fine and the imprisonment; and
- (ii) is personally liable to pay to the creditor the amount of the creditor's debt or claim to the extent to which it is not paid by the company.

*Part I: Debentures and Debenture Stock*

**Issue of debentures or debenture stock**

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

(2) Debentures of the same series shall rank at the same rate in all respects although they may be issued on different dates.

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

(4) Debenture stock shall be created by deed under the common seal of the company or certified by the signatures of two directors and the Company Secretary in the form of a deed poll or of an indenture in favour of trustees for debenture stockholders.

(5) A debenture holder is not a member of the company and, despite a provision in the debenture or a company's constitution, is not entitled to attend and vote at a general meeting of the company.

**Specific performance of contract for debentures**

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

**Documents of title to debentures**

**85.** (1) Subject to the Central Securities Depository Act, 2007 (Act 733) a company shall, within two months after the allotment of any of its debentures, or after the registration of the transfer of any debentures, deliver to the registered holder of the debentures, the debentures or a certificate of the debenture stock under the common seal of the company or as certified by two directors and the Company Secretary of that company.

(2) Where a debenture or debenture stock certificate is defaced, lost or destroyed, the company, at the request of the registered holder of the debenture, shall issue a certified copy of the debenture or renew the

## *Companies Bill, 2018*

debenture stock certificate on payment of a fee prescribed by the company and on the terms, as to evidence and indemnity and the payment of the company's out-of-pocket expenses of investigating the evidence, that the company may reasonably require.

(3) Where a company defaults in complying with this section, the company and an officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of two hundred and fifty penalty units.

(4) On an application by a person entitled to have the debentures or debenture stock certificate delivered to that person, the Court may order the company to deliver the debenture stock certificate and may require the company and that officer to bear the costs of, and incidental to, the application.

### **Effect of statements in debentures**

**86.** (1) Statements made in debentures or debenture stock certificates, including statements made electronically are prima facie evidence of the title to the debentures of the person named in the statement as the registered holder and of the amounts so secured.

(2) Where a person changes that person's position in reliance in good faith on the continued accuracy of the statements made in the debenture or debenture stock certificate, the company is estopped in favour of that person from denying the continued accuracy of the statements and shall compensate that person for a loss suffered by that person in reliance on that accuracy, and which that person would not have suffered had the statement been or continued to be accurate.

(3) Subsection (2) does not derogate from a right the company may have to be indemnified by any other person.

### **Perpetual debentures**

**87.** A condition contained in a debenture or in a trust deed for securing any debentures, shall not be invalid by reason of the fact that the debentures are by that condition made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period however long.

**Convertible debentures**

**88.** Subject to the Central Securities Depository Act, 2007 (Act 733), debentures may be issued on the terms that in lieu of redemption or repayment they may, at the option of the holder or the company, be converted into shares in the company on the terms that are stated in the debentures.

**Secured or naked debentures**

**89.** (1) Debentures may either be secured by a charge over the company's property or may be unsecured by a charge.

(2) Debentures may be secured by a fixed charge on certain of the company's property or a floating charge over the whole or a specified part of the company's undertaking and assets, or by both a fixed charge on certain property and a floating charge.

(3) A charge securing debentures becomes enforceable on the occurrence of the events specified in the debentures or the deed securing the debentures.

(4) Where legal proceedings are brought by a debenture holder to enforce the security of a series of debentures of which that holder holds part, the debenture holder shall sue in a representative capacity personally and on behalf of the other debenture holders of that series, and section 205 shall apply.

(5) Where debentures are secured by a charge, sections 110 to 121 relating to registration of particulars of charges, shall apply.

**Meaning of "floating charge"**

**90.** (1) Subject to subsection (2), a floating charge is an equitable charge over the whole or a specified part of the company's undertaking and assets both present and future.

(2) A floating charge does not preclude the company from dealing with the assets of the company until,

- (a) the security becomes enforceable and the holder of the security pursuant to a power in that behalf in the debenture or the deed securing the same, appoints a receiver or manager or enters into possession of those assets;
- (b) the Court appoints a receiver or manager of the assets on the application of the holder; or
- (c) the company goes into liquidation.

## *Companies Bill, 2018*

(3) On the happening of an event specified in subsection (2), the charge crystallizes and becomes a fixed equitable charge on those of the company's assets that are subject to the charge.

(4) Where a receiver or manager is withdrawn with the consent of the charge, or the charge withdraws from possession, before the charge has been fully discharged, the charge ceases to be a fixed charge and again becomes a floating charge.

(5) A fixed charge on a property has priority over a floating charge affecting that property unless the terms on which the floating charge was granted, prohibited the company from granting a later charge having priority over the floating charge and the person in whose favour that later charge was granted had actual notice of that prohibition at the time when the charge was granted to that person.

### **Powers of the Court**

**91.** (1) Where a fixed or floating charge becomes enforceable, the Court may appoint a receiver and, in the case of a floating charge, a receiver and manager of the assets subject to the charge.

(2) In the case of a floating charge, the Court may, although the charge has not become enforceable, appoint a receiver or manager if satisfied that the security of the debenture holder is in jeopardy.

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

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

### **Payment of preferential creditors out of assets subject to a floating charge**

**92.** (1) Where a receiver is appointed on behalf of the holders of the debentures of the company secured by a floating charge or possession is taken by or on behalf of those debenture holders of a property subject to the charge, the debts which in a winding up are, under section 41 of the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) or a statutory modification or re-enactment of that Act to be paid in priority to any other debts, shall be paid out of the assets coming to the hands of the receiver or any other person taking that possession in priority to a claim for principal or interest in respect of the debentures.

## *Companies Bill, 2018*

(2) Where the receiver or any other person taking possession as provided for in subsection (1) makes a repayment in respect of the debenture before discharging the debts having priority in accordance with subsection (1), the receiver or that person is personally liable to discharge the debts to the extent of the repayment made by the receiver or that person.

(3) The periods of time mentioned in section 41 of the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) or a statutory modification or re-enactment of that Act shall be reckoned from the date of the appointment of the receiver or possession being taken.

(4) The payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

### **Limitation of efficacy of floating charges in liquidations**

**93.** Where the winding up of the company commences within twelve months of the creation of a floating charge on the undertaking or property of the company, the charge is invalid, unless it is proved that the company was solvent immediately after the creation of the charge, except to the amount of the cash paid to the company at the time of, or subsequently to, the creation of the charge and in consideration for the charge, together with interest on that amount at the yearly interest rate applicable to the ninety-one day government treasury bill.

### **Application of sections 244 to 256**

**94.** Sections 244 to 256 apply to the appointment of a receiver by or on behalf of the debenture holders.

### **Trustees for debenture holders**

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

(2) Trustees shall safeguard the rights of the debenture holders and, on behalf of and for the benefit of the debenture holders, exercise the rights, powers, and discretions conferred on them by the trust deed.

*Companies Bill, 2018*

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

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

(5) Subsection (4) does not invalidate a release otherwise validly given in respect of anything done or omitted to be done by a trustee on the agreement to that release, of a majority of not less than three-fourths in value of the debenture holders present in person, or where proxies are permitted, by proxy at a meeting summoned for the purpose.

(6) Despite the provisions in the debentures or trust deed, the Court may, on the application of a debenture holder or of the Registrar, remove a trustee and appoint another trustee in the place of the removed trustee if satisfied that the first mentioned trustee has interests which conflict or may conflict with those of the debenture holders or that for a sufficient reason it is desirable to remove that trustee.

(7) Where an application is made under subsection (6) by a debenture holder, the Court may order the applicant to give security for the payment of the costs of the trustee and may direct that the application shall be heard in chambers.

(8) Where a trustee dies or retires, the Registrar may appoint another trustee in the place of the trustee who has died or retired at any time before the appointment of another trustee in accordance with a provision to that effect in the trust deed.

**Meetings of debenture holders**

**96.** (1) The terms of the debentures or trust deed may provide for the convening of general meetings of the debenture holders and for the passing, at those meetings, of resolutions binding on the holders of the debentures of the same class.

*Companies Bill, 2018*

(2) Whether or not the debentures or trust deed contains the provisions referred to in subsection (1), the Registrar may at any time direct a meeting of the debenture holders of a class to be held and conducted in the manner that the Registrar thinks fit, to consider the matters which the Registrar or the trustees, shall bring before the meeting, and may give the ancillary or consequential direction that the Registrar thinks fit.

**Re-issue of redeemed debentures**

**97.** (1) Where a company redeems a debenture previously issued, the company may, subject to subsection (5), re-issue that debenture.

(2) The re-issue may be made either by re-issuing that debenture or by issuing another debenture in place of the redeemed debenture.

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

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

(5) For the purposes of subsection (4), a person lending money on the security of a re-issued debenture which appears to be duly stamped may give the debenture in evidence in any proceedings without payment of the stamp duty or a penalty unless that person had notice, or with due diligence might have discovered that the debenture was not duly stamped, but the company in either case is liable to pay the proper stamp duty and penalty.

(6) This section does not entitle a company to re-issue a redeemed debenture if it has manifested its intention that the debenture shall be cancelled or if re-issue is forbidden by a provision in that company's constitution or in the debenture, trust deed or any other contract entered into by the company.

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



*Companies Bill, 2018*

*Part J: Transfer of shares and debentures*

**Restrictions on transferability of shares**

**98.** (1) Except as expressly provided in a company's registered constitution, shares are transferable without restriction by a written transfer in common form.

(2) Subject to section 305, the company's registered constitution may impose restrictions on the transferability of shares, including power for the directors to refuse to register a transfer and provisions for compulsory acquisition or rights of first refusal in favour of other members or officers of the company.

(3) A restriction shall not be imposed under subsection (2) on the transferability of any shares after the shares have been issued unless the holders of the shares consent in writing to the transfer.

(4) Despite subsection (1), a company may refuse to register a transfer of shares to a person who is an infant or to a person found by a competent court in the Republic to be an infant or a person of unsound mind.

**Register of debentures**

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

(2) Subject to sections 106 to 109,

- (a) the register of debenture holders shall be kept and maintained at the address at which the register of members is kept; and
- (b) sections 35 to 39 shall apply as regards the giving of notice to the Registrar of the place where the register is kept taking into consideration the details in the register of debentures.

**Restrictions on transferability of debentures**

**100.** (1) Except as expressly provided in the terms of the debentures, debentures are transferable without restriction by a written transfer in common form and the transferee is entitled to the debenture and to the moneys secured by the transfer without regard to any equities, set-off, or cross claim between the company and the original or an intermediate holder.

(2) Subject to section 305, the terms of a debenture may impose restrictions on the transferability of debentures including power for the company to refuse to register a transfer and provisions for compulsory acquisition or rights of first refusal in favour of other debenture holders, or members or officers of the company.

*Companies Bill, 2018*

(3) Where a restriction is imposed on the right to transfer a debenture, notice of the restriction shall be endorsed on the face of the debenture or debenture stock certificate and, in the absence of that endorsement, the restriction is ineffective as regards a transferee for value whether or not that transferee has notice of the restriction.

**Registration of transfers**

**101.** (1) Subject to sections 35, 102 and 103, a notice of a trust, express, implied or constructive or of any equitable, contingent, future or partial interest in a share or debenture or a fractional part of a share or debenture shall not be entered in the register of members or debenture holders or receivable by the company.

(2) For the purposes of subsection (1), the company is not bound by, or is not compelled in any way to recognise, any other rights in respect of a share or debenture except an absolute right to the entirety of the share or debenture in the registered holder; and accordingly until the name of the transferee is entered in the register in respect of the share or debenture, the transferor remains, so far as concerns the company, the holder of the share or debenture.

(3) Despite anything contained in the constitution of a company or in a contract, that company shall not register a transfer of shares or debentures unless a proper instrument of transfer duly stamped, if chargeable to stamp duty, has been delivered to the company.

(4) Subsection (3) does not derogate from a power of the company to register a person to whom the right to shares or debentures has been transmitted by operation of law.

(5) Unless otherwise provided in a company's constitution or the terms of the debenture, the company may refuse to register a transfer if the transfer is not accompanied by the appropriate share certificate, debenture or debenture stock certificate, or the company is bound to issue a renewal or copy of that certificate in accordance with subsection (2) of section 55 or section 85.

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

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

*Companies Bill, 2018*

(8) Where a company defaults in complying with subsection (3) or (7), that company and every officer of the company that is in default is liable to pay to the Registrar an administrative penalty of five hundred penalty units.

(9) The provisions of this section shall not apply to a company the shares of which can be transferred through a scheme established under the Central Securities Depository Act, 2007 (Act 733).

**Transmission of shares or debentures by operation of law**

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

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

(3) The company has the right to decline registration of a transfer under subsection (2) as it would have had in the case of a transfer by the registered holder but does not have a right to refuse registration personally of that person.

(4) A person on whom the ownership of a share or debenture devolves by reason of that person being the legal personal representative, receiver, or trustee in bankruptcy of the holder, or by operation of law is entitled, before registration personally of that person or a transferee, to the same dividends, interest and other advantages as if that person were the registered holder and, in the case of a share, to the same rights and remedies as if that person were a member of the company, but that person is not entitled before being registered as a member in respect of the share, to attend and vote at a meeting of the company.

*Companies Bill, 2018*

(5) For the purposes of subsection (4), the company may at any time give notice requiring that person to elect to be registered personally or to transfer the share or debenture, and if the notice is not complied with within ninety days, the company may suspend payment of the dividends, interest or any other moneys payable in respect of the share or debenture until the requirements of the notice have been complied with.

(6) The provisions of subsections (2) to (5) shall not apply to a company the shares of which can be transferred through a scheme established under the Central Securities Depository Act, 2007 (Act 733).

**Protection of beneficiaries**

**103.** (1) A person claiming to be interested in any shares or debentures or the dividends or interest on those shares or debentures may protect the interest of that person by serving on the company concerned copies of a notice and affidavit in accordance with rules 4 to 12 of Order 46 of the High Court (Civil Procedure) Rules, 2004 (C.I. 47).

(2) Despite subsection (1) of section 101, the company

- (a) shall enter on the register of members or debenture holders, the fact that the notice has been served, and
- (b) shall not register a transfer or make a payment or return in respect of the shares or debentures contrary to the terms of the notice until the expiration of due notice to the claimant in accordance with that Order.

(3) In the event of a default by the company in complying with this section, the company shall compensate a person injured as a result of the default.

(4) The provisions of this section shall not apply to a company the shares of which are dealt with by virtue of a scheme established under the Central Securities Depository Act, 2007 (Act 733).

**Certification of transfers**

**104.** (1) Where the holder of shares or of debenture stock wishes to transfer to a person part only of the shares or stock represented by one or more certificates, the instrument of transfer together with the related certificates may be delivered to the company or to the registration officer of the company with a request to certify the instrument of transfer.

(2) If a company or its registration officer endorses on an instrument of transfer the words “certificate lodged”, or words to the like effect, the

*Companies Bill, 2018*

endorsement shall be taken as a representation to anyone acting on the faith of the certification that there has been produced to, and retained by, the company or the registration officer the certificates that show a prima facie title to the shares or stock in the transferor named in the instrument of transfer but not as a representation that the certificates are genuine or that the transferor has a title to the shares or stock.

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

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

(5) The certification is made by the company,

(a) if it bears the signature or initials, whether handwritten or not, of an officer for whose act of signing it the company is liable under sections 147 to 151; or

(b) if it purports to bear the signature or initials, whether handwritten or not, of an officer of the company and is issued by an officer of the company for whose act of issuing it the company is liable under sections 147 to 151.

(6) The certification is made by the registration officer,

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

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

*Companies Bill, 2018*

(7) For the purposes of subsections (5) and (6), the certification is issued by a person if the instrument of transfer bearing the certification is delivered or sent by that person to the transferor, transferee or any other person named in the request for certification, or is despatched to the transferor, transferee or that other person with a covering letter bearing the signature or initials of that person whether handwritten or not.

(8) The provisions of this section shall not apply to a company the shares of which are operated by virtue of a scheme established under the Central Securities Depository Act, 2007 (Act 733).

**Company's lien on shares**

**105.** (1) Subject to the Central Securities Depository Act, 2007 (Act 733), a company may, where its constitution so provides, have a lien on any of its issued shares on which there is an unpaid liability for the moneys, whether presently payable or not, called or payable at a fixed time in respect of those shares.

(2) The lien shall be an effective charge on the shares and the dividends payable on the shares enforceable in the manner provided by the company's constitution.

(3) Despite a provision in the company's constitution, the company's lien shall not extend to shares on which there does not exist an unpaid liability, or to the sums of money due from the shareholder except in respect of the unpaid liability on the shares.

*Part K: Branch Registers*

**Power of company to keep branch register**

**106.** (1) A company that has shares may, if so required by its constitution, keep in a country outside the Republic a branch register of shareholders or debenture holders residing in that country or in any other country outside the Republic.

(2) The company shall give to the Registrar, notice of the situation of the office where a branch register is kept, and of a change in its situation, and if it is discontinued, of its discontinuance.

(3) The notice shall be given within twenty-eight days of the opening of the office or of the change or discontinuance.

*Companies Bill, 2018*

(4) Where the company defaults in complying with subsections (2) and (3), the company and every officer of the company who is in default is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the default continues.

**Regulations as to branch registers**

**107.** (1) A branch register is a part of the company's principal register of members or debenture holders.

(2) A branch register shall be kept in, and shall be opened for inspection in, the same manner in which the principal register is, by sections 35 to 39 and sections 99 to 101 required to be kept, and the advertisement before closing the branch register shall be inserted in a state-owned daily newspaper circulating in the district where the branch register is kept.

(3) The company shall,

- (a) transmit to its registration office a copy of every entry in its branch register as soon as practicable after the entry is made; and
- (b) keep at the place where the company's principal register is kept, a duplicate of its branch register duly entered up from time to time.

(4) The duplicate is, for the purposes of this Act, a part of the principal register.

(5) Subject to this section, with respect to the duplicate register, the shares or debentures registered in a branch register shall be distinguished from those registered in the principal register, and a transaction with respect to a share or debenture registered in a branch register shall not, during the continuance of that registration, be registered in any other register.

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

(7) Subject to this Act, a company may, by its constitution, make provisions respecting the keeping of branch registers.

*Companies Bill, 2018*

(8) Where a company defaults in complying with subsection (3), the company and every officer of the company who is in default is liable to pay to the Registrar an administrative penalty of twenty-five penalty units for each day during which the default continues.

(9) Where the principal register is kept at the office of a person other than the company, and by reason of a default of that person the company fails to comply with paragraph (b) of subsection (3), that person is liable to the same penalty as if that person was an officer of the company who was in default.

(10) The provisions of this section shall not apply to a company the shares of which are operated by virtue of a scheme established under the Central Securities Depository Act, 2007 (Act 733).

**Stamp duties in case of securities registered in branch registers**

**108.** An instrument of transfer of a share or debenture registered in a branch register, is a transfer of property situate out of the Republic, and, unless executed in a part of the Republic, shall be exempted from a stamp duty chargeable in the Republic.

**Provisions as to branch registers kept in the Republic**

**109.** (1) Subject to subsection (2), where the law in force in a country provides for companies incorporated under that law to keep in Ghana branch registers of their shareholders or debenture holders, the Minister may, by legislative instrument, make Regulations for the application of sections 36 and 38 in relation to those branch registers.

(2) The application of sections 36 and 38 shall not derogate from any modification and adaptation specified in the legislative instrument made under subsection (1).

*Part L: Registration of Particulars of Charges*

**Registration of particulars of charges created by companies**

**110.** (1) A charge, other than a charge specified in subsection (5), created by a company after the commencement of this Act is void so far as a security on the company's property, is conferred by that charge, unless the particulars prescribed in this section together with the original or a certified copy of the instrument by which the charge is created or evidenced, are delivered in the prescribed form to the Registrar for registration within forty-five days after the date of its creation.



*Companies Bill, 2018*

(2) For the purposes of subsection (1), “property” includes the undertaking of the company and the unpaid liability on its shares.

(3) This section shall not affect a contract or an obligation for repayment of the money secured by the contract or obligation.

(4) When a charge becomes void under this section, the money secured by the charge shall immediately become payable despite a provision to the contrary in the contract.

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

(6) Subject to subsections (7) and (8), the particulars requiring delivery for registration under this section are

- (a) the date of creation of the charge;
- (b) the nature of the charge;
- (c) the amount of money secured by the charge, or the maximum sum of money secured by the charge in accordance with section 110;
- (d) short particulars of the property charged;
- (e) the persons entitled to the charge;
- (f) in the case of a floating charge, the nature of a restriction on the power of the company to grant further charges ranking in priority to, or at the same rate with, the charge created by the registration; and
- (g) particulars of any variation of the terms and provisions of a charge.

(7) Where a series of debentures containing, or giving by reference to any other instrument, a charge to the benefit of which the debenture holders are entitled at the same rate, is created by the company, it shall, for the purposes of this section, be sufficient if there are delivered to the Registrar within forty-five days after the execution of the document containing the charge or, if there is no document containing the charge after the execution of any debentures of the series, the following particulars, namely,

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

*Companies Bill, 2018*

- (b) the total amount of money secured by the whole series,
- (c) the names of the trustees, and
- (d) the particulars specified in paragraphs (b), (d) and (f) of subsection (6) of this section,

together with the original or certified copy of the deed creating the charge or, of any deed variation of the terms and provisions of the charge or if there is no certified copy of the deed, the debentures of the series.

(8) For the purposes of subsections (1) and (7), a certified copy is a copy which has endorsed on that copy, a certificate to the effect that it is a true and complete copy of the original, under the seal of the company or signed personally by a person interested in the copy otherwise than on behalf of the company.

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

(10) This section does not affect the provisions of any other enactment relating to the registration of charges.

**Charges to secure fluctuating amounts**

**111.** (1) Where a charge, particulars of which require registration under section 110 is expressed to secure

- (a) the sums of money due or to become due, or
- (b) some other uncertain or fluctuating amount,

the particulars required under paragraph (c) of subsection (6) of section 110 shall state the maximum sum of money secured by the charge, being the maximum sum of money covered by the stamp duty paid on the charge and the charge shall be void, so far as a security on the company's property is conferred by the registration, regarding an excess over the stated maximum.

(2) For the purposes of subsection (1), if

- (a) additional stamp duty is subsequently paid on the charge, and
- (b) at any time after the payment, but before the commencement of the winding up of the company, particulars of the charge stating the increased maximum sum of money secured

*Companies Bill, 2018*

by the charge, together with the original instrument by which the charge was created or evidenced, are delivered to the Registrar for registration,

as from the date of the delivery, the charge, if otherwise valid, shall be effective to the extent of the increased maximum sum of money except as regards a person who, before the date of the delivery, has acquired any proprietary rights in, or a fixed or floating charge on, the property subject to the charge.

**Charges on property acquired**

**112.** (1) When a company acquires a property which is subject to a charge of the kind that particulars of it would, if it had been created by the company after the acquisition of the property, have been required to be registered under section 110, the company shall deliver to the Registrar for registration particulars of the charge together with the document by which the charge was created or evidenced or a copy of that document, certified as provided in subsections (8) and (9) of section 110.

(2) The delivery under subsection (1) shall be effected within twenty-eight days after the date on which the acquisition is completed.

(3) The particulars requiring registration under subsection (1) shall be those specified in subsection (6) of section 110 with the addition of the date of the acquisition of the property by the company.

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

**Existing charges**

**113.** (1) Where, at the date of commencement of this Act, a company has property on which there is a charge particulars of which would require registration if it had been created by the company after the date of that commencement then, unless the charge has been discharged or the property has ceased to be held by the company before the expiration of six months from the date of that commencement, the company shall, within that time, deliver particulars of the charge as prescribed by section 110 to the Registrar for registration together with the document, by which the charge was created or a copy of that document certified as required by that section.

*Companies Bill, 2018*

(2) An existing company shall before the expiration of six months from the commencement of this Act, deliver to the Registrar for registration a statutory declaration made by a director and the secretary of the company stating whether or not there are any charges on the company's property of which particulars require to be registered under subsection (1) and confirming that particulars of those charges have been duly delivered to the Registrar for registration.

(3) Where a company defaults in complying with subsection (2), the company and every officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units.

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

**Duty of company to deliver particulars for registration**

**114.** (1) A company shall send to the Registrar for registration the particulars required to be sent under sections 110 to 113, but registration of the particulars of the charge may be effected on the application of a person interested in the charge.

(2) Where registration is effected on the application of a person other than the company, that person is entitled to recover from the company the amount of the fees payable to the Registrar on the registration.

(3) Where a company defaults in sending to the Registrar the particulars requiring registration as required by this section, the company and every officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of five hundred penalty units unless the particulars have been duly delivered for registration by any other person.

**Register of particulars of charges**

**115.** (1) The Registrar shall keep, with respect to each company, a register of the particulars duly delivered pursuant to sections 110 to 113 and shall enter the particulars in the register.

(2) The Registrar shall give a certificate signed personally by the Registrar of the registration of particulars of a charge registered in pursuance of sections 110 to 113, and the certificate is conclusive evidence, except in favour of the company or of any other person who has delivered false or incomplete particulars or an incorrect copy of a document, that the requirements of sections 110 to 113 have been complied with.

*Companies Bill, 2018*

(3) In the case of a charge of the type referred to in section 111, the certificate shall state the maximum sum of money deemed to be secured by the charge.

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

**Endorsement of registration on debentures of a series**

**116.** (1) A company shall endorse on every debenture, forming one of a series of debentures, or certificate of debenture stock which is issued by the company and the payment of which is secured by a charge, the following particulars of which are registered under sections 110 to 113:

- (a) a copy of the certificate of registration, or
- (b) a statement that registration has been effected and the date of registration.

(2) Subsection (1) shall not be construed as requiring to be so endorsed a debenture or certificate or debenture stock issued by the company before the charge was created.

(3) A person who knowingly authorises or permits the delivery of a debenture or certificate of debenture stock which is required to be endorsed under this section and which is not so endorsed is liable to pay to the Registrar, an administrative penalty of fifty penalty units.

- (4) A person who
  - (a) endorses or causes to be endorsed on a debenture or certificate of debenture stock a purported copy of a certificate of registration or statement that registration has been effected which that person knows to be false in a material particular, or
  - (b) authorises or permits the delivery of a debenture or certificate of debenture stock bearing an endorsement purporting to be a copy of a certificate of registration or statement that registration has been effected which that person knows to be false in a material particular,

commits an offence and is liable on summary conviction to a fine of not less than five hundred penalty units and not more than one thousand penalty units or to a term of imprisonment of not less than two years and not more than five years or to both the fine and imprisonment.

**Entry of satisfaction on discharge**

117. The Registrar, on an application in the prescribed form and on satisfactory evidence being given with respect to a charge of which particulars have been registered,

- (a) that the debt for which the charge was given has been paid or satisfied in whole or in part, or
- (b) that the whole or part of the property charged has been released from the charge or has ceased to form part of the company's property or undertaking,

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

**Rectification of register of particulars of charges**

118. (1) The Court, on being satisfied

- (a) that the omission to register particulars of a charge within the time required by this Act, or that the omission or mis-statement of the particulars with respect to a charge or in a memorandum of satisfaction was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or members of the company, or
- (b) that on other grounds it is just and equitable to grant relief, may, on the application of the company or a person interested, and on the terms that the Court considers just and expedient, order that the time for registration shall be extended, or that the omission or mis-statement shall be corrected.

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

**Registration of enforcement of security**

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

(2) Where default is made in giving the notice required under subsection (1), the receiver, the person entering into possession, the company, or an officer of the company who is in default is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the default continues.

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

(4) The Registrar shall enter the notice referred to in subsection (3) in the register of particulars of charges.

(5) A person who defaults in complying with the requirements of subsection (3) is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the default continues.

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

**Copies of charges to be kept by company**

**120.** (1) A company shall keep a copy of every instrument creating a charge of which particulars require to be registered under sections 110 to 113, at the registered office of the company and at any other office in Ghana at which its register of debenture holders is kept; but in the case of a series of uniform debentures, a copy of one debenture of the series is sufficient.

(2) The copies are open to inspection during usual business hours, subject to the reasonable restrictions that the company in general meeting may impose.

*Companies Bill, 2018*

(3) For the purposes of subsection (2), not less than two hours in each day, other than a Saturday, a Sunday and a public holiday shall be allowed for inspection by

- (a) a member or creditor of the company without a fee, and
- (b) any other person on payment of a fee, prescribed by the company for each inspection.

(4) Where a company defaults in complying with subsection (1), or if inspection of the copies is refused, the company and every officer of the company that is in default is liable on summary conviction to a fine of not less than two hundred and fifty penalty units and not more than five hundred penalty units, and in the event of refusal, the Court may compel an immediate inspection of the copies.

**Registration constituting notice**

**121.** The registration of any particulars under sections 113 to 120 constitutes actual notice of those particulars, but not of the contents of a document referred to in, or delivered with, the particulars to all persons and for all purposes as from the date of registration.

*Part M: Registered Office, Publication of Name and Annual Returns*

**Registered office**

**122.** (1) A company shall within twenty-eight days after its incorporation, have the following to which communications and notices to the company may be addressed:

- (a) a registered office and principal place of business in the Republic with a telephone contact, a post office box or private mail bag of its registered office; and
- (b) an electronic mail address and the website of the company if available.

(2) Where a company defaults in complying with subsection (1), the company and every officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the default continues.

**Notice of situation of registered office**

**123.** (1) A company shall give notice of the following for purposes of incorporation in accordance with section 13:

- (a) the original registered office of the company, its telephone contact, a post office box or private mail box of its registered office; and
- (b) an electronic mail address and the website of the company if available.



*Companies Bill, 2018*

(2) If the return referred to in section 13 is not delivered to the Registrar for registration within twenty-eight days after the date of the company's incorporation, notice of the location of the registered office, of the number of its post office box or the electronic address shall be given in the prescribed form to the Registrar for registration.

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

(4) The inclusion in the annual return referred to in section 126 of a statement as to the situation of the company's registered office and the number of its post office box or its electronic address does not satisfy the obligation imposed by this section.

(5) Where a company defaults in complying with subsection (2) or (3), the company and every officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the default continues.

**Requirement to change registered office**

**124.** (1) Subject to the other provisions of this section, a company shall change its registered office where it is required to do so by the Registrar.

(2) The Registrar may require a company to change its registered office by notice in writing delivered or sent to the company at its registered office.

(3) The notice shall

(a) state that the company is required to change its registered office by the date specified in the notice, not being a date that is earlier than twenty eight days after the date of the notice;

(b) state the reason for the required change;

(c) state that the company has the right to appeal to Court; and

(d) be dated and signed by the Registrar.

(4) A copy of the notice shall be sent to each director of the company.

(5) The company shall change its registered office

(a) by the date specified in the notice; or

(b) where it appeals to the Court and the appeal is dismissed, within seven days of the date of the decision of the Court.

*Companies Bill, 2018*

(6) Where a company fails to comply with this section, each director and the Company Secretary of that company commits an offence and is liable on summary conviction to a fine of not more than twenty-five penalty units for each day during which the default continues.

**Publication of name of company**

**125.** (1) A company shall,

- (a) paint or affix, and keep painted or affixed, its name on the outside of its registered office and of every office or place in which its business is carried on, in a conspicuous position in letters that are easily legible;
- (b) where it has a common seal have its name engraved in legible characters on its seal; and
- (c) have its name accurately mentioned in legible characters at the head of the business letter, invoices, receipts, notices, or any other publication of the company and in the negotiable instruments or orders for money, goods or services purporting to be signed or endorsed by or on behalf of the company.

(2) Where a company defaults in complying with subsection (1), the company and each officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of two hundred and fifty penalty units.

(3) Where an officer of the company or a person purporting to act on the company's behalf uses or authorises the use of a seal purporting to be a seal of the company on which the name is not engraved as required by subsection (1), that officer commits an offence and is liable on summary conviction to a fine of not less than one hundred and twenty-five penalty units and not more than two hundred and fifty penalty units.

(4) Where an officer of the company or any other person signs or endorses or authorises the signing or endorsement on behalf of the company of a negotiable instrument or order for money, goods or services in which the name of the company is not accurately mentioned in accordance with paragraph (c) of subsection (1), that officer or person is personally liable to discharge the obligation thereby incurred unless it is duly discharged by the company or otherwise, but without limiting a right of indemnity which that person may have against the company or any other person.

*Companies Bill, 2018*

(5) The use of the abbreviation “Ltd.” instead of “Limited” is not a breach of this section.

**Annual return**

**126.** (1) A company shall, at least once in every year, deliver to the Registrar for registration an annual return including particulars of every member of the company, and every beneficial owner of that company and in the form and relating to the matters prescribed in the Fifth Schedule.

(2) A company need not make an annual return,

(a) in the year of its incorporation, or

(b) in a year ending less than eighteen months after the date of its incorporation, so long as it makes a return within thirty-six days after the first despatch to its members and debenture holders of the statements, accounts, and reports referred to in section 128.

(3) The annual return shall be completed and made within thirty-six days of the date on which the statements, accounts and reports of the company are sent to the members and debenture holders pursuant to section 128, and shall be signed by at least one director and the Company Secretary.

(4) The return shall state the position of the company as at the date of the annual general meeting or, if the holding of an annual general meeting is waived in accordance with subsection (5) of section 157, at the twenty-first day after the despatch of the documents referred to in subsection (3).

(5) The Registrar, after registering the annual return, shall publish in the *Companies Bulletin* a notice that the annual return in respect of the company has been registered.

(6) In the case of a private company, the annual return shall be accompanied by the documents specified in section 281 and in the case of a public company by the documents specified in section 306.

(7) Where a company defaults in complying with this section, the company and every officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the default continues.

*Companies Bill, 2018*

*Part N: Accounts and Audit*

**Keeping of books of account and preparation of financial statements**

**127.** (1) A company shall keep proper books of account with respect to its financial position and changes in the books of account, and with respect to the control of and accounting for assets acquired whether for resale or for use in the company's business, and, in particular with respect to

- (a) the sums of money received and expended by, or on behalf of, the company and the matters in respect of which the receipt and expenditure takes place;
- (b) the sales and purchases by the company of property, goods and services; and
- (c) the assets and liabilities of the company and the interests of the members in the company.

(2) For the purposes of subsection (1), books of account which do not give a true and fair view of the state of the company's affairs and are not necessary for the preparation of the proper income statements and balance sheets in accordance with sections 129 to 135 are not proper books of account.

(3) The books of account may be kept by making entries in bound volumes, or, subject to compliance with subsections (2) and (3) of section 276, by a system of electronic recording, or otherwise.

(4) The books of account shall be kept at the registered office of the company or at any other place in Ghana that the directors consider fit, and shall be open to inspection by the directors, Company Secretary and auditors of the company.

(5) The financial statements of a company shall

- (a) comprise an income statement, balance sheet, statement of cash flows, statement of changes in equity and summary of significant accounting policies and other explanatory notes to the financial statements; and
- (b) be prepared in compliance with international financial reporting standards approved by the Institute of Chartered Accountants, Ghana or any other standards approved or adopted by the Institute.

**Circulation of financial statements and reports**

**128.** (1) The directors of a company shall, at a date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year at intervals of not more than fifteen months, prepare and send to every member of the company and to every

*Companies Bill, 2018*

holder of debentures of the company a copy of each of the following documents:

- (a) financial statements prepared and signed in accordance with sections 129 to 135;
- (b) a report by the directors in accordance with section 136; and
- (c) a report by the auditors in accordance with section 137.

(2) Subsection (1) does not require a copy of the documents to be sent to a member or debenture holder of whose address the company is unaware, but that member or debenture holder is entitled to be furnished on demand without charge with a copy of the last of the financial statements and directors' and auditors' reports.

(3) Unless the holding of an annual general meeting is duly waived by the members in accordance with subsection (5) of section 157, the documents referred to in subsection (1) of this section shall be laid before the company in general meeting.

(4) The Registrar may extend the periods of eighteen months and fifteen months referred to in subsection (1) and, in the circumstances referred to in subsection (9) of section 131, may waive the requirements of this section in respect of a calendar year.

**First financial statement after incorporation**

**129.** (1) The financial statements referred to in paragraph (a) of subsection (1) of section 128 shall, in the case of the first financial statement since the incorporation of the company, cover the period since the incorporation of the company and, in any other case, cover the period since the preceding account and shall be made up to a date not earlier than nine months or more from the date on which it is to be sent to members and debenture holders pursuant to section 128.

(2) For the purposes of subsection (1),

- (a) in the case of an existing company which has not previously prepared an income statement and a cash flow statement and which was not required by its constitution to prepare one, the first financial statement need not cover a period commencing earlier than the date of the commencement of this Act; and
- (b) the Registrar may extend the period of nine months.

## *Companies Bill, 2018*

(3) The date to which the income statement and cash flow statement is to be made up in accordance with subsection (1) is the end of the company's financial year.

(4) The income statement and the cash flow statement shall, subject to subsection (5) of section 131, relating to a consolidated financial statement,

- (a) give a true and fair view of the profit or loss of the company for the period to which it relates; and
- (b) comply with the requirements of sections 131 to 135 and Part One of the Sixth Schedule.

(5) The Registrar may, on the application or with the consent of the company's directors, modify in relation to that company any of the requirements in Part One of the Sixth Schedule for the purpose of adapting them to the circumstances of the company, but a modification shall not derogate from the obligation imposed by paragraph (a) of subsection (4) to give a true and fair view of the profit or loss of the company.

### **Balance sheet**

**130.** (1) The balance sheet as part of the financial statements referred to in paragraph (a) of subsection (1) of section 128 shall give a true and fair view of the state of affairs of the company as at the end of the company's financial year and shall comply with the requirements of sections 131 to 135 and Part Two of the Sixth Schedule.

(2) The Registrar may, on the application or with the consent of the company's directors, modify any of the requirements in Part Two of the Sixth Schedule for the purpose of adapting them to the circumstances of the company, but a modification shall not derogate from the obligation imposed by subsection (1) to give a true and fair view of the state of affairs of the company.

### **Consolidated financial statements**

**131.** (1) At the end of a company's financial year, this section shall apply where a company has subsidiaries.

(2) Financial statements dealing with the operating results and the state of affairs of the company and the subsidiaries, that is to say, the consolidated financial statements, shall, subject to subsection (3), be sent to the members and debenture holders of the company with the company's own financial statements pursuant to section 128.

*Companies Bill, 2018*

- (3) Despite subsection (2),
- (a) consolidated financial statements shall not be required where the company at the end of the company's financial year is the wholly owned subsidiary of another company; and
  - (b) subject to the approval of the Registrar, consolidated financial statements need not deal with a subsidiary of the company if the company's directors are of opinion that,
    - (i) it is impracticable or would not be of a real value to the members and debenture holders of the company in view of the insignificance of the amount of money involved;
    - (ii) it would involve expense or delay out of proportion to the value to members and debenture holders of the company;
    - (iii) the result would be misleading or harmful to the business of the company or any of its subsidiaries; or
    - (iv) the business of the holding company and that of the subsidiaries are so different that they cannot reasonably be treated as a single undertaking.
- (4) The consolidated financial statement shall comprise
- (a) consolidated balance sheet,
  - (b) consolidated income statement,
  - (c) consolidated statement of changes in equity,
  - (d) consolidated statements of cash flows,
  - (e) a description of significant accounting policies, and
  - (f) explanatory notes to the consolidated financial statements.
- (5) The consolidated financial statement shall
- (a) give a true and fair view of the profit or loss and of the state of affairs of the company and the subsidiaries dealt with by the consolidated financial statement as a whole, so far as concerns the interest of the company; and
  - (b) be prepared in compliance with international financial reporting standards adopted by the Institute of Chartered Accountants, Ghana.

*Companies Bill, 2018*

(6) The financial statements of the company and the consolidated financial statements, shall comply with the requirements of Part Three of the Sixth Schedule.

(7) The Registrar may, on the application or with the consent of the company's directors, modify in relation to that company any of the requirements in Part Three of the Sixth Schedule for the purpose of adapting them to the circumstances of the company; but a modification shall not derogate from the obligation imposed by subsection (5) to give a true and fair view of the profit or loss and the state of affairs of the company and the subsidiaries as a whole, so far as concerns the interests of the company.

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

(9) Where it appears to the Registrar that it is desirable for a holding company or subsidiary company to extend its financial year so that the subsidiary's financial year may end with that of the holding company, and for that purpose to postpone the despatch of the financial statement and reports referred to in section 128, from one calendar year to another, the Registrar may direct that the despatch of the financial statements by one or other of these companies shall not be required in the earlier years of the calendar.

(10) Where the financial year of a subsidiary does not coincide with that of the holding company, the consolidated financial statements shall, unless the Registrar otherwise directs, deal with the subsidiary's profit or loss for, and the state of affairs as at the end of, its financial year ending last before that of the holding company.

**Particulars of directors' emoluments and pensions**

**132.** (1) In a note to the financial statements of a company, there shall be shown in accordance with this section, the following information in so far as it is contained in the company's books or accounting records, or



*Companies Bill, 2018*

the company has obtained the information from the persons concerned or has the right to obtain it under section 134, namely,

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

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

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

(4) For the purposes of subsection (3), it is not necessary to include a pension paid or receivable under a pension scheme where the contributions are substantially adequate for the maintenance of the scheme.

(5) The amount to be shown under paragraph (c) of subsection (1) shall include the sums of moneys paid to or receivable by a director or past director by way of compensation for the loss of office as director of the company or for the loss, while a director of the company, or in connection with that person ceasing to be a director of the company, of any other office in the company or of an office in an associated company; and a sum of money and the value of any other valuable consideration paid or receivable in connection with retirement from office or as damages for breach of contract of service, shall be deemed to be paid or receivable by way of compensation for loss of office.

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

*Companies Bill, 2018*

(7) The amounts to be shown under this section for a financial year shall, be the sums of money 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.

(8) For the purposes of subsection (7), the sums paid in advance of the financial year to which they are expressed to relate shall be shown in the accounts for the financial year in which they are paid.

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

**Particulars of amounts due from officers**

**133.** (1) In a note to the financial statements of a company, there shall subject to this section, be separately shown,

- (a) the aggregate amount of the sums of money due to the company or an associated company at the end of the company's financial year from an officer of the company or of an associated company; and
- (b) the maximum amount of the sums of money due to the company and an associated company at any time during the company's financial year from any officer of the company or of an associated company.

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

(3) Despite subsections (1) and (2), the following do not require to be separately shown:

- (a) an indebtedness incurred as a result of a transaction in the ordinary course of business by the company or an associated company unless the indebtedness has not been discharged within three months from the day of the transaction;
- (b) a loan made in the ordinary course of business by a company, the ordinary business of which includes the lending of money; or

*Companies Bill, 2018*

(c) a loan made by the company or an associated company to an officer of the company or associated company if the loan does not exceed five thousand Ghana Cedis or two per cent of the stated capital of the company concerned, whichever is less, and is certified by the directors of the company concerned to have been made in accordance with a practice adopted, or about to be adopted, by that company with respect to loans to those employees.

(4) Paragraphs (b) and (c) of subsection (3) shall not include a loan made by a company under a guarantee from or on security provided by an associated company.

(5) References in this section to an associated company include a reference to a company which is an associated company at the end of the company's financial year, whether or not an associated company at the date of the transaction concerned.

(6) This section does not derogate from section 311 prohibiting loans by public companies to their directors or directors of their associated companies.

**Provisions supplemental to sections 127 to 133**

**134.** (1) A reference in this Act to the financial statements of a company includes the notes on those financial statements and a document annexed to those financial statements giving information which is required by this Act.

(2) A reference in this Act to a statement of income of a company limited by guarantee or any other company not trading for profit shall be construed as a reference to its statement of income and expenditure and reference to income and expenditure, and reference to income statement and consolidated income statement shall be construed accordingly.

(3) Where a person, who is a director of a company, fails to take the reasonable steps necessary to secure compliance with sections 127 to 133, that person commits an offence and is, in respect of each offence, liable on summary conviction to a fine of not less than two hundred and fifty penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than one year and more than two years or to both the fine and imprisonment.

*Companies Bill, 2018*

- (4) For the purposes of subsection (3),
- (a) in proceedings against a person for an offence, that person may as a defence prove that that person had reasonable cause to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that those provisions were complied with and was in a position to discharge that duty; and
  - (b) a person shall not be sentenced to imprisonment for an offence unless, in the opinion of the Court, the offence was committed wilfully.

(5) A director and former director of the company shall give notice in writing to the company of the matters relating to that director or former director that may be necessary to enable the company to comply with sections 132 and 133, and if notice is given, the director or former director shall secure that it is brought up and read at the next meeting of the directors after it is given.

(6) It is not necessary for a person under subsection (5) to give written notice of loans, guarantees or securities made or given by the company itself.

(7) A person who defaults in complying with subsection (5) is liable to pay to the Registrar an administrative penalty of two hundred and fifty penalty units.

(8) A company shall give a written notice to an associated company relating to a transaction entered into by the first named company that may be necessary to enable the associated company comply with sections 132 and 133.

(9) Where a company defaults in complying with subsection (8), the company and every officer of the company, that is in default is liable to pay to the Registrar an administrative penalty of two hundred and fifty penalty units.

**Signing and publication of financial statements**

**135.** (1) A company shall not issue, publish or circulate a copy of a financial statement unless,

- (a) the company attaches to the financial statements the directors' report and the auditors' report required under sections 136 and 137, and

*Companies Bill, 2018*

- (b) the financial statements have been approved by the board of directors and, after that approval, signed on their behalf by two directors.
- (2) Subsection (1) does not prohibit the publication of
  - (a) a fair and accurate summary of the financial statement and the auditors' report on that financial statement after it has been approved by, and signed on behalf of, the board of directors; and
  - (b) a fair and accurate summary of the profit or loss figures for part of the company's financial year.
- (3) In the event of a breach of subsection (1), the company and every officer of the company that is in default is liable to pay to the Registrar an administrative penalty of one hundred and fifty penalty units.

**Directors' report**

**136.** (1) The report of the directors referred to in paragraph (b) of subsection (1) of section 128, shall consist of a report on

- (a) details on the state of the company's affairs and, if the company is a holding company, on the state of affairs of the company and its subsidiaries as a group, and the amount of money which they recommended shall be paid by way of dividend,
  - (b) the particulars of entries in the interests register during the financial year,
  - (c) the total amount of donations made by the company and any subsidiary during the financial year; and
  - (d) the amount payable by way of audit fees.
- (2) The report shall deal, so far as is material for the appreciation of the state of the company's affairs, with any change during the financial year in the nature of the business of the company or of the company's associated companies, or in the classes of business in which the company has an interest, whether as member of another company or otherwise.
- (3) The report shall contain a list of bodies corporate in relation to which is fulfilled at the end of the company's financial year, the condition that

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

*Companies Bill, 2018*

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

(4) The list referred to in subsection (3) shall distinguish between bodies corporate falling within paragraphs (a) and (b) of that subsection and shall state as regards each company,

- (a) its name;
- (b) its country of incorporation; and
- (c) the nature of the business carried on by it.

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

(6) If, on an application made by the directors, the Registrar is satisfied that mention of any of the matters referred to in subsections (2) (3), (4) and (5) would be harmful to the business of the company or any of its associated companies, the Registrar may direct that the matter need not be mentioned in the report of a financial year.

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

(8) A director who fails to take the reasonable steps necessary to comply with this section is liable to pay to the Registrar, an administrative penalty of one hundred and fifty penalty units.

**Auditors' report**

**137.** (1) The report by the auditors referred to in paragraph (c) of subsection (1) of section 128, shall

- (a) consist of a report, addressed to the members of the company, by an auditor or auditors duly qualified and appointed as auditors of the company in accordance with sections 138 and 139 on
  - (i) the books of account of the company, and
  - (ii) every balance sheet, income statement, cash flow statement and the consolidated financial statements to be sent to the members and debenture holders of the company in accordance with sections 128 and 131; and

*Companies Bill, 2018*

(b) contain statements as to the matters mentioned in the Seventh Schedule.

(2) Where, in the case of the financial statements, any of the particulars required to be shown under sections 132 and 133 are not shown, the report, in addition to stating that the financial statements do not give the information required by this Act, shall contain a statement giving the required particulars so far as the auditors are reasonably able to do so.

(3) The audit of the financial statements shall, in the case of a public or private company be carried out in compliance with international standards on auditing adopted by the Institute of Chartered Accountants, Ghana and it shall be sufficient if the auditor's report complies with the financial standards and accords with terminology approved by the Institute of Chartered Accountants, Ghana.

(4) The report shall be open to inspection by a member or debenture holder of the company at the registered office of the company during usual business hours and shall be read at an annual general meeting of the company held within three months after it is sent to members and debenture holders in accordance with section 128.

**Qualification of auditors**

**138.** (1) A person is qualified for appointment as an auditor of a private or public company, if that person is,

- (a) qualified and licensed in accordance with the Chartered Accountants Act, 1963 (Act 170) or a statutory modification or re-enactment of that Act; and
- (b) not disqualified under subsection (2).

(2) A person is disqualified for appointment as auditor, if that person is

- (a) an officer of the company or of an associated company;
- (b) a partner of, or in the employment of, an officer of the company or of an associated company;
- (c) an infant;
- (d) found by a competent court to be a person of unsound mind;
- (e) a body corporate, except that members of an incorporated partnership may be appointed in the manner provided by subsection (2) of section 139;

*Companies Bill, 2018*

- (f) one in respect of whom an order has been made under section 177 so long as the order remains in force unless leave to act as auditor of the company concerned has been given by the Court in accordance with that section;
- (g) an undischarged bankrupt, unless that person has been granted leave to act as auditor of the company concerned by the Court by which the adjudication as bankrupt was made; or
- (h) for the time being disqualified from acting as auditor of a company by order of the Registrar under subsection (4).

(3) Paragraph (b) of subsection (2) does not disqualify a person from being appointed as auditor by reason only of the fact that that person is a partner or in the employment of a person acting as secretary of the company or of an associated company.

(4) The Registrar may, on cause being shown, by legislative instrument, disqualify a person otherwise qualified from acting as auditor of a private company and may at any time remove that disqualification.

(5) A person aggrieved by a decision of the Registrar under subsection (4) has a right to appeal to the Court.

(6) A person not qualified for appointment as an auditor who acts as an auditor, commits an offence and is liable on summary conviction to a fine of not less than three hundred and twenty-five penalty units and not more than seven hundred and fifty penalty units and the company by whom that person is appointed and an officer of that company that is in default is liable to pay to the Registrar an administrative penalty of seven hundred and fifty penalty units.

**Appointment of auditors**

**139.** (1) A person shall not be appointed as an auditor of a company unless, that person

- (a) has, before the appointment, consented in writing to be appointed; and
- (b) is duly qualified in accordance with section 138.

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

(3) Despite a contrary provision in a company's constitution, an auditor shall be appointed by ordinary resolution of the company and not otherwise.



*Companies Bill, 2018*

- (4) For the purposes of subsection (3),
  - (a) the directors may appoint the first auditors of a company and may fill a casual vacancy in the office of auditor; or
  - (b) if a company does not have an auditor for a continuous period of three months the Registrar may appoint an auditor for that company.
- (5) An existing auditor shall continue in office until,
  - (a) that auditor ceases to be qualified for appointment;
  - (b) that auditor resigns from office by notice in writing to the company; or
  - (c) an ordinary resolution is duly passed at an annual general meeting in accordance with section 141 removing that auditor from office or appointing any other person in place of that auditor as from the conclusion of the annual general meeting;

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

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

- (7) For the purposes of subsection (6)
  - (a) where a partnership firm has been appointed auditor in the name of the firm, the firm's name and business address shall be given to the Registrar, and
  - (b) a change in the constitution of the firm or of the partners in the firm who is an auditor of the company is not a change in the auditors.

(8) Before accepting the appointment as auditor of a company, the auditor shall communicate with the retiring auditor and request the retiring auditor to make any representations and supply information about the company.

(9) The retiring auditor shall respond to the request and supply the requisite information.

(10) Where a company contravenes a provision of this section or describes as auditor of the company a person who has not been duly appointed, the company and an officer of the company that is in default are liable to pay to the Registrar an administrative penalty of two hundred and fifty penalty units.

**Remuneration of auditors**

**140.** (1) The remuneration of an auditor of a company shall be fixed where the auditor is appointed

- (a) by the directors for the period expiring at the conclusion of the next annual general meeting of the company;
- (b) by the Registrar; or
- (c) at a meeting of the company, by ordinary resolution of the company or in a manner that the company by ordinary resolution may determine.

(2) For purposes of full disclosure, the

- (a) company shall clearly state in the financial statements which are accessible and reported to shareholders of the company the remuneration offered to auditors of the company for any service rendered; and
- (b) remuneration payable to an auditor of the company shall be subject to confirmation by members of the company.

(3) For the purposes of this section, the sums of money paid or payable by the company in respect of the auditors' expenses shall be included in the expression "remuneration".

(4) Where a company contravenes a provision of this section, the company and an officer of the company that is in default are liable to pay to the Registrar an administrative penalty of two hundred and fifty penalty units.

**Removal of auditors**

**141.** (1) A resolution to remove an auditor or to appoint any other person in the place of that auditor is not effective unless,

- (a) written notice has been given to the company of the intention to move it, not less than thirty-five days before the general meeting at which it is to be moved and on its receipt, the company has forthwith sent a copy of the resolution to the auditor concerned;
- (b) it is passed at a general meeting of the company; and
- (c) the company has given its members notice of the resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, has given them

*Companies Bill, 2018*

notice of the resolution in the same manner as notices of meetings are required to be given not less than twenty-one days before the meeting.

- (2) For the purposes of subsection (1),
  - (a) if, after notice of the intention to move the resolution is given to the company, an annual general meeting is called for a date thirty-five days or less after the notice has been given to the company, the notice is properly given; and
  - (b) in the case of a resolution to remove an auditor appointed by the directors in accordance with subsection (4) of section 139 or to appoint any other person in place of an auditor so appointed, subsection (1) shall have effect with the substitution of fourteen days for thirty-five days in paragraph (b) and seven days for twenty-one days in paragraph (c).
- (3) The auditor concerned is entitled
  - (a) to be heard on the resolution at the meeting; and
  - (b) to send to the company a written statement, and the company shall send copies of the statement with every notice of the annual general meeting or, if the statement is received too late, shall forthwith circulate to every person entitled under subparagraph (f) of paragraph 1 of the Eighth Schedule the notice of the meeting in the same manner as notices of meetings are required to be given.
- (4) The company is not required to send or circulate the statement under paragraph (b) of subsection (3),
  - (a) if it is received by the company less than seven days before the meeting; or
  - (b) if the Court, on an application made by the company or any other person who claims to be aggrieved, so orders on being satisfied that the statement is unreasonably long or that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; the Court may order the costs of the applicant to be paid in whole or in part by the auditor although the auditor is not a party to the application.

*Companies Bill, 2018*

(5) Without limiting the auditor's right to be heard orally on the resolution, the auditor may, unless the Court makes an order under subsection (4), also require that the written statement by the auditor be read to the meeting.

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

**Functions of auditors**

**142.** (1) An auditor of a company while acting in the performance of functions under this Act, is not an officer or agent of the company, but

(a) stands in a fiduciary relationship to the members of the company as a whole, and

(b) shall act in a manner that a faithful, diligent, careful, and ordinarily skilful auditor would act in the circumstances.

(2) A provision, whether contained in the constitution of a company, or in a contract, or in a resolution of a company, shall not relieve an auditor

(a) from the duty to act in accordance with subsection (1); or

(b) from a liability incurred as a result of a breach of that duty.

(3) An auditor shall have a right of access at all times to the books and financial statements and vouchers of the company and is entitled to require from the officers of the company the information and explanation that the auditor thinks necessary for the performance of the auditor's functions.

(4) The auditor of a company is entitled

(a) to attend a general meeting of the company,

(b) to receive the notices of, and other communications relating to, a general meeting, and

(c) to be heard at a general meeting on any part of the business of the meeting which concerns the auditor.

(5) The auditor of a company may apply to the Court for directions in relation to a matter arising in connection with the performance of functions under this Act.

(6) On receipt of that application, the Court may give directions that the Court considers just and unless the Court otherwise directs, the costs of the application shall be paid by the company.

**Auditor to avoid conflict of interest**

**143.** (1) An auditor of a company shall ensure that, in carrying out the duties of an auditor under this Part, that the personal judgment of that auditor is not impaired by reason of any relationship with or interest in the company or any of its subsidiaries.

(2) Without limiting subsection (1), a company, person or firm that carries out duties of an auditor shall not engage in any relationship with a client that will result in a conflict of interest between that person or firm and that client including a relationship with a client that will;

- (a) place the person or firm in the position of auditing its own work;
- (b) result in that person or firm acting as management or an employee of the client; or
- (c) place that person or firm in a position of being an advocate for the client.

(3) Subsection (2) applies to the appointment of an auditor who is appointed to perform the services of a receiver.

*Part O: Acts by or on behalf of the Company*

**Division of powers between general meeting and board of directors**

**144.** (1) A company shall act through its members in general meeting or its board of directors or through officers or agents, appointed by, or under authority derived from the members in general meeting or the board of directors.

(2) Subject to this Act, the respective powers of the members in general meeting and the board of directors may be determined by a company's constitution.

(3) Except as otherwise provided in the company's constitution, the business of the company shall be managed by the board of directors who may exercise the powers of the company that are not by this Act or the constitution required to be exercised by the members in general meeting.

(4) Unless the company's constitution otherwise provides, the board of directors when acting within the powers conferred on them by this Act or the constitution of the company, are not bound to obey the directions or instructions of the members in general meeting.

*Companies Bill, 2018*

- (5) Subject to section 145, the members in general meeting may
- (a) act in a matter if the members of the board of directors are disqualified or are unable to act by reason of a deadlock on the board or otherwise;
  - (b) institute legal proceedings in the name of and on behalf of the company if the board of directors refuses or neglects to do so;
  - (c) ratify or confirm an action taken by the board of directors; or
  - (d) make recommendations to the board of directors regarding an action to be taken by the board.

(6) An amendment of the constitution of a company shall not invalidate a prior act of the board of directors which would have been valid if that alteration had not been made.

**Major transactions**

**145.** (1) A company shall not enter into a major transaction unless the transaction is

- (a) approved by special resolution; or
- (b) contingent on approval by special resolution.

(2) For the purposes of this section,

- (a) 'assets' include property of any kind whether tangible or intangible;
- (b) 'major transaction' means
  - (i) the acquisition of, or an agreement to acquire, whether contingent or otherwise, assets the value of which is more than seventy-five percent of the value of the company's assets before the acquisition; or
  - (ii) the disposition of, or an agreement to dispose of, whether contingent or otherwise, assets of the company the value of which is more than seventy-five per cent of the value of the company's assets before the disposition; or
  - (iii) a transaction that has or is likely to have the effect of the company acquiring rights or interests or incurring obligations or liabilities, including contingent liabilities, the value of which is seventy-five percent of the value of the company's assets before the transaction; and

*Companies Bill, 2018*

- (c) the company's assets as regards major transactions under paragraph (b), include the assets of the company and its subsidiaries.

(3) The provisions of paragraphs (a) and (b) of subsection (2) shall not affect an agreement entered into by a company to give a charge secured over the assets of that company the value of which is more than seventy-five percent of the company's assets, for the purpose of securing the repayment of money or the performance of an obligation.

(4) In assessing the value of a contingent liability for the purposes of subparagraph (iii) of subsection (2) (b), the directors

- (a) shall have regard to every circumstance that the directors know, or ought to know, affects, or may affect, the value of the contingent liability;
- (b) may rely on estimates of the contingent liability that are reasonable in the circumstances; and
- (c) may take account of
  - (i) the likelihood of the contingency occurring; and
  - (ii) any claim the company is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.

(5) The provisions of this section do not apply to a major transaction entered into by a receiver appointed pursuant to an instrument that creates a charge over the whole of or a substantial part of the property of a company.

**Delegation to committees and managing directors**

**146.** Unless otherwise provided in the constitution of a company, the board of directors,

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

**Acts of the company**

**147.** (1) An act of the members in general meeting, of the board of directors, or of a managing director while carrying on in the usual way the business of the company, is the act of the company itself; and accordingly the company is criminally and civilly liable for that act to the same extent as if it were a natural person.

(2) For the purposes of subsection (1),

- (a) the company does not incur civil liability to a person if that person had actual knowledge at the time of the transaction in question that the general meeting, board of directors, or managing director, did not have the power to act in the matter or had acted in an irregular manner or if, having regard to the position with, or relationship to, the company, that person ought to have known of the absence of the power or of the irregularity; or
- (b) if in fact a business is being carried on by the company, the company shall not escape liability for acts undertaken in connection with that business merely because the business in question was not among the businesses authorised by the company's constitution.

**Acts of officers or agents**

**148.** (1) Except as provided in section 147, the acts of an officer or agent of a company are not acts of the company, unless,

- (a) the company, acting through its members in general meeting, the board of directors, or managing director, has expressly or impliedly authorised that officer or agent to act in the matter; or
- (b) the company, acting under paragraph (a) has represented to the officer or agent as having its authority to act in the matter, in which event the company is civilly liable to a person who has entered into the transaction in reliance on that representation, unless that person had actual knowledge that the officer or agent did not have the authority or unless, having regard to the position with, or relationship to, the company, that person ought to have known of the absence of authority.

(2) The authority of an officer or agent of the company may be conferred before action is taken by that officer or agent or by subsequent ratification.



*Companies Bill, 2018*

(3) The knowledge of action by that officer or agent and acquiescence in that action by

- (a) the members for the time being entitled to attend general meetings of the company,
- (b) the directors for the time being, or
- (c) the managing director for the time being,

is equivalent to ratification by the members in general meeting, by the board of directors, or by the managing director.

(4) This section does not derogate from the vicarious liability of a company for the acts of its employees while acting within the scope of their employment.

**No constructive notice of registered documents**

**149.** Except as provided in section 121, regarding particulars in the register of particulars of charges, a person shall not be deemed to have knowledge of any particulars, documents, or the contents of documents by reason only that those particulars or documents are registered by the Registrar or referred to in any particulars or documents so registered.

**Presumption of regularity**

**150.** (1) A person having dealings with a company or with any other person who derives title under the company is entitled to assume,

- (a) that the company has been duly incorporated under this Act;
- (b) that a person described in the particulars filed with the Registrar pursuant to sections 13 and 216 as a director, managing director or Company Secretary of the company, or represented by the company, acting through its members in general meeting, board of directors, or managing director, as an officer or agent of the company, has been duly appointed and has authority to exercise the powers and perform the duties customarily exercised or performed by a director, managing director, or Company Secretary of a company carrying on business of the type carried on by the company or customarily exercised or performed by an officer or agent of the type concerned;

*Companies Bill, 2018*

- (c) that the Company Secretary, and any other officer or agent of the company having authority to issue documents or certified copies of documents on behalf of the company has authority to warrant the genuineness of the documents or the accuracy of the copies so issued; or
- (d) that a document has been duly authenticated by the company if
  - (i) it bears what purports to be the seal of the company attested by what purports to be the signatures of two persons who, in accordance with paragraph (b), can be assumed to be a director and the Company Secretary of the company; or
  - (ii) it is certified by what purports to be the signatures of two directors and the Company Secretary of the company

and the company and those deriving title under it are estopped from denying the truth of that assumption.

- (2) For the purposes of subsection (1),
  - (a) a person is not entitled to make any of those assumptions if that person had actual knowledge to the contrary or if, having regard to the position with, or relationship to, the company, that person ought to have known the contrary; or
  - (b) a person is not entitled to assume that any one or more of the directors of the company has or have been appointed to act as a committee of the board of directors or that an officer or agent of the company has the company's authority by reason only that the company's constitution provides that authority to act in the matter may be delegated to a committee or to an officer or agent.

**Liability of company not affected by officer's fraud or forgery**

**151.** Where, in accordance with sections 147 to 150, a company would be liable for the acts of an officer or agent, the company is liable although the officer or agent has acted fraudulently or forged a document purporting to be sealed by, or signed on behalf of, the company.

**Form of contracts**

**152.** A contract on behalf of a company may be made, varied or discharged if the contract, if made between individuals would

- (a) by law be required to be in writing under seal, or could be varied or discharged by writing under seal only, or may be made, varied or discharged in writing;
- (b) by law be required to be in writing or to be evidenced in writing by the parties to be charged therewith or could be varied or discharged only by writing or written evidence signed by the parties to be charged, may be made, evidenced, varied or discharged, in writing signed acting under its authority express or implied in the name or on behalf of the company; or
- (c) be valid although made orally only and not reduced to writing or could be varied or discharged orally, may be made, varied or discharged, orally on behalf of the company acting under its authority express or implied as if it were under the seal of the company.

**Bills of exchange and promissory notes**

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

(2) The company and its successors are bound if the company is, in accordance with sections 147 to 151, liable for the acts of those who made, accepted or endorsed in its name or on its behalf or account, and a signature by a director or the secretary on behalf of the company shall not be deemed to be a signature by procuration for the purposes of section 23 of the Bills of Exchange Act, 1961 (Act 55).

**Authentication of documents**

**154.** (1) A document or proceeding requiring authentication by a company may be signed on its behalf by an officer of the company.

(2) For the purposes of this section, an “officer” means a director, Company Secretary or any other person authorised by the board of directors or Managing Director of a company to sign a document on behalf of the company.

**Execution of deeds abroad**

**155.** (1) A company may, by an instrument in writing executed in accordance with paragraph (d) of subsection (1) of section 150 empower a person generally or in respect of a specified matter, as its attorney to execute deeds on its behalf in a place outside the Republic.

(2) A deed signed by that attorney on behalf of the company in respect of the instrument binds the company.

**Official seal for use abroad**

**156.** (1) A company may, by its constitution, authorise for use in a territory, district, or place not situated in the Republic, an official seal which is a facsimile of the common seal of the company with the addition on its face of the name of the territory, district or place where it is to be used.

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

(3) The directors may provide for the safe custody of the seal, which shall only be used by the authority of the board of directors or of a committee of the directors authorised by the board of directors in that behalf, and an instrument to which the seal is affixed shall be signed by a director, and shall be countersigned by the Company Secretary or by a second director or by some other person appointed by the directors for the purpose.

(4) The company may exercise the powers conferred under this section with regard to having an official seal for use abroad, and those powers shall be vested in the board of directors.

(5) A person dealing with an agent of the company in reliance on a writing conferring the authority is entitled to assume that the authority of the agent continues during the period mentioned in the writing or, if a period is not there mentioned, until that person has actual notice of the revocation or determination of the authority.

(6) The person affixing the official seal shall, by writing signed personally by that person, certify on the document to which the seal is affixed, the date on which and the place at which the seal is affixed.

*Companies Bill, 2018*

*Part P: General Meetings and Resolutions*

**Annual general meetings**

157. (1) Except as provided in subsection (4), a company
- (a) shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and
  - (b) shall specify the meeting as the annual general meeting in the notice calling the meeting.
- (2) Not more than fifteen months shall elapse between the date of one annual general meeting and the next.
- (3) If a company holds its first annual general meeting within eighteen months of its incorporation, it is not required to hold it in the year of its incorporation or in the following year.
- (4) The annual general meeting shall be held not earlier than twenty-one days after the company's financial statements, the consolidated financial statements, and the reports of the directors and auditors on the financial statements have been despatched to members and debenture holders of the company in accordance with section 128; and the financial statements, and reports shall be laid before the annual general meeting for consideration.
- (5) If the auditors of the company and the members of the company entitled to attend and vote at an annual general meeting agree in writing that an annual general meeting shall be dispensed with in any year, it shall not be necessary for that company to hold an annual general meeting that year.
- (6) If the annual general meeting is not held in accordance with subsection (5), the Registrar may, on the Registrar's own motion or on the application of an officer or a member of the company, call, or direct the calling of, an annual general meeting of the company, and may give the ancillary or consequential directions that the Registrar thinks fit, including directions modifying or supplementing, in relation to the venue, calling, holding and conducting of that meeting, the operation of
- (a) section 159,
  - (b) paragraphs 1 to 3 of the Eighth Schedule,
  - (c) paragraphs 8, 9, 12, 13 of the Eighth Schedule,
  - (d) paragraphs 15 to 19 of the Eighth Schedule, and
  - (e) the company's constitution where applicable.

*Companies Bill, 2018*

(7) Where a meeting held in pursuance of subsection (6) is not held in the year in which the default in holding the company's annual general meeting occurred, the meeting so held shall be treated as the annual general meeting for that year, but shall not be treated as the annual general meeting for the year in which it is held unless, at that meeting, the company resolves that it shall be so treated.

(8) Where a company passes a resolution pursuant to subsection (5) or (7), a copy of the resolution shall, within twenty-eight days of its passage, be forwarded to the Registrar for registration.

(9) If an annual general meeting of the company is not held in

(a) accordance with subsection (1),

(b) compliance with the directions of the Registrar under subsection (6), or

(c) compliance with subsection (4), (7) or (8) of this section,

the company and every officer of the company that is in default is liable to pay to the Registrar an administrative penalty of one hundred and fifty penalty units.

**Extraordinary general meetings**

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

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

(3) An extraordinary general meeting of a private company may be requisitioned in accordance with section 282 and an extraordinary general meeting of a public company may be requisitioned in accordance with section 307.

**Place of meetings**

**159.** Unless a company's constitution otherwise provides, the general meetings shall be held in the Republic.

**Notice on proxy**

**160.** (1) In every case in which a member is entitled to appoint a proxy to attend and vote pursuant to paragraph 9 of the Eighth Schedule to this Act, instead of that member, the notice shall contain with reasonable prominence, a statement that the member has the right to appoint a proxy

## *Companies Bill, 2018*

to attend and vote instead of that member and that the proxy need not be a member of the company.

(2) If there is a default in complying with this section in respect of a meeting, every officer of the company who is in default is liable to pay to the Registrar an administrative penalty of one hundred and fifty penalty units.

### **Compliance with proxy arrangements**

**161.** (1) A person shall comply with the proxy arrangements for voting and attendance of meetings in accordance with paragraph 9 of the Eighth Schedule.

(2) An officer of the company who knowingly authorises or permits a breach or non-observance of subparagraphs (g), (h), (i) or (k) of paragraph 9 of the Eighth Schedule, is liable to pay to the Registrar an administrative penalty of two hundred and fifty penalty units; and in the event of a refusal to permit inspection in accordance with subparagraph (g) of paragraph 9 of the Eighth Schedule, the Court may by order compel an immediate inspection.

### **Power of Court to order meeting**

**162.** (1) If for a good reason it is impracticable to call a meeting of a company in a manner in which meetings of that company may be called, or to conduct the meeting of the company in the manner prescribed by a company's constitution, the Court may on the application of a director, a member of the company or the Registrar order a meeting of the company to be called, held and conducted in the manner that the Court considers fit.

(2) Where that order is made, the Court may give any ancillary or consequential directions that it considers expedient.

(3) A meeting called, held and conducted in accordance with the order is, for the purpose of this Act, a meeting of the company duly called, held and conducted.

### **Written resolutions**

**163.** (1) Except as provided in subsection (5), a resolution in writing signed by all the members for the time being entitled to attend and vote on the resolution at a general meeting, or being bodies corporate by their duly authorised representatives, is as valid and effective, for the purposes

## *Companies Bill, 2018*

of this Act as if the resolution had been passed at the general meeting of the company duly convened and held.

(2) Subsection (1) applies where the company has only one member entitled to vote.

(3) A resolution described as a special resolution is a special resolution within the meaning of this Act.

(4) A resolution is passed on the date on which the resolution was signed by the last member to sign, and where the resolution states a date as being the date of the signature by a member, that statement is sufficient evidence that it was signed by that member on that date.

(5) Subsections (1) and (4) do not apply to a resolution to remove an auditor, which can be passed only at a general meeting in accordance with section 141, or to remove a director, which can be passed only at a general meeting in accordance with section 176.

### **Application of provisions on general meetings to class meetings**

**164.** (1) The provisions on general meetings in accordance with section 163 and the provisions of the Eighth Schedule apply to meetings of a class of members in like manner as they apply to general meetings of companies, but the necessary quorum shall be as set out in subsection (2) and a member of the class present in person or by proxy may demand a poll.

(2) At a meeting of a class of members, the necessary quorum shall be,

- (a) if there are not more than two members of that class, one member present in person or by proxy; or
- (b) in any other case, two members, present in person or by proxy, holding not less than one-third of the total voting rights of that class.

(3) A company's constitution may provide for a larger, but not for a smaller, quorum for the purposes of subsection (2).

### **Registration of copies of certain resolutions**

**165.** (1) A certified true copy of a special resolution of a general meeting or of a class of members and of a resolution

- (a) to which a specified proportion of a class of members have consented in writing, and
- (b) which would not have been effective for its purpose, unless the written consent had been given, without the passing of a special resolution,



*Companies Bill, 2018*

shall be forwarded to the Registrar for registration within twenty-eight days after the passing of the resolution or the making of the copy.

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

(3) A copy of a special resolution of a general meeting of the company for the time being in force shall be embodied in or annexed to a copy of the company's constitution after the passing of the resolution, but where the sole effect of the special resolution is to amend a constitution, this subsection is sufficiently complied with if a copy of the constitution adopted after the passing of the resolution embodies the effect of the amendment and refers to the date of the passing of the special resolution.

(4) Where a company fails to comply with this section, the company and every officer of the company that is in default is liable to a fine of not more than twenty-five penalty units for each default.

**Minutes of general meetings**

**166.** (1) A company shall cause minutes of the proceedings of general meetings and meetings of a class of members to be entered in a book or books kept for the purpose.

(2) A minute under subsection (1), if purporting to be signed by the chairperson of the meeting at which the proceedings took place or of the next succeeding meeting, is sufficient evidence of the proceedings.

(3) Where minutes have been made in accordance with this section, until the contrary is proved, the meeting shall be deemed to be duly held, convened and conducted.

(4) Where a company fails to comply with subsection (1), the company and each officer of the company that is in default is liable to pay to the Registrar an administrative penalty specified by the Registrar by legislative instrument.

**Inspection of minute books**

**167.** (1) The books containing the minutes of proceedings of a general meeting or class meetings of a company shall be kept at the registered office of the company and shall, during business hours, subject to reasonable restrictions that a company's constitution may impose, be open to the inspection of a member without charge.

*Companies Bill, 2018*

(2) Not less than two hours in each day other than a Saturday or a Sunday or a public holiday shall be allowed for inspection under subsection (1).

(3) A member is entitled to be furnished at a cost determined by the company, within ten days after the member has made a request in that behalf to the company, with a copy of the minutes.

(4) If an inspection required under this section is refused or if a copy required under this section is not sent within the proper time, the company and every officer of the company that is in default is liable in respect of each offence to pay to the Registrar an administrative penalty of twenty-five penalty units for each day during which the default continues and the Court may, by order, compel an immediate inspection or furnishing of a copy.

**Members' circulars**

**168.** (1) A company shall circulate members' resolutions and supporting circulars and members' circulars in accordance with paragraphs 5 and 6 of the Eighth Schedule.

(2) Despite subsection (1), a company is not required to circulate a resolution or statement in accordance with paragraph 5 or 6 of the Eighth Schedule if on application of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by paragraph 5 or 6 of the Eighth Schedule are being abused to secure needless publicity for defamatory matter.

(3) The Court may order the company's costs to be paid in whole or in part by the member making the request, although that member is not a party to the application.

(4) Where a company defaults in complying with subsection (1), every officer of the company who is in default is liable to pay to the Registrar an administrative penalty of one hundred and fifty penalty units.

**Proceedings at meetings**

**169.** Unless the constitution of a company provides otherwise, the provisions specified in the Eighth Schedule shall govern the proceedings at meetings of a company except to the extent that the registered constitution of the company makes provision for the matters that are expressed in that Schedule to be subject to the registered constitution of the company.

*Companies Bill, 2018*

*Part Q: Directors, Secretary and Other Officers of a Company*

**Meaning of “directors”**

**170.** (1) For the purposes of this Act “directors” means those persons, by whatever name called, who are appointed to direct and administer the business of the company.

- (2) A person, not being a duly appointed director of a company,
- (a) who holds out as a director or knowingly allows to be held out as a director of that company, or
  - (b) on whose directions or instructions the duly appointed directors are accustomed to act,

is subject to the same duties and liabilities as if that person were a duly appointed director of the company.

(3) Subsection (2) shall not derogate from the duties or liabilities of the duly appointed directors, including the duty not to act on the directions or instructions of any other person.

(4) Where a person, who is not a duly appointed director of a company, holds out as a director or knowingly allows to be held out as a director of the company, or if the company holds out that person, or knowingly allows that person to hold out as a director of the company, that person or the company, is liable to pay to the Registrar, an administrative penalty of two hundred and fifty penalty units.

(5) For the purposes of subsections (2), (3) and (4), a person who is described as director of a company, whether the description is qualified by the word “local”, “special”, “executive” or in any other way, shall be deemed to be held out as a director of that company.

**Number of directors**

**171.** (1) A company incorporated after the commencement of this Act shall have at least two directors, one of these directors being ordinarily resident in Ghana.

(2) If at any time the number of directors is less than two in contravention of subsection (1), and the company continues to carry on business for more than four weeks after that time, the company and each director and member of the company that is in default is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which it so carries on business after the expiration of the four weeks without having at least two directors.

*Companies Bill, 2018*

(3) Every director and every member of the company who is cognisant of the fact that it is carrying on business with fewer than two directors are jointly and severally liable for the debts and liabilities of the company incurred during that time.

(4) Subject to this section, the number of directors may be fixed by, or in accordance with, the company's constitution.

**Appointment of directors and filling of vacancy**

**172.** (1) The first directors of a company shall be named in an application for incorporation.

(2) A person shall not be appointed as a director of a company unless that person has, before the appointment

(a) made a statutory declaration filed with the Registrar to indicate that he or she has not within the preceding five years of the application for incorporation of the company been

(i) charged with or convicted of a criminal offence involving fraud or dishonesty;

(ii) charged with or convicted of a criminal offence relating to the promotion, incorporation or management of a company; or

(iii) a director or senior manager of a company that has become insolvent or if the person has been, the date of the insolvency and the particular company; and

(b) consented in writing to be a director and filed the consent within twenty-eight days.

(3) Subject to this section and to sections 173 and 174, the appointment of directors shall be regulated

(a) by section 283 in the case of a private company, and

(b) by sections 308 and 309 in the case of a public company except as otherwise provided in a company's constitution.

(4) The constitution of a company may provide for the appointment of a director or directors by a class of shareholders, debenture holders, creditors, employees or any other person.

(5) Despite a provision to the contrary in a company's constitution, a casual vacancy in the number of directors may be filled by,

*Companies Bill, 2018*

- (a) the continuing directors or director although their number may have been reduced below that fixed as the necessary quorum of directors; or
- (b) an ordinary resolution of the company in general meeting.

(6) In exercising their power to fill a vacancy under subsection (5), the directors shall observe the rules laid down in sections 190 and 191 and shall not appoint a person to be a director unless they have taken reasonable steps to satisfy themselves of that person's integrity and suitability to be a director of the company.

(7) Where the casual vacancy filled under subsection (5) is one which, under the terms of a company's constitution, should be filled by an appointment by a class of shareholders, debenture holders, creditors, employees, or any other person, the director appointed by the continuing directors or by an ordinary resolution of the company in general meeting, shall cease to hold office as soon as any other director is duly appointed in accordance with the constitution.

(8) In the event that

- (a) there are no directors of a company, or the number of directors are less than the quorum required for a meeting of the board; and
- (b) it is not possible or practicable to appoint directors in accordance with a company's constitution

a shareholder or creditor of the company may apply to the Court to appoint one or more persons as directors of the company, and the Court may make an appointment if it considers that it is in the interest of the company to do so.

(9) An appointment by the Court under subsection (8) may be made on such terms and conditions as the Court considers fit.

**Qualification of directors**

**173.** (1) The following persons are not qualified to be appointed or to act as directors of a company, namely,

- (a) an infant;
- (b) a person adjudged to be of unsound mind;
- (c) a body corporate;

*Companies Bill, 2018*

- (d) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of a company as a result of an order made under section 177 so long as the order remains in force unless leave to act as director has been given by the Court in accordance with that section; and
- (e) an undischarged bankrupt, unless that bankrupt has been granted leave to act as director by the Court by which that person was adjudged bankrupt.

(2) Where a person specified in subsection (1), other than a body corporate, or a person of unsound mind, acts as a director of a company or agrees to be appointed a director, that person commits an offence and is liable on summary conviction to a fine of not less than five hundred penalty units and not more than one thousand penalty units or to a term of imprisonment of not less than two years and not more than five years or to both the fine and the imprisonment.

(3) Where a body corporate acts as a director or agrees to be appointed a director, the body corporate and every officer of that body that knowingly permitted it so to act or to be appointed commits an offence and is liable to pay to the Registrar, an administrative penalty of one thousand penalty units.

(4) Where a company appoints a person as director in contravention of this section, the company and every director of the company that is in default is liable to pay to the Registrar, an administrative penalty of one thousand penalty units.

(5) A company's constitution may provide that classes of persons additional to those provided in subsection (1) are incompetent to be directors of the company.

**Directors' share qualification**

174. (1) Unless a company's constitution otherwise provides, a director is not required to be a member of the company or hold a share in the company.

(2) Where a company's constitution requires a director to hold a specified share qualification, every director shall obtain that qualification within two months after appointment as director or a shorter period that may be fixed by the constitution.

*Companies Bill, 2018*

(3) The office of director shall be vacated if the director fails to hold the specified share qualification within two months after appointment or if at any time after the expiration of that period that person ceases to hold that qualification.

(4) Where a company amends its constitution so as to introduce or increase the requirement of a share qualification, every director holding office at the date of the amendment shall have two months within which to obtain the qualification and shall not vacate office under this section unless that director fails to do so.

(5) A person who vacates office under this section is not qualified to be re-appointed a director of the company until that person has obtained the qualification.

**Vacation of office of director**

**175.** (1) The office of director shall be vacated if the director

- (a) becomes incompetent to act as a director by virtue of section 173,
- (b) ceases to hold office by virtue of section 174, or
- (c) resigns from office by notice in writing to the company.

(2) A company's constitution may provide for the termination or vacation of office in circumstances additional to those specified in subsection (1).

**Removal of directors**

**176.** (1) Subject to section 310 and to this section, a company may by ordinary resolution at a general meeting remove from office all or any of the directors despite anything in that company's constitution or in an agreement with the director.

(2) A resolution to remove a director shall not be moved at a general meeting unless notice of the intention to move it has been given to the company not less than thirty-five days before the meeting at which it is to be moved.

(3) If after notice of the intention to move the resolution is given to the company, a meeting is called for a date thirty-five days or less after the notice has been given, the notice is properly given for the purposes of subsection (2).

*Companies Bill, 2018*

(4) The company shall give its members notice of the resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice of the resolution in the same manner as notices of meetings are required to be given not less than twenty-one days before the meeting.

(5) On receipt of notice of an intended resolution to remove a director under this section, the company shall immediately send a copy of the notice to the director concerned and that director, whether or not the director is a member of the company, is entitled,

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

(b) to send to the company a written statement, copies of which the company shall send with every notice of the general meeting or, if the statement is received too late, shall immediately circulate to every person entitled under subparagraph (f) of paragraph 1 of the Eighth Schedule, to notice of the meeting in the same manner as notices of meetings are required to be given.

(6) The company is not required to send or circulate the statement if

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

(b) the Court, on an application by the company or any other person who claims to be aggrieved, so orders on being satisfied

(i) that the statement is unreasonably long, or

(ii) that the rights conferred by this section are being abused to secure needless publicity for defamatory matter;

and the Court may order the costs of the applicant to be paid in whole or in part by the director although the director is not a party to the application.

(7) Without limiting the director's right to be heard orally on the resolution, the director may, unless the Court makes an order, also require that the written statement by the director be read to the meeting.

(8) A vacancy created by the removal of a director under this section, if not filled at the meeting at which the director is removed, may be filled as a casual vacancy in accordance with section 172.



*Companies Bill, 2018*

(9) This section does not deprive a director who has a service agreement with the company of a right to

- (a) compensation to which the director may lawfully be entitled under that agreement on the termination of the directorship, or
- (b) damages if the removal from the directorship constitutes a breach of the service agreement.

**Restraining fraudulent persons from managing companies**

177. (1) Where,

- (a) a person is convicted, whether in the Republic or elsewhere, of
  - (i) an offence involving fraud or dishonesty,
  - (ii) an offence in connection with the promotion, formation or management of a body corporate,
  - (iii) an offence involving insider dealing, or
  - (iv) any other criminal offence which is not a misdemeanour;
- (b) a person is adjudged bankrupt whether in the Republic or elsewhere;
- (c) it appears that a person has been guilty of a criminal offence, whether convicted or not, in relation to a body corporate or of fraud or breach of duty in relation to a body corporate;
- (d) it appears that a person is debarred by the competent authority from being a member of a recognised professional body as the result of a disciplinary inquiry; or
- (e) there is an ongoing investigation by a criminal investigating body or by the Registrar or the equivalent in a foreign jurisdiction regarding the matters in paragraphs (a) to (d)

the Court, on its own motion or on the application of a person referred to in subsection (6), may order that that person shall not, without the leave of the Court, be a director of or in any way, whether directly or indirectly, be concerned or take part in the management of a company or act as auditor, receiver or liquidator of a company for the period specified in the order.

*Companies Bill, 2018*

(2) Without limiting subsection (1), a person is automatically disqualified for appointment as director or to act as a director of a company for a period of five years if that person has

- (a) been convicted within the last five years of an offence involving fraud or dishonesty, or relating to the promotion, formation or running of a company,
- (b) has been a director or senior executive of a company that has become insolvent within the last five years on account of or partly as a result of the culpable activities of that director, or
- (c) has been disqualified to act as Company Secretary, receiver, manager or liquidator of a company.

(3) Where a person referred to in paragraph (a) of subsection (2) is subsequently subject to a

- (a) second conviction, that person shall be automatically disqualified for a period of ten years; and
- (b) third conviction, that person shall be permanently disqualified as a director or to act as a director.

(4) An order under paragraph (a) of subsection (1) may be made by a court in Ghana before which the person is convicted.

(5) A person referred to in paragraph (a) of subsection (2) may apply to the Court for re-instatement before the expiration of the five year automatic disqualification period imposed under subsection (3).

- (6) An application for an order under this section may be made by
- (a) any member or officer of the company,
  - (b) a person who can demonstrate an interest in the case,
  - (c) the Registrar or by the Official Trustee,
  - (d) the trustee in bankruptcy of the person concerned, or
  - (e) by the liquidator of a body corporate.

(7) A person who intends to apply for an order under this section shall give not less than twenty-eight days written notice of that intention to the person against whom the order is sought, and to the Registrar.

*Companies Bill, 2018*

(8) On the hearing of an application under this section, the applicant, the person against whom the order is sought, the Registrar and the Official Trustee may appear, and give evidence and call witnesses.

(9) A person against whom an order is made under this section who intends to apply for leave to act as a director or in the management of a company shall give at least twenty-eight days written notice of that intention to the Registrar, and the Registrar, the Official Trustee, and that person on whose application the order was made or who appeared on the hearing at which the order was made, may appear and give evidence and call witnesses and draw the attention of the Court to any relevant matters.

(10) Where an order is made or leave is granted under this section, the Court making the order or granting leave shall forward a copy to the Registrar who shall publish a summary of the order in the Companies Bulletin.

(11) The Registrar shall maintain a register of orders made under this section and shall enter in the register, particulars of each order and of the leave granted.

(12) The register shall be open to the inspection of a person on payment of a fee determined by the Registrar for each inspection.

(13) A person who acts in contravention of an order made under this section commits an offence and is liable on summary conviction, in respect of each offence to a fine of not less than two hundred and fifty penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than one year and not more than two years or to both the fine and the imprisonment.

(14) For the purpose of this section

- (a) “insider dealing” means buying or selling securities in a company by persons who have access to non-public information about the company; and,
- (b) “senior executive” means an employee who acts in the top hierarchy of a company’s management.

**Duty of director to report disqualification**

**178.** (1) On becoming aware of the disqualification to act as director, the director concerned shall immediately report his or her disqualification to the Board, and the Company Secretary in writing.

*Companies Bill, 2018*

(2) A director who refuses to disclose or misreports his or her disqualification within twenty-one days of the disqualification, commits an offence and is liable on summary conviction to a fine of not less than five hundred penalty units and not more than one thousand penalty units or a term of imprisonment of not less than two years and not more than five years or to both the fine and the imprisonment.

(3) A vacancy created by the disqualification of a director under this section, may be filled as a casual vacancy in accordance with section 172.

**Duty of company to fill vacancy of disqualified director**

**179.** (1) Where a company ceases to have the minimum number of directors, the board of directors of a company shall fill the vacancy of a disqualified director in accordance with section 172.

(2) The board of directors shall deliver or cause to be delivered to the Registrar for registration, notice in an approved form of the change in the directors of that company as a result of a disqualification of a director.

(3) The notice shall be delivered to the Registrar within twenty-eight days after the company becomes aware of the disqualification or the relevant court order is made and shall be accompanied with

- (a) the new director's statutory declaration to be director; and
- (b) a consent form signed by the new director to signify acceptance to be a director.

(4) If the company contravenes the provisions of this section, the company and any director and member of the company that is in default is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which it so carries on business after the expiration of the specified period without filling the vacancy and subsequently notifying the Registrar.

**Substitute directors**

**180.** (1) Unless a company's constitution otherwise provides, a company may appoint substitute directors in accordance with this section.

(2) A substitute director is one who is appointed to act as a deputy for another named director and as the substitute in the absence of that director.

*Companies Bill, 2018*

(3) A substitute director shall not be counted as a director for the purposes of a provision in this Act or the company's constitution prescribing a minimum or maximum number of directors, other than a provision relating to a quorum.

(4) A substitute director is not entitled to vote at a meeting of directors or a committee of directors at which the director for whom that person is a substitute is present.

(5) Subject to subsections (3) and (4), a substitute director is a full director of the company for all purposes and shall be appointed and may be removed in the same way as directors are required to be appointed and removed.

(6) Subject to subsections (3) and (4) a substitute director shall not cease to be a director by reason of the fact that the director for whom that person is a substitute ceases to be a director.

**Alternate directors**

**181.** (1) Unless a company's constitution otherwise provides, a director may, appoint another director or any other person approved by a resolution of the board of directors, as an alternate director to act as a director in respect of a period not exceeding six months in which that director is absent from the Republic or unable for a reason to act as a director.

(2) The appointment shall be in writing signed by the appointor and appointee and lodged with the company.

(3) An alternate director so appointed

(a) is, for the period of the appointment, and for all purposes, a director and officer of the company and not the agent of the appointor;

(b) shall not be required to hold a share qualification although, under the constitution of the company, directors may be so required;

(c) is not entitled to appoint an alternate director; and

(d) shall not be counted as a director for the purposes of a provision of this Act or the constitution of a company relating to the minimum or maximum number of directors, other than a provision relating to quorum.

*Companies Bill, 2018*

(4) The company is not liable to pay additional remuneration by reason of the appointment of an alternate director.

(5) The constitution of a company may provide that

(a) the alternate director shall be entitled to receive from the company during the period of the appointment, the remuneration to which the appointor, but for the appointment, would have been entitled, and

(b) the appointor shall not be entitled to remuneration for that period.

(6) In the absence of a provision referred to in paragraph (b) of subsection (5) in the constitution the alternate director is not entitled to be remunerated otherwise than by the director appointing the alternate director.

(7) An alternate director who is personally a director, shall have an additional vote for each director for whom the alternate director acts as alternate director at every meeting of the directors.

(8) The appointment of an alternate director shall cease

(a) at the expiration of the period for which the appointment was made,

(b) if the appointor gives written notice to that effect to the company,

(c) if the appointor ceases for any reason to be a director, or

(d) if the alternate director resigns by notice in writing to the company.

(9) Until the cessation of the appointment of an alternate director, both the appointor and appointee are and may act as directors of the company, but an alternate director, unless personally a director, shall not attend or vote at a meeting of the directors or a committee of directors at which the appointor is present.

**Presence of directors in the Republic**

**182.** (1) At least one director of the company shall at all times be resident in the Republic.

(2) In the event of a wilful breach of subsection (1), the company and every director of the company that is in default is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the default continues.

*Companies Bill, 2018*

(3) The rights of the company concerned under or arising out of a contract made during the time that a director of the company is not resident in the Republic are not enforceable by action or any other legal proceedings.

(4) For the purposes of subsection (3)

- (a) the company may apply to the Court for relief against the disability imposed by subsection (3) and the Court, on being satisfied that it is just and equitable to grant relief, may grant the relief generally or as regards a particular contract and on the conditions that the Court may impose;
- (b) the rights of any other party as against the company, or any other person in respect of the contract are not limited; and
- (c) if an action or a proceeding is commenced by any other party against the company to enforce the rights of that party in respect of the contract, subsection (3) does not preclude the company from enforcing in that action or proceeding by way of counterclaim, set off or otherwise, the rights that it may have against that party in respect of that contract.

**Executive directors**

**183.** Unless the company's constitution otherwise provides,

- (a) a director may hold any other office or place of profit under the company, other than the office of an auditor, in conjunction with the office of director;
- (b) the directors may from time to time appoint one or more of their body to any other office for the period and on the terms that they may determine and, subject to the terms of an agreement entered into in a particular case, may revoke the appointment;
- (c) subject to compliance with section 185 and subject to section 214, that office may be remunerated by way of salary, commission, share of profits, participation in pension and retirement schemes, or partly in one way and partly in another, as the directors may determine; and
- (d) in exercising their powers under this section, the directors shall observe the rules laid down in sections 190 and 191 and, in particular, in determining the amount of remuneration, shall satisfy themselves that the amount of the remuneration is reasonably related to the value of the services of the holder of the office.

**Managing directors**

- 184.** Unless a company's constitution otherwise provides,
- (a) the directors may from time to time appoint one or more of their body to the office of managing director and section 183 shall apply to that appointment;
  - (b) the appointment of a managing director shall be automatically determined if the holder of the office ceases from a cause to be a director and, unless the agreement entered into in a particular case otherwise provides, the determination shall not constitute a breach of the contract with the company; and
  - (c) the directors may entrust to and confer on a managing director any of the powers exercisable by them on the terms and with the restrictions that they think fit, and collaterally with, or to the exclusion of their own powers and, subject to the terms of an agreement entered into in a particular case, may from time to time revoke or vary all or any of those powers.

**Remuneration and other benefits of directors**

**185.** (1) Subject to this section, the fees and any other remuneration including salary payable to the directors in whatever capacity, shall be determined from time to time by ordinary resolution of the company, and not by a provision in an agreement.

(2) The fees payable to the directors as directors shall be determined from time to time by ordinary resolution of the company and not in any other way.

(3) Unless otherwise resolved, the fees payable to directors accrue from day to day and the directors are entitled to be paid the travelling and other expenses properly incurred by them in attending and returning from meetings of the directors or a committee of the directors or general meeting of the company or otherwise in connection with the business of the company.

(4) Where a director holds any other office or place of profit under the company in accordance with section 183 or 184, the terms of the appointment may provide for the remuneration in respect of the appointment but that director is not entitled to a remuneration additional to the fees to which that person is entitled as director unless the terms of the appointment to that office have been approved by ordinary resolution of the company.



*Companies Bill, 2018*

(5) A company's registered constitution may make provision for benefits payable to directors including

- (a) compensation for loss of employment as director or former director;
- (b) insurance benefits; and
- (c) other indemnities.

**Publication of names of directors**

**186.** (1) A company incorporated in the Republic shall state in legible characters in its trade circulars and business letters on or in which the company's name appears,

- (a) the present forenames and surname; and
- (b) any former forenames or surname

of every director, including substitute directors appointed in accordance with section 180 but excluding alternate directors appointed in accordance with section 181.

**Prohibition of assignment of offices**

**187.** A provision in the constitution of a company or in an agreement purporting to empower

- (a) a director to assign the office of that director, or
- (b) any other officer to assign the office of that officer

to another person is void.

**Proceedings and minutes of directors' meetings**

**188.** (1) The directors of a company shall meet at least once every six months in each year to consider financial and operational affairs of the company.

(2) Subject to a contrary provision in a company's constitution,

- (a) the directors may
  - (i) meet together in Ghana or elsewhere for the dispatch of business,
  - (ii) adjourn and otherwise regulate their meetings as they think fit, and
  - (iii) delegate any of their powers to committees consisting of the member or members of their body that they think fit; but a committee so formed shall in the exercise of the powers so delegated conform to the regulations that may be imposed on them by the directors;

*Companies Bill, 2018*

- (b) a director may, and the Company Secretary on the requisition of a director shall, at any time summon a meeting of directors, and a director being a member of a committee may, and the secretary on the requisition of that director shall, at any time summon a meeting of the committee;
- (c) it shall not be necessary to give notice of a meeting of directors or of a committee of directors to a director for the time being absent from the Republic;
- (d) the quorum necessary for the transaction of business of the directors and of a committee of directors may be fixed by the directors, and unless so fixed shall be two, or, in the case of a one-person committee, one;
- (e) except as provided in paragraph (f), a business shall not be transacted in the absence of a quorum although a quorum was present at the commencement of the meeting;
- (f) the continuing directors may act despite a vacancy in their body but, if and so long as their number is reduced below the number fixed as the necessary quorum, the continuing directors or director may act for four weeks after the number is so reduced, but after the four weeks may act only for the purpose of increasing their number to that number or of summoning a general meeting of the company and for no other purpose;
- (g) the directors and a committee of directors may elect a chairperson of their meetings and determine the period for which the chairperson is to hold office, but if a chairperson is not elected, or if at a meeting, the chairperson is not present within five minutes after the time appointed for holding the meeting, those present may choose one of their number to be chairperson of the meeting;
- (h) questions arising at a meeting of the directors or a committee of directors shall be decided by a majority of votes and in the case of an equality of votes the chairperson shall have second or casting vote;
- (i) attendance and voting by proxy is not permitted at meetings of directors or committees of directors; and

*Companies Bill, 2018*

- (j) a resolution in writing, signed by the directors for the time being entitled to receive notice of a meeting of the directors, or of a committee of directors, is as valid and effectual as if it had been passed at a meeting of the directors or a committee of directors duly convened and held.

(3) A company shall cause minutes of the proceedings of meetings of its directors and a committee of directors to be entered in a book or books kept for the purpose.

(4) A minute kept under subsection (1), if purporting to be signed by the chairperson of the meeting at which the proceedings took place or of the next succeeding meeting, is prima facie evidence of the proceedings.

(5) Where minutes have been made in accordance with this section, until the contrary is proved, the meeting is duly convened, held and conducted and the appointments of directors are valid.

(6) Where a company fails to comply with subsection (1), the company and every officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of five hundred penalty units.

**Limitations on the powers of directors**

**189.** (1) Subject to this Act, the directors of a company with shares shall not, without the approval of

- (a) an ordinary resolution of the company,
  - (i) issue any new or unissued shares, other than treasury shares, in the company unless the shares have first been offered on the same terms and conditions to all the existing shareholders or to all the holders of the shares of the class or classes being issued in proportion as nearly as may be to their existing holdings;
  - (ii) make voluntary contributions to a charitable or any other fund, other than pension funds for the benefit of employees of the company or an associated company, of the amounts the aggregate of which will, in a financial year of the company, exceed two per cent of the income surplus of the company at the end of the preceding financial year; or

*Companies Bill, 2018*

(b) a special resolution, pursue a major transaction under section 145.

(2) A resolution of the company shall not be effective as approving a transaction as is referred to in subparagraph (i) of paragraph (a) of subsection (1), unless it authorises in terms the specific transaction proposed by the directors.

(3) A resolution of the company shall not be effective as approving a transaction as is referred to in paragraph (b) of subsection (1), if passed more than one year before the issue of the shares, unless the issue is in accordance with a scheme for the time being in force relating to the issue of shares to or for the benefit of persons genuinely in the employment of the company or any of its associated companies.

(4) Subsection (3) shall not apply to a public company which has some or all of its equity shares being dealt in on an approved stock exchange.

(5) Despite a provision of this Act or in the company's constitution or in a resolution of the company in general meeting, new or unissued shares or treasury shares shall not be issued to a director or past director of the company or of an associated company or to the nominee of that director or to a body corporate controlled by that director, unless the shares have first been offered on the same terms and conditions to

- (a) all the existing shareholders,
- (b) all the holders of the shares of the class or classes being issued in proportion to their existing holdings, or
- (c) to members of the public in the case of a public company.

(6) Subsection (5) may be disapplied with the approval of an ordinary resolution of a public company if some or all of its equity shares are dealt in on an approved stock exchange or in respect of which an application has been made to an approved stock exchange for permission to deal in those shares.

(7) For the purposes of subsection (5), a body corporate is controlled by a director if the body corporate or its directors are accustomed to act in accordance with the directions or instructions of that director or a nominee of that director or if at a general meeting of the body corporate that director or a nominee of that director is entitled to exercise or control the exercise of one-third or more of the voting powers.

*Companies Bill, 2018*

- (8) This section does not prohibit,
- (a) the issue of shares under a genuine underwriting agreement, or
  - (b) the issue to a director at a fair price payable in cash of the shares, if under the constitution of the company, that director is required to hold by way of share qualification.

(9) Unless the company's constitution otherwise provides, the directors of a company with shares shall not, without the approval of an ordinary resolution of the company, exercise the company's power to borrow money or to charge any of its assets where the moneys to be borrowed or secured, together with the amount remaining undercharged of moneys already borrowed or secured, apart from temporary loans obtained from the company's bankers in the ordinary course of business, will exceed the stated capital for the time being of the company.

(10) A person dealing with the company in good faith or registering a disposition of, or title to, property shall not be concerned to see whether the conditions of this section have been fulfilled, and sections 147 to 151 shall apply to a transaction of the type referred to in this section although the conditions have not been fulfilled.

**Duties of directors**

**190.** (1) A director of a company stands in a fiduciary relationship towards the company and shall observe the utmost good faith towards the company in a transaction with it or on its behalf.

(2) A director shall always act in what the director believes is the best interest of the company as a whole so as to preserve its assets, further its business, and promote the purposes for which it was formed, in the manner that a faithful, diligent, careful and ordinarily skilful director would act in the circumstances and in doing so shall have regard to

- (a) the likely consequence of any decision in the long term,
- (b) the impact of the company's operations on the community and the environment, and
- (c) the desirability of the company maintaining a reputation for high standards of business conduct.

(3) A director of a company shall

- (a) act in accordance with the company's constitution, and

*Companies Bill, 2018*

(b) only exercise powers for the purposes for which they are conferred.

(4) In considering whether a particular transaction or course of action is in the best interests of the company as a whole, a director may consider the interests of the employees, as well as the members, of the company, and, where appointed by, or as representative of, a special class of members, employees, or creditors may give special, but not exclusive, consideration to the interests of that class.

(5) A director shall exercise independent judgment.

(6) A provision, whether contained in the constitution of a company, or in a contract, or in a resolution of a company shall not relieve a director from the duty to act in accordance with this section or relieve the director from a liability incurred as a result of a breach of a provision of this section.

**Exercise of directors' powers**

**191.** (1) The directors shall not, without the approval of an ordinary resolution of the company, exceed the powers conferred on them by this Act, and the company's constitution, or exercise those powers for a purpose different from that for which those powers were conferred, although they may believe the exercise is in the best interests of the company.

(2) Where a director

(a) fails to take reasonable steps to comply with subsection (1),  
or

(b) acts or omits to act in contravention of subsection (1),

the director is personally liable to pay to the company or to any other person, the amount of moneys lost to the company or to the other person or the monetary value of the damages caused to, or suffered by, the company or that person as a result of the failure, act or omission of the director.

(3) Where the directors

(a) fail to take reasonable steps to comply with subsection (1),  
or

(b) act or omit to act in contravention of subsection (1),

the directors are jointly and severally liable to pay to the company or to any other person, the amount of moneys lost to the company or to that other person, or the monetary value of the damages caused to, or suffered by, the company or that other person as a result of the failure, act or omission of the directors.

*Companies Bill, 2018*

(4) An amount of money due and payable by virtue of subsection (2) or (3) may be recovered as a civil debt by the company or that other person.

(5) This section is in addition to, and not in derogation of, sections 192 and 193.

**Conflicts of duty and interest**

**192.** (1) Despite a provision in a company's constitution to the contrary, a director shall not, without the consent of the company in accordance with section 193, place himself or herself in a position in which his or her duty to the company conflicts or may conflict with the personal interests or the duties to other persons, and in particular, without that consent a director shall not,

- (a) use for the director's own advantage any money or property of the company or use, otherwise than in accordance with section 198, any confidential information or special knowledge obtained by the director in the capacity of director;
  - (b) be interested directly or indirectly, otherwise than merely as a shareholder or debenture holder in a public company, in a business which competes with that of the company; or
  - (c) be personally interested, directly or indirectly, in a contract or any other transaction entered into by the company except as provided by section 194.
- (2) The duty of a director to avoid conflict is not infringed if
- (a) the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
  - (b) the matter has been authorised by the directors.
- (3) Authorisation may be given by the directors
- (a) where the company is a private company and nothing in the company's constitution invalidates the authorisation, by the matter being proposed to and authorised by the directors; or
  - (b) where the company is a public company and its constitution includes provisions enabling the directors to authorise the matter, by the matter being proposed to and authorised by them in accordance with the constitution.

*Companies Bill, 2018*

- (4) The authorisation is effective only if
- (a) any requirement as to the quorum at the meeting at which the matter is considered is met without counting the director in question or any other interested director, and
  - (b) the matter was agreed to without their voting or would have been agreed to if their votes had not been counted.

(5) Any reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

**Consent of company**

**193.** (1) For the purposes of section 192, the company does not consent unless, after full disclosure of the material facts, including the nature and extent of the interests of the directors, the transaction concerned has been specifically authorised by an ordinary resolution of the company which has been agreed to by the members of the company entitled to attend and vote at a general meeting or has been passed at a general meeting at which neither the director concerned nor the holders of the shares in which the director is beneficially interested, directly or indirectly, have voted as members on the resolution.

(2) Consent in accordance with subsection (1) may be given before or after the occurrence of the transaction to which it relates.

(3) A resolution of the company ratifying a transaction or a series of related transactions which has or have already taken place shall not be effective for the purposes of subsection (2) unless it was passed not later than fifteen months after the date when the transaction or the first of those transactions took place.

**Contracts in which directors are interested**

**194.** (1) Unless otherwise provided in the company's constitution, a director, despite section 192 is entitled to enter into a contract with the company and, subject to compliance with section 190 and with subsections (2) to (7) of this section, the contract or any other contract by the company in which a director is in any way interested shall not be liable to be avoided nor is a director liable to account for a profit made by reason of the director holding that office or of the fiduciary relationship so established.

(2) A director who is, whether directly or indirectly, materially interested in a contract or proposed contract entered into or to be entered into by or on behalf of the company shall declare the nature and extent



*Companies Bill, 2018*

of the interest at a meeting of the directors of the company.

(3) In the case of a proposed contract, the declaration required by subsection (2) to be made by a director shall be made

- (a) at the meeting of the directors at which the question of entering into the contract is first taken into consideration, or
- (b) if the director was not at the date of that meeting interested in the proposed contract, at the next meeting after the director became so interested, and

in a case where the director becomes interested in a contract after it is made, the declaration shall be made at the first meeting of the directors held after the director becomes so interested.

(4) For the purposes of this section, a general notice in writing given to the directors of the company by a director to the effect that the director is a member of a specified company or firm, and is to be regarded as interested in a contract which may, after the date of the notice, be made with that company or firm, is a sufficient declaration of interest in relation to a contract or proposed contract so made or to be made, if

- (a) the notice states the nature and extent of the interest of the director in that company or firm;
- (b) at the time the question of confirming or entering into a contract is first taken into consideration the extent of the interest of the director in that company or firm is not greater than is stated in the notice;
- (c) the general notice is not effective unless it is given at a meeting of the directors, or the director giving the notice takes reasonable steps to secure that it is brought up and read at the next meeting of directors after it is given;
- (d) the general notice is not effective for more than twelve months but may from time to time be renewed.

(5) A director of the company shall not enter into a contract on its behalf in which the director knows or has knowledge, that any other director of the company or an associated company is materially interested, whether directly or indirectly, until a resolution has been passed by the directors approving the contract.

*Companies Bill, 2018*

(6) In the case of a proposed contract in which the director is personally interested, the director shall, before the passage of the approving resolution, declare the nature and extent of the director's interest in the proposed contract at a meeting of directors or by written notice given to the directors and shall cause that interest to be registered in the Interests Register and to be disclosed to the Board of the company in accordance with section 195.

(7) A director shall not vote in respect of a contract or an arrangement in which that director is materially interested and if the director does vote that vote shall not be counted, nor shall that director be counted in the quorum required for that business.

(8) Subsection (7) does not apply to

- (a) an arrangement for giving a director a security and indemnity in respect of money lent by the director to obligations undertaken by the director for the benefit of the company;
- (b) an arrangement for the giving by the company of a security to a third party in respect of a debt or obligation of the company for which the director personally has assumed responsibility in whole or in part under a guarantee or indemnity or by the deposit of a security; or
- (c) a contract by a director to subscribe for or underwrite shares or debentures of the company.

(9) A copy of a declaration made and of a notice given in pursuance of this section shall, within three days after the making or giving of the declaration or notice, be entered in a book kept for this purpose.

(10) For the purposes of this section, an interest merely as holder of debentures, or of not more than two per cent of the shares or a class of shares, of a public company is not a material interest.

**Disclosure of interest by directors**

**195.** (1) A director of a company who has an interest that is likely to create a conflict of interest between that director and the company shall

- (a) cause to be entered that interest in the Interests Register established under section 196; and
- (b) disclose that interest to the Board of the company at a meeting or by written notice given to the directors

immediately after becoming aware of the fact of that interest.

*Companies Bill, 2018*

(2) The director shall disclose the nature and extent of the interest.

(3) A director who fails to comply with a provision of this section commits an offence and is liable on summary conviction to a fine of not less than two hundred and fifty penalty units and not more than five hundred penalty units.

**Company to maintain Interests Register**

**196.** (1) A company shall maintain an Interests Register which shall record the interests that directors declare under subsection (6) of section 194.

(2) The Interests Register shall state the place where any document that contains the details of the interest may be inspected.

(3) The Interests Register shall be kept at the same place as the register of members maintained in accordance with section 35.

(4) The Interests Register shall be opened to inspection during business hours, subject to the reasonable restriction that a company's constitution may impose.

(5) The Interests Register shall be open for inspection

(a) not less than two hours in each day, other than a Saturday, a Sunday or a public holiday; and

(b) during the continuance of a general meeting to a person attending the meeting.

(6) The provisions of this section shall not apply if the members of a company by ordinary resolution so determine.

(7) Where a company or an officer of a company fails to comply with this section, the company and every officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of five hundred penalty units and if an inspection required under subsection (5) is refused, the Court may by order compel an immediate inspection of the register.

**Directors to act professionally**

**197.** Unless otherwise provided in a company's constitution, a director may, despite section 192, act personally or by the firm of that director in a professional capacity for the company, except as auditor, and the director or the firm of the director is entitled to proper remuneration for professional services as if the director were not a director provided that disclosure is made under subsection (6) of section 194.

**Use of company information**

**198.** (1) A director of a company who has information in the director's capacity as a director or employee of the company, being information that would not otherwise be available to that director, shall not disclose that information to any person, or make use of or act on the information, except

- (a) for the purposes of the company;
- (b) as required by law;
- (c) in accordance with subsection (2); or
- (d) in any other circumstances
  - (i) authorised by the constitution of that company ; or
  - (ii) approved by the company by a written resolution circulated to all the members and signed by three fourths of all members entitled to attend and vote on the resolution at a general meeting; or
  - (iii) approved by the company by an ordinary resolution of the company passed at a general meeting at which neither the director concerned, nor the holder of any share in which the director is beneficially interested, directly or indirectly, has voted as member on the resolution or where the holder has voted and the vote is not counted.

(2) The approval under subparagraph (iii) of paragraph (d) may be given before or after the occurrence of the transaction to which it relates.

(3) The Board may authorise a director to disclose, make use of, or act on information where it is satisfied that to do so is not likely to affect the company.

(4) A director of a company may, if authorised by the Board under subsection (4), disclose information to

- (a) a person whose interests the director represents; or
- (b) a person in accordance with whose directions or instructions the director may be required or is accustomed to act in relation to the director's powers and duties,

subject to the director entering the particulars of the authorisation and the name of the person to whom it is disclosed in the Interests Register.

*Companies Bill, 2018*

(5) Any monetary gain made by a director from the use of information which a director has in that director's capacity as a director shall be accounted for to the company.

**Civil liabilities for breach of duty**

**199.** Where a director commits a breach of duty under sections 190 to 192,

- (a) the director and any other person who knowingly participated in the breach is liable to compensate the company for the loss it suffers as a result of the breach;
- (b) the director shall account to the company for a profit made by the director as a result of the breach; and
- (c) a contract or any other transaction entered into between the director and the company in breach of that duty may be rescinded by the company.

**Legal proceedings to enforce liabilities**

**200.** (1) Proceedings may be instituted by the company or by a member of the company to

- (a) enforce the liabilities referred to in section 199;
- (b) restrain a threatened breach of a duty under sections 190 to 192; or
- (c) recover from a director of the company a property of the company.

(2) Proceedings may be instituted by the company on the authority of the board of directors or of a receiver and manager or liquidator of the company, or of an ordinary resolution of the company which has been agreed to by the members of the company entitled to attend and vote at a general meeting or has been passed at a general meeting.

(3) Subject to subsection (5) of section 19 and at a general meeting for the purposes of subsection (2), neither the proposed defendants nor the holders of shares in which they or any of them are beneficially interested shall vote on the resolution and if they do vote their votes shall not be counted.

(4) After an investigation of the affairs of the company, proceedings may pursuant to section 234 be instituted in the name of the company by the Registrar.

*Companies Bill, 2018*

(5) Where proceedings are instituted by a member, that member may either bring a derivative action under section 201 or may sue in a representative capacity on behalf of that member and all other members, except members who are defendants to the action, and shall join the company as a defendant; and to that representative action the provisions of section 332 shall apply.

- (6) The Court, on the application of a defendant,
- (a) may stay proceedings by the member if satisfied that, in all the circumstances, including the participation of that member in the transaction complained of, and the circumstances in which that member became a member, it is inequitable that the member should be allowed to have the conduct of the action,
  - (b) may order the member to give security for payment of the costs of the defendants, and
  - (c) may direct that the action or any part of it shall be heard in chambers.

(7) A period of limitation shall not apply to proceedings under this section, but in those proceedings the Court may relieve a director from liability in whole or in part and on the terms that, in all the circumstances including lapse of time, the Court considers it equitable so to do.

(8) In proceedings under this section the Court may, in the interest of justice, order that a sum of money found to be payable by a defendant shall be restored, in whole or in part, to members or former members of the company instead of to the company itself.

(9) Where the Court makes an order, the Court may order that the necessary enquiries shall be made to ascertain the identity of the members and former members concerned and may give the consequential directions that may be necessary or expedient.

(10) Proceedings under this section shall not be discontinued, settled or compromised without the approval of the Court after notice of the proposed discontinuance, settlement or compromise has been given to all members of the company and to the Registrar in the manner that the Court directs.

(11) Within the time prescribed by the notice, a member of the company and the Registrar may appear and call the attention of the Court to the matters which seem relevant and may give evidence and call witnesses.

*Companies Bill, 2018*

(12) Where the Court does not approve the discontinuance or compromise, it may give the conduct of the action to a member willing to continue the proceedings, or to the Registrar in the name of the company, making the consequential orders regarding the parties to the action or otherwise that may be necessary or expedient.

**Derivative actions**

**201.** (1) Subject to subsection (3), the Court may, on the application of a shareholder or director of a company, grant leave to that shareholder or director to

- (a) bring proceedings in the name and on behalf of the company or its subsidiary; or
- (b) intervene in proceedings to which the company or any related company is a party for the purpose of continuing, defending, or discontinuing the proceedings on behalf of the company or its subsidiary, as the case may be.

(2) Without limiting subsection (1), in determining whether to grant leave under that subsection, the Court shall have regard to

- (a) the likelihood of the proceedings that may follow,
- (b) the costs of the proceedings in relation to the relief likely to be obtained,
- (c) any action already taken by the company or its subsidiary to obtain relief, and
- (d) the interests of the company or its subsidiary in the proceedings being commenced, continued, defended, or discontinued, as the case may be.

(3) Leave to bring proceedings or intervene in proceedings may be granted only where the Court is satisfied that either

- (a) the company or related company does not intend to bring, diligently continue or defend, or discontinue, the proceedings, as the case may be; or
- (b) it is in the interests of the company or its subsidiary that the conduct of the proceedings should not be left to the directors or to the determination of the shareholders as a whole.

(4) Notice of the application shall be served on the company or its subsidiary.

*Companies Bill, 2018*

- (5) The company or related company
  - (a) may appear and be heard, and
  - (b) shall inform the Court, whether or not it intends to bring, continue, defend, or discontinue the proceedings, as the case may be.

(6) Except as provided for in this section, a member or director of a company is not entitled to bring or intervene in any proceedings in the name of, or on behalf of, a company or its subsidiary.

**Costs of derivative action to be met by company**

**202.** The Court shall, on the application of the shareholder or director to whom leave was granted under section 201 to bring or intervene in the proceedings, order that the whole or part of the reasonable costs of bringing or intervening in the proceedings, including any costs relating to any settlement, compromise, or discontinuance approved under section 201, shall be met by the company unless the Court considers that it would be unjust or inequitable for the company to bear those costs.

**Powers of Court where leave is granted**

- 203.** The Court may,
- (a) at any time, make any order it considers fit in relation to proceedings brought by a member or a director or in which a member or director intervenes, as the case may be, with leave of the Court under subsection (3) of section 201, and
  - (b) without limiting the generality of this section,
    - (i) make an order authorising the member or any other person to control the conduct of the proceedings;
    - (ii) give directions for the conduct of the proceedings;
    - (iii) make an order requiring the company or the directors to provide information or assistance in relation to the proceedings; or
    - (iv) make an order directing that any amount ordered to be paid by a defendant in the proceedings shall be paid, in whole or part, to former and present members of the company or its subsidiary instead of the company or the related company.



**Compromise, settlement or withdrawal of derivative action**

**204.** Where proceedings in which a shareholder or a director intervenes, as the case may be, with leave of the Court are brought under subsection (5) of section 201, the proceedings shall not be settled or compromised or discontinued without the approval of the Court.

**Representative actions**

**205.** Where, under a section of this Act it is provided that if legal proceedings are instituted by a person, that person shall sue in a representative capacity on behalf of the person and any other members of a class,

- (a) that person may commence proceedings in that representative capacity without obtaining the consent and approval of any other member of the class represented and, subject to paragraph (b) of this section, that person shall have the sole conduct of the action and any other member of the class shall not be regarded as a party to the proceedings or liable for the costs of the proceedings;
- (b) a member of the class represented may at any time before final judgement apply to the Court for leave to be made a party to the proceedings whether as co-plaintiff or otherwise and the Court may grant leave on the terms regarding the conduct of the action and otherwise that it considers fit; and if the leave is granted the applicant shall become a party to the proceedings and liable accordingly to have an order for costs made against that applicant;
- (c) a judgement given in the action shall bind and inure for the benefit of the members of the class represented, whether or not they have intervened in the proceedings in accordance with paragraph (b) of this section;
- (d) the proceedings shall not be dismissed, settled or compromised without the leave of the Court which may order that notice of the proposed dismissal, settlement or compromise shall be given to the members of the class represented and any other persons;
- (e) in relation to proceedings under section 201 of this section, shall be supplemented by the provisions of that section; and
- (f) this section shall not affect the validity of an agreement between the members of the class represented, relating to contribution towards the costs of the party or parties suing in a representative capacity.

**Payments to directors for loss of office**

**206.** (1) A company shall not make a payment to a director or former director of the company or an associated company,

- (a) by way of compensation for loss of an office in the company or an associated company, or
- (b) as consideration for or in connection with retirement from office of that director or former director,

without particulars of the proposed payment, including the amount of the payment, being disclosed to the members of the company and the proposal being approved by an ordinary resolution of the company agreed to or passed in the manner provided by section 193.

(2) A payment shall not be made, whether by the company or otherwise, to a director or former director of a company in connection with the transfer of the whole or a part of the undertaking or property of the company or an associated company, whether the payment is expressed to be by way of compensation for loss of office or otherwise, unless particulars of the proposed payment, including the amount of the payment have been disclosed to the members of the company and the proposal approved by an ordinary resolution of the company agreed to or passed in the manner provided by section 193.

(3) Where a payment is made in contravention of this section, the amount of the payment shall be regarded as money of the company used by a director for the director's own advantage within the meaning of section 192.

**Payments to directors in connection with take over bids**

**207.** (1) An offer for the acquisition of shares of a company may be made on the terms that the offer is available for acceptance,

- (a) by the members of the company or by the holders of shares of the class to which the offer relates, or
- (b) by the holders of shares which, together with the shares already owned beneficially by the person making the offer or by a body corporate in which that person is the controlling member, confer the right to exercise or control the exercise of not less than one third of the voting power at a general meeting of the company.

*Companies Bill, 2018*

(2) Where an offer for the acquisition of shares is made under subsection (1), and in connection with that offer it is proposed that a payment shall be made or a payment has been made to a director or former director of the company or an associated company, over and above the receipt by the director or former director in respect of the same price as may be receivable by other holders of the shares of the same class, that director or former director shall take reasonable steps to secure that particulars of the payment are included in or sent with the notice of the offer made for their shares which is given to the shareholders.

(3) Where

- (a) the director or former director fails to take the reasonable steps, or
- (b) a person who has been properly required by that director or former director to include the particulars in or send them with the notice fails to do so,

that director or former director commits an offence and is liable on summary conviction to a fine of not less than seventy-five penalty units and not more than one hundred and fifty penalty units.

(4) The payment shall be distributed in the manner provided by subsection (4) unless

- (a) the requirements of subsection (1) are complied with, and
- (b) the making of the payment is, before the transfer of shares in pursuance of the offer, approved by an ordinary resolution,
  - (i) agreed to by the holders of the shares to which the offer relates, or
  - (ii) passed at a meeting, summoned for that purpose by notice complying with subsection (7), of the holders at which neither the director concerned nor the holders of the shares in which the director or former director is beneficially interested, directly or indirectly, have voted on the resolution.

(5) Where a payment is to be distributed in accordance with subsection (4), the person making or proposing to make the payment and the director or former director to whom it is made or proposed to be made are jointly and severally liable to distribute the payment among the

*Companies Bill, 2018*

persons who have sold their shares as a result of the offer in proportion to the number of shares sold by them, and if a director or former director receives the payment, that director or former director shall hold the payment on trust for those persons.

- (6) For the purposes of subsection (5),
- (a) the expenses incurred in distributing the payment shall be borne by the persons liable to make the distribution and not retained out of the payment;
  - (b) if, in proceedings instituted before the expiration of three months from the first transfer of shares in pursuance of the offer, the Court awards or approves the payment of damages to the director or former director for breach of a valid service agreement, the amount of the damages, but not the costs or expenses incurred in connection with proceedings, shall be paid to or retained by the director or former director out of the payment and only the balance of the payment shall be distributable.

(7) The notice of a general meeting summoned for the purposes of subsection (4) shall be convened, held and conducted as nearly as may be in accordance with this Act or a company's constitution relating to general meetings of the company.

(8) The notices convening the meeting shall state that if the resolution approving the payment is not passed, the payment will be distributable among the persons who have sold their shares in pursuance of the offer except to the extent that the Court may award or approve the payment to the director or former director concerned of damages for breach of a valid service agreement.

(9) An offer referred to in subsection (1) shall not be made conditional on approval of a payment or proposed payment to a director or former director and, if an offer is expressed to be made subject to that condition, the condition is void.

- (10) For the purposes of paragraph (b) of subsection (1),
- (a) where the offer is made by a body corporate, the shares are owned beneficially by that body corporate if they are owned beneficially by it or by any of its associated companies or by any controlling shareholders of it; and

*Companies Bill, 2018*

- (b) a person is a controlling shareholder of a body corporate if that body corporate or its directors are accustomed to act in accordance with the directions or instructions of that person or that person's nominee or if, at a general meeting of that body corporate, that person is entitled to exercise or control the exercise of one-third or more of the voting power.

**Provisions supplemental to sections 206 and 207**

**208.** (1) For the purposes of sections 206 and 207 and of this section, the expression "payment" includes a benefit or an advantage whether in cash or in kind.

(2) Sections 206 and 207 shall not render unlawful, or apply to, the payment of damages awarded or approved by a competent court for breach of a valid service agreement or the genuine payment of a pension or superannuation benefit in respect of past services in accordance with a valid service agreement.

(3) For the purposes of subsection (4) of section 207 and of subsection (2) of this section, a service agreement is not valid if it has been entered into in contemplation of a transfer referred to in subsection (2) of section 206 or of an offer referred to in subsection (1) of section 207 and unless the contrary is proved, the service agreement shall be deemed to have been entered into in contemplation of that transfer or offer if it is made within one year before or contemporaneously with, or at any time after the date of the agreement to transfer or the making of the offer.

(4) For the purposes of sections 206 and 207,

- (a) a payment, which is not a remuneration properly payable in accordance with section 185, is received by a director or former director within a period of one year before, or two years after the date of the agreement to make the transfer referred to in subsection (2) of section 206 or of the date of making an offer referred to in subsection (1) of section 207, and
- (b) the company or the person to whom the transfer or by whom the offer was made was privy to the making of the payment,

*Companies Bill, 2018*

the payment shall be deemed to have been received by the director or former director in connection with the transfer or offer unless the director or former director proves that the payment would have been received by the director or former director whether or not the transfer or offer had been made.

**Duties of directors in sales or purchases of the company's securities**

**209.** (1) Where a director of a company, having acquired as a director of the company special information which may substantially affect the value of the shares or debentures of the company or an associated company, buys or sells those shares or debentures without disclosing that information to the seller or purchaser of the shares or debentures, the purchase or sale is voidable at the option of the seller or purchaser within twelve months after the date of the agreement to sell or buy.

(2) For the purposes of subsection (1), the shares or debentures bought or sold shall be deemed to have been bought or sold by a director if the director's interest in the shares or debentures would normally require recording in relation to that director in the register maintained in accordance with section 210, unless it is proved that the sale or purchase was not made by that director or on the instructions or advice of that director or on the instructions or advice of any other person to whom that director had imparted a special information affecting the value of the shares or debentures obtained by that director in the capacity of director of the company.

(3) This section does not affect the right of the company to proceed against a director for breach of sections 192 and 198.

**Register of directors' holdings**

**210.** (1) A company shall keep a register showing, in respect of each director of the company,

- (a) the number and description of shares in the company or an associated company; and
- (b) the amount of the debentures of the company or an associated company of which that director is the holder or in which that director has, directly or indirectly, a beneficial interest or right to acquire, or of which that director has an option to buy or sell.

(2) Despite subsection (1), the register need not include shares in a body corporate which is the wholly owned subsidiary of another body corporate.

*Companies Bill, 2018*

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

(4) Where the shares or debentures fail to be or cease to be recorded in the register in relation to a director by reason of a transaction entered into after the commencement of this Act, and while that director is a director, the register shall also show the date of, and the price or any other consideration for the transaction; and where there is an interval between the agreement for that transaction and the completion of the transaction, the date shown shall be that of the agreement.

(5) The register shall be kept at the same place as the register of members maintained in accordance with section 35, and shall be open to inspection during business hours, subject to the reasonable restrictions that that company's constitution may impose, by a member or debenture holder or a former member or debenture holder or by the auditor of the company or by the Registrar.

(6) Not less than two hours in each day, other than a Saturday, a Sunday or a public holiday, shall be allowed for inspection.

(7) The register shall be produced at the commencement of a general meeting of the company and remain open and accessible during the continuance of the meeting to a person attending the meeting.

(8) A director of the company shall give notice to the company of the matters relating to that director that may be necessary for the purposes of complying with subsections (1) and (4).

(9) The notice shall be in writing and shall be given within twenty-eight days after the commencement of this Act and within twenty-eight days after the occurrence of a transaction which requires recording.

(10) If the notice is not given at a meeting of directors, the director who should have given it shall take reasonable steps to secure that it is brought up and read at the next meeting of directors after it is given.

(11) Where a director fails to comply with subsections (8), (9) and (10), that director is liable to pay to the Registrar,

(a) an administrative penalty of five hundred penalty units;  
and

(b) five hundred penalty units for each day that the failure occurs.

(12) Where a person fails to comply with subsection (1), (4), (5), (6) or (7), the company and every officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of five

hundred penalty units and if an inspection required under subsections (5) and (7) is refused, the Court may by order compel an immediate inspection of the register.

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

(14) For the purposes of this section, a director is beneficially interested in shares or debentures if a body corporate holds them or has a right in or over them, and that body corporate or its directors are accustomed to act in accordance with that director's directions or instructions, or that director is entitled to exercise or control the exercise of one-third or more of the voting power at a general meeting of that body corporate.

### **Company Secretary**

**211.** (1) A company shall have a person qualified as a secretary to be the Company Secretary of the company.

(2) The Company Secretary may be a body corporate except that it must have as one of its promoters, subscribers, directors or operating officers, a person who is qualified to be a Company Secretary.

(3) The directors shall not appoint a person as a Company Secretary unless that person

- (a) has obtained a professional qualification or a tertiary level qualification that enables that person have the requisite knowledge and experience to perform the functions of a Company Secretary,
- (b) has held office, before the appointment, as an apprentice or has been articled under the supervision of a qualified Company Secretary for a period of at least three years,
- (c) is a member in good standing of
  - (i) the Institute of Chartered Secretaries and Administrators, or
  - (ii) the Institute of Chartered Accountants, Ghana, or
- (d) having been enrolled to practice, is in good standing as a barrister or solicitor in the Republic, or
- (e) by virtue of an academic qualification, or as a member of a professional body, appears to the directors as capable of



## *Companies Bill, 2018*

performing the functions of secretary of the company.

(4) For the purpose of paragraph (a) of subsection (3), a professional or tertiary level qualification is a discipline with an offering in company law practice and administration.

(5) Unless the constitution of a company otherwise provides, the Company Secretary shall be appointed by the directors for the term, at the remuneration and on the conditions that the directors consider fit, and may be removed by them, subject to the right of the Company Secretary to claim damages from the company if removed in breach of contract.

(6) Where a company carries on business for more than six months without a Secretary, the company and every officer of the company that is in default is liable to a financial or an administrative penalty, determined by Regulations under section 364 for each day that the company continues to carry on business without a Company Secretary after the expiration of the period of six months.

(7) An act required or authorised to be done by or to the Company Secretary may, if the office is vacant or there is not for any other reason, a person capable of acting as Company Secretary, be done by or to an assistant or a deputy Company Secretary or any other officer of the company appointed by the directors to be acting Company Secretary.

(8) Before a Company Secretary assumes office, the person concerned shall lodge with the Registrar, the written consent to serve as Company Secretary.

### **Duties of a Company Secretary**

**212.** The duties of a Company Secretary include

- (a) assisting the Board to comply with the constitution of the company if it has one and with any relevant enactment;
- (b) keeping the books and records of the company;
- (c) ensuring that the minutes of the meetings of the shareholders and the directors are properly recorded in the form required by this Act;
- (d) preparing and issuing out notices in the name of the company;
- (e) ensuring that the company's annual financial statements are despatched to every person entitled to the statements as

*Companies Bill, 2018*

- required by this Act;
- (f) ensuring that all statutory forms and returns are duly filed with the Registrar;
  - (g) maintaining the statutory registers of the company;
  - (h) providing the Board with guidance as to its duties, responsibilities and powers and on the changes and development in the laws affecting the operation of companies;
  - (i) informing the Board of legislation relevant to or affecting meetings of shareholders and directors and the failure to comply with the legislation and reporting accordingly at any meeting; and
  - (j) advising the directors on their responsibilities as directors.

**Avoidance of acts in dual capacity as director and Company Secretary**

**213.** Where a person acts as both director and Company Secretary of a company, a provision requiring or authorising an act to be done by or to a director and a Company Secretary shall not be considered as done if the act is done by or to that person acting in both capacities.

**Prohibition of tax-free payments**

**214.** (1) A company shall not pay a director or Company Secretary of the company remuneration free of income tax or otherwise calculate that remuneration by reference to or varying with the amount of the income tax payable by the director or Company Secretary.

(2) A provision contained in a company's constitution or in a resolution of a company or of a company's directors, or in a contract, for payment of remuneration shall have effect as if it provided for payment, as a gross sum, subject to income tax, of the net sum for which it actually provides.

**Register of directors and Company Secretary**

**215.** (1) A company shall keep at its registered office a register of its directors including substitute directors appointed in accordance with section 180 but excluding alternate directors appointed in accordance with section 181 and secretaries.

- (2) The register shall contain with respect to each director,
- (a) the present forenames and surname;
  - (b) any former forename or surname;
  - (c) the usual residential address;

*Companies Bill, 2018*

- (d) the business occupation; and
- (e) particulars of any other directorships, other than alternate directorships held by the director.

(3) The register shall contain with respect to the Company Secretary or, where there are joint Company Secretaries, with respect to each of them,

- (a) in the case of an individual, the particulars required by paragraphs (a) to (d) of subsection (2); and
- (b) in the case of a body corporate, its corporate name and registered or principal office.

(4) Where all the partners in a firm are joint Company Secretaries, the name and principal office of the firm may be stated instead of the residential address of each partner.

(5) The register shall, during business hours, subject to the reasonable restrictions that the company may by its constitution impose, be open to the inspection of a member of the company without charge and any other person on payment of a prescribed fee, for each inspection.

(6) Not less than two hours in each day, other than a Saturday, Sunday or a public holiday shall be allowed for inspection under subsection (5).

(7) If an inspection required under this section is refused or if default is made in complying with subsection (1), (2) or (3), the company and every officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of five hundred penalty units and in the case of a refusal the Court may by order compel an immediate inspection of the register.

(8) For the purposes of this section and of sections 216 and 186,

- (a) in the case of a person usually known by a title different from the surname, the expression “surname” means that title; and
- (b) references to a former name do not include,
  - (i) in the case of a person usually known by a title, the name by which that person was known before the succession to that title;
  - (ii) a name changed or disused before the person bearing the name attained the age of eighteen years or changed or disused for a period of not less than twenty years; or
  - (iii) in the case of a married woman, the name by which she was known before the marriage.

**Registration of particulars of directors and Company Secretaries**

**216.** (1) A company shall, within twenty-eight days of a change occurring among its directors or in its Company Secretary or in any of the particulars contained in the register, other than those required under paragraph (e) of subsection (2) of section 215, send to the Registrar for registration notification in the prescribed form of the change, specifying the date of the change.

(2) Where a company defaults in complying with subsection (1), the company and every officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the default continues.

(3) A director or Company Secretary who resigns from office is in default unless notification of the resignation is duly given to the Registrar in accordance with subsection (1).

**General saving of existing law relating to officers**

**217.** The rights, duties and liabilities of officers and agents of companies shall continue to be governed by the rules of the common law and equity relating to principal and agent and master and servant except in so far as those rules are not inconsistent with the express provisions of this Act.

*Part R: Protection against Illegal or Oppressive Action*

**Injunction or declaration in the event of illegal or irregular activity**

**218.** (1) The Court on the application of a member may by injunction restrain the company,

(a) from doing an act or entering into a transaction which is illegal or beyond the power or capacity of the company or which infringes a provision of its constitution, or

(b) from acting on a resolution not properly passed in accordance with this Act or the company's constitution,

and may declare that act, transaction or resolution already done, entered into, or passed to be void.

(2) Subsection (1) does not derogate from the protection afforded by a provision of this Act to a person dealing with the company.

(3) In relation to acts beyond the capacity or power of the company, this section is subject to section 19 and does not limit its application.

*Companies Bill, 2018*

(4) The right afforded to a member to apply to the Court, does not limit the right that member may have to institute proceedings against a director of the company pursuant to section 200 or to apply to the Court under section 219.

(5) In proceedings by a member under this section, the Court may order the member to give security for the costs of the company and may direct that the application shall be heard in chambers.

**Remedy against oppression**

**219.** (1) A member or debenture holder of a company or, in a case falling within section 234, the Registrar may apply to the Court for an order under this section on the ground

- (a) that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or debenture holders or in disregard of the proper interests of those members, shareholders, officers, or debenture holders of the company; or
- (b) that an act of the company has been done or is threatened or that a resolution of the members, debenture holders or a class of them has been passed or is proposed which unfairly discriminates against, or is otherwise unfairly prejudicial to, one or more of the members or debenture holders.

(2) Where on the application, the Court is of opinion that either of the grounds set out in subsection (1) is established, the Court may, with a view to bringing to an end or remedying the matters complained of, make an appropriate order; and, without limiting the effect of this subsection, the Court may by order,

- (a) direct or prohibit an act or cancel or vary a transaction or resolution;
- (b) regulate the conduct of the company's affairs in future; or
- (c) provide for the purchase of the shares or debentures of any members or debenture holders of the company by other members or debenture holders of the company or by the company itself; and in the case of purchase of shares by the company without regard to the limitations imposed by sections 61 to 65, other than subsections (4), (5) and (6) of section 61.

*Companies Bill, 2018*

(3) Where an order under this section makes an amendment in or addition to any provisions of a company's constitution, then, despite anything in this Act but subject to the provisions of the order, the company shall not without the leave of the Court, make a further amendment in or addition to the constitution inconsistent with the provisions of the order.

(4) An office copy of an order under this section amending or adding to the company's constitution shall, within twenty-eight days after the making of the order, be delivered by the company to the Registrar for registration.

(5) Where a company defaults in complying with subsection (4), the company and an officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of two hundred and fifty penalty units.

(6) On an application under this section by a member or debenture holder of the company, the Court may order the applicant to give security for the costs of the company and may direct that the application shall be heard in chambers.

**Shareholder's requirement of company to purchase shares**

**220.** (1) Despite sections 64 and 65 a member may require a company to purchase the shares of that member where members of a company by special resolution resolve to

- (a) amend the constitution of the company with a view to varying or dispensing with the business activities or objects of the company;
- (b) approve
  - (i) a major transaction under section 145;
  - (ii) an arrangement, merger or both of the company under Part T of Chapter Two of this Act; or

(iii) the variation of class rights under section 50.

(2) A sale and distribution in pursuance of a special resolution under subsection (1) is binding on the company.

(3) A member of the company is entitled to have the shares of that member bought under the provisions of this Act, only if that member voted wholly against the resolution for matters specified in subsection (1).

*Companies Bill, 2018*

(4) A special resolution pursuant to paragraph (a) and paragraphs (b) (i), (ii) and (iii) of subsection (1), may only be rescinded by a special resolution.

(5) For the purposes of

- (a) subsection (2), if within one year from the date of the passage of the special resolution, the company has been unable to carry out the proposed objects or any of the business activities specified in paragraph (b) of subsection (1), a member is entitled to apply to have the respective shares reinstated; and
- (b) this section, a “special resolution” is deemed to include, in the case of a variation of class rights, the prior written consent of the holders of at least three-fourths of the issued shares of the class of shares affected.

**Notice requiring purchase of shares**

**221.** (1) A member of a company who wishes the company to purchase that member’s shares under section 220 shall, within fourteen days of the passage of the resolution at a meeting of the members of the company, give written notice to the company requiring the company to purchase those shares.

(2) On receipt of the notice, the Board shall

- (a) arrange for the purchase of the shares by the company;
- (b) arrange for some other person to purchase the shares;
- (c) arrange for the resolution to be rescinded in accordance with subsection (4) of section 220; or
- (d) apply to the Court for an order exempting it from the purchase of the members’ shares.

(3) The Board shall within twenty-eight days of receipt of the notice give written notice to the shareholder of its decision.

**Purchase of shares by company**

**222.** (1) Where the Board agrees under paragraph (a) of subsection (2) of section 221 to the purchase of the shares by the company, it shall within seven days of issuing notice under subsection (3) of section 221,

- (a) state a fair and reasonable price as at the close of business on the day before the day the resolution is passed for the shares to be acquired; and
- (b) give written notice of the price to the member.

*Companies Bill, 2018*

(2) A member who considers that the price stated by the Board is not fair and reasonable, shall forthwith, but at any rate, not later than fourteen days after receipt of the notice, give written notice of the objection to the company.

(3) Where the member agrees to the price stated by the Board without objection, the company shall, on the date the company and the member mutually agree, or in the absence of any agreement, as soon as practicable, purchase all the shares at the stated price.

**Determination of fair and reasonable price for purchase of shares by company**

**223.** (1) Where a member raises an objection to the price of shares stated by the board of directors under subsection (2) of section 222, the company shall

- (a) pay to the member concerned, a provisional price in respect of each share equal to the price stated by the Board of directors, and
- (b) refer the matter to an auditor to determine a fair and reasonable price for the shares within seven days.

(2) When the payment of the provisional price is made, the member concerned shall take the steps required to transfer the shares to the company.

(3) Where after fourteen days, the auditor is unable to determine a fair and reasonable price for the shares,

- (a) the member concerned and the Board shall each appoint an arbitrator; and
- (b) the member and the Board shall agree on an umpire.

(4) The company shall bear the costs for the appointment of an arbitrator under subsection (3).

(5) Where the member and Board are unable to agree on the appointment of a third arbitrator as umpire, the Court may appoint the umpire.

(6) A reference to arbitration under this section, shall be deemed to be a submission to arbitration in accordance with the Alternative Dispute Resolution Act, 2010 (Act 798).



*Companies Bill, 2018*

(7) The arbitrator shall expeditiously determine a fair and reasonable price for the shares on the day before the date on which the members determined by special resolution authorising the respective action under subsection (1) of section 220 excluding any appreciation or depreciation directly or indirectly induced by the action or its proposal.

(8) The price determined by the arbitrator shall be binding on the company and the member concerned.

(9) Where the price of shares to be determined are listed on a Stock Exchange or traded on a stock market, the arbitrator shall determine the price for the shares as being the price at which shares of that kind are traded on the Stock Exchange or stock market as at the close of business on the day before the date on which the members determined by special resolution for the authorising of the respective action excluding any appreciation or depreciation directly or indirectly induced by the action or its proposal unless a price determined in accordance with this subsection would be clearly unfair, in all the circumstances to the shareholder concerned.

(10) Where the price determined in accordance with a provision of this section

- (a) exceeds the provisional price, the company shall immediately pay the outstanding balance to the respective member; or
- (b) is less than the provisional price paid, the company may recover from the respective member the excess paid.

(11) The arbitrator may award interest on any balance payable or in excess to be repaid under subsection (10) at the rate that the arbitrator thinks fit, having regard to whether the provisional price paid or the reference to arbitration, as the case may be, was reasonable.

**Application to Court for exemption on grounds of insolvency**

**224.** (1) The company shall apply to the Court for an order exempting it from the obligation to purchase its shares, where

- (a) a notice is given to a company under section 221;
- (b) the Board has resolved that the purchase by the company of the shares to which the notice relates would result in it becoming insolvent; and
- (c) the company has, following reasonable efforts to do so, been unable to arrange for the shares to be purchased by another person in accordance with paragraph (b) of subsection (2) of section 221.

*Companies Bill, 2018*

(2) Where the Court is satisfied that the purchase of the shares would result in the company becoming insolvent and the company has made reasonable efforts to arrange for the shares to be purchased by another person in accordance with paragraph (b) of subsection (2) of section 221, the Court may make

- (a) an order exempting the company from the obligation to purchase the shares;
- (b) an order suspending the obligation to purchase the shares; or
- (c) any other order that it considers fit, including an order referred to in subsection (2) of section 227.

(3) For the purposes of this section, the stated capital of a company shall not be taken into account in determining whether the company shall, after the repurchase, continue to be solvent.

(4) Despite subsection (3), where the company has entered into an agreement with a shareholder under subsection (3) of section 222, the stated capital shall be taken into account to the extent required by the agreement unless the shareholder's prior consent is obtained.

**Purchase of shares by third party**

**225.** (1) Section 222 shall apply to the purchase of shares by a person with whom the company has entered into an arrangement for purchase in accordance with paragraph (b) of subsection (2) of section 221 subject to the necessary modification.

(2) Every holder of shares that are to be purchased in accordance with the arrangement shall be indemnified by the company in respect of loss suffered by reason of the failure by the person who has agreed to purchase the shares to purchase them at the price nominated or fixed by arbitration, as the case may be.

**Reinstatement of shares**

**226.** (1) Where a former member wishes for shares to be reinstated pursuant to subsection (5) of section 220, that former member shall give written notice to the company within twenty-eight days after the one year period requiring the repurchase of the shares by that member.

(2) On the receipt of the notice, the Board shall within seven days notify the former member in writing if it agrees to the purchase and indicate a specific date for payment of the price of the shares.

*Companies Bill, 2018*

(3) Within seven days after receipt of a notice under subsection (2), the former member concerned shall make payment for the shares at the purchase price of the shares at the time the member received payment for those shares.

(4) The member who applies to the company for reinstatement of shares is entitled to receive the correlative dividends or other distributions made during the one year period.

(5) When payment for the shares is made by the member under subsection (3), the company shall

- (a) forthwith deliver to the member an executed instrument of transfer of the shares together with any relevant share certificate; or
- (b) otherwise take the necessary steps required to transfer the shares to the member.

**Application to court for exemption**

**227.** (1) A company to which a notice has been given under section 221, may apply to the Court for an order exempting it from the obligation to purchase the shares to which the notice relates, on the grounds that

- (a) the purchase would be disproportionately damaging to the company;
- (b) the company cannot reasonably be required to finance the purchase; or
- (c) it would not be just and equitable to require the company to purchase the shares.

(2) On an application under this section, the Court may make an order to relieve the company in whole or in part and on the terms that it considers fit from the liability to purchase the shares if in the circumstances, including lapse of time, the Court considers it equitable to do so.

(3) An order of the Court under subsection (2) may include

- (a) setting aside a resolution of the shareholders;
- (b) directing the company to take, or refrain from taking, any action specified in the order; or
- (c) requiring the company to pay compensation to the shareholders affected.

*Companies Bill, 2018*

*Part S: Inspection and Investigation of Companies*

**Enquiries by the Registrar**

**228.** (1) In order to ensure that the provisions of sections 127 to 137 regarding the maintenance and auditing of accounts are being duly complied with, the Registrar may by written order call on a company to produce for the Registrar's inspection all or any of the books of the company.

(2) Where it appears to the Registrar that there are circumstances suggesting, in relation to a company, that

- (a) a provision of this Act is not being complied with, or
- (b) a document which the company is required to send to the Registrar under this Act does not disclose a full and fair statement of the matters to which it purports to relate, or
- (c) the business of the company is being conducted with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose, or
- (d) the business of the company is being conducted or the powers of the directors are being exercised in a manner oppressive to a part of the members or debenture holders or in disregard of their proper interests as members, shareholders, officers or debenture holders, or
- (e) persons concerned with its formation or the management of its affairs have in connection with the formation or management been guilty of a breach of duty towards it or its members, or
- (f) the members of the company have not been given the information with respect to its affairs that they might reasonably expect,

the Registrar may by written order call on the company to produce for the Registrar's inspection all or any of the books of the company or to furnish in writing that information or explanation that the Registrar may specify in the order.

(3) Where the Registrar makes an order under subsection (1) or (2), the company shall comply with the order within the time specified in the order, and the persons who are or have been officers of the company shall so far as lies within their power, produce the books or furnish the information or explanation.

*Companies Bill, 2018*

(4) Where the company defaults in complying with subsection (3), the company and an officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of two hundred and fifty penalty units and if an officer or former officer of the company defaults in complying with subsection (3), that officer is liable to pay to the Registrar, an administrative penalty of two hundred and fifty penalty units.

(5) Unless the books, information, or explanations produced or given to the Registrar in accordance with this section satisfy the Registrar that further action is not needed, the Registrar shall

- (a) proceed in accordance with section 234, or
- (b) report the circumstances in writing to the Court.

**Appointment of inspector under order of the Court**

**229.** (1) The Court may order the Registrar to appoint one or more competent inspectors to investigate the affairs of a company and to report on the affairs to the Registrar in the manner that the Court directs,

- (a) on a report by the Registrar after enquiries by the Registrar in accordance with section 228;
- (b) on the application of the Registrar; or
- (c) on the application of not less than one hundred members, or of members holding not less than one-tenth of the issued shares, or of members being not less than one-tenth in number of the total members.

(2) Where the application is made under paragraph (c) of subsection (1),

- (a) it shall be supported by the evidence that the Court requires for the purpose of showing that the applicants have good reason for requiring the investigation;
- (b) the Court may, before ordering the appointment of an inspector, require the applicants to give security to an amount determined by the Court for payment of the costs of the investigation; and
- (c) at least fourteen days' previous notice of the application shall be given to the Registrar who shall be entitled to be represented at the hearing and to give evidence and call witnesses.

*Companies Bill, 2018*

(3) An application under this section shall be heard in chambers and at least fourteen days' previous notice of the application shall be given to the company which shall be entitled to be represented at the hearing and to give evidence and call witnesses.

**Appointment of inspector on special resolution of the company**

**230.** The Registrar shall appoint one or more competent inspectors to investigate the affairs of a company and to report on the affairs to the Registrar in the manner that the Registrar directs if the company by special resolution declares that its affairs ought to be investigated by an inspector appointed by the Registrar.

**Power to carry investigation into the affairs of associated companies**

**231.** Where an inspector appointed under section 229 or section 230 to investigate the affairs of a company thinks it necessary for the purposes of the investigation to investigate also the affairs of any other body corporate which is or has at any relevant time been the company's associated company, the inspector may do so, and shall report on the affairs of the other body corporate so far as the inspector thinks the results of the investigation are relevant to the investigation of the affairs of the first mentioned company.

**Production of documents and evidence**

**232.** (1) The officers and agents of the company and the officers and agents of any other body corporate whose affairs are investigated by virtue of section 231

- (a) shall produce to the inspectors the books and the documents of or relating to the company or the other body corporate which are in their custody or power, or
- (b) shall otherwise give to the inspectors the assistance in connection with the investigation which they are reasonably able to give.

(2) An inspector may examine on oath the officers and agents of the company or other body corporate in relation to its business and may administer an oath accordingly.

*Companies Bill, 2018*

(3) Where an officer or agent of the company or other body corporate,

- (a) destroys or refuses to produce to the inspectors a book or document which is that officer's or agent's duty under this section so to produce, or
- (b) refuses to answer a question which is put to that officer or agent by the inspectors with respect to the affairs of the company or other body corporate,

the inspectors may certify the facts in writing to the Court, and the Court may inquire into the case, and after hearing the witnesses who may be produced against or on behalf of the alleged offender, and after hearing the statement which may be offered in defence, punish the offender as if the offender had been guilty of contempt of the Court.

(4) Where an inspector thinks it necessary for the purposes of the investigation that a person whom the inspector does not have a power to examine on oath should be so examined, the inspector may apply to the Court and the Court may order that person to attend and be examined on oath before it on a matter relevant to the investigation.

(5) On examination,

- (a) the inspector may take part personally or be represented by a legal practitioner;
- (b) the Court may put the questions that the Court considers appropriate to the person examined; and
- (c) the person examined shall answer the questions that the Court may put or allow to be put to that person who may at a personal cost employ a legal practitioner, who shall be at liberty to put to that person questions that the Court may consider just for the purpose of enabling that person to explain or qualify an answer given by that person;

and notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may be used in evidence against that person.

(6) Despite anything in paragraph (c) of subsection (5), the Court may allow costs to the person examined, and the costs so allowed shall be paid as part of the expenses of the investigation.

*Companies Bill, 2018*

(7) In this section, a reference to officers or to agents includes past, as well as present, officers or agents, and for the purposes of this section, “agents” in relation to a company or other body corporate includes the bankers or legal practitioners of the company or other body corporate and a person employed by the company or other body corporate as auditor.

**Inspectors’ report**

**233.** (1) The inspectors may, and, if so directed by the Registrar, shall, make interim reports to the Registrar, and on the conclusion of the investigation shall make a final report to the Registrar.

(2) The report shall be written or printed, as the Registrar directs.

(3) The Registrar may cause the report to be printed and published, and shall, unless in the Registrar’s opinion it is undesirable in the public interest,

(a) forward a copy of the report made by the inspectors to the registered office of the company;

(b) furnish a copy of the report on request and on payment of a reasonable charge, to any other person who is a member of the company or of any other body corporate dealt with in the report by virtue of section 231 or whose interests as a creditor of the company or of that other body corporate appear to the Registrar to be affected;

(c) where the inspectors are appointed under section 229, furnish a copy of the report to the Court; and

(d) where the inspectors are appointed under paragraph (c) of subsection (1) of section 229, furnish at the request of the applicants for the investigation, a copy of the report to them.

(4) A copy of the report authenticated by the seal of the Registrar is admissible in legal proceedings as evidence of the opinion of the inspectors in relation to a matter contained in the report.

**Proceedings after investigations**

**234.** Where as a result of information obtained in accordance with section 228, or as a result of a report made under section 233, it appears to the Registrar that,

(a) a person may have committed an offence for which that person is criminally liable, the Registrar shall refer the matter to the Attorney-General for necessary action;



*Companies Bill, 2018*

- (b) a company ought to be wound up or that an application should be made to the Court under section 219, the Registrar may petition the Court to wind up the company, if it thinks it just and equitable to do so, or may apply to the Court under section 219; or
- (c) proceedings ought in the public interest to be brought by a company against a director or former director of a company under section 200 or against a person to recover property, damages or compensation to which a body corporate is entitled, the Registrar may bring proceedings for that purpose in the name of the company or body corporate but, subject to section 235 shall indemnify the company or body corporate against the costs or expenses incurred by it in connection with those proceedings.

**Expenses of investigations**

**235.** (1) The expenses of, and incidental to, an investigation by the Registrar under section 228 or by inspectors appointed by the Registrar under section 229 or 230 shall be defrayed in the first instance by the Registrar, but the following persons are, to the extent mentioned, liable to repay the Registrar, that is to say,

- (a) a person who is convicted on a prosecution instituted by virtue of paragraph (a) of section 234, or who is ordered to restore property or pay damages or compensation in proceedings brought by virtue of paragraph (c) of section 234 may in the same proceedings be ordered to pay the expenses to the extent specified in the order;
- (b) a body corporate in whose name proceedings are brought by virtue of paragraph (c) of section 234 is liable to the amount or value of any sums of money or property recovered by it as a result of those proceedings, and the expenses shall be a first charge on those sums or property; or
- (c) a body corporate dealt with by the report of an inspector appointed under section 229 or 230 and the applicants, other than the Registrar, for the investigation where the inspector was appointed under section 229 is liable to the extent that the Registrar shall direct.

*Companies Bill, 2018*

(2) The report of an inspector may, if the inspector thinks fit, and shall if the Registrar so directs, include a recommendation as to the directions which the inspector thinks appropriate to be given under paragraph (c) of subsection (1).

(3) For the purposes of this section, the costs or expenses incurred by the Registrar in connection with proceedings brought under paragraph (b) or (c) of section 234 shall be treated as expenses of the investigation giving rise to the proceedings.

(4) As between the persons specified in paragraphs (a), (b) and (c) of subsection (1) of this section, liability to repay the Registrar shall be borne, to the extent to which they are respectively liable under those paragraphs, in the first instance by those liable under paragraph (a), by those liable under paragraph (b), and finally by those liable under paragraph (c).

**Request for information as to persons interested in shares or debentures**

**236.** (1) Where it appears to the Registrar that there is good reason to investigate the ownership of any shares in or debentures of a company, or where the directors of a company so request in writing, the Registrar may personally carry out the investigation or by written order appoint one or more inspectors to carry out the investigation in a manner provided by this section.

(2) The Registrar or an inspector appointed by the Registrar may require a person whom the Registrar or the inspector has reasonable cause to believe,

(a) to be or to have been interested in those shares or debentures, or

(b) to act or to have acted in relation to those shares or debentures as the agent or adviser of a person interested in those shares or debentures,

to give the Registrar or inspector an information which that person has or can reasonably be expected to obtain as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares and debentures.

(3) For the purposes of this section, a person has an interest in a share or debenture if that person has a right to acquire or dispose of the share or debenture, or an interest in or to vote in respect of the share or

*Companies Bill, 2018*

debenture, or if that person's consent is necessary for the exercise of any of the rights of other persons interested in the share or debenture, or if other persons interested in the share or debenture can be required or are accustomed to exercise their rights in accordance with the instructions of that person.

(4) A person who fails to give information required of that person under this section, or who in giving that information makes a statement which is false in a material particular commits an offence and is liable on summary conviction to a fine of not less than three hundred and twenty-five penalty units and not more than seven hundred and fifty penalty units or to a term of imprisonment of not less than three months and not more than six months or to both the fine and imprisonment unless, in the case of a false statement, it is proved that that person believed on reasonable grounds that the statement was true.

(5) Where it appears to the Registrar that there is difficulty in finding out the relevant facts about those shares or debentures, whether issued or to be issued, and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned or any of them to give accurate information as required by this section, the Registrar may by order direct that the shares or debentures shall, until further order, be subject to the restrictions imposed by subsection (6).

(6) Where shares or debentures are directed to be subject to the restrictions imposed by the direction referred to in subsection (5),

- (a) a transfer of those shares or debentures or of the right to be issued with those shares or debentures and an issue of those shares or debentures is void;
- (b) voting rights shall not be exercisable in respect of those shares or debentures;
- (c) further shares or debentures shall not be issued in respect of those shares or debentures or in pursuance of an offer made to the holders of those shares or debentures; and
- (d) except in a liquidation, a payment shall not be made of the sums of money due from the company on those shares or debentures.

(7) Where the Registrar makes an order directing that shares or debentures shall be subject to the restrictions, or refuses to make an order directing that they shall cease to be subject to those restrictions, a person

*Companies Bill, 2018*

having an interest in the shares or debentures may apply to the Court and the Court may direct that the shares or debentures shall cease to be subject to those restrictions or any of them.

- (8) A person who,
- (a) exercises or purports to exercise a right to dispose of shares or debentures which, to the knowledge of that person, are for the time being subject to the restrictions or any of them, or of a right to be issued with those shares or debentures,
  - (b) votes, whether as holder or proxy, or appoints a proxy to vote in respect of shares or debentures which, to the knowledge of that person are for the time being subject to the restriction, those voting rights shall not be exercisable in respect of those shares or debentures, or
  - (c) being the holder of shares or debentures fails to notify of the restrictions any other holder or proxy for a holder whom that holder does not know to be aware of the restrictions,

commits an offence and is liable on summary conviction to a fine of not less than three hundred and twenty-five penalty units and not more than seven hundred and fifty penalty units or to a term of imprisonment of not less than three months and not more than six months or to both the fine and imprisonment and where shares or debentures in a company are issued in contravention of the restriction, the company and every officer of the company that is in default is liable to a fine of not more than seven hundred and fifty penalty units.

(9) A prosecution shall not be instituted under subsection (8) except by, or with the consent of, the Attorney-General.

(10) Where an inspector is appointed to carry out an investigation under this section, the inspector shall report in writing to the Registrar on the result of the investigation.

- (11) The Registrar may
- (a) furnish to a person or the persons who the Registrar thinks fit, a copy of the report referred to in subsection (10), or of part or parts of the copy and may cause the copy or those parts of the copy to be printed and published;
  - (b) divulge to a person or the persons who the Registrar thinks fit, any information obtained by the Registrar as a result of the investigation of the Registrar or the inspector and may publish that information.

*Companies Bill, 2018*

(12) The expenses of an investigation under this section shall be defrayed by the Registrar.

**Saving for legal practitioners and bankers**

**237.** Sections 228 to 236 do not require disclosure to the Registrar or to an inspector appointed by the Registrar,

- (a) by a legal practitioner of privileged communication made to the legal practitioner in that capacity except as regards the name and address of the client; or
- (b) by the bankers of a body corporate in their capacity as bankers of the body corporate of information as to the affairs of any of their customers other than the body corporate.

*Part T: Arrangements and Mergers*

**Arrangement and merger by sale of undertaking**

**238.** (1) With a view to effecting an arrangement or merger, a company may by special resolution resolve,

- (a) that the company be put into members' voluntary liquidation, and
- (b) that the liquidator be authorised,
  - (i) to sell the whole or part of its undertaking or assets to another body corporate, whether a company within the meaning of this Act or not, in this section called the transferee company, in consideration or part consideration of fully paid shares, debentures or other like interests in the transferee company, and
  - (ii) to distribute those shares, debentures or other like interests in specie among the shareholders of the company in accordance with their rights in the liquidation.

(2) A sale and distribution in pursuance of a special resolution, is binding on the company and the members of the company and each member shall be deemed to have agreed with the transferee company to accept the fully paid shares, debentures or other like interests to which that member is entitled under the distribution.

(3) For the purposes of subsection (2),

- (a) if within one year from the date of the passage of the special resolution, an order is made under section 219 or

*Companies Bill, 2018*

for the winding up of the company under the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180), or a statutory modification or re-enactment of that Act, the arrangement or merger and the sale and distribution shall not be valid unless sanctioned by the Court; or

- (b) if a member of the company, by notice in writing addressed to the liquidator and left at the registered office of the company within twenty-eight days after the passage of the resolution, dissents from the arrangement or merger in respect of all of the shares held by that member, the liquidator shall abstain from carrying the resolution into effect or shall purchase the shares at a price to be determined in a manner provided by subsections (4), (5) and (6) of this section.

(4) Where the liquidator elects to purchase the shares of a member who has expressed dissent in accordance with subsections (2) and (3) of this section, the price payable for the shares shall be determined by agreement or, in default of agreement, by a single arbitrator appointed by the Institute of Chartered Accountants in the Republic in accordance with the Alternative Dispute Resolution Act, 2010 (Act 798).

(5) The price shall be determined by estimating what the member concerned would have received had the whole of the undertaking of the company been sold as a going concern for cash to a willing buyer and the proceeds, less the costs of liquidation, been divided amongst the members in accordance with their rights.

(6) The purchase money shall be paid before the company is dissolved and raised by the liquidator in the manner that may be determined by the special resolution or, in default of a direction in the special resolution, in the manner that the liquidator thinks fit as part of the expenses of the winding-up.

(7) This section does not authorise a variation or an abrogation of the rights of the creditors of the company.

(8) If a company otherwise than under this section

- (a) sells or resolves to sell the whole or a part of its undertaking or assets to another body corporate in consideration or part consideration of shares, debentures or other like interest in that body corporate, and

*Companies Bill, 2018*

- (b) resolves to distribute the proceeds in specie among the members of the company, whether in a liquidation or by way of dividend,

a member of the company may, by notice in writing addressed to the company and left at the registered office of the company within twenty-eight days after the passage of the resolution authorising the distribution, require the company to abstain from carrying the resolution into effect or to purchase any of the shares of that member at a price to be determined in the manner provided by subsections (4), (5) and (6).

- (9) Subsection (8) does not authorise a company

- (a) to purchase its shares except in accordance with sections 61 to 66; or  
(b) to make a distribution to its shareholders except in accordance with section 72 and sections 75 to 82 or in a liquidation.

**Arrangement or merger with Court approval**

**239.** (1) Where an arrangement or merger is proposed, whether or not involving a compromise between a company and its creditors or members or any class or classes of them, the Court, on the application of the

- (a) company or a member or creditor of the company,  
(b) Securities and Exchange Commission, or  
(c) the liquidator in the case of a company being wound up,

may order that meetings of the various classes of members and creditors concerned, be summoned in the manner that the Court directs or that a postal ballot be taken of the various classes in the manner provided by subparagraphs (g), (h), (i) and (j) of paragraph 16 of the Eighth Schedule.

(2) Where a seventy-five per cent majority of each class of members concerned and a majority in number representing three-fourths in value of each class of creditors concerned approve the arrangement or merger, the approval shall be referred to the Registrar by the persons concerned.

(3) The Registrar shall recommend to the Court, the appointment of a reporter who shall be a qualified insolvency practitioner, to investigate the fairness of the arrangement or merger.

*Companies Bill, 2018*

(4) The remuneration of the reporter shall be fixed by the Registrar and the proper expenses of the investigation shall be borne by the company or any other party to the application that the Court orders.

(5) Where the Court, after considering the report, makes an order confirming the arrangement or merger, with or without modifications, the arrangement or merger as confirmed is binding on the company and on all members and creditors of the company and its validity shall not subsequently be impeachable in any proceedings.

(6) On the hearing by the Court of the application to confirm the arrangement or merger, a member or creditor of the company claiming to be affected by the arrangement or merger is entitled to be represented and to object.

(7) The Court may prescribe the terms that it considers fit as a condition of its confirmation including a condition that any member shall be given rights to require the company to purchase their shares at a price fixed by the Court or to be determined in a manner provided in the order.

(8) An arrangement or merger may be carried out in accordance with this section although it could have been accomplished under section 238 or any other provision of this Act.

(9) Despite subsection (8), sections 78 to 82 shall also be complied with if the arrangement or merger is one which, by virtue of section 78 requires the confirmation of the Court in accordance with those sections.

(10) An order made under subsection (5) of this section shall not have effect until an office copy of the order has been delivered to the Registrar who shall register the order and publish it in the Companies Bulletin.

(11) A copy of the order shall be annexed to every copy of the company's constitution issued by the company after the order has been made.

(12) If a company defaults in complying with subsection (11), the company and every officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units in respect of each copy issued contrary to subsection (11).

**Powers of the Court for facilitating arrangements or mergers**

**240.** (1) Where an application is made to the Court under section 239 and it is shown to the Court that under the arrangement or merger



*Companies Bill, 2018*

the whole or a part of the undertaking or assets of a company, in this section referred to as a transferor company, is to be transferred to another company, in this section referred to as the transferee company, the Court may, by the order sanctioning the arrangement or merger or by a subsequent order, make provision for all or any of the following matters, that is to say,

- (a) the transfer to the transferee company of the whole or a part of the undertaking, assets and liabilities of the transferor company;
- (b) the allotting or appropriation by the transferee company of shares, debentures or other like interests in that company which, under the arrangement or merger, are to be allotted or appropriated by that company to or for a person;
- (c) the continuation by or against the transferee company of legal proceedings pending by or against a transferor company;
- (d) the dissolution, without winding up, of a transferor company;
- (e) the provision to be made for any person who, within the time and in the manner that the Court directs, dissents from the arrangement or merger; or
- (f) the incidental, consequential and supplemental matters that are necessary to secure that the arrangement or merger is fully and effectively carried out.

(2) Where an order under subsection (1) provides for the transfer of property or liabilities

- (a) that property shall, by virtue of the order, be transferred to and vest in, and
- (b) those liabilities shall, by virtue of the order, be transferred to and become liabilities of,

the transferee company, and in the case of a property, if the order so directs, shall be freed from a charge which, by virtue of the arrangement or merger, is to cease to have effect.

(3) Where an order is made under subsection (1), a company in relation to which the order is made shall deliver an office copy of the order to the Registrar for registration within twenty-eight days after the making of the order.

(4) Where the company defaults in complying with subsection (3), the company and every officer of the company that is in default is

*Companies Bill, 2018*

liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the default continues.

- (5) In this section,  
“property” includes property rights and powers of every description;  
“liabilities” includes duties of every description although the rights, powers and duties are of a personal character which could not under the general law be assigned or performed vicariously.

**Information as to arrangements and mergers**

**241.** (1) Where notice of a resolution to approve an arrangement or merger under section 238 or 239 is sent to members or creditors of a company, there shall be sent also a statement explaining the effect

- (a) of the arrangement or merger and in particular stating the material interests of the directors of the company, whether as directors or members or creditors of the company or otherwise, and  
(b) on those interests of the arrangement or merger in so far as it is different from the effect on the like interests of other persons.

(2) In a notice of the resolution which is given by advertisement, there shall be included the statement referred to in subsection (1) or a notification of the place at which and the manner in which members or creditors to whom the notice is addressed may obtain copies of the statement.

(3) The member or creditor shall, on making an application in the manner indicated in the notice, be furnished by the company, free of charge, with a copy of the statement.

(4) Where the arrangement or merger affects the rights of debenture holders of the company, the statement shall give the like explanation as respects the trustees of a deed for securing the debentures as it is required to give as respects the company’s directors.

(5) Where a company defaults in complying with a requirement of this section, the company and an officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of seven hundred and fifty penalty units.

*Companies Bill, 2018*

- (6) For the purposes of subsection (5)
- (a) a liquidator of the company or a trustee of a deed securing debentures of the company is an officer of the company;
  - (b) a person is not liable under that subsection if that person shows that the default was due to the refusal of any other person to supply the necessary particulars as to those material interests; and
  - (c) that subsection does not derogate from the power of the Court under section 218 or 219 to declare ineffective a special resolution passed pursuant to section 238.

(7) A director of the company and of a trustee for debenture holders of the company, shall give notice to the company of the matters relating to that director or trustee as may be necessary for the purposes of this section, and a director or trustee who defaults in complying with this subsection is liable to pay to the Registrar, an administrative penalty of one hundred and fifty penalty units.

**Acquiring shares of minority on acquisition of subsidiary company**

**242.** (1) Where a body corporate, whether a company within the meaning of this Act or not, in this section referred to as the transferee company, has made an offer to the holders of shares in a company, in this section referred to as the transferor company, if the conditions specified in subsection (2) are duly fulfilled, the transferee company may compulsorily acquire the shares in the transferor company in the manner specified in this section.

- (2) This section applies if,
- (a) the offer by the transferee company is made to the holders of the whole of the shares in the transferor company, other than those already held by the transferee company or any of its associated companies or by nominees for the transferee company or any of its associated companies;
  - (b) the consideration for the acquisition is
    - (i) the allotment of shares in the transferee company, or
    - (ii) the allotment of shares in the transferee company or, at the option of the holders, a payment of cash;

*Companies Bill, 2018*

- (c) the same terms are offered to the holders of the shares to whom the offer is made or, where there are different classes of shares, to the holders of shares of the same class;
- (d) within four months after the making of the offer, it has been accepted in respect of not less than nine-tenths of the whole of the shares and of not less than nine-tenths of the shares of each class, other than shares already held by the transferee company or any of its associated companies or by nominees of the transferee company or any of its associated companies and the holders of those shares are not less than three-fourths in number of the holders of those shares and of each class of those shares.

(3) Where the conditions specified in subsection (2) are fulfilled, the transferee company may, within two months after the conditions are fulfilled, give notice in the prescribed form to a shareholder who has not accepted the offer in respect of the shares of that shareholder that it desires to acquire those shares.

(4) When the notice under subsection (3) is given, the transferee company is entitled and bound to acquire those shares on the terms of the offer, unless on an application made by the shareholder in accordance with subsection (5), the Court orders otherwise.

(5) At any time within a period of two months from the service of the notice referred to in subsection (3), a shareholder to whom notice has been given in accordance with subsection (3), may apply to the Court and the Court may order that the transferee company shall not be entitled to acquire the share of that holder or that the transferee company shall be bound to acquire those shares on any other terms that the Court may order.

(6) On an application to the Court under subsection (5) the Court, before making an order, may on the recommendation of the Registrar appoint one or more reporters to investigate the fairness of the offer and to report on the fairness to the Court.

(7) The remuneration of the reporters shall be fixed by the Registrar and the remuneration and the proper expenses of the investigation shall be borne by the transferee company or by the applicant or both as the Court shall order.

*Companies Bill, 2018*

(8) Where the Court makes an order under subsection (5), that the transferee company shall be bound to acquire the shares concerned on terms different from those of the original offer, the transferee company shall give notice in the prescribed form, of the amended terms, to the other holders of shares of the same class and to the former holders of shares of the same class who accepted the original offer unless the Court otherwise orders.

- (9) At any time within two months of the giving of the notice,
- (a) a shareholder is entitled to require the transferee company to acquire the shares on the same terms as those ordered by the Court, and
  - (b) a former holder is entitled to require the transferee company to pay or transfer to that former holder the additional consideration to which the former holder would have been entitled had the shares been acquired on the terms ordered by the Court.

(10) Where notice is given by the transferee company under subsection (3) and the Court has not, on an application by the shareholder under subsection (5), ordered to the contrary, the transferee company shall,

- (a) on the expiration of two months from the date on which notice is given, or
  - (b) if an application by the shareholder under subsection (5) is then pending after that application has been disposed of,
- transmit a copy of the notice to the transferor company together with an instrument of transfer executed on behalf of the shareholder by a person appointed by the transferee company and on its own behalf by the transferee company, and transfer to the transferor company the shares, or if the shareholder has exercised the cash option pay to the transferor company the cash, representing the consideration payable by the transferee company for the shares which by virtue of this section the transferee company is entitled to acquire.

(11) After receipt of payment under subsection (10), the transferor company shall register the transferee company as the holder of those shares.

(12) The sums of money received by the transferor company under subsection (10) shall be paid into a separate bank account and the

*Companies Bill, 2018*

sums of money and the shares so received shall be held by the transferor company on trust for the several persons entitled to the shares in respect of which the sums of money and shares were received.

**Rights of minority on acquisition of subsidiary company**

243. (1) Where, as a result of an offer to the shareholders of a company or any of them, shares in that company are transferred to another body corporate, whether a company within the meaning of this Act or in this section called the transferee company, or its nominee and those shares, together with any other shares in the first mentioned company held by the company or a nominee for the transferee company, or by a nominee for, any of its associated companies at the date of the transfer, comprise or include three-fourths of the shares in the first named company or any class of those shares,

- (a) the transferee company shall within one month from the date of the transfer, unless on a previous transfer has already complied with this requirement, give notice of that fact in the prescribed form to the holders of the remaining shares or of the remaining shares of the class; and
- (b) any of those holders may within three months from the giving of the notice to the holder require the transferee company to acquire all or any of the shares of that holder.

(2) Where a shareholder under subsection (1) requires the transferee company to acquire shares, the transferee company is entitled and bound to acquire those shares on the terms of the offer or on any other terms that may be agreed or as the Court, on the application of the transferee company or the shareholder, may order.

(3) On an application to the Court under subsection (2), the Court may on the recommendation of the Registrar appoint one or more reporters to investigate the fairness of the offer and in that event subsections (6) and (7) of section 242 shall apply.

*Part U: Receivers and Managers*

**Eligibility for appointment as receiver or manager**

244. (1) The following persons are not eligible to be appointed or to act as receivers or managers of a property or an undertaking of a company:

- (a) an infant;
- (b) a person found by a court of competent jurisdiction to be a person of unsound mind;

*Companies Bill, 2018*

- (c) a body corporate other than the Registrar;
- (d) a person in respect of whom an order has been made under section 177, for as long as the order remains in force unless leave to act as receiver or manager of the property or undertaking of the company concerned has been given by the Court in accordance with that section;
- (e) an undischarged bankrupt, unless that bankrupt has been granted leave to act as receiver or manager of the property or undertaking of the company concerned by the Court by which that person was adjudged bankrupt.

(2) A person is not eligible to be appointed or to act as a receiver or manager unless that person has in the opinion of the Registrar the requisite expertise and skill to manage and administer a company in receivership.

(3) A director or an auditor of a company is not eligible for appointment as a receiver or manager of a property or an undertaking of that company.

(4) An appointment made in contravention of this section is void and if a person named in subsection (2) or (3) or in paragraphs (a), (c) (d) or (e) of subsection (1) acts as a receiver or manager, that person commits an offence and is liable on summary conviction, to a fine of not less than three hundred and twenty-five penalty units and not more than seven hundred and fifty penalty units or, in the case of an individual, to a fine of not less than three hundred and twenty-five penalty units and not more than seven hundred and fifty penalty units or to a term of imprisonment of not less than three months and not more than six months or to both the fine and imprisonment.

**Power to appoint Official Trustee**

**245.** Where an application is made to the Court to appoint a receiver or manager on behalf of secured creditors or debenture holders of a company which is being wound up under the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180), or a statutory modification or re-enactment of that Act, the Official Trustee may be appointed.

**Duties of receivers**

**246.** (1) A receiver shall exercise the powers of that receiver in good faith and for a proper purpose.

(2) In the exercise of the powers conferred under subsection (1),

*Companies Bill, 2018*

and section 249, the receiver or manager in the case of a receiver or manager appointed out of Court may give special, but not exclusive, consideration to the interests of those on whose behalf the appointment is made.

(3) Pursuant to subsections (1) and (2), a receiver shall exercise the powers of that receiver with reasonable regard to the interests of

- (a) secured creditors,
- (b) the company,
- (c) any person claiming through the company, an interest in the property in receivership,
- (d) unsecured creditors of the company, and
- (e) any surety that may be called on to fulfil obligations of the company.

(4) A receiver that exercises a power of sale of property in receivership shall obtain the best price reasonably obtainable as at the time of sale.

(5) Where a receiver appointed out of Court acts or refrains from acting in accordance with any directions given by the person in whose interests that receiver was appointed, the receiver

- (a) is not in breach of the duty referred to in subsection (3), but
- (b) is still liable for any breach of the duty referred to in subsection (1).

(6) A receiver shall keep money relating to the property in receivership separate from other money received in the course of, but not relating to, the receivership and from other money held by or under the control of the receiver.

(7) A receiver shall at all times keep accounting records that correctly record and explain the receipts, expenditure and other transactions relating to the property in receivership.

(8) A receiver shall retain accounting records for at least six years after the receivership is determined.

**Duties of managers**

**247.** A person appointed manager of the whole or a part of the undertaking of a company shall manage the undertaking with a view to the beneficial realisation of the security of those on whose behalf the appointment is made.



**Absence of defence or immunity**

**248.** Despite a provision of any enactment, rule of law or any provision contained in the deed or agreement by or under which a receiver is appointed

- (a) it is not a defence to proceedings against a receiver for a breach of duty in connection with the sale of property that, the receiver was acting as the company's agent or under a power of attorney from the company; and
- (b) a receiver is not entitled to compensation or indemnity from the property in receivership or the company in respect of any liability incurred by the receiver arising from a breach of the duty in connection with the sale of property.

**Powers of receivers and managers**

**249.** (1) A person appointed receiver of a property of a company shall, subject to the rights of any prior incumbrances

- (a) take possession of and protect the property,
- (b) receive the rents and profits,
- (c) discharge the outgoings in respect of the property, and
- (d) realise the security of those on whose behalf that person is appointed,

but unless also appointed manager, that person shall not carry on a business or an undertaking.

(2) From the date of appointment of a receiver or manager, the powers of the directors or liquidators in a members' voluntary liquidation to deal with the property or undertaking over which the receiver or manager is appointed shall cease until the receiver or manager is discharged.

(3) Where, on the appointment of a receiver or manager, the company is being wound up under the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180), or a statutory modification or re-enactment of that Act, or the property concerned is in the hands of any other officer of the Court, the liquidator or officer is not bound to relinquish control of the property to the receiver or manager except under an order of the Court.

**Receivers and managers appointed by Court**

**250.** (1) A receiver or manager of a property or an undertaking of a company appointed by the Court is, for the purposes of this Act, an officer of the Court and not of the company and shall act in accordance with the directions and instructions of the Court.

*Companies Bill, 2018*

(2) A person appointed manager of the whole or a part of the undertaking of a company shall manage the undertaking with a view to the beneficial realisation of the security of those on whose behalf the appointment is made.

**Receivers and managers appointed out of Court**

**251.** (1) A receiver or manager of a property or an undertaking of a company appointed out of Court is, for the purposes of this Act and subject to section 252, an agent of the person or persons on whose behalf the appointment is made.

(2) A receiver or manager who is appointed manager for the whole or a part of the undertaking of a company is, for the purposes of this Act, an officer of that company and stands in a fiduciary relationship to it, and section 190 shall apply to the manager as if the manager were a director of the company.

(3) The receiver or manager may apply to the Court for directions in relation to a matter arising in connection with the performance of functions under this section; and on that application the Court may give the directions, or make an order declaring the rights of persons before the Court or otherwise, that the Court considers fit.

(4) The Court may, on the application of the company or a liquidator of the company, by order fix the amount to be paid by way of remuneration to the receiver or manager; and may on an application made by the company or liquidator or by the receiver or manager, vary or amend the order.

(5) The power of the Court under subsection (4) shall, where a previous order has not been made with respect to that power under that subsection,

- (a) extend to fixing the remuneration for a period before the making of the order or the application for the order;
- (b) be exercisable although the receiver or manager has died or ceased to act before the making of the order or the application for the order; and
- (c) extend to requiring the receiver or manager or the personal representative of the receiver or manager to account for the excess or that part of the excess that may be specified in the order where the receiver or manager has been paid or has retained for the remuneration payable to the receiver or manager for a period before the making of the order an amount of money in excess of that so fixed for that period.

(6) The power conferred by paragraph (c) of subsection (5) shall not be exercised regarding a period before the making of the application for the order unless, in the opinion of the Court, there are special circumstances making it proper for the power to be so exercised.

**Liabilities of receivers and managers on contracts**

**252.** (1) A receiver or manager of a property or an undertaking of a company is personally liable on a contract entered into by the receiver or manager except in so far as the contract otherwise expressly provides.

(2) As regards contracts entered into by the receiver or manager in the proper performance of the functions of office, the receiver or manager, subject to the rights of a prior incumbrance, is entitled to an indemnity in respect of liability on those contracts out of the property over which the appointment was made to act as receiver or manager.

(3) A receiver or manager appointed out of Court is entitled, as regards contracts entered into by the receiver or manager with the express or implied authority of those making the appointment, to an indemnity in respect of liability on those contracts from those making the appointment to the extent to which the receiver or manager is unable to recover in accordance with subsection (2).

**Notification that receiver or manager has been appointed**

**253.** (1) Where a receiver or manager of a property or an undertaking of a company is appointed, notice shall be given to the Registrar in accordance with section 119 and any invoice, order or business letter issued by or on behalf of the company or the receiver or manager or the liquidator of the company, which is a document on or in which the name of the company appears, shall contain a statement that a receiver or manager has been appointed.

(2) Where default is made in complying with the requirements of subsection (1) relating to invoices, orders or business letters, the company and any officer, liquidator, receiver or manager of the company that is in default is liable on summary conviction to a fine of not less than fifty penalty units and not more than one hundred penalty units.

**Accounts where manager appointed to enforce a floating charge**

**254.** (1) Where a manager is appointed of the whole or substantially the whole of the undertaking of a company on behalf of the holders of debentures secured by a floating charge, the Bodies Corporate (Official

Liquidations) Act, 1963 (Act 180) or a statutory modification or re-enactment of that Act shall apply as regards the submission of a statement of affairs and of periodical accounts by the manager as if the company had been ordered to be wound up under that Act and as if the manager had been appointed liquidator.

(2) A person who defaults in complying with the requirements of subsection (1) is liable on summary conviction to a fine of not less than ten penalty units and not more than twenty-five penalty units for each day during which the default continues.

**Delivery to Registrar of accounts of receivers**

**255.** (1) Except where section 254 applies, a receiver or manager of a property of a company shall,

- (a) within one month, or a longer period that the Registrar may allow, after the expiration of the period of twelve months from the date of the appointment and of every subsequent period of twelve months until the receiver or manager ceases to act, deliver to the Registrar for registration an abstract in the prescribed form showing receipts and payments of the receiver or manager during that period of twelve months; or
- (b) within one month, or a longer period that the Registrar may allow, after the receiver or manager ceases to act as receiver or manager, deliver to the Registrar for registration an abstract in the prescribed form showing receipts and payments of the receiver or manager during the period from the end of the twelve months to which the last abstract relates, and the aggregate of those receipts and payments during the whole period of the appointment.

(2) A receiver or manager who defaults in complying with the requirements of subsection (1) is liable on summary conviction to a fine of not more than twenty-five penalty units for each day during which the default continues.

**Enforcement of receivers' duties**

**256.** (1) Where a receiver or manager of a property or an undertaking of a company,

- (a) having defaulted in filing, delivering or making any return, account, or other document or in giving a notice which the

*Companies Bill, 2018*

receiver or manager is by a provision of this Act required to file, deliver, make or give, fails to make good the default within twenty-eight days after the service on the receiver or manager, of a notice by the company, member, creditor, liquidator of the company or Registrar requiring the receiver or manager to make good the default, or

- (b) having been appointed out of Court under the powers contained in an instrument, has, after being required at any time by the liquidator of the company so to do, failed to render proper accounts of the receipts and payments of the receiver or manager and to vouch the same and to pay over to the liquidator the amount properly payable to the receiver or manager,

the Court may, on an application made for the purpose, make an order directing the receiver or manager to make good the default within the period specified in the order and may provide that the costs of and incidental to the application shall be borne by the receiver or manager.

(2) An application for the purposes of subsection (1) may, in the case of a default mentioned in paragraph (a) of that subsection, be made by the company or a member, creditor or liquidator of the company or by the Registrar, and in the case of a default mentioned in paragraph (b) of that subsection, be made by the liquidator.

*Part V: Winding up*

**Modes of winding up**

257. (1) The winding up of a company may be

- (a) by an official liquidation in accordance with the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180), or a statutory modification or re-enactment of that Act, or  
(b) by a private liquidation in accordance with this Part.

(2) The company shall, from the commencement of the winding up cease to carry on its business except so far as may be required for the beneficial winding up of the company, but the corporate state and corporate powers of the company shall continue until it is dissolved.

(3) Where a company is being wound up by way of a private liquidation, any invoice, order or business letter issued by or on behalf of the company or a liquidator of the company or a receiver or manager of

*Companies Bill, 2018*

a property of the company, which is a document in or on which the name of the company appears, shall contain a statement that the company is being wound up under this Part.

(4) Where default is made in complying with subsection (3), the company and an officer of the company and a liquidator, receiver or manager that is in default is liable on summary conviction to a fine of not less than fifty penalty units and not more than one hundred penalty units.

**Affidavit of solvency**

**258.** (1) Where it is proposed to wind up a company by way of a private liquidation, the directors of the company or, in the case of a company having more than two directors, the majority of the directors shall, at a meeting of the directors, make an affidavit to the effect that they have made a full enquiry into the affairs of the company, and that, having done so, they have formed the opinion that the company will be able to pay its debts and liabilities in full within a period of not more than twelve months from the commencement of the winding up that may be specified in the affidavit.

(2) An affidavit made under subsection (1) does not have effect for the purposes of this Act unless,

- (a) it is made within five weeks immediately preceding the date of the passage of the resolution for the winding up of the company by way of private liquidation and is delivered to the Registrar for registration on or before that date; and
- (b) it embodies a statement of the company's assets and liabilities at the latest practicable date before the making of the affidavit.

(3) A director of a company who makes an affidavit under this section without having reasonable grounds for the opinion that the company will be able to pay its debts and liabilities in full within the period specified in the affidavit, commits an offence and is liable on summary conviction to a fine of not less than three hundred and twenty-five penalty units and not more than seven hundred and fifty penalty units or to a term of imprisonment of not less than six months and not more than one year or to both the imprisonment and the fine.

(4) Where the company is wound up in pursuance of the resolution for the winding up of the company by way of private liquidation

passed within the period of five weeks after the making of the affidavit, but its debts and liabilities are not paid or provided for in full within the period stated in the affidavit, it shall be presumed, until the contrary is shown, that the director did not have reasonable ground for the opinion stated in the affidavit.

**Procedure on resolution for liquidation**

**259.** (1) A company may be wound up by way of private liquidation if,

- (a) the company resolves by special resolution that it shall be wound up by way of private liquidation, and
- (b) before the date of the resolution an affidavit declaring that the company is solvent is made in accordance with section 258.

(2) The private liquidation commences at the time of the passing of the resolution.

(3) Where a company passes a resolution for a private liquidation it shall, within fourteen days after the passage of the resolution, send to the Registrar a copy of the resolution and the Registrar shall publish the resolution in the *Companies Bulletin*.

**Statements and accounts of final financial year**

**260.** (1) For the purposes of sections 127 to 143, the final financial year of a company in liquidation under this Part ends immediately before the date of the commencement of the winding up, and, subject to subsection (2), the provisions of those sections shall continue to apply to the preparation, auditing and despatch of the statements, accounts and report referred to in those sections.

(2) For the purposes of subsection (1),

- (a) a copy of the documents referred to in section 128 shall be sent to the liquidator appointed in accordance with section 261 as well as to every member and debenture holder of the company in accordance with section 128;
- (b) a copy of those documents shall be sent to the persons referred to in paragraph (a) within three months after the date of commencement of the winding up.

**Resolution for appointment and removal of liquidator**

**261.** (1) The resolution for the private liquidation of a company shall include the appointment as liquidator of a person named in the resolution and the resolution is not valid for the purposes of this Part unless the person named has previously consented in writing to the appointment.

*Companies Bill, 2018*

(2) Where a vacancy occurs by death, resignation or otherwise in the office of liquidator, the company in general meeting may fill the vacancy and for that purpose a general meeting may be convened by a member or if there were more liquidators than one, by the continuing liquidators.

(3) The Court may, on the application of a member of the company or of the Registrar, remove a liquidator and appoint another in the place of the removed liquidator or appoint a liquidator if, from a sufficient cause, a liquidator is not acting.

(4) The company or the Court, shall give notice to the Registrar of the removal or appointment of a liquidator, and the Registrar shall register the notice and publish it in the *Companies Bulletin*.

**Remuneration of liquidator**

**262.** For the purposes of a private liquidation, the company shall, in general meeting, fix the remuneration to be paid to a liquidator appointed for the purpose of liquidation and where the appointment of a liquidator is made by the Court the remuneration of the liquidator shall be fixed by the Court.

**Disqualification of liquidator**

**263.** (1) The following persons are not eligible to be appointed or to act as liquidators of a company under this Act, namely,

- (a) an infant;
- (b) a person found by a court of competent jurisdiction to be a person of an unsound mind;
- (c) a body corporate;
- (d) a person convicted, whether in Ghana or elsewhere, of an offence involving fraud or dishonesty, or of an offence in connection with the promotion, formation or management of a body corporate; and
- (e) an undischarged bankrupt or any other person subject to insolvency proceedings under the Insolvency Act, 2006 (Act 708).

(2) Despite subsection (1), a person convicted of an offence under paragraph (d) of subsection (1) is eligible to be appointed as a liquidator or to act as a liquidator or to act as a liquidator of a company if ten years or more have passed since the end of the sentence.

(3) A director of a company shall not be eligible for appointment as a liquidator of that company.



*Companies Bill, 2018*

(4) An auditor of a company shall not be eligible to be appointed as a liquidator in a private liquidation.

(5) An appointment made in contravention of this section is void.

(6) Where a person named in paragraph (a), (c), (d), or (e) of subsection (1) or in subsection (2) acts as liquidator of a company, that person commits an offence and is liable on summary conviction to a fine of not less than three hundred and twenty-five penalty units and not more than seven hundred and fifty penalty units or in the case of an individual to a fine of not less than three hundred and twenty-five penalty units and not more than seven hundred and fifty penalty units or to a term of imprisonment of not more than five years or to both the fine and the imprisonment.

**Status of liquidator**

**264.** A liquidator appointed for the purposes of a private liquidation stands in a fiduciary relationship to the company as if that liquidator were a director of the company and accordingly sections 190 to 217 shall, with the necessary modifications apply.

**Cessation of directors' powers**

**265.** On the appointment of a liquidator for the purposes of a private liquidation, the powers of the board of directors shall vest in the liquidator and the powers and authority of every director shall cease, except in so far as

- (a) the company in general meeting or the liquidator sanctions their continuance; or
- (b) is necessary to enable the directors to prepare statements and accounts of the company.

**Powers of liquidator**

**266.** (1) A liquidator in a private liquidation may exercise the power of the liquidator in an official winding up under the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) or a statutory modification or re-enactment of that Act and any other relevant enactment.

(2) Where several liquidators are appointed, a power given by this Act may be exercised by any one or more of them as may be determined at the time of their appointment, or, in default of that determination, by a number not less than two.

*Companies Bill, 2018*

(3) The Court shall have the same powers in relation to the liquidator in a private liquidation as are by the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) or a statutory modification or re-enactment of that Act conferred on it in relation to official liquidations.

(4) The liquidator may apply to the Court for directions in relation to a matter arising in connection with the performance of the functions of office or to exercise all or any of the powers which the Court might exercise if the company were being wound up under the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) or a statutory modification or re-enactment of that Act and on that application, the Court may give appropriate directions or make an appropriate order.

**Books and accounts during private liquidation**

**267.** (1) The liquidator in a private liquidation shall keep

- (a) proper records and books of account with respect to the
  - (i) acts and dealings of the liquidator,
  - (ii) conduct of the winding up, and
  - (iii) receipts and payments by the liquidator; and
- (b) a distinct account of the trading so long as the liquidator carries on the business of the company.

(2) In the event of the winding up continuing for more than a year, the liquidator shall

- (a) summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within three months of the end of the year or a longer period that the Registrar may allow, and
- (b) lay before the meeting an account of acts and dealings of the liquidator and of the conduct of the winding up during the preceding year and of the trading during the time that the business of the company has been carried on, and within twenty-eight days after the meeting shall send a copy of the accounts to the Registrar for registration.

(3) When the affairs of the company are fully wound up, the liquidator shall

- (a) prepare and deliver to every member of the company final

*Companies Bill, 2018*

accounts of the winding up showing how the winding up has been conducted, the result of the trading during the time that the business of the company has been carried on, and how the property of the company has been disposed of, and

- (b) convene a general meeting of the company for the purpose of laying before it the accounts and of giving an explanation of the accounts.

(4) Within twenty-eight days after the meeting referred to in subsection (3), the liquidator shall deliver to the Registrar for registration, copies of the accounts laid before the meeting and a statement of the holding of the meeting and of its date.

(5) Where a quorum was not present at the meeting, the liquidator shall, in place of the statement mentioned, deliver a statement that the meeting was duly convened and that a quorum was not present at the meeting.

(6) The records, books and accounts shall be in the form that the Registrar may prescribe and shall give a true and fair view of the matters recorded in them and of the administration of the company's affairs and of the winding up.

(7) The accounts referred to in subsections (2) and (3) shall be audited by the auditors of the company before being laid before the company in general meeting in accordance with those subsections, and the auditors shall state in a report annexed to the accounts whether, in their opinion and to the best of their information,

- (a) they have obtained the information and explanations necessary for the purpose of their audit;
- (b) proper books and records have been maintained by the liquidator in accordance with this Act; and
- (c) the accounts are in accordance with the books and records and give
  - (i) the information required by this Act in the manner required by this Act, and
  - (ii) a true and fair view of the matters stated in the accounts.

(8) For the purposes of this section, the audit and auditors' report shall not be required if,

*Companies Bill, 2018*

(a) the liquidator, or one of the liquidators if more than one, is duly qualified under section 138 for appointment as auditor of a public company; and

(b) on or after the appointment as liquidator, the company resolved by special resolution that the accounts should not be required to be audited in accordance with subsection (7).

(9) Meetings required to be convened under this section shall be convened and held, so far as may be, in accordance with the provisions of this Act and the constitution of a company relating to general meetings.

(10) The liquidator shall preserve the books and papers of the company and of the liquidator for a period of five years from the dissolution of the company, but after that period, may destroy those books and papers unless the Registrar otherwise directs, in which event the liquidator shall not destroy them until the Registrar consents in writing.

(11) A liquidator who fails to comply with a provision of this section commits an offence and is liable on summary conviction to a fine of not less than one hundred and twenty-five penalty units and not more than two hundred and fifty penalty units.

(12) For the purposes of this section, the delivery of a document shall be considered as effective if delivered in the

(a) hard copy form; or

(b) soft copy form, supported by evidence of the same.

**Liquidation account**

**268.** (1) The liquidator shall open the private liquidation account, with a bank nominated by the company in general meeting for the purposes of the private liquidation.

(2) The receipts and payments by or on behalf of the liquidator in respect of the company shall be credited or debited, to the private liquidation account.

(3) Where, on the application of the company or any other person interested in the liquidation proceedings, it appears to the Court before the termination of the liquidation, that assets have been lost to the estate by reason of a default by the liquidator, the Court may order that the private liquidation account be credited with the sum of money that the Court considers just.

**Duty of liquidator in case of insolvency**

**269.** (1) Where in a private liquidation the liquidator is at any time of the opinion that the company may not be able to pay its debts in full within the period stated in the affidavit made under section 258, the liquidator shall forthwith give notice of that fact to the Registrar, together with a statement of the company's liabilities and assets.

(2) The notice and statement shall be in the prescribed form.

(3) The Registrar, whether or not the Registrar makes an order under section 5 of the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) or a statutory modification or re-enactment of that Act shall register both the notice and the statement and cause a copy of the notice to be published in the *Companies Bulletin* and the liquidator shall proceed in the same manner, so far as the provisions are applicable, as a liquidation under an order of the Court pursuant to the Bodies Corporate (Official Liquidations) Act 1963 (Act 180) or a statutory modification or re-enactment of that Act.

(4) Where the liquidator fails to comply with this section, the liquidator is liable to pay to the Registrar, an administrative penalty of seven hundred and fifty penalty units.

**Stay of proceedings**

**270.** (1) At any time during the course of a private liquidation and before the dissolution of the company, the company in general meeting may, by special resolution, resolve that, subject to the confirmation of the Court, the liquidation proceedings shall be stayed.

(2) After the passing of the special resolution

(a) an application may be made to the Court by the liquidator or a member of the company; and

(b) the Court may, and subject to terms and conditions that the Court considers fit, order that the liquidation be stayed, that the liquidator be discharged and that the directors be permitted to resume the management of the company.

(3) At least twenty-eight days before the hearing of the application under subsection (2), written notice of the application shall be given by the applicant to the Registrar, to the directors of the company and to a liquidator of the company, and the Registrar shall publish the notice in the *Companies Bulletin*.

*Companies Bill, 2018*

(4) The Registrar and a director, liquidator, member or creditor of the company is each entitled to appear on the hearing of the application and to call witnesses and give evidence.

(5) Where an order confirming the resolution is made by the Court, the company shall send an official copy of the order to the Registrar and the Registrar shall register the order and publish a copy in the *Companies Bulletin* and on that publication, the liquidation shall cease and the company shall continue to be a going concern subject to the terms or conditions of the order.

**Dissolution of companies**

**271.** (1) Where the Registrar is satisfied that the winding up of the company is complete, the Registrar shall strike the name of the company off the register and notify the fact of the strike off in the *Companies Bulletin*.

(2) The company is dissolved as at the date of the publication of the notification in the *Companies Bulletin*.

(3) Where a company is dissolved, the Court may

(a) at any time within two years after the date of the dissolution, and

(b) on an application made for the purpose by the Registrar or by the liquidator of the company or by a former officer, member, or creditor of the company or a person claiming through or under any of them,

make an order, on the terms that the Court considers fit, declaring the dissolution void and ordering the name of the company to be restored to the register.

(4) An official copy of an order made under subsection (3) shall be delivered to the Registrar for registration and the Registrar shall publish the copy of the order in the *Companies Bulletin* and the name of the company shall be restored to the register.

(5) Where registration and publication under subsection (3) takes effect, the company shall be deemed to have continued in existence as if it had not been dissolved, and for the purposes of a period of limitation the period between dissolution and restoration shall not be counted.

*Companies Bill, 2018*

(6) The Court may by the order give the directions and make the provisions that seem just for placing the company and any other person in the same position as nearly as may be as if the name of the company had never been struck off.

**Dissolution without full winding up**

**272.** (1) Where the Registrar, by reference to personal knowledge, or on information supplied by any officer, member or creditor of a company, has reasonable cause to believe that the company is not carrying on business or is not in operation, the Registrar may by written communication to the company enquire whether the company is carrying on business or is in operation.

(2) Where the Registrar does not receive an answer to the written communication, within two months of the communication, the Registrar may send to the company a second written communication referring to the first written communication, stating that an answer has not been received by the Registrar, and that if an answer is not received to the second written communication within two months from the date of the second written communication, a notice will be published in the *Companies Bulletin* with a view to striking the name of the company off the register.

(3) Where the Registrar receives an answer from the company to the effect that it is not carrying on business or in operation, or does not receive an answer to the second written communication, the Registrar may publish in the *Companies Bulletin* and send to the company by written communication a notice that at the expiration of three months from the date of that notice the name of the company shall, unless cause is shown to the contrary, be struck off the register and the company shall stand dissolved.

(4) Where a company is being wound up and the Registrar has reasonable cause to believe that a liquidator is not acting but is not satisfied that the winding up is complete, the Registrar may publish in the *Companies Bulletin* and send to the company and to the last known place of business of the person last known to have acted as liquidator, a notice as is provided in subsection (3).

*Companies Bill, 2018*

(5) At or after the expiration of the time mentioned in the notice, the Registrar shall, unless cause is shown, strike the name of the company off the register and shall publish the notice of that fact in the *Companies Bulletin* and on that publication in the *Companies Bulletin* the company shall stand dissolved.

(6) For the purposes of subsection (5), the liability of every director or other officer and member of the company shall continue and may be enforced as if the company had not been dissolved; but the subsection does not affect the power of the Court to order the winding up of the company.

(7) When the name of a company is struck off the register under this section, at any time within twenty years after the publication in the *Companies Bulletin* in accordance with subsection (5), the Court may, on application made for this purpose by a liquidator or by a former officer, member or creditor of the company, or by a person claiming through or under any of them, make an order on the terms that the Court considers fit, declaring the dissolution void and ordering the name of the company to be restored to the register and subsection (3) shall apply as if the order was one made under this section.

(8) A notice or written communication to be sent under this section to a company

(a) may be addressed to

- (i) the company at its registered office,
- (ii) a company at its last known place of business if an office has not been registered, or
- (iii) the care of an officer of the company, or

(b) may be sent to the person or each of the persons who subscribed to the incorporation of the company addressed to that person at the address mentioned in the subscription to the incorporation of the company or to the Registrar if there is no officer of the company whose name and address are known.

*Part W: Documents*

**Service of documents by company**

**273.** (1) A document may be served by a company on a member, debenture holder, or Director of the company personally, or by sending it through the post in a prepaid letter addressed to that person at the address on the register of members, debenture holders, or directors, or if



*Companies Bill, 2018*

there is no registered address, at the address, supplied by that person to the company for the giving of notices, or by leaving it for that person with a person apparently over the age of sixteen years at that address.

(2) A document may be served by a company on the joint holders of a share or debenture of the company by serving it on the joint holder named first in the register of members or debenture holders in respect of the share or debenture.

(3) A document may be served by a company

(a) on the person on whom ownership of a share or debenture has devolved by reason of that person being a legal personal representative, receiver or trustee in bankruptcy of a member or debenture holder personally,

(b) by sending it through the post in a prepaid letter addressed to the person by

(i) name,

(ii) title of the representative of the deceased, receiver or trustee of the bankrupt or by any like description at the address supplied for the purpose by that person; or

(c) by leaving it for the person with a person apparently over the age of sixteen years at the address supplied for the purpose by the person.

(4) Where an address has not been supplied by the person for the purpose of service under this section, the document may be served in a manner which the document might have been served, if the death, receivership or bankruptcy had not occurred.

(5) Where a document is sent by post, service shall be deemed to

(a) be effected by properly addressing, pre-paying and posting a letter containing the document, and

(b) have been effected at the expiration of forty-eight hours after the letter containing the document is posted.

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

(7) The service of a document on a shareholder or creditor includes sending the document by electronic mail, or facsimile machine and service shall be deemed to be effected by

(a) properly addressing, attaching and mailing the document to the electronic mail address in the case of communication by electronic mail, or

*Companies Bill, 2018*

- (b) sending the document to a telephone contact used by the person concerned for the transmission of documents by facsimile subject to section 275.

**Service of documents on company**

274. (1) A document may be served on a company by

- (a) leaving it at, or sending it by post to, the registered office of the company, or the latest office registered by the Registrar as the registered address of the company,
- (b) sending it to the official electronic mail address of the company registered with the Registrar, and
- (c) sending it by facsimile machine to a telephone number used by that company for the transmission of documents by facsimile.

(2) A document to be served by post on a company shall be posted in the time that admits of its being delivered in due course of delivery within the time prescribed for the service of the document.

(3) In proving service it shall be sufficient to prove that a letter containing the document was properly addressed, prepaid and posted, whether or not by registered post.

(4) Where a company's registered office cannot be traced, service on a director of the company or, if a director cannot be traced in the Republic, on a member of the company, shall be deemed good and effectual service on the company.

(5) Where it is proved that a document was in fact received by the director, managing director or secretary of a company, the document shall be deemed to have been served on the company despite the fact that service may not have been effected in accordance with subsections (1), (2), (3) or (4).

(6) This section does not derogate from a provision in this Act relating to the service of a document, or from the power of a Court to direct how service shall be effected of a document relating to legal proceedings before that Court.

(7) Paragraphs (b) and (c) of subsection (1) shall not apply to the service of legal proceedings on a company.

**Additional provisions relating to service**

**275.** (1) Subject to subsection (2), and for the purposes of sections 273 and 274

- (a) where a document is to be served by delivery to a natural person, service shall be made
  - (i) by handing the document to the person; or
  - (ii) where the person refuses to accept the document, by bringing it to the attention of, and leaving it in a place accessible to, the person;
- (b) a document sent by facsimile machine is deemed to have been received on the working day following the day on which it was sent;
- (c) in proving service of a document by facsimile machine, it is sufficient to prove that the document was properly transmitted by facsimile to the person concerned.

(2) Where a liquidator sends documents

- (a) to the last known address of a shareholder or creditor who is a natural person; or
- (b) to the address for service of a shareholder or creditor that is a company,

and the documents are returned unclaimed two consecutive times, the liquidator need not send further documents to the shareholder or creditor but shall forthwith circulate a notice in a daily newspaper of national circulation requesting the shareholder or creditor to convey to the liquidator within ten working days after publication of the notice, the relevant new address.

(3) A document may be sent to a shareholder or creditor by electronic means of communication provided that

- (a) the shareholder or creditor has consented in writing to that form of communication being used by the company or other person providing the communication; and
- (b) the shareholder or creditor has provided an electronic address to which such communication may be sent.

(4) Any consent under subsection (3) may be revoked at any time on the provision of five days notice in writing to the person sending the document.

(5) A document shall not be deemed to have been served or sent or delivered to a person where the person proves that, through no fault on the person's part, the document was not received within the time specified.

**Books and registers**

**276.** (1) A register, minute book or book of account required by this Act to be kept by a company may be kept by making entries in bound volumes, or by a system of mechanical, electronic or other recording.

(2) Where the register, minute book or book of account is not kept by making entries in bound volumes, adequate precautions shall be taken for guarding against the risk of falsification that might arise from the method of recording and for facilitating discovery.

(3) Where a system of recording is adopted, adequate arrangements shall be made for making the information in the recording available in an intelligible form to a person lawfully inspecting the register, minute book or book of account.

(4) Where there is a default in complying with subsection (2) or (3), the company and an officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of two hundred and fifty penalty units.

*Part X: Invitations to the Public*

**Control of public invitations**

**277.** (1) A person shall not make an invitation to the public,

(a) to acquire or dispose of any shares or debentures of a company, or

(b) to deposit money with a company for a fixed period or payable at call, whether bearing or not bearing interest,

unless the company concerned is a public company and the appropriate provisions contained in Part A of Chapter Four are duly complied with.

(2) Subsection (1) does not render unlawful the sale of shares or debentures by or under the supervision of the Court.

(3) Where an invitation to the public is made in breach of subsection (1), the person who made the invitation and an officer of a body corporate who made the invitation each commits an offence and is liable on summary conviction

(a) in the case of a body corporate, to a fine of not less than five hundred penalty units and not more than one thousand penalty units, and

(b) in any other case to a fine of not less than five hundred penalty units and not more than one thousand penalty units or to a term of imprisonment of not less than one year and not more than two years or to both the fine and imprisonment.

*Companies Bill, 2018*

(4) Where as a result of an invitation to the public in breach of subsection (1), a person acquires or disposes of shares or debentures or deposits money with a company, that person is entitled to rescind the transaction and in addition to or instead of rescinding, may recover compensation for a loss sustained by that person from a person who is liable, whether convicted or not, in respect of the breach.

(5) Where, in accordance with subsection (4), a person claims to rescind a transaction that person shall do so with reasonable promptitude and is not entitled to rescind a transaction with the company or to recover compensation from it unless that person takes steps to rescind before the commencement of the winding up of the company.

**Meaning of “invitations to the public”**

**278.** (1) For the purposes of this Act, an invitation is made to the public if an offer or invitation to make an offer is

- (a) advertised or disseminated in the Republic by newspaper, broadcasting, cinematograph, electronic communication or any other means;
- (b) made to or circulated among persons whether selected as members or debenture holders of the company concerned or as clients of the persons making or circulating the invitation or in any other manner;
- (c) made to one or more persons on the terms that the person or persons to whom it is made may renounce or assign the benefit of the invitation or of shares or debentures to be obtained under the invitation in favour of any other person; or
- (d) made to one or more persons to acquire shares or debentures dealt in on a stock exchange or in respect of which the invitation states that application has been or will be made for permission to deal in those shares or debentures on a stock exchange subject to subsection (5).

(2) Subsection (1) does not require an invitation to be treated as made to the public if the invitation can properly be regarded in all the circumstances as being a domestic concern of the persons making and receiving it.

(3) For the purposes of subsection (1), an invitation made by or on behalf of a private company exclusively to its existing shareholders and debenture holders, which is not greater in number than is prescribed

*Companies Bill, 2018*

by subsection (3) of section 7 and its existing employees is not an invitation to the public unless the invitation is of the type referred to in paragraph (c) or (d) of subsection (1).

(4) For the purposes of subsection (1), the issue of a form of application for shares or debentures or of a form to be completed on the deposit of money with a company is an invitation to acquire those shares or debentures or to deposit money.

(5) For the purposes of sections 312 to 325 the expression “invitation to the public” bears the meaning assigned to it in section 278 but an invitation made on behalf of an external or non-Ghanaian company, as if the company exclusively to its existing shareholders and debenture holders, which is not greater in number than is prescribed by subsection (3) of section 7, and its existing employees is not an invitation to the public unless the invitation is of the type referred to in paragraph (c) or (d) of subsection (1).

**Offers for sale deemed to be made by company**

**279.** (1) Where a company allots or agrees to allot any of its shares or debentures to a person with a view to the public being invited to acquire any of those shares or debentures, for the purposes of this Act, an invitation so made is an invitation to the public made by the company as well as by the person actually making the invitation.

(2) A person who acquires any of the shares or debentures in response to the invitation under subsection (1) is an allottee from the company of those shares or debentures.

(3) For the purposes of subsection (1), where

(a) an invitation to the public is made in respect of shares or debentures within six months after the allotment or agreement to allot, or

(b) at the date when the invitation to the public was made, the whole consideration to be received by the company in respect of the shares or debentures had not been so received,

it shall be assumed, unless the contrary is shown, that the allotment or agreement to allot was made by the company with a view to an invitation to the public being made in respect of those shares or debentures.

(4) This section applies to an invitation to the public made in respect of shares or debentures of external and non-Ghanaian companies.

CHAPTER THREE

**ADDITIONAL PROVISIONS APPLICABLE TO PRIVATE COMPANIES ONLY**

**Default in complying with conditions constituting a private company**

**280.** (1) Where a private company defaults in complying with a condition by virtue of its incorporation as required by section 7, sections 306 and 311 shall apply to the company as if it were a public company.

(2) When the Court is satisfied that the failure to comply with a condition, specified in subsection (1), was accidental or due to inadvertence or to any other sufficient cause, or that on other grounds it is just and equitable to grant relief, the Court may, on the application of the company or an officer or a member of the company, and on the terms and conditions that the Court considers just and expedient, order that the company be relieved of the consequences of the default.

**Documents to be annexed to the annual return of a private company**

**281.** (1) With the annual return required by section 126, a private company shall send to the Registrar for registration,

- (a) a certification that the company has not, since the date of the last return, or, in the case of the first return, since the date of incorporation of the company, issued an invitation to the public to acquire shares or debentures of the company or to deposit money with the company; and
- (b) a certification that the number of members and debenture holders of the company does not exceed fifty or that an excess over fifty consists solely of persons who are genuinely in the employment of the company and persons, who, having been formerly genuinely in the employment, of the company were, while in that employment, and have continued after the determination of that employment to be, members or debenture holders of the company.

(2) In addition to complying with subsection (1), a private company shall send to the Registrar for registration,

*Companies Bill, 2018*

- (a) a copy of every financial statement and consolidated financial statements circulated to the members and debenture holders pursuant to section 128 during the period to which the return relates, and a copy of the report of the directors and of the report of the auditors accompanying those accounts; or
- (b) a written statement by the auditors of the company that, to the best of their knowledge and belief, the financial statements and reports referred to in section 128 have been sent to the members and debenture holders in accordance with that section; and
- (c) a copy of the report so sent; and
- (d) a certificate that to the best of the knowledge and belief of the persons signing the certificate, a body corporate is not or has not been at any time beneficially interested, otherwise than by way of security, in an issued share of the company, or that if a body corporate is or has been so interested, it is an exempted body corporate as defined in subsection (6).

(3) The certification required by paragraphs (a) and (b) of subsection (1) and paragraph (b) of subsection (2) shall be signed by a director and by the secretary of the company.

(4) The copies required by paragraph (a) of subsection (2) shall be certified by a director and by the secretary of the company to be true copies.

(5) The copy of the report of the auditors required by paragraph (b) of subsection (2) shall be certified by the auditors to be a true copy and the statement referred to in that paragraph shall be signed by the auditors.

(6) For the purposes of this section, a body corporate is an exempted body corporate if,

- (a) it is not a public company;
- (b) it has not at any time issued an invitation to the public to acquire any of its shares or debentures or to deposit money with it; and



- (c) at all times since it became beneficially interested in any shares of the company,
  - (i) it has not had more than fifty members and debenture holders, not including persons who are genuinely in the employment of the body corporate and persons who, having been formerly genuinely in the employment of the company were, while in that employment, and continued after the determination of that employment to be, members or debenture holders of the company; and
  - (ii) another body corporate, other than an exempted body corporate, has not been beneficially interested, other than by way of security, in any issued shares of the body corporate.

**Requisitioning extraordinary general meetings of a private company**

**282.** (1) The directors of a private company, despite a provision in its constitution, shall duly convene an extraordinary general meeting of the company on the requisition of

- (a) two or more members of the company or a single member holding not less than one-tenth of the shares of the company; or
- (b) in the case of a company limited by guarantee, one-tenth of the total voting rights of the members of the company.

(2) The requisition shall state the nature of the business to be transacted at the meeting and shall be signed by the requisitionists and sent to or delivered at the registered office of the company.

(3) If the directors do not, within seven days from the date of receipt of the requisition at the registered office of the company, proceed duly to convene a meeting for a date not later than twenty-eight days after the receipt of the requisition, the requisitionists or any of them may themselves convene a meeting, but a meeting so convened shall be held within four months from that date.

(4) The reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company and the sum of money so

*Companies Bill, 2018*

repaid shall be retained by the company out of the fees or other remuneration of the directors who were in default.

(5) For the purposes of this section, the directors have not proceeded duly to convene a meeting if they do not, within seven days after the receipt of the requisition at the registered office, cause notices of the meeting, to transact the business specified in the requisition, to be given in accordance with paragraphs 1 to 3 of the Eighth Schedule.

**Appointment and removal of directors of private companies**

**283.** (1) The appointment and removal of directors of a private company may, subject to sections 171 to 176, be regulated by the company's registered constitution.

(2) In the absence of a contrary provision in a company's registered constitution, each of the existing directors shall continue to hold office until the director vacates office under section 175, or is removed under section 176.

(3) A company may at any time by ordinary resolution fill a vacancy in the number of directors and may at any time by ordinary resolution increase the number of directors, but the total number of directors shall not exceed the maximum prescribed by that company's constitution if it has one.

**Unanimous agreement by shareholders**

**284.** (1) Where all shareholders of a private company agree to or concur in any action which has been taken or is to be taken by the company

(a) the taking of that action is deemed to be validly authorised by the company despite any provision in the registered constitution of the company; and

(b) the provisions in any of the constitutions referred to in the Second, Third and Fourth Schedules shall not apply in relation to that action.

(2) Without limiting the matters which may be agreed to or concurred in under subsection (1), that subsection shall apply where all the shareholders of a private company agree to or concur in

(a) the issue of shares by the company;

(b) the making of a distribution by the company;

*Companies Bill, 2018*

- (c) the repurchase or redemption of shares in the company;
- (d) the giving of financial assistance by a company for the purpose of, or in connection with, the purchase of shares in the company;
- (e) the payment of remuneration to a director, or the making of a loan to a director or a member or the conferral of any other benefit on a director or member;
- (f) the making of a contract between an interested director or a member and the company;
- (g) the entry into a major transaction; or
- (h) the ratification after the event of any action which could have been authorised under this section.

**Conversion of private company to public company**

**285.** (1) A private company shall be converted into a public company if

- (a) it alters its capacity to operate as a private company as required by subsection (4) of section 7, and
- (b) where it alters its registered constitution in a manner that is appropriate to a public company and not required in order to constitute a private company as required under subsection (4) of section 7.

(2) Within twenty-eight days after the date of the special resolution to alter its capacity to operate as a private company or alter its registered constitution of a company, the company shall deliver to the Registrar for registration a copy of the resolution in accordance with section 165.

(3) The Registrar shall publish notice of the conversion of the company in the *Companies Bulletin*.

(4) Where default is made in complying with subsection (1) or (2), the company and an officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of five hundred penalty units.

CHAPTER FOUR  
ADDITIONAL PROVISIONS APPLICABLE TO PUBLIC  
COMPANIES ONLY

*Part A: Prospectuses and Statements in lieu of Prospectus*

**Statement in lieu of prospectus**

**286.** (1) A public company shall, within twenty-eight days after its incorporation, or after its conversion from a private company in accordance with section 285, deliver to the Registrar for registration a statement in lieu of prospectus, signed by every person who is named in the statement as a director or a proposed director of the company or by that person's agent authorised in writing, in the form and containing the particulars set out in Part One of the Ninth Schedule and, in the cases mentioned in Part Two of that Schedule, accompanied by the financial statements and reports specified in the Schedule.

(2) A copy of the statement in lieu of prospectus shall be delivered to the Commission.

(3) A statement in lieu of prospectus delivered under subsection (1) shall, where the persons making the report specified in Part Two of the Ninth Schedule have made any adjustments as are mentioned in paragraph 27 of that Schedule, have endorsed on the statement or attached to the statement a written statement signed by those persons setting out the adjustments and giving the reason for the adjustments.

(4) Where a company contravenes subsection (1), or (3), the company and an officer of the company who is in default is liable to pay to the Registrar, an administrative penalty of five hundred penalty units.

(5) Where a statement in lieu of prospectus delivered to the Registrar under subsection (1) includes an untrue statement or omits truthfully to state any of the particulars required to be stated by virtue of the Ninth Schedule then,

(a) a person, which expression for the purposes of this subsection does not include the company itself, who authorised the delivery of the statement in lieu of prospectus for registration commits an offence and is liable on summary conviction to a fine of not less than two hundred and fifty penalty units and not more than five hundred penalty units or to a term

of imprisonment of not less than one year and not more than two years or to both the fine and the imprisonment, unless that person proves that the untrue or omitted statement was immaterial or that that person had reasonable grounds to believe and did, up to the time of delivery for registration of the statement in lieu of prospectus, believe that the untrue statement was true;

- (b) an allottee who acquired shares or debentures in the company in reliance on the statement in lieu of prospectus, and who was misled by the untrue statement or omission, is entitled to rescind the allotment of those shares or debentures and to recover from a person guilty of an offence under paragraph (a) whether convicted or not, compensation for a loss which the allottee has suffered by reason of that reliance; or
- (c) a person who acquires shares or debentures in the company from an allottee in reliance on the statement in lieu of prospectus, and who was misled by the untrue statement or omission, is entitled to recover from a person guilty of an offence under paragraph (a), whether convicted or not, compensation for a loss which that person has suffered by reason of that reliance.

**Prospectus on invitations to the public to acquire or dispose of securities**

**287.** (1) Despite section 277, an invitation to the public to acquire or dispose of any shares or debentures of a public company may be made if,

- (a) within six months before the making of the invitation there has been delivered to the Commission for examination and approval by the Commission in accordance with section 291, a prospectus relating to the shares or debentures complying in all respects with relevant provisions of sections 288 to 290 and that prospectus has been registered with the Registrar;
- (b) except as provided in subsection (2) of this section, a person to whom the invitation is made is supplied with a true copy of the prospectus at the time when the invitation is first made to that person; and

*Companies Bill, 2018*

(c) a copy of the prospectus states on its face that it has been approved by the Commission and the date of the approval.

(2) Electronic media with the prior consent in writing of the Commission or a newspaper may publish an advertisement or otherwise a summary of the contents of a prospectus, duly approved in accordance with section 291, so long as the summary

(a) does not contain a form of application for any shares or debentures which has not been approved by the Commission or, in respect of shares or debentures dealt in or to be dealt in on an approved stock exchange by that stock exchange;

(b) states with reasonable prominence where copies of the full prospectus may be obtained and the fact that it has been approved and the date of approval.

**General and restricted invitations to the public**

**288.** (1) Except as provided in section 289, where the invitation invites the public to acquire shares or debentures of a public company, the prospectus referred to in section 287 shall state the matters specified in Part One of the Tenth Schedule and set out the reports specified in Part Two of that Schedule.

(2) Subsection (1) shall not apply to,

(a) an invitation by a company in respect of shares or debentures of that company or any of its associated companies made solely to the existing shareholders or debenture holders of that company; or

(b) an invitation by a company in respect of shares or debentures of that company which are in all respects uniform with shares or debentures of that company previously issued and for the time being dealt in on an approved stock exchange.

(3) A prospectus relating to an invitation to the public to acquire or dispose of shares or debentures of a public company, which is an invitation not falling within subsection (1) because it does not invite the public to acquire shares or debentures, or because it is excluded from the ambit of that subsection by virtue of subsection (2) need not state the matters or set out the reports specified in the Tenth Schedule.

*Companies Bill, 2018*

(4) The prospectus referred to in subsection (3) shall not contain an untrue statement and, if the shares or debentures to which it relates are dealt in on a stock exchange, whether in the Republic or elsewhere, or if an application has been, or is being made to a stock exchange for permission to deal in those shares or debentures the prospectus, shall

- (a) state that the shares or debentures are dealt in on that stock exchange or that application has been or is to be made for permission to deal in those shares or debentures on that stock exchange; and
- (b) state whether or not that stock exchange is an approved stock exchange within the meaning of this Act; and
- (c) contain the particulars and information required by that stock exchange;

and in any other case shall state that the shares or debentures are not dealt in on a stock exchange.

(5) An invitation falling within

- (a) subsection (1) is in this Act described as a general invitation; and
- (b) subsection (3) is in this Act described as a restricted invitation.

**Certificates of exemption**

**289.** (1) Where it is proposed to make a general invitation to the public to acquire shares or debentures of a public company and an application is made to an approved stock exchange for permission for those shares or debentures to be dealt in on that stock exchange there may, on the request of the applicant, be given by or on behalf of that stock exchange, a certificate of exemption, that, having regard to the proposals as stated in the request as to the size and other circumstances of the invitation, compliance with the requirements of the Tenth Schedule would be unduly burdensome.

(2) A certificate of exemption specified in this section shall state that having regard to the proposals as stated in the request as to the size and other circumstances of the invitation, compliance with the requirements of the Tenth Schedule would be unduly burdensome.

(3) Where a certificate of exemption is granted and the proposals are adhered to, a prospectus containing the particulars and information required by the stock exchange if duly published in the manner required by the stock exchange shall be deemed to be a prospectus complying with the Tenth Schedule.

**Expert's consent**

**290.** (1) Where a prospectus relating to an invitation to the public in respect of shares or debentures of a public company, whether a general invitation or a restricted invitation, includes a statement purporting to be made by an expert, the prospectus shall not be delivered for approval unless,

- (a) the expert has given a written consent, and has not, before delivery of the prospectus for examination and approval in accordance with section 291, withdrawn the consent, to the publication of the prospectus with the inclusion of the statement in the form and context in which it is included; and
- (b) a statement that the expert has given and not withdrawn the consent appears in the prospectus.

(2) Where, after delivery of the prospectus to the Commission for examination and approval, the expert withdraws the consent, the person who delivered the prospectus for approval shall immediately notify the Commission.

(3) In this section the expression "expert" includes engineer, valuer, accountant, assayer, and any other person whose profession or calling gives authority to a statement by that person.

**Registration of prospectus**

**291.** (1) A prospectus delivered to the Commission pursuant to section 287 shall be delivered in triplicate.

(2) Where a general invitation is being made by or on behalf of a company in respect of its shares or debentures, one copy of the prospectus delivered to the Commission shall be signed by every person who is named in the invitation as a director or proposed director of the company or by that person's agent authorised in writing as well as being signed, in the manner referred to in subsections (3) and (4), by or on behalf of any other person also making the invitation.

(3) In every case one copy of the prospectus so delivered shall be signed by the person making the invitation or by the agent of that person authorised in writing.

(4) Where the person making the invitation is a firm or body corporate, it is sufficient if the prospectus is signed by or on behalf of the



*Companies Bill, 2018*

firm or body corporate by not less than half the partners or by not less than two directors of the body corporate, and any of those partners or directors may sign by the agent of that partner or director authorised in writing.

(5) One copy of the prospectus so delivered shall have endorsed on it or attached to it,

- (a) a consent of an expert required by section 290; and
- (b) in the case of a prospectus relating to a general invitation, a certified copy or translation of each of the documents required to be available for inspection in accordance with paragraph 45 of the Tenth Schedule, or, where a certificate of exemption has been granted pursuant to section 289 required to be available for inspection under the regulations of the approved stock exchange but if a copy or translation of the document has already been delivered by the company to the Registrar for registration, the Registrar may dispense with the need to endorse or attach a further copy of the document, in the opinion of the Registrar, the copy originally delivered is readily identifiable and accessible.

(6) Where the prospectus relates to shares or debentures dealt in on an approved stock exchange or states that application has been or will be made to an approved stock exchange for permission to deal in the shares or debentures to which it relates, there shall be delivered to the Commission with the prospectus a certificate by or on behalf of that approved stock exchange that

- (a) the prospectus has been scrutinised by the stock exchange; and
- (b) its requirements relating to the contents of the document have been satisfied;

and the Registrar shall register the prospectus within forty-eight hours of the approval by the Commission of the prospectus.

(7) In a case which does not fall within subsection (5) or (6), the Registrar may, for the purposes of reaching an opinion on whether a prospectus

- (a) does not comply with this Act, or
- (b) contains an untrue statement, or

*Companies Bill, 2018*

- (c) omits to state a material fact, or
- (d) is otherwise incomplete or misleading,

refer the prospectus to the Commission for its opinion, and the Commission shall give its opinion within twenty-one days after the reference, in relation to the prospectus.

(8) A copy of a prospectus which has been delivered for registration in accordance with this section shall state at its head the following:

“A copy of this prospectus has been delivered to the Securities and Exchange Commission in accordance with subsection (8) of section 291 of the Companies Act.....(Act.....). For the financial soundness of the company or the value of the securities on offer investors are advised to consult a dealer, investment adviser or any other professional for the appropriate advice.”

(9) For the purposes of this Act, and until the contrary is shown, the first publication of the prospectus is the date of registration.

**Waiting period**

**292.** (1) For the purposes of this Act, “waiting period” means a period of twenty-one days after the first publication of a registered prospectus or a longer period that is stated in the prospectus as the period before the expiration of which applications, offers or acceptances in response to the prospectus will not be accepted or treated as binding.

(2) For the purposes of subsection (1),

- (a) where the shares or debentures to which the invitation relates are dealt in on a stock exchange or where the prospectus states that application has been or will be made for permission to deal in the shares or debentures on a stock exchange, and
- (b) to comply with the requirements of that stock exchange it is necessary to advertise the prospectus in one or more daily newspapers of national circulation,

then unless the prospectus is advertised there has not been a publication of the prospectus.

(3) A binding contract or legally enforceable obligation shall not be entered into in response to an invitation to the public in respect of the shares or debentures of a public company until after the expiration of the offer period, and an application, offer or acceptance by a person in

response to the invitation is revocable by that person at any time before the expiration of the offer period.

(4) Subsection (3) does not invalidate a genuine underwriting agreement in respect of those shares or debentures.

**Withdrawal of applications after the offer period**

**293.** Where a general invitation is made to the public in respect of the shares or debentures of a public company, an application for the shares or debentures is not revocable during a period of seven days immediately after the expiration of the offer period unless, before the expiration of the period of seven days, a person responsible for the prospectus has, in accordance with section 296, given public notice having the effect under that section of excluding or limiting the responsibility of the person giving it.

**Invitations in respect of securities to be dealt in on a stock exchange**

**294.** (1) Where a prospectus, issued in connection with a general or restricted invitation to the public to acquire shares or debentures in a public company states that application has been or will be made for permission for the shares or debentures to be dealt in on a stock exchange, an agreement to acquire those shares or debentures made in pursuance of that prospectus shall become void if the application is refused by that stock exchange or if permission to deal in the shares or debentures is not granted within twenty-eight days after the expiration of the offer period.

(2) Where an agreement becomes void in accordance with subsection (1), the person or persons making the invitation shall forthwith repay and restore without interest the money and other property received from a person in response to the invitation.

(3) Where the money or other property is not repaid or restored in accordance with subsection (2) within eight days after it becomes repayable or returnable, the person or persons making the invitation and, in the case of a body corporate, the directors of that body corporate is or are jointly and severally liable to repay that money or restore that property with interest at the yearly interest rate of a ninety-one day government treasury bill on the amount or value from the expiration of the eighth day.

(4) A director is not liable under subsection (3) if the director proves that the default in the repayment of the money was not due to the misconduct or negligence of the director.

*Companies Bill, 2018*

(5) So long as the person making the invitation may become liable to repay the money in accordance with subsection (2), the moneys received in response to the invitation shall be kept in a separate bank account and shall be held on trust to give effect to this section; and if default is made in complying with this subsection, the persons making the invitation and, in the case of a body corporate, every officer of the body corporate who is in default is liable to pay to the Registrar, an administrative penalty of seven hundred and fifty penalty units.

**Minimum subscription**

**295.** (1) Where a public company makes a general invitation to the public to subscribe for any of its shares or debentures, the amount of money payable on application for the shares or debentures shall not be less than twenty per cent of the subscription price.

(2) Unless, within twenty-eight days of the expiration of the offer period, the amount stated in the prospectus as the minimum amount of money which, in the opinion of the directors, must be raised in order to provide for the matters specified in subparagraph (b) of paragraph 24 of the Tenth Schedule, in this section called the minimum subscription, has been subscribed and the amount payable on application for the minimum subscription has been paid to and received by the company, an agreement to subscribe for those shares or debentures shall become void at the expiration of the twenty-eight days.

(3) Where an agreement becomes void in accordance with subsection (2), the company shall repay without interest the moneys received from any persons in response to the invitation.

(4) If the money is not repaid in accordance with subsection (3) within eight days after it becomes repayable, the directors of the company are jointly and severally liable to repay that money with interest at the yearly interest rate of a ninety-one day government treasury bill on the amount or value from the expiration of the eighth day.

(5) A director is not liable under subsection (4) if the director proves that the default in the repayment of the money was not due to the misconduct or negligence of the director.

(6) So long as the company may become liable to repay the money in accordance with subsection (3), the moneys received in response to the invitation shall be kept in a separate bank account and shall be held on trust to give effect to this section and if default is made in complying

*Companies Bill, 2018*

with this subsection the company and an officer of the company who is in default is liable to pay to the Registrar, an administrative penalty of seven hundred and fifty penalty units.

**Civil remedy for mis-statements or omissions in a prospectus**

**296.** (1) Where a prospectus published in connection with a general or restricted invitation to the public in respect of shares or debentures of a public company contains an untrue statement or omits to state any of the particulars or to set out any of the reports which, under this Act, it is required to state or set out, subject to this section, a person specified in subsection (2) is liable to pay compensation to the persons who acquire or dispose of the shares or debentures on the faith of the prospectus for the loss they may have sustained by reason of the untrue statement or omission.

(2) Subject to this section, the following persons are liable to pay compensation in accordance with subsection (1):

- (a) a person making the invitation to which the prospectus relates;
- (b) a person who was a director of a body corporate making the invitation at the time when the prospectus was published;
- (c) where the invitation was made by the company to whose shares or debentures the invitation relates,
  - (i) a person who has personally authorised to be named and is named in the prospectus as a director or as having agreed to become a director, immediately or after an interval of time; or
  - (ii) a promoter of the company who was a party to the preparation of the prospectus; and
- (d) a person who, pursuant to section 290 has consented to the publication of the prospectus containing a statement by that person as an expert.

(3) A person is not liable under subsections (1) and (2) if that person proves

- (a) that as regards an untrue statement, not purporting to be made on the authority of an expert, other than that person, or of a public official document or statement, that person had reasonable grounds to believe and did believe up to the time of the publication of the prospectus or, where a waiting period applies, up to the expiration of the waiting period, that the statement was true;

*Companies Bill, 2018*

- (b) that as regards an omission, that person was not cognisant of the omission up to the time of the publication of the prospectus or, where a waiting period is applicable, up to the expiration of the waiting period;
- (c) that as regards an untrue statement purporting to be a statement by an expert, other than that person, or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and that that person had reasonable grounds to believe and did believe up to the time of the publication of the prospectus that the person making the statement was competent to make it and had given the consent required by section 290 and had not withdrawn that consent before the date of registration of the prospectus;
- (d) that as regards an untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document;
- (e) that after the publication of the prospectus but before the expiration of a waiting period that person, on becoming aware of an untrue statement in the prospectus or omission from the prospectus withdrew the consent given to the prospectus and gave reasonable public notice of the withdrawal and of the reason for the withdrawal; or
- (f) that the prospectus was published without the knowledge of, and that, on becoming aware of its publication, that person forthwith gave reasonable public notice that it was published without the knowledge of that person.

(4) A person specified in subparagraph (i) of paragraph (c) of subsection (2) is not liable under subsections (1) and (2) if that person proves that having consented to being named as a director or as having agreed to become a director the consent was withdrawn before the registration of the prospectus and that it was published without the authority or consent of that person.

*Companies Bill, 2018*

(5) A person specified in paragraph (d) of subsection (2) is not liable under subsections (1) and (2) of this section,

(a) if the untrue statement or omission was not made by that person;

(b) if that person proves

(i) that as regards an untrue statement made by that person, that person was competent to make the statement and had reasonable grounds to believe and did believe, up to the date of publication of the prospectus or, where a waiting period applies, up to the expiration of the waiting period, that the statement was true;

(ii) that having given the consent under section 290 that person withdrew it in writing before delivery of the prospectus for registration; or

(iii) that, after delivery of the prospectus for registration but before publication of the prospectus, or, where a waiting period applies, before the expiration of the waiting period, that person, on becoming aware of the untrue statement or omission, withdrew the consent in writing and gave reasonable public notice of the withdrawal, and of the reason for the withdrawal.

(6) Where,

(a) a person is named in a prospectus as a director of a company or as having agreed to become a director of a company, and that person has not consented to become a director or has withdrawn that consent before the publication of the prospectus and has not authorised or consented to the publication, or

(b) the consent of a person is required under section 290 to the publication of the prospectus and that person has not given that consent or has withdrawn it before the publication of the prospectus,

a person making the invitation to which the prospectus relates and a person who was a director of a body corporate making the invitation at the time when the prospectus was published, except a person without whose knowledge or consent the prospectus was published, is liable to indemnify

## *Companies Bill, 2018*

the person referred to in paragraph (a) or (b) of this subsection against the damages, costs and expenses to which that person may be made liable by reason of the name having been inserted in the prospectus or of the inclusion in the prospectus of a statement purporting to be made by that person as an expert, or in contesting legal proceedings brought against that person in respect of the prospectus.

### **Rescission for mis-statements in a prospectus**

**297.** (1) Where a person acquires shares or debentures of a public company from that company or disposes of shares or debentures of a public company to that company as a result of an untrue statement of a material fact made, whether innocently or fraudulently, in a prospectus published in connection with an invitation to the public made by or on behalf of that company, that person is, subject to subsection (2), entitled to rescind the acquisition or disposition of the shares or debentures.

(2) A person is not entitled to rescission unless that person claims to rescind with reasonable promptitude after discovering that the untrue statement was made and, in any case, before the commencement of the winding up of the company.

### **Voting rights of shares offered to the public**

**298.** (1) An invitation shall not be made to the public to acquire shares in a public company unless the voting rights attached to the shares of the company, are required by sections 52 and 53 in the case of shares issued after the commencement of this Act.

(2) Where a person makes an invitation to the public in breach of subsection (1), that person is liable pay to the Registrar, an administrative penalty of one thousand penalty units and if the invitation is made by or on behalf of the company, the company and an officer of the company who is in default, is liable to a like penalty.

### **Public invitations to deposit money with public companies**

**299.** (1) Despite section 277, an invitation to the public to deposit money with a public company may be made if,

- (a) the public company is licensed, under section 24 of the Companies Ordinance (Cap. 193) or a statutory re-enactment of that section, to carry on banking business; or



*Companies Bill, 2018*

(b) before the making of the invitation the written consent of the Commission has been obtained to the making of the invitation and the invitation is made in accordance with the conditions and restrictions that the Registrar has imposed.

(2) The Commission may grant or withhold the consent and without limiting the generality of this subsection, may require the registration with and approval by the Registrar of an advertisement or a circular to be used in connection with the invitation.

(3) Where an advertisement or a circular used in connection with the invitation contains an untrue statement then, subject to subsection (4), a person who made the invitation and a person who was a director of a body corporate making the invitation at the time when the advertisement or circular was published, is liable to pay compensation to the persons who deposited money with the public company on the faith of the advertisement or circular for the loss they may have sustained by reason of the untrue statement.

(4) A person is not liable under subsection (3) if that person proves,

(a) that that person had reasonable grounds to believe and did believe up to the time of publication of the advertisement or circular that the statement was true; or

(b) that the advertisement or circular was published without the knowledge of, and that on becoming aware of its publication, that person forthwith gave reasonable public notice that it was published without that person's knowledge.

(5) Where a person deposits money with a public company as a result of an untrue statement of a material fact made, whether innocently or fraudulently in an advertisement or a circular published in connection with an invitation to the public made by or on behalf of that company, that person is entitled to require the company immediately to repay the money with interest at the yearly rate of five per cent, or a higher rate as may have been agreed to be paid on the deposit.

**Prohibition of waiver and notice clauses**

**300.** A condition purporting to require or bind a person to waive compliance with a section of this Part, or purporting to affect that person with notice of a contract, document or matter, not specifically referred to in a prospectus or statement in lieu of prospectus, advertisement or circular, is void.

**Criminal liability for mis-statements**

**301.** (1) Where a prospectus, an advertisement or a circular published in relation to an invitation to the public to acquire or dispose of shares or debentures of a company or to deposit money with a company,

- (a) contains an untrue statement, or
- (b) omits truthfully to state any of the matters which, under a section of this Part, it is required to state,

a person who authorised the publication of the prospectus, advertisement or circular commits an offence and is liable on summary conviction to a fine of not less than five hundred penalty units and not more than one thousand penalty units or to a term of imprisonment of not less than one year and not more than two years or to both the fine and imprisonment, or in the case of a body corporate to a fine of not less than five hundred penalty units and not more than one thousand penalty units, unless that person proves, that the untrue or omitted statement was immaterial or that that person had reasonable grounds to believe and did believe, up to the time of publication of the prospectus, that the statement was true.

(2) For the purposes of subsection (1), a person has not authorised the publication of a prospectus by reason only of that person having given the consent required by section 290 and the Registrar has not authorised the publication of an advertisement or circular by reason of the Registrar having given the consent referred to in section 299.

**Registrar to waive or modify the application of Part A of Chapter Four**

**302.** (1) Despite any other provision of this Act, the Registrar may waive or modify the requirements of a provision of Part A of Chapter Four in relation to an invitation to the public to acquire or dispose of shares or debentures of a company or to deposit money with the company for a fixed period or payable at call whether bearing or not bearing interest.

(2) An invitation and a prospectus relating to that invitation shall be deemed to comply with this Act to the extent that the Registrar has waived or modified any of the requirements.

*Part B: Dividends and Transfers*

**Limitation on liability of shareholders in public companies to restore illegal dividends**

**303.** Where a public company pays a dividend in contravention of subsection (1) of section 72, a shareholder of the company is not liable to restore to the company the amount received by the shareholder in respect of the dividend if the shareholder shows that, at the time when the shareholder received the money, the shareholder did not know that the payment contravened the subsection.

**Interim dividends**

**304.** (1) The directors of a public company with shares may, unless the registered constitution of the company otherwise provides, pay to the shareholders of the company interim dividends on account of dividends to be declared by the company in accordance with section 76.

(2) For the purposes of subsection (1),

(a) a dividend shall not be paid in contravention of subsection (1) of section 72; and

(b) if a payment is made in contravention of subsection (1) of section 72, the person specified in subsection (2) of section 72 is liable to restore the money to the company with interest in accordance with the subsection as qualified by this section.

**Restrictions on the transferability of securities of public companies**

**305.** (1) Despite subsection (2) of section 98, the constitution of a public company shall not impose a restriction on the right to transfer shares of the company and if the constitution purports to impose that restriction it shall be ineffective.

(2) Subsection (1) shall not,

(a) prohibit a restriction on the right to transfer shares on which there is an unpaid liability; or

(b) preclude a company from refusing to register a transfer of shares to a person who is an infant or to a person found by a court of competent jurisdiction to be a person of unsound mind.

(3) Despite subsection (2) of section 100, a public company shall not issue a debenture of the company which imposes a restriction on the right to transfer the debenture and if the debenture purports to contain that restriction it shall be ineffective.

(4) Subsection (1) shall not render ineffective a restriction contained in a debenture issued before the commencement of this Act or while the company was a private company.

*Companies Bill, 2018*

*Part C: Documents Accompanying Annual Returns*

**Documents to be annexed to annual returns of a public company**

**306.** The annual return of a public company required by section 126 shall be accompanied by a copy, certified by a director and the secretary of the company to be a true copy, of every balance sheet, income statement, cash flow and consolidated statements, directors' report and auditors' report sent to members and debenture holders of the company in accordance with section 128 during the period to which the return relates.

*Part D : Extraordinary General Meetings*

**Extraordinary general meetings of public companies**

**307.** (1) The directors of a public company, despite anything in that company's constitution, shall on the requisition of members of the company holding not less than one-twentieth of the shares of the company, or, in the case of a company limited by guarantee, members of the company representing not less than one-twentieth of the total voting rights of the members of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.

(2) The requisition

(a) shall state the nature of the business to be transacted at the meeting, and

(b) shall be signed by the requisitionists and sent to or deposited at the registered office of the company.

(3) The requisition may consist of several documents in the like form each signed by one or more requisitionists.

(4) If the directors do not, within twenty-eight days from the date of receipt of the requisition at the registered office of the company, proceed duly to convene a meeting for a date not later than twenty-eight days after the receipt, the requisitionists, or any of them, may themselves convene a meeting but a meeting so convened shall not be held after the expiration of four months from that date.

(5) The reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and the sum of money so repaid shall be retained by the company out of the fees or other remuneration of any of the directors who were in default.

(6) For the purposes of this section, the directors have not proceeded duly to convene a meeting if they do not, within twenty-eight days of the

*Companies Bill, 2018*

receipt of the requisition at the registered office, give notices of the meeting to transact the business specified in the requisition in accordance with paragraphs 1 to 3 of the Eighth Schedule.

*Part E: Directors*

**Rotation of directors of a public company**

**308.** Subject to sections 172 to 176 and sections 309 and 310 and except as otherwise provided in a company's registered constitution, the following rules shall apply to the retirement and appointment of directors of a public company:

- (a) at the first annual general meeting of the company every director shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office;
- (b) the directors to retire in every year shall be those who have been longest in office since their last election, but, as between persons who became directors on the same day those to retire shall, unless they otherwise agree among themselves, be determined by lot;
- (c) a director appointed to the office of managing director shall not, while holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors;
- (d) a retiring director is eligible for re-election;
- (e) the company, at the annual general meeting at which a director retires as provided in this section, may fill the vacated office by electing a person to that office, and in default the retiring director shall, if offering to stand for re-election, be deemed to have been re-elected unless at the meeting it is expressly resolved not to fill the vacated office or unless a resolution for the re-election of the director has been put to the meeting and lost;
- (f) a person is not eligible for election to the office of director unless not less than three days and not more than twenty-eight days before the date appointed for the general meeting, a notice in writing

*Companies Bill, 2018*

- (i) of the intention to propose that person for election, signed by a member entitled to attend and vote at the meeting; and
  - (ii) of the consent to be elected as a director, signed by the person proposed,  
is lodged at the registered office of the company; and
- (g) on an increase or a decrease in the number of directors, the company may, by ordinary resolution determine in what rotation the increased or decreased number is to retire from office.

**Voting for directors of a public company**

**309.** (1) At a general meeting of a public company, other than a company limited by guarantee, a resolution for the appointment of two or more persons as directors of the company by a single resolution shall not be moved unless a resolution that it shall be so moved has first been carried unanimously.

(2) A resolution moved in contravention of subsection (1) is void, whether or not its being so moved was objected to at that time.

(3) For the purposes of this section, a resolution approving appointments or nominating persons for appointment shall be treated as a resolution for appointment.

(4) This section shall not apply where a company's registered constitution provides for cumulative voting in accordance with section 310.

**Cumulative voting for directors of a public company**

**310.** (1) The registered constitution of a public company may provide that directors shall be elected by cumulative voting.

(2) Where the registered constitution of a company provides for cumulative voting,

- (a) although there is a provision to the contrary in the company's constitution, the minimum number of directors of the company shall not be less than three and the whole of the directors, including a managing director, shall retire from office at each annual general meeting;

*Companies Bill, 2018*

- (b) the votes of each member shall, for the purposes of electing directors to fill the resulting vacancies, be multiplied by the number of vacancies;
- (c) a member may cast the resulting votes of that member in favour of one candidate for election or may distribute them among as many candidates as that member thinks fit;
- (d) the candidates receiving the highest number of votes up to the number of directors to be elected, shall be declared elected;
- (e) despite section 176, unless the whole board of directors is removed by an ordinary resolution duly passed in accordance with that section, a director may not be removed under that section if the votes cast against the removal would, when multiplied by the total number of directors, have been sufficient to secure the return of that director at an election of the whole board conducted in accordance with the rules contained in paragraphs (a), (b), (c) and (d) of this subsection.

**Prohibition of loans by public companies to directors**

**311.** (1) A public company shall not make a loan to a person who is its director or a director of an associated company, or enter into a guarantee or provide a security in connection with a loan made to that person by any other person.

(2) Subsection (1) does not apply,

- (a) to the making of a loan to an associated company or the entering into a guarantee or the providing of a security in connection with a loan made to an associated company by any other person; or
- (b) subject to subsection (3), 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.

(3) Paragraph (b) of subsection (2) does not authorise the making of loans or the entering into a guarantee or the providing of a security,

unless the total amount lent, guaranteed and secured in respect of loans to those persons does not exceed one per cent of the net assets of the company.

(4) Where a company defaults in complying with this section, the company and any officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of five hundred penalty units, and the directors authorising the making of the loan or the entering into the guarantee or the providing of the security are jointly and severally liable to indemnify the company against the loss arising from the default.

(5) For the purpose of subsection (3), “net assets” means the assets less the liabilities of the company as shown in the last audited balance sheet of the company.

## CHAPTER FIVE

### **PROVISIONS APPLICABLE TO EXTERNAL COMPANIES**

#### **Meaning of “external company”**

**312.** (1) Sections 313 to 325 apply to external companies as defined in this section.

(2) An external company is a body corporate formed outside the Republic which, at or subsequently to, the commencement of this Act has an established place of business in the Republic.

(3) The expression “established place of business” means a branch, management, share, transfer, or registration office, factory, mine, or any other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of the body corporate or maintains a stock of merchandise belonging to that body corporate from which the agent regularly fills orders on its behalf.

(4) For the purposes of subsection (3),

(a) a body corporate does not have an established place of business in the Republic merely because it carries on business dealings in the Republic through a genuine broker or general commission agent acting in the ordinary course of business as a broker or general commission agent; or

(b) the fact that a body corporate has a subsidiary which is incor-



porated, resident, or carrying on business in the Republic, whether through an established place of business or otherwise, does not of itself constitute the place of business of that subsidiary an established place of business of that body corporate.

**Documents to be delivered to Registrar by external company**

**313.** (1) External companies which establish a place of business in the Republic shall, within one month of the establishment of the place of business, deliver to the Registrar for registration

- (a) a copy of the certificate of incorporation and where applicable a copy of the constitution, charter, statutes, regulations, memorandum and articles, or any other instrument constituting or defining the constitution of the company, in a language acceptable to the Registrar;
- (b) a statement duly notarised in the jurisdiction of origin of the company giving the following particulars regarding the company:
  - (i) its name;
  - (ii) the nature of its business or businesses or other main objects if any;
  - (iii) the present forenames and surname and a former forename or surname, and the address and business occupation of one person or more persons, in this Act referred to as a local manager, authorised to manage the business of the company in the Republic;
  - (iv) if the company has shares, the number and nominal value of its authorised and issued shares, the amount paid up on the shares and the amount remaining payable on the shares distinguishing between the amounts paid and payable in cash and the amounts paid and payable otherwise than in cash;
  - (v) the address of its registered or principal office in the country of its incorporation;
  - (vi) the address of its principal place of business in the Republic including an electronic address, the number of its post office box and the telephone contact; and
  - (vii) the name and address in the Republic of a person, in this Act referred to as a process agent, authorised

*Companies Bill, 2018*

by the company to accept service of process and other documents on its behalf; and

- (c) a statement duly notarised in the jurisdiction of origin of the company giving the following particulars regarding the beneficial owners of the company:
- (i) the full name and any former or alternate name;
  - (ii) the date and place of birth;
  - (iii) the telephone number;
  - (iv) the nationality and national identity number or passport number or any other appropriate identification;
  - (v) the residential and postal address;
  - (vi) the nature of the interest including the details of any legal, financial, security, debenture or informal arrangement giving rise to the beneficial ownership; and
  - (vii) a confirmation as to whether the beneficial owner is a politically exposed person; and
- (d) the particulars, and copies, of the charges on the property of the company that are required to be delivered for registration in accordance with section 320, or, if there are no charges, a statement in the prescribed form to that effect.

(2) The Registrar shall register the documents in the register of external companies and publish the particulars contained in the statement referred to in paragraph (b) of subsection (1) in the *Companies Bulletin*.

(3) For the purposes of paragraphs (b) and (c) of subsection (1)

- (a) in the case of a person usually known by a title different from the surname, the expression “surname” includes that title;
- (b) reference to a former name does not include,
- (i) in the case of a person usually known by a title, the name by which that person was known before the succession to that title;
  - (ii) a name changed or disused before the person bearing the name attained the age of eighteen years, or changed or disused for a period of not less than twenty years; or
  - (iii) in the case of a married woman, the name by which she was known before the marriage.

**Notice of alteration of registered particulars**

**314.** (1) Where an alteration is made in the certificate of incorporation and where applicable a copy of the constitution, charter, statutes, regulations, memorandum and articles, or any other instrument referred to in paragraph (a) of subsection (1) of section 313, the company shall deliver to the Registrar for registration, notice in the prescribed form giving details of the alteration within two months of the effective date of the alteration.

(2) Where an alteration is made in any of the particulars contained in the statement referred to in paragraph (b) or (c) of subsection (1) of section 313, the company shall deliver to the Registrar for registration notice in the prescribed form giving details of the alteration within the times prescribed by subsection (3) or (4).

(3) In the case of an alteration in any of the particulars referred to in subparagraph (i), (ii), (iv) or (v) of paragraph (b) or (c) of subsection (1) of section 313, the notice required by subsection (2) shall be delivered to the Registrar within two months after the effective date of the alteration.

(4) In the case of an alteration in any of the particulars referred to in subparagraph (iii), (vi) or (vii) of paragraph (b) of subsection (1) of section 313, the notice required by subsection (2) shall be delivered to the Registrar within twenty-eight days of the date of the alteration, and the Registrar shall publish the particulars in the notice in the *Companies Bulletin*.

**Local manager and local agent**

**315.** (1) An external company may appoint a person as its local manager or cause a person to be named as its local agent in a statement or notice delivered to the Registrar under this Act.

(2) A person is eligible to be appointed a local manager or to be named a local agent of an external company if that person is eligible to be appointed a director of a company formed in the Republic under this Act.

(3) The acts of a person registered as the local manager or named as a local agent of an external company while carrying on the business in the Republic of that company shall bind the company unless the local manager or local agent does not have authority so to act, and the person with whom the local manager or local agent was dealing had actual knowledge of the absence of authority, or, having regard to the local manager's or local agent's position with or relationship to the company, ought to have known of the absence of authority.

(4) The scope of authority of the local manager or local agent shall be filed with the Registrar.

**Service on external company**

**316.** (1) A process or any other document shall be sufficiently served on an external company if

- (a) delivered or sent through an electronic address provided by the company to the Registrar or delivered or sent by post to the person last registered as the company's process agent at the last registered address of that agent, even if the process agent refuses to accept service or the company has ceased to maintain a place of business in the Republic; or
  - (b) sent by facsimile machine to a telephone number used for the transmission of documents by facsimile at the company's registered office, or address for service or its head office or principal place of business.
- (2) Subsection (1) does not apply to service of a document,
- (a) if the company was struck off the register of external companies under section 323 more than six years previously;
  - (b) if one person was last registered as process agent and that person is dead or, in the case of a body corporate, dissolved; or
  - (c) if two or more persons were last registered as process agents and each of those persons is dead, or in the case of a body corporate, dissolved.
- (3) Where,
- (a) a registration of the name and address of a person as the process agent of an external company has not been effected, or
  - (b) subsection (1) does not apply by reason of paragraph (b) or (c) of subsection (2),

a process or any other document shall be sufficiently served on the company if delivered or sent by post to a place of business of the company in the Republic or, if the company has ceased to have a place of business in the Republic, to the registered office or principal place of business of the company in the country of its incorporation.

(4) A document to be served by post on an external company shall be posted within a period that will admit of its being delivered in due course of delivery within the time prescribed for the service of the document.

(5) In proving service, it shall be sufficient to prove that a letter containing the document was properly addressed, prepaid, and posted, whether or not by registered post.

*Companies Bill, 2018*

- (6) Where it is proved that a document was in fact received by
- (a) a local manager or a process agent,
  - (b) the board of directors of the external company, or
  - (c) the managing director or secretary of the external company,

the document shall be deemed to have been served on that company although service may not have been effected in accordance with subsections (4) and (5).

(7) This section shall not derogate from the power of a Court to direct how service shall be effected of a document relating to legal proceedings before that Court.

**Financial statements of external company**

**317.** (1) An external company shall, once in every year at intervals of not more than fifteen months, make out and deliver to the Registrar for registration, an income statement, statement of cash flows and balance sheet and, if the company is a holding company, consolidated financial statements, in the form and containing the particulars of financial statements which, under paragraph (a) of subsection (1) of section 128, the directors would have been required to send to the members and debenture holders of the company if it were a company formed in Ghana under this Act.

(2) The Registrar may accept for registration an income statement, statement of cash flows, a balance sheet and consolidated financial statements prepared in the form required under the law of the place of the company's incorporation if, in the Registrar's opinion, the financial statements give substantially the same, or greater, information as that required to be given in the financial statements referred to in section 128.

(3) The financial statements mentioned in subsection (1) shall be in the English language.

(4) Although the financial statements and the consolidated financial statements prepared in the form required under the law of the place of the company's incorporation do not give substantially as much information as that required in the financial statements referred to in section 128, the Registrar may, nevertheless agree to accept the financial statements for registration in compliance with subsection (1) but in that event, subject to subsection (7), the company shall also deliver to the Registrar for registration, in the English language

- (a) an income statement, made out as nearly as may be in the form and containing the particulars required by section 129

*Companies Bill, 2018*

and giving a true and fair view of the profit or loss, during the period to which it relates, on the company's operations in the Republic as if the operations had been conducted by a separate company formed in the Republic under this Act;

(b) a statement as at the end of the company's financial year showing the company's assets locally situated in the Republic classified, distinguished and valued in accordance with section 130 and Part Two of the Sixth Schedule, and the nature and amount of the specific charges on the assets; and

(c) a report on the account and statement referred to in paragraphs (a) and (b) of this subsection by an auditor qualified in accordance with section 138 stating that in the auditor's opinion and to the best of the information available the accounts and statements are in accordance with the books and records of the company and give the information required by this Act in the manner required and give a true and fair view of the matters stated.

(5) Subsection (4) does not apply to a company which,

(a) has at any time made in the Republic an invitation to the public to acquire any of its shares or debentures or to deposit money with it; or

(b) has issued shares or debentures which are for the time being dealt in on a stock exchange in the Republic.

(6) In the income statement referred to in paragraph (a) of subsection (4), the company is entitled to make the apportionments and to add the notes and explanations that, in its opinion, are necessary or desirable in order to give a true and fair view of the profit or loss on its operations in the Republic and for this purpose may debit a reasonable rate of interest on capital employed in the Republic.

(7) Although the Registrar agrees to accept an income statement, statement of cash flows, a balance sheet and consolidated financial statements under subsection (4), the Registrar may waive compliance with paragraphs (a), (b) and (c) of that subsection or any of those paragraphs if satisfied that compliance with any of them is impracticable having regard to the nature of the company's operations in the Republic.

(8) In relation to the accounts and statements referred to in this section the Registrar shall have the same powers to modify the requirements of Parts One, Two and Three of the Sixth Schedule as the Registrar has in relation to companies formed in the Republic under this Act.

*Companies Bill, 2018*

(9) The Minister may, in the public interest and by legislative instrument, modify in relation to an external company any of the requirements in this section for purpose of adapting them to the circumstances of the external company but a modification shall not derogate from the obligations imposed by this section to give a true and fair view of the profit or loss of the company.

**Obligation to state name of external company**

**318.** (1) An external company shall,

- (a) conspicuously exhibit on every place where it carries on business in the Republic the name of the company, the country in which the company is incorporated, and, if the liability of the members is limited, the fact that it is so limited; and
- (b) state the name of the company and of the country in which it is incorporated and if the liability of the members is limited that fact that it is so limited, in legible letters at the head of the business letters of the company despatched in the Republic.

(2) Where the name of the company is in a foreign language, the requirements of this section relating to the name of the company are fulfilled if the company exhibits and states a translation of the name in a language acceptable to the Registrar.

(3) The fact that the word “limited”, or its equivalent in a foreign language, forms part of the company’s name is not sufficient compliance with the obligations imposed by this section relating to the exhibition and stating of the fact that the liability of the members is limited.

**Publication of names of local managers or local agents**

**319.** (1) An external company shall, in its trade circulars and business letters on or in which the company’s name appears and which are despatched in the Republic by or on behalf of the company, state in legible letters with respect to each local manager,

- (a) the present forenames or initials and the present surname of the local manager or local agent, and
- (b) any former forename or surname of the local manager or local agent.

(2) If special circumstances exist which render it in the opinion

of the Registrar expedient that an exemption should be granted, the Registrar may, by legislative instrument, grant, subject to the conditions specified in the instrument, exemption from the obligations imposed by this section in respect of a company.

(3) Subsection (3) of section 313 applies to this section.

**Registration of particulars of charges**

**320.** (1) Part L of Chapter Two extends to charges on property in the Republic which are, or have been, created, and to charges on property in the Republic which is acquired, by an external company.

(2) For the purposes of subsection (1), particulars of charges created before the date when the external company had an established place of business in the Republic, shall be deemed to be duly registered if particulars of those charges are duly delivered to the Registrar for registration in accordance with section 313 and the failure to register any of the charges shall not affect the validity of the charge.

**Winding up of external company**

**321.** (1) Where, in the case of an external company,

- (a) a winding up order is made by a court of the country in which the company is incorporated, or
- (b) a resolution is passed or other appropriate proceedings are taken in that country to lead to the voluntary winding up of the company, or
- (c) the company is dissolved or otherwise ceases to exist according to the law of the country in which it was incorporated,

the local manager or process agent of the company shall, within twenty-four hours after that event, give notice in the prescribed form of that event to the Registrar who shall register the same and publish the particulars contained in the notice in the *Companies Bulletin*, and in any other medium.

(2) Where an event referred to in paragraph (a) or (b) of subsection (1) has occurred, the local manager of the company shall, on every invoice, order or business letter issued in the Republic by or on behalf of the company, which is a document on or in which the company's name appears, indicate in legible letters to the effect that the company is being wound up in the country where it is incorporated.



*Companies Bill, 2018*

(3) Where a person has served the Registrar with a notice in accordance with section (1), that person shall cease to carry on business or purport to carry on business on behalf of a company specified in subsection (1).

(4) A person who in the Republic carries on, or purports to carry on, business on behalf of the company after the date on which it was dissolved or has otherwise ceased to exist in the country in which it was incorporated is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which that person continues so to do.

(5) This section does not derogate from the provisions of the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) or a statutory modification or re-enactment of that Act enabling an external company, whether or not it has been dissolved or has otherwise ceased to exist according to the law of the country in which it was incorporated, to be wound up under that Act.

(6) A liquidator of an external company or a person exercising the powers and functions of such a liquidator shall

- (a) before any distribution of the external company's assets is made, by advertisement in a newspaper circulating generally in each country where the external company had been carrying on business before the liquidation and where no liquidator has been appointed for that place, invite all creditors to make their claims against the external company within a reasonable time before the distribution;
- (b) not, subject to the provisions of the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) or a statutory modification or re-enactment of that Act, without leave of the Court, pay out any creditor to the exclusion of any other creditor; and
- (c) unless the Court otherwise directs, only recover and realise the assets of the external company in Ghana and shall subject to paragraph (b) and to the provisions of the Bodies Corporate (Official Liquidations Act) 1963, (Act 180) or a statutory modification or re-enactment of that Act pay the net amount so recovered and realised to the liquidator of that external company for the place where it was formed or incorporated after paying any debts and satisfying any liabilities incurred in Ghana by the external company.

*Companies Bill, 2018*

(7) Where an external company has been wound up so far as its assets in Ghana are concerned and there is no liquidator for the place of its incorporation or origin, the liquidator may apply to the Court for directions as to the disposal of the net amount recovered under paragraph (c) of subsection (6).

(8) Where a report has been made by an inspector under this Act regarding an external company, the Registrar may apply to the Court for an order for the winding-up of the affairs of the company in so far as they relate to its assets in Ghana.

(9) Where on an application an order is made for the affairs of the company so far as assets in Ghana are concerned to be wound up, the company shall not carry on business or establish or keep a place of business in Ghana unless the Court directs otherwise.

**Winding up of external company in specified business**

322. In the case of an external company that is

- (a) a deposit-taking business under the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930);
- (b) a collective investment scheme; or
- (c) a life insurance company under the Insurance Act, 2006 (Act 724)

the Court, shall, after providing for all interested parties to have the opportunity of being heard, determine whether the assets of the company in Ghana should be segregated in order to first effect payment rateably of the debts of the company in Ghana and the amounts payable to depositors, investors in the mutual fund company and life insurance beneficiaries, in priority to any payment being made in relation to debts and liabilities to other parties outside Ghana.

**Cessation of business of external company**

323. (1) Where an external company ceases to have an established place of business in the Republic, it shall within twenty-eight days after so ceasing, give notice of the cessation to the Registrar in the prescribed form in duplicate and the Registrar shall register the cessation and publish a copy of the notice in the *Companies Bulletin*.

(2) The Registrar shall then strike the name of the company off the register of external companies.

(3) After notice is given to the Registrar in accordance with subsection (1) and so long as the company does not have an established place

## *Companies Bill, 2018*

of business in the Republic except as provided in subsection (6), a person shall not be under an obligation to deliver a document relating to the company to the Registrar pursuant to sections 312 to 321.

(4) Where the Registrar has reasonable cause to believe that an external company has ceased to have a place of business in the Republic, the Registrar may send by registered post to the registered local manager and process agent and, if more than one, to all of those persons, a letter enquiring whether the company is maintaining an established place of business in the Republic.

(5) Where the Registrar receives an answer to the effect that the company has ceased to have an established place of business in the Republic or does not, within three months, receive a reply, the Registrar may strike the name of the company off the register of external companies.

(6) At any time within six years after the date on which the company was struck off the register of external companies under subsections (1) and (2) or (4) and (5), a person has the right to inspect the documents relating to that company.

(7) During the six years after the date on which the company was struck off the register of external companies, the company shall, despite subsection (3) continue to be under the obligation imposed by section 314 to give notice of an alteration in the names of the company's process agent.

### **Penalties and disabilities**

**324.** (1) Where an external company or a local manager or process agent of an external company fails to comply with any of the obligations imposed on it or that manager or agent by sections 313 to 320, the external company and a local manager or process agent that is in default is liable to pay to the Registrar, an administrative penalty of two hundred and fifty penalty units or, in the case of a continuing default five penalty units for each day during which the default continues.

(2) Where there is a default in delivering to the Registrar a document required to be delivered for registration pursuant to sections 313 to 323, the rights of the external company concerned under or arising out of a contract made in the Republic during the time that the default continues shall not be enforceable by action or any other legal proceedings.

*Companies Bill, 2018*

- (3) For the purposes of subsection (2),
- (a) the external company may apply to the Court for relief against the disability imposed by that subsection and the Court, on being satisfied that it is just and equitable to grant relief, may grant a relief generally or as respects a particular contract and on the conditions that the Court may impose;
  - (b) that subsection does not affect the rights of any other parties against the external company in respect of the contract;
  - (c) if an action or a proceeding is commenced by any other party against the external company to enforce the rights of that party in respect of that contract, subsection (2) shall not preclude the external company from enforcing in that action or proceeding by way of counterclaim, set off or otherwise, the rights that it has against that party in respect of that contract.

**Control of public invitations relating to external companies**

**325.** (1) Where a person makes in the Republic an invitation to the public to acquire or dispose of shares or debentures of an external company or to deposit money with an external company for a fixed period or payable at call, whether bearing or not bearing interest, subject to any other provisions of this Act, Part X of Chapter Two and Part A of Chapter Four shall apply as if the external company were a public company within the meaning of this Act.

(2) An invitation and a prospectus relating to that invitation shall be deemed to comply with this Act to the extent that the Commission has waived or modified any of the requirements.

(3) Where the invitation to the public is a general invitation within the meaning of section 288, the prospectus, in addition to complying with the Tenth Schedule subject to the modifications made in accordance with subsection (2) and subject to section 289, shall also contain particulars with respect to

- (a) the instrument constituting or defining the constitution of the company;
- (b) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected;

*Companies Bill, 2018*

(c) an address in the Republic where copies of the documents referred to in paragraphs (a) and (b) or, if those documents are in a foreign language, certified translations of those documents can be inspected; and

(d) the date on which and the country in which the company was incorporated.

(4) A prospectus registered and an advertisement or a circular published in connection with that invitation shall state the country in which the external company is incorporated and the address of its principal place of business in the Republic.

(5) Unless this section is complied with, the making of the invitation is a breach of section 277.

**Control of public invitations relating to other non-Ghanaian companies**

**326.** (1) For the purposes of this section and of section 278 the expression “non-Ghanaian company” means an association incorporated or to be incorporated outside the Republic which is not an external company as defined in section 312.

(2) Where a person makes in Ghana an invitation to the public which is,

(a) a general invitation, as defined by section 288 to acquire shares or debentures of a non-Ghanaian company, or

(b) an invitation to deposit money with a non-Ghanaian company for a fixed period or payable at call whether bearing or not bearing interest,

subject to any other provision of this Act, Part X of Chapter Two and Part A of Chapter Four shall apply as if the non-Ghanaian company were a public company within the meaning of this Act, and subsections (2) and (3) of section 325 apply as if that company were an external company.

(3) A prospectus, an advertisement or a circular registered or published in connection with that invitation shall state the country in which the non-Ghanaian company is incorporated and, if the liability of its members is limited shall so state.

(4) Unless this section is complied with, the making of the invitation is a breach of section 277.

(5) Sections 296, 297, 300 and 301 shall apply in relation to an

invitation to the public to acquire or dispose of any shares or debentures of a non-Ghanaian company, whether or not an invitation of the types referred to in subsection (2) and sections 299, 300 and 301 shall apply in relation to an invitation to the public to deposit money with a non-Ghanaian company, as if the company were a public company within the meaning of this Act.

## CHAPTER SIX—SUPPLEMENTARY

### *Part A: Miscellaneous Offences*

#### **Inducing persons to invest**

**327.** (1) A person who by a statement, promise or forecast which is untrue, misleading, false or deceptive induces or attempts to induce another person to enter into or offers to enter into,

- (a) an agreement for or with a view to acquiring, disposing of, or underwriting, securities, or lending or depositing money to or with a body corporate, or
- (b) an agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities,

commits an offence and is liable on summary conviction to a term of imprisonment of not less than three years and not more than seven years unless the accused person proves that that person had reasonable grounds to believe and did believe that the statement was true or that the promise or forecast was not misleading, false or deceptive.

(2) A person who, by a dishonest concealment of material facts induces or attempts to induce another person to enter into any of the transactions referred to in subsection (1) commits an offence and on summary conviction is subject to the punishment prescribed by subsection (1).

#### **Penalty for false statements**

**328.** (1) A person who in any return, report, certificate, account, or other document required under a provision of this Act to be sent to the Registrar wilfully makes a false statement, knowing it to be false, commits an offence and is liable on summary conviction to a fine of not less than

two hundred and fifty penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than one year and not less than one year and not more than two years or to both the fine and the imprisonment.

(2) Subsection (1) does not affect the liability of a body corporate or any other person under any other section of this Act or any other enactment but the penalties imposed by this section shall be alternative, and not additional, to the penalties imposed by the other section or enactment.

**Penalty for improper use of “incorporated” or “limited”**

**329.** Where any person or persons trade or carry on business in the Republic under a name or title of which

- (a) the words “incorporated”, “corporation” or any contraction or imitation of those words or an equivalent in any other language forms part, or
- (b) the word “limited” or a contraction or an imitation of those words or an equivalent in any other language is the last word,

that person is or those persons are, unless duly incorporated under this Act or any other enactment and, where “limited” or a contraction or an imitation of that word is the last word, unless duly incorporated with limited liability, liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which that name or title has been or is used.

**Publication of misleading statements regarding shares or capital**

**330.** (1) A body corporate shall not state the number of its authorised or issued shares or the amount of its capital in any notice, advertisement, business letter or other publication of the body corporate unless the statement includes with equal prominence accurate particulars of the number of shares issued, and of the stated and paid up capital of the body corporate.

(2) In the event of a breach of subsection (1), the body corporate and an officer of the body corporate that is in default is liable to pay to the Registrar, an administrative penalty of seven hundred and fifty penalty units.

*Companies Bill, 2018*

*Part B: Legal Proceedings*

**Costs in actions by limited companies**

**331.** Where a body corporate with limited liability is the plaintiff in legal proceedings the Court may, if it appears by credible evidence that there is reason to believe that the body corporate will be unable to pay the costs if the defendant is successful, require sufficient security to be given for the costs, and may stay the proceedings until the security is given.

**Contribution between joint wrongdoers**

**332.** (1) Where more than one officer of a body corporate or other persons are liable to pay damages, costs, compensation, debt, or monetary penalty under, or in respect of a breach of a section of this Act, they shall have a right of contribution amongst themselves.

(2) In an action to enforce liability or in an action to recover contribution, the Court may award contribution on the terms that it considers equitable in all the circumstances and may exempt a person from liability to make contribution, or direct that the contribution to be recovered from any persons shall amount to a complete indemnity.

**Power to grant relief**

**333.** (1) Where in proceedings against a member, an officer or an auditor of a company for a default or a breach of duty under this Act, or against a trustee for debenture holders in respect of a breach of duty or trust, it appears to the Court hearing the case that the member, officer, auditor or trustee is or may be liable but that the member, officer, auditor or trustee has acted honestly and reasonably and that, having regard to the circumstances of the case, that person ought fairly to be excused, the Court may relieve that person in whole or in part from that liability on the terms that the Court considers fit.

(2) Where the member, officer, auditor or trustee has reason to apprehend that a claim may be made against that person in respect of a breach of duty or trust, that person may apply to the Court for relief.

(3) The Court on the application, shall have the same power to relieve that person as under this section it would have had if it had been a court before which proceedings against that person for breach of duty or trust had been brought.

(4) Written notice of an application to the Court under subsection (2) shall be given to the Registrar at least twenty-one days before the



date of the hearing of the application and the Registrar may appear on the hearing of the application and call evidence and make the representations that the Registrar deems fit.

*Part C: Establishment of the Office of the Registrar of Companies*

**Establishment of the Office of the Registrar of Companies**

**334.** (1) There is established by this Act a body corporate with perpetual succession to be known as the Office of the Registrar of Companies.

(2) Where there is hindrance to the acquisition of property, the property may be acquired for the Office of the Registrar of Companies under the State Lands Act, 1962 (Act 125) and the cost shall be borne by the Office of the Registrar of Companies.

(3) The Registrar shall have a seal which shall bear the words “Registrar of Companies, Ghana”.

**Status of the Office of the Registrar**

**335.** The Office of the Registrar has financial autonomy subject to the provisions of this Act.

**Object and functions of the Office of the Registrar**

**336.** (1) The object of the Office of the Registrar is to register and regulate all types of businesses in conformity with this Act and any other relevant enactments.

(2) To achieve the object, the Office of the Registrar shall

(a) register

(i) business names in accordance with the Registration of Business Names Act, 1962 (Act 151),

(ii) companies, and

(iii) partnerships in accordance with the Incorporated Private Partnerships Act, 1962 (Act 152);

(b) appoint inspectors to ensure the effective compliance with the Act;

(c) discharge its duties and perform its functions as the Official Liquidator under the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) or a statutory modification or re-enactment of that Act; and

*Companies Bill, 2018*

(d) manage the finances and fixed assets of the Office of the Registrar.

(3) Without limiting subsection (1), the Office of the Registrar has the duty to undertake public education programmes to educate the general public engaged in business activities on the operation of companies, partnerships and business names.

**Governing body of the Office of the Registrar**

337. (1) The governing body of the Office of the Registrar is a Board consisting of

- (a) a chairperson nominated by the President,
- (b) one representative of the Office of the Attorney-General not below the rank of a Principal State Attorney,
- (c) one representative of the Ministry of Trade and Industry not below the rank of a Director,
- (d) one representative of the Ministry of Finance not below the rank of a Director,
- (e) one representative of the Private Enterprise Federation,
- (f) one lawyer with at least ten years' experience, nominated by Ghana Bar Association,
- (g) one person from business academia,
- (h) one person from corporate law academia, and
- (i) the Registrar of Companies appointed under section 345.

(2) The members of the Board shall be appointed by the President in accordance with article 70 of the Constitution.

(3) The Board shall ensure the proper and effective performance of the functions of the Office of the Registrar.

**Tenure of office of members**

338. (1) A member of the Board shall hold office for a period not exceeding four years and is eligible for re-appointment, but a member shall not be appointed for more than two terms.

(2) Subsection (1) does not apply to the Registrar of Companies.

(3) A member of the Board may at any time resign from office in writing addressed to the President through the Minister.

(4) A member of the Board, other than the Registrar of Companies, who is absent from three consecutive meetings of the Board without sufficient cause ceases to be a member of the Board.

*Companies Bill, 2018*

(5) The President, may by letter addressed to a member and for good cause revoke the appointment of that member.

(6) Where a member of the Board is, for a sufficient reason, unable to act as a member, the Minister shall determine whether the inability would result in the declaration of a vacancy.

(7) Where there is a vacancy

(a) under subsection (3) or (4) or section 340,

(b) as a result of a declaration under subsection (6), or

(c) by reason of the death of a member,

the Minister shall notify the President of the vacancy and the President shall appoint a person to fill the vacancy.

**Meetings of the Board**

**339.** (1) The Board shall meet at least once every three months for the despatch of business at the times and in the places determined by the chairperson.

(2) The chairperson shall at the request in writing of not less than one-third of the membership of the Board convene an emergency general meeting of the Board at the place and time determined by the chairperson.

(3) The chairperson shall preside at meetings of the Board and in the absence of the chairperson, a member of the Board elected by the members present from among their number shall preside.

(4) The quorum at a meeting of the Board is five members or a greater number determined by the Board in respect of an important matter.

(5) Matters before the Board shall be decided by a majority of the members present and voting and in the event of an equality of votes, the person presiding shall have a casting vote.

(6) The Board may co-opt a person to attend a Board meeting but that person shall not vote on a matter for decision at the meeting.

**Disclosure of interest**

**340.** (1) A member of the Board who has an interest in a matter for consideration by the Board

(a) shall disclose the nature of the interest and the disclosure shall form part of the record of the consideration of the matter; and

*Companies Bill, 2018*

(b) shall not participate in the deliberations of the Board in respect of that matter.

(2) A member ceases to be a member of the Board, if that member has an interest in a matter before the Board and

(a) fails to disclose that interest, or

(b) participates in the deliberations of the Board in respect of the matter.

**Establishment of committees**

**341.** (1) The Board may establish committees consisting of members of the Board or non-members or both to perform a function.

(2) A committee of the Board shall be chaired by a member of the Board.

(3) Section 340 applies to members of committees of the Board.

**Fees and allowances**

**342.** Members of the Board and members of a committee of the Board shall be paid fees and allowances to be determined by the Minister in consultation with the Minister responsible for Finance.

**Regional offices**

**343.** (1) The Board shall establish regional offices of the Office of the Registrar in each regional capital within a period that the Board may determine.

(2) The Board shall on the recommendation of the Registrar of Companies appointed under section 345, shut down or direct the cessation of the operation of a regional office established under subsection (1) where the exigencies so require.

(3) A regional office of the Office of the Registrar shall be provided with the public officers that the President shall appoint in accordance with article 195 of the Constitution.

(4) A regional office of the Office of the Registrar shall perform the functions of the Office of the Registrar in the region that the Board on the advice of the Registrar may direct.

**Ministerial directives**

**344.** The Minister may give general policy directives to the Board in writing not inconsistent with a provision of this Act and the Board shall comply.

*Companies Bill, 2018*

*Part D: Administrative and Financial Provisions of the Office of the Registrar*

**Appointment of Registrar of Companies**

**345.** (1) The President shall in accordance with article 195 of the Constitution appoint a person other than the Registrar General as the Registrar of Companies to perform the functions vested by or under this Act or any other enactment.

(2) The Registrar of Companies shall hold office on the terms and conditions specified in the Registrar's letter of appointment.

(3) Anything which is appointed, authorised or required to be done under this Act by the Registrar may be done by the Deputy Registrar or an Assistant Registrar and is as valid and effectual as if done by the Registrar.

**Appointment of other staff**

**346.** (1) The President shall in accordance with article 195 of the Constitution appoint

- (a) Deputy Registrars one of whom is the Secretary to the Board,
- (b) Assistant Registrars, and
- (c) any other staff

for the Office of the Registrar that are necessary for the proper and effective performance of its functions.

(2) The President may delegate the power of appointment of public officers in accordance with clause (2) of article 195 by directions in writing to the Board.

(3) Other public officers may be transferred or seconded to the Office of the Registrar or may otherwise give assistance to it.

(4) The lawyers of the Office of the Registrar are members of the Legal Service and shall enjoy the salaries and benefits attached to the respective posts.

(5) The Office of the Registrar may engage the services of advisers on the recommendations of the Board.

**Funds of the Office of the Registrar**

**347.** The funds of the Office of the Registrar include

- (a) moneys that are approved by Parliament subject to subsection (1) of section 367,

*Companies Bill, 2018*

- (b) fees and charges that accrue to the Office of the Registrar in the performance of its functions consisting of,
  - (i) fees and charges in respect of services rendered by the Office of the Registrar, and
  - (ii) proceeds from the sale of the *Companies Bulletin* and other publications of the Office of the Registrar;
- (c) donations and grants,
- (d) interests from investment, and
- (e) income from any other source approved by the Board.

**Management of the Office of the Registrar's finances**

**348.** (1) The Board shall manage and control the finances of the Office of the Registrar and determine matters that arise out of the financial administration of the Office of the Registrar in accordance with the Public Financial Management Act, 2016 (Act 921).

(2) Subject to the Ministries, Departments and Agencies (Retention of Funds) Act, 2007 (Act 735), the Office of the Registrar is authorised to retain all moneys realised in the performance of its functions.

(3) The preparation and submission of estimates and the reporting and accounting of estimates are subject to the Public Financial Management Act, 2016 (Act 921).

(4) The provisions of article 187 of the Constitution which relate to the Auditor-General shall apply to the moneys retained under the Act.

(5) Despite any other provision in any enactment to the contrary, internally generated funds

- (a) can only be utilised when the activities on which the expenditure will be incurred have been programmed and approved in the expenditure budget of the Office of the Registrar, and
- (b) shall not be used for the payment of salaries, staff benefits and other allowances except where the allowances are directly related to the provision of services that will lead to increased revenue.

**Loans, bank accounts and investments**

**349.** (1) Subject to article 181 of the Constitution and the Loans Act, 1970 (Act 335), the Office of the Registrar may obtain loans and credit facilities that the Office requires for the implementation of its functions.

*Companies Bill, 2018*

(2) The Office of the Registrar may with the approval of the Minister responsible for Finance borrow, by way of overdraft or otherwise, sums that it may require to meet its current obligations or perform its functions under this Act.

(3) The Board may with the approval of the Controller and Accountant-General open bank accounts that the Board considers necessary, except that a bank account opened outside the country shall be subject to paragraph (b) of clause (2) of article 183 of the Constitution.

(4) The Office of the Registrar may make prudent investments in government securities as it considers necessary.

**Accounts and audit**

**350.** (1) The Board shall keep books of account and proper records in relation to them in the form approved by the Auditor-General.

(2) The Board shall submit the accounts of the Office of the Registrar to the Auditor-General for audit within three months after the end of the financial year.

(3) The Auditor-General shall, not later than three months after the receipt of the accounts, audit the accounts and forward a copy of the audit report to the Minister.

(4) The financial year of the Office of the Registrar is the same as the financial year of the Government.

**Annual report and other reports**

**351.** (1) The Board shall within one month after the receipt of the audit report, submit an annual report to the Minister covering the activities and the operations of the Office of the Registrar for the year to which the report relates.

(2) The annual report shall include the report of the Auditor-General, and the periodical report of the Registrar of Companies referred to in section 352.

(3) The Minister shall, within one month after the receipt of the annual report, submit the report to Parliament with a statement that the Minister considers necessary.

(4) The Board shall also submit to the Minister any other reports which the Minister may require in writing.

*Companies Bill, 2018*

*Part E: General Provisions*

**Periodical reports by Registrar**

**352.** (1) The Registrar shall, every year, make a report on the operation of this Act to the Minister who shall lay the report before Parliament.

- (2) In the report, the Registrar shall
  - (a) in addition to giving general statistical information relating to the registration and dissolution of companies, report on the exercise by the Registrar of the Registrar's powers under this Act, and
  - (b) in particular, refer to the cases in which the Registrar has, under the powers conferred by this Act, waived compliance with, or modified, any of the normal provisions of this Act, and give stated reasons in each case for so doing.

**Companies Bulletin**

**353.** (1) There is established by this Act an official bulletin known as the *Companies Bulletin*.

- (2) The Registrar shall
  - (a) keep and maintain the *Companies Bulletin* in an accurate form as determined by the Board; and
  - (b) ensure the accessibility of the *Companies Bulletin* in the hard copy format and the electronic format.
- (3) The *Companies Bulletin* shall also be maintained as a secured electronic database.
- (4) The purpose for which the *Companies Bulletin* is to be maintained is confined to matters provided in this Act and any other relevant enactment.

**Fees**

**354.** (1) The Office of the Registrar shall, in consultation with the Minister responsible for Finance, prescribe fees chargeable under this Act.

- (2) The Registrar shall publish in the *Companies Bulletin* the fees payable.

**Documents to be translated**

**355.** Where, under a section of this Act, a document is required to be prepared or registered, that document shall, unless the section otherwise provides, be in the English language.



**Registration of documents**

**356.** (1) There is established by this Act a register to be known as the Central Register.

(2) The Registrar shall

- (a) keep and maintain the Central Register both in manual and electronic formats; and
- (b) enter in the Central Register,
  - (i) the particulars required to be submitted for registration under subsection (2) of section 13;
  - (ii) the particulars required to be submitted for registration under subsection (6) of section 35;
  - (iii) the particulars required to be submitted for registration under paragraph (c) of subsection (1) of section 313;
  - (iv) the particulars required to be submitted for registration under subsection (2) of section 314; and
  - (v) any other information that the Registrar may require.

(3) The Registrar shall

- (a) collaborate with other authorities for purpose of maintaining, verifying and updating the Central Register;
- (b) on request and in a timely manner, make information entered in the Central Register available to the relevant authorities for inspection; and
- (c) in line with open data best practices, make an electronic format of the Central Register available to members of the public for inspection.

(4) Subject to section 361 where, under a section of this Act, a document or particulars are required to be registered by the Registrar, registration shall be effected by inserting the document or making the appropriate entries of the particulars in the register maintained at the Office of the Registrar.

(5) For the purposes of a provision of this Act, a document has not or particulars have not, been delivered to the Registrar for registration until the appropriate registration fee has been paid to the Registrar.

(6) Where the Registrar is of opinion that the document or particulars delivered to the Registrar for registration,

- (a) contain matter contrary to law,
- (b) by reason of an error, omission or a misdescription have not been duly completed,
- (c) otherwise do not comply with the requirements of this Act, or
- (d) contain an error,

*Companies Bill, 2018*

the Registrar may request that the document or particulars be appropriately amended or completed and re-submitted, and may refuse to register the document or particulars until appropriately amended or completed; and in that event the document has not or the particulars have not, been delivered for registration until re-submitted as appropriately amended or completed.

(7) For the purpose of this section, “competent authority” means public authorities with designated responsibilities for combating money laundering or terrorist financing, in particular, the Financial Intelligence Centre and the authorities that have the functions of investigating or prosecuting money laundering and associated predicate offences and terrorist financing.

(8) The Minister may, by legislative instrument, make Regulations to prescribe

- (a) the mode and format for the submission of particulars required to be entered in the Central Register;
- (b) the procedure for companies to maintain up to date and accurate records of beneficial ownership;
- (c) the procedure for collection, authentication, verification or rectification of information entered in the Central Register; and
- (d) the penalty for a default in complying with reporting requirements in respect of the Central Register.

**Prescribed forms**

357. (1) Subject to section 361 where a section of this Act provides that a document shall be in the prescribed form, the document shall be in the form prescribed by the Registrar by legislative instrument.

(2) Where a section of this Act provides that a document shall be delivered to the Registrar for registration, the Registrar may refuse to accept the document if in the Registrar’s opinion, it is insufficiently legible or is written on paper insufficiently durable to be suitable for registration.

(3) Where the Registrar, refuses to accept a document for registration the document is not, for the purposes of this Act, duly delivered to the Registrar within the time prescribed by that subsection or within the extended time that the Registrar may allow for the delivery of a copy of the document unless, a copy of the document is in a form acceptable to the Registrar and duly delivered within the time prescribed or other prescribed time that the Registrar may allow for the delivery of a copy.

**Inspection, copies and evidence of registered documents**

**358.** (1) A person may,

- (a) inspect the register of particulars of charges and a document registered by the Registrar on payment of the fee prescribed for that purpose by the Registrar for each inspection of the register and documents relating to one company; or
- (b) require a certificate of the incorporation of a company or a copy of any other document, or a part of any other document, registered by the Registrar to be signed by the Registrar, on payment of the fees prescribed by the Registrar.

(2) A process for compelling the production of a document kept by the Registrar shall not issue from a Court except with the leave of that Court and a process if issued shall bear on the process a statement that it is issued with the leave of the Court.

(3) A copy of, or extract from, a document registered by the Registrar, certified by the Registrar to be a true copy, whose official position it shall not be necessary to prove, is admissible in legal proceedings in evidence as of equal validity with the original document.

**Authentication of documents issued by Registrar**

**359.** (1) The documents purporting to be orders, certificates, licences, approvals or revocations of those documents made or issued by the Registrar for the purposes of this Act, and purporting to be sealed with the seal of the Registrar, or be signed by the Registrar, or by a properly authorised officer, shall be received in evidence without further proof of validity unless the contrary is shown.

(2) A certificate that an order made, certificate issued, or act done is the order, certificate, or act of the Registrar is conclusive evidence of the fact so certified.

**Enforcement of duty to make returns**

**360.** (1) The Registrar or a member or a creditor of a body corporate may apply to the Court, where the body corporate or an officer or a liquidator of a body corporate, having defaulted in complying with a provision of this Act which requires it, to deliver a return, a financial statement, or any other document, or to give notice of a matter, fails to end the default within twenty-eight days after the service of a notice on the body corporate or the officer or liquidator requiring it or the officer or liquidator to do so.

*Companies Bill, 2018*

- (2) The Court may
- (a) make an order directing the body corporate and an officer of the body corporate or the liquidator to make good the default within the time that is specified in the order; and
  - (b) provide that the costs of, and incidental to, the application shall be borne by the body corporate or by the officer or liquidator of the body corporate responsible for the default.

**Electronic transactions**

**361.** (1) Despite a provision of this Act and any other enactment, the Registrar may authorise

- (a) the incorporation or the registration of a company;
- (b) the reservation of a company name;
- (c) the filing of particulars;
- (d) the conversion of a company;
- (e) the filing of annual returns and financial statements;
- (f) the keeping and maintenance of a register;
- (g) arrangements, mergers, amalgamations and sale of undertakings;
- (h) the removal of a company's name from the register upon cessation, dissolution or liquidation;
- (i) reports on statistical data on companies;
- (j) the inspection of a register;
- (k) the registration of debentures;
- (l) the transfer of debentures;
- (m) the alteration of debentures;
- (n) the registration of a contract or agreement with respect to the allotment of shares;
- (o) the registration of charges;
- (p) keeping of books of accounts;
- (q) a service of a notice or document;
- (r) the dissolution of a company;
- (s) searches on a company register;
- (t) an offer to be made to the public or an invitation to make an offer to the public;
- (u) payment of fees;
- (v) the filing of any notice or document; and
- (w) the performance of any act or thing required to be done in relation to paragraphs (a) to (v)

*Companies Bill, 2018*

to be effected electronically in the manner and through an electronic system approved by the Registrar subject to subsection (5).

(2) With effect from the date as may be notified in the *Companies Bulletin*, the Registrar may direct that any matter, act or thing referred to in subsection (1), or required to be done under this Act, shall be submitted or done electronically.

(3) For the purpose of facilitating the operation of a system of dematerialised or immobilised securities electronically, a security shall not have a distinctive number.

(4) Every new company incorporated after the commencement of this Act, that has a website, shall endeavour to post on that website any information required to be filed with the Office of the Registrar.

(5) The Registrar shall inform its clients that desire to transact business with the Registrar electronically, of the electronic system intended to be used as the medium for the electronic communication and obtain the written consent of the client concerned to use the designated electronic system.

(6) Without limiting subsections (2) and (3), a document or information may be sent in electronic form to a person, a company, member or officer of a company, by the Registrar through an electronic system for the performance of any act or thing under this Act if

- (a) the intended recipient has consented in writing to the dispatch and receipt of the document or information as a substitute for the hard copy form, at a designated electronic address to and from the party responsible for sending it; or
- (b) it is required by law to receive a document or information in electronic form.

(7) The Registrar may by legislative instrument make Regulations

- (a) to prescribe the mode of electronic transactions
  - (i) between companies and the general public;
  - (ii) between companies and regulatory agencies;
  - (iii) between companies; and
  - (iv) within a company;
- (b) for application procedures for incorporation and registration matters by electronic filing;
- (c) to provide for the use of documents reproduced electronically or by other means by the Registrar as original documents despite any enactment to the contrary;

*Companies Bill, 2018*

- (d) for electronic record keeping of documents by companies;
- (e) for procedures for the authentication of electronic documents by companies;
- (f) for the use of websites and electronic filing addresses for the purposes of this Act;
- (g) for the format for electronic filing of statutory forms and documents;
- (h) to prescribe the payment systems for electronic filing, electronic searches and electronic downloads of requested documents from the Registrar;
- (i) for the destruction of any documents that has been recorded or stored electronically or by other means;
- (j) to give effect to and ensure the efficient operation of any device or facility of the kind referred to in subsection (1); and
- (k) required for the purposes of electronic transactions under this Act.

(8) Where in an enactment a person is required to provide evidence of a transaction in respect of a matter specified in this Act, proof of that matter as transacted electronically in the manner approved by the Registrar shall suffice.

**Registrar's power to obtain directions of the Court**

**362.** The Registrar may apply to the Court for directions in relation to a matter arising in connection with the Registrar's functions under this Act, and on that application the Court may give the appropriate directions or make the appropriate order.

**Extension to unregistered companies**

**363.** (1) The Minister may, by legislative instrument, direct that any of the provisions of this Act shall apply to a body corporate formed in the Republic otherwise than under this Act or to certain classes of those bodies corporate or to certain named bodies corporate formed in the Republic, as specified in the instrument, as if they were companies registered under this Act.

(2) An instrument shall not be made under subsection (1) unless a draft of the instrument has been laid before Parliament and approved by a resolution of Parliament.

### **Regulations**

**364.** (1) The Minister may, by legislative instrument, make Regulations regulating the exercise by the Registrar of any of the powers and discretions conferred on the Registrar by this Act.

(2) Regulations made under subsection (1) shall include regulations

- (a) to provide for the payment to the Registrar of moneys for the publication of matters required by this Act to be published in the Companies Bulletin by the Registrar,
- (b) in respect of matters required to be prescribed by the Registrar,
- (c) for classifying companies as large, medium or small, and for modifying this Act for the benefit of medium and small companies,
- (d) to prescribe the template for beneficial ownership data required to be submitted to the Registrar,
- (e) to amend Part One of the Ninth Schedule in respect of statement in lieu of prospectus and financial statement and report to accompany the statement,
- (f) to amend the Eleventh Schedule in respect of fees payable to the Registrar, and
- (g) to prescribe administrative and other penalties for offences committed under this Act.

(3) Without limiting subsection (1), the Minister may, on the advice of the Board, by legislative instrument, make Regulations to provide for any other matter necessary for the effective implementation of the provisions of this Act.

### **Interpretation**

**365.** In this Act, unless the context otherwise requires, the expressions defined in the First Schedule have the meanings assigned to them in that Schedule.

### **Repeal and savings**

**366.** (1) The Companies Act, 1963 (Act 179) as amended by

- (a) the Companies (Amendment) Act, 1994 (Act 474),
- (b) the Companies (Amendment) Act, 1997 (Act 531),
- (c) the Companies (Amendment) Act, 2012 (Act 835), and
- (d) the Companies (Amendment) Act, 2016 (Act 920)

are hereby repealed.

*Companies Bill, 2018*

(2) Despite the repeal of the Companies Act, 1963 (Act 179), the Regulations, by-laws, notices, orders, directions, appointments or any other act lawfully made or done under the repealed enactment and in force immediately before the commencement of this Act shall be considered to have been made or done under this Act and shall continue to have effect until reviewed, cancelled or terminated.

(3) Any register, fund and account kept immediately before the commencement of this Act and every document prepared or issued under the Companies Act, 1963 (Act 179) shall continue in force as if kept, prepared or issued under the corresponding provision of this Act.

**Transitional provisions**

**367.** (1) On the commencement of this Act, the Office of the Registrar established under section 334, shall assume the status of a Category III subvented agency as classified under the Subvented Agencies Act, 2006 (Act 706) and operate under the Ministry responsible for Justice.

(2) The rights, assets and liabilities accrued in respect of the properties vested in the Registrar-General's Department established under the Civil Service (Structure) Regulations, 1961 (L.I. 139) in relation to the registration and regulation of companies in existence immediately before the commencement of this Act are transferred to the Office of the Registrar established under section 334 of this Act and accordingly proceedings relating to the establishment or regulation of companies taken by or against the Registrar-General may be continued by or against the Office of the Registrar.

(3) The President shall, in accordance with the advice of the Board given in consultation with the Public Services Commission and within a period the President shall determine on the commencement of this Act, transfer to the Office of the Registrar the number as the President may determine, of personnel seconded to or employed for or by the Registrar-General's Department immediately before the commencement of this Act.

(4) Where a person to whom subsection (3) applies is not transferred under that subsection, the Legal Service shall deal with the appointment as it considers fit.

(5) The President may delegate the power of appointment under subsection (3) in accordance with clause (2) of article 195 of the Constitution.



## *Companies Bill, 2018*

(6) A transfer to the Office of the Registrar shall for the purposes of pension and other retirement benefits constitute a continuous service in the Legal Service.

(7) The terms and conditions of service of a person transferred to the Office of the Registrar under subsection (3) shall not be less favourable than those applicable to that person immediately before the commencement of this Act.

(8) A contract relating to the establishment and regulation of companies subsisting between the former Registrar-General's Department and another person and in effect immediately before the commencement of this Act shall subsist between the Office of the Registrar and that other person.

(9) A matter specified under section 361 in respect of which a transaction may be effected electronically on the commencement of this Act, shall after five years from the commencement date of this Act be effected electronically only.

(10) Section 361 does not affect the validity of anything done manually relating to the operation of companies established before the commencement of this Act.

### **Modification**

**368.** The Electronic Transactions Act, 2008 (Act 772) shall be read as one with section 361 of this Act and where there is a conflict between section 361 and Act 772, section 361 of this Act shall prevail.

### **Commencement**

**369.** (1) The Minister shall specify the date when this Act shall come into force by publication in the *Gazette*.

(2) The Office of the Registrar of Companies shall be established within two years of the coming into force of this Act.

*Companies Bill, 2018*

**FIRST SCHEDULE**

*(Section 365)*

*Definitions*

In this Act, unless the context otherwise requires,

“acquire” in relation to securities,

(a) means that securities are obtained whether from the body corporate whose securities they are or from a former holder and whether for cash or for a consideration other than cash or for no consideration, and

(b) except where the context otherwise requires, includes an agreement to acquire;

“alternate director” has the meaning assigned to it by section 181;

“annual return” means the return required to be made under section 126;

“approved stock exchange” means a body corporate approved as a stock exchange under the Securities Industry Act, 2016 (Act 929);

“arrangement” means a change in

(a) the rights or liabilities of members, debenture holders or creditors of a company or any class of them, or

(b) the constitution of a company other than a variation of class rights pursuant to section 50 or by the unanimous agreement of the parties affected by that change;

“asset” means any kind of property or any legal or equitable right;

“associated company” where used in this Act to describe the relationship of one body corporate to another means that the body corporate so described is the subsidiary or holding company of that other, or a subsidiary of that other’s holding company, or a holding company of that other’s subsidiary;

“beneficial owner” means an individual

(a) who directly or indirectly ultimately owns or exercises substantial control over a person or company;

*Companies Bill, 2018*

- (b) who has a substantial economic interest in or receives substantial economic benefits from a company whether acting alone or together with other persons;
  - (c) on whose behalf a transaction is conducted; or
  - (d) who exercises significant control or influence over a legal person or legal arrangement through a formal or informal agreement;
- “benefits” in relation to a director
- (a) includes a fee, percentage or other payment, and the monetary value of any consideration, allowance or perquisite, given directly or indirectly, to the director in relation to the management of the affairs of the company or of a related company, whether as a director or otherwise; but
  - (b) does not include an amount given in payment or reimbursement of out-of-pocket expenses incurred for the benefit of the company;
- “body corporate” means a corporation formed under this Act or otherwise and whether in Ghana or elsewhere but does not include a corporation sole such as an incorporated body;
- “book” includes any account, deed, writing or document, and any other record of information however compiled, recorded or stored;
- “buy”, in relation to securities means
- (a) an acquisition of the securities for cash; or
  - (b) an agreement to acquire those securities;
- “calls” means a sum which the company has validly resolved to call up in respect of any shares issued with an unpaid liability and whereby the terms of issue of a share a sum becomes payable on application, allotment or at any fixed date that sum is a call duly made and payable on the date on which by the terms of issue the same become payable;
- “capitalisation issue” has the meaning assigned to it by subsection (1) of section 77;
- “charge” includes a security on property or a mortgage whether legal or equitable statement to the effect that it is a true and complete copy of the original or, an accurate translation of the original, under the seal of the company or signed by a director and the secretary of the company;

*Companies Bill, 2018*

“Commission” means the Securities and Exchange Commission;

“company” means a body formed and registered under this Act; “company limited by shares” and “company limited by guarantee” have the meanings assigned to them in section 7;

“Company Secretary” includes a person occupying the position of secretary by whatever name called;

“constitution” includes

(a) a registered constitution of a company duly delivered in accordance with section 23; and

(b) the constitution of a company as specified in the Second, Third and Fourth Schedules;

“contribution” in relation to a pension scheme, includes the payment of an insurance premium, paid for the purposes of the scheme by or in respect of persons rendering services in respect of which pensions will or may become payable under the scheme, but does not include a payment in respect of two or more persons if the amount paid in respect of each of them is not ascertainable;

“Court” means the High Court;

“creditors voluntary winding up” has the meaning assigned to it by section 259;

“debenture” includes

(a) a written acknowledgment of indebtedness issued by a company in respect of a loan made or to be made to it or to any other person or money deposited or to be deposited with the company or any other person or the existing indebtedness of the company or any other person whether constituting a charge on any of the assets of the company or not;

(b) debenture stock;

(c) convertible debenture;

(d) a bond or an obligation;

(e) loan stock;

(f) an unsecured note; or

(g) any other instrument executed, authenticated, issued or created in consideration of such a loan or existing indebtedness;

*Companies Bill, 2018*

- (h) but does not include
    - (i) a bill of exchange;
    - (ii) a promissory note;
    - (iii) a letter of credit;
    - (iv) an acknowledgment of indebtedness issued in the ordinary course of business for goods or services supplied;
    - (v) a policy of insurance; or
    - (vi) a deposit certificate, pass book or other similar document issued in connection with a deposit or current account at a banking company;
- “default” means the failure to comply with a provision of this Act and being liable to a fine or penalty or to pay damages or compensation or to discharge a debt or obligation;
- “delivery” includes electronic delivery;
- “director” in relation to a company, has the meaning assigned to it by section 170 and in relation to any other body corporate means a person whose position in relation to that body corporate is one that that person would be a director of the body corporate if that body corporate were a company;
- “dispose” in relation to any securities means
- (a) that the securities are parted with whether to the body corporate to which the securities belong or to any other person and whether for cash or for a consideration other than cash or for no consideration; or
  - (b) an agreement to part with securities except where the context otherwise requires;
- “distribution test” includes circumstances where
- (a) a company is able to pay its debts as they fall due; and
  - (b) the amount or value of any payment, return or distribution made by the company does not exceed its income surplus immediately before the making of the payment, return or distribution;
- “document” includes
- (a) a written expression in any form;
  - (b) writing on any material;
  - (c) a book, graph or drawing; and
  - (d) information recorded or stored by any electronic or other technological means and capable, with or without the aid of equipment, of being reproduced;

*Companies Bill, 2018*

“external company” has the meaning assigned to it by section 312;

“equity share” has the meaning assigned to it by section 51;

“financial statement” in relation to a company includes

- (a) an income statement,
- (b) balance sheet,
- (c) statement of cash flows,
- (d) statement of changes in equity,
- (e) a description of significant accounting policies, and explanatory notes to the financial statement of a company prepared in compliance with international financial reporting standards approved by the Institute of Chartered Accountants, or any other standards approved or adopted by the Institute;

“financial year” means the period covered by the company’s income statement in accordance with section 129;

“floating charge” has the meaning assigned to it by section 90;

“income surplus” has the meaning assigned to it by section 71;

“in default” means that the person concerned knowingly authorises or permits the default, refusal or contravention mentioned in the section;

“infant” means a natural person under the age of eighteen years or any other age that is declared by an enactment to be of full age for legal purposes;

“liquidator” means the person appointed to wind up a body corporate;

“local agent” in relation to an external company, has the meaning assigned to it by section 315;

“local manager” in relation to an external company, has the meaning assigned to it by section 315;

“major transaction” has the meaning assigned to it in section 145;

“manager” includes a receiver and a person appointed to perform the functions referred to in subsections (1) and (2) of section 249;

“managing director” means a director to whom has been delegated the powers of the board of directors, to direct and administer the business of the company;

“Minister” means the Minister responsible for Justice;

*Companies Bill, 2018*

- “merger” means the combination of
- (a) the undertaking or a part of the undertakings of two or more companies; or
  - (b) the undertaking or part of the undertakings of one or more companies, and one or more bodies corporate;
- “non-Ghanaian” means an association incorporated or to be incorporated outside the Republic ;
- “notarise” means to officially witness and sign a document required for certification that may be used as proof or evidence of certain facts;
- “Office of the Registrar” means the body corporate established as the Office of the Registrar of Companies established under section 334 of this Act;
- “officer” in relation to a body corporate includes any director, secretary or employee of that body corporate and a receiver and manager of a part of the undertaking of that body corporate, appointed under a power contained in an instrument, and a liquidator of a company appointed in a members’ voluntary winding up, but does not include a receiver, not being a manager, a receiver and manager appointed by the Court, or a liquidator appointed under the provisions of the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180), or an auditor of a company;
- “ordinary resolution” means a resolution passed by a simple majority of votes cast by the members of the company who, being entitled so to do, vote in person or, where proxies are allowed, by proxy at a general meeting;
- “payment in cash” has the meaning assigned to it by section 48;
- “penalty unit” means the pecuniary value of a fine provided for in the Interpretation Act, 2009 (Act 792);
- “pension” means any superannuation allowance, superannuation gratuity, or similar payment;
- “pension scheme” means a scheme for the provision of pensions in respect of services as an officer of a company which is maintained in whole or in part by contributions;

*Companies Bill, 2018*

“politically exposed person” includes

- (a) a person who is or has been entrusted with a prominent public function in this country, a foreign country or an international organisation including
  - (i) Head of State or Head of Government;
  - (ii) senior political party official, government, judicial or military official;
  - (iii) a person who is or has been an executive of a State owned company;
  - (iv) important political party officials; and
- (b) an immediate family member or close associate of a person referred to in paragraph (a);

“preference share” has the meaning assigned to it by section 51;

“prescribed form” has the meaning assigned to it by section 357;

“private company” and “public company” have the meanings assigned to them in section 7;

“private liquidation” has the meaning assigned to it by section 259;

“process agent” in relation to external companies has the meaning assigned to it by section 313;

“Producer Price Index” means an index that measures the average change over time in the prices received by domestic producers of goods and services in the wholesale market as calculated by the Ghana Statistical Service;

“purchase” in relation to securities means an acquisition of securities for cash and except where the context otherwise requires, includes an agreement to buy;

“receiver” includes a manager and a person appointed to perform the functions referred to in subsection (1) of section 249;

“registration” has the meaning assigned to it by section 356;

“registration officer” has the meaning assigned to it by subsection (12) of section 32;

“Registrar” includes

- (a) the Office of the Registrar of Companies; and
- (b) the Registrar of Companies appointed in accordance with section 345 where the context otherwise requires;



*Companies Bill, 2018*

- “registered constitution” means the document registered with the Registrar under section 23 as representing the constitution of a company;
- “Republic” means the Republic of Ghana;
- “resolution requiring confirmation” has the meaning assigned to it by subsection (2) of section 78;
- “seal” means the common seal of a company;
- “securities” include
- (a) shares or debentures;
  - (b) securities of the Government or any country or territory outside Ghana;
  - (c) rights or interests, whether described as units or otherwise under a unit trust; and
  - (d) rights, whether actual or contingent in respect of money lent to or deposited with, a person that is not a body corporate licensed, under the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930) or any other enactment to carry on banking business;
- “sell” in relation to securities means a disposal of securities for cash and except where the context otherwise requires, includes an agreement to sell;
- “shares” mean the interests of members of a body corporate who are entitled to share in the capital or income of the body corporate;
- “solvent” in relation to a body corporate means the ability to pay its debts as they fall due;
- “special resolution” has the meaning assigned to it in paragraph 14 of the Eighth Schedule;
- “stated capital” has the meaning assigned to it by section 68;
- “stock exchange” means any body corporate or association of persons operating an exchange or market on which securities are acquired and disposed of;
- “subscribe” in relation to securities includes
- (a) the purchase of those securities from the body corporate whose securities they are, and

*Companies Bill, 2018*

- (b) an agreement to purchase those securities from the body corporate whose securities they are;
- “subscriber” in relation to a body corporate means a person who applies for the incorporation of a company;
- “subsidiary” and “holding company” means a body corporate that is the subsidiary of another and that other is its holding company if,
- (a) that other body corporate by the exercise of a power directly or indirectly vested in it, whether by virtue of the beneficial ownership of shares or otherwise, can appoint or remove or procure the appointment or removal of all or not less than half of its directors for the time being or can prevent the appointment or removal of all or not less than half of its directors; but
- (i) a power exercisable in a fiduciary capacity for another person shall be treated as exercisable by that other person and not by the fiduciary;
- (ii) a power exercisable by virtue of shares held by way of security only for the purpose of a transaction entered into in the ordinary course of business of that other body corporate shall be disregarded; and
- (iii) a body corporate has a power to appoint a director of another body corporate if a person’s appointment as director of that other body corporate necessarily follows from that person’s appointment as director or other officer of that first named body corporate; or
- (b) it is a subsidiary of a body corporate which is that other’s subsidiary;
- “substitute director” has the meaning assigned to it by section 180;
- “surplus” has the meaning assigned to it by section 70;
- “treasury shares” has the meaning assigned to it by subsection (5) of section 61;
- “unlimited company” has the meaning assigned to it in section 7;

*Companies Bill, 2018*

“untrue statement” means a statement which is false or misleading in the form, context or circumstances in which it was made having regard to a failure to state other facts;

“vendor” means a person who has entered into a contract, absolute or conditional, for the sale or leasing, of a property or for the granting of an option to purchase or lease, a property;

“wholly owned subsidiary” means where a holding company is beneficially entitled, whether the registered holder or not, to all the issued shares of any of its subsidiaries that subsidiary is the wholly owned subsidiary of that holding company;

“winding up under an order of a Court” has the meaning assigned to it by section 257;

“written” includes

(a) the recording of words in a permanent or legible form; and

(b) the display of words by any form of electronic or other means of communication in a manner that enables the words to be readily stored in a permanent form and with or without the aid of any equipment to be retrieved and read; and

“written communication” includes communication by registered post, and electronic communication, but excludes oral communication.

**SECOND SCHEDULE**

*(Sections 24, 25, 27 and 284)*

*Constitution for a Private Company Limited by Shares*

The clauses of this constitution may be adopted

A private company may, in a constitution registered by it, exclude or modify any of the provisions of this Schedule to the extent permitted by this Act.

1. Pursuant to section 18 of this Act, a company has the powers of a natural person of full capacity.
2. The powers of the board of directors are limited in accordance with sections 189 and 195 of the Act.
3. The liability of the members of the company is limited.
4. The company is a private company and accordingly,
  - (a) the right to transfer shares is restricted in that the directors may, in their absolute discretion and without assigning a reason decline to register a transfer of a share;
  - (b) the number of members and debenture holders of the company, exclusive of persons who are genuinely in the employment of the company and of persons who having been formerly genuinely in the employment of the company were while in that employment and have continued after the determination of the employment to be members or debenture holders of the company, is limited to fifty, but where two or more persons hold one or more shares or debentures jointly they shall for the purposes of this clause be treated as a single member;
  - (c) the company is prohibited from making an invitation to the public to acquire any of its shares or debentures;
  - (d) the company is prohibited from making an invitation to the public to deposit money for fixed periods or payable at call whether bearing or not bearing interest.

*Companies Bill, 2018*

*Shares and variation of rights*

5. The company may, by a special resolution amend this constitution
  - (a) to increase the number of its shares by creating new shares;
  - (b) to reduce the number of its shares by cancelling shares which have not been taken or agreed to be taken by a person, or by consolidating its existing shares, whether issued or not, into a smaller number or shares;
  - (c) to provide for different classes of shares by attaching to certain of the shares preferred, deferred or other special rights or restrictions whether in regard to dividend, voting, repayment or otherwise, but the voting rights of equity shares shall comply with sections 34 and 53 of the Act and the voting rights of preference shares shall comply with sections 34 and 52 of the Act; and
  - (d) in accordance with section 61 of the Act to create preference shares which are, or at the option of the company are liable, to be redeemed on the terms and in the manner that may be provided, but subject to compliance with sections 62 to 65 of the Act.
6.
  - (1) The company shall not issue any new or unissued shares for cash unless the shares are offered in the first instance to the shareholders or to the shareholders of the class or classes being issued in proportion as nearly as may be to their existing holdings.
  - (2) The offer to the existing shareholders shall be by notice specifying the number of shares to which the shareholder is entitled to subscribe and limiting a time, not being less than twenty-eight days after the date of service of the notice, after the expiration of which the offer, if not accepted, will be deemed to be declined.
  - (3) After the expiration of that time, or on receipt of an intimation from the shareholder that the shareholder declines to accept the shares offered, the board of directors may, subject to the terms of a resolution of the company and to section 189 of the Act dispose of the shares at a price not less than that specified in the offer in the manner that they think most beneficial to the company.
  - (4) This clause is not alterable except with the unanimous consent of the members of the company.

*Companies Bill, 2018*

7. Where the shares are divided into different classes, the rights attached to a class may be varied with the written consent of the holders of at least three-fourths of the issued shares of that class or the sanction of special resolution of the holders of the shares of that class.
8. Subject to compliance with sections 62 to 65 of the Act, the company may exercise the powers conferred by section 61 of the Act to,
  - (a) purchase its own shares;
  - (b) acquire its own shares by a voluntary transfer to it or nominees for it;
  - (c) forfeit in accordance with this constitution any shares issued with an unpaid liability for non-payment of calls or other sums payable in respect of those shares.
9. The company may pay commission or brokerage to a person in consideration of that person subscribing or agreeing to subscribe or agreeing to procure subscriptions for any shares in the company provided that the payment does not exceed ten percent for each hundred of the price at which the shares are issued.
10. Share certificates shall be issued in accordance with section 55 of the Act.

*Calls on shares*

11. (1) Where shares are issued on the terms that a part of the price payable for the shares is not payable at a fixed time, the board of directors may from time to time make calls upon the shareholders in respect of any moneys unpaid on their shares, provided that a call shall not be payable less than twenty-eight days from the date fixed for the payment of the last preceding call, and each shareholder shall, subject to receiving not less than fourteen days notice specifying the time or times and place of payment, pay to the company at the time or times and place so specified the amount called upon the shares of that person.
  - (2) A call may be revoked or postponed as the directors may determine.
12. A call is made at the time when the resolution of the directors authorising the call is passed and may be required to be paid by instalments.

*Companies Bill, 2018*

13. The joint holders of a share are jointly and severally liable to pay all calls in respect of that share.
14. If a sum called in respect of a share is not paid before or on the day appointed for payment, the person from whom the sum is due shall pay interest on that sum from the date appointed for payment to the time of actual payment at the yearly rate not exceeding five for each hundred as the board of directors may determine, but the board of directors shall be at liberty to waive payment of the interest wholly or in part.
15. A sum which by the terms of issue of a share becomes payable on application for the shares or on allotment, or at a fixed date is, for the purposes of this constitution a call duly made and payable on the date on which by the terms of issue the sum becomes payable, and in the case of non-payment, all the relevant provisions of this constitution as to payment of interest and expenses, forfeiture, sale or otherwise shall apply as if the sum had become payable by virtue of a call duly made and notified.
16. As between shares of the same class the company shall not differentiate between the holders as to the amount of calls to be paid or the times of payment.
17. If the company receives from a shareholder all or any part of the moneys not presently payable or called upon any shares held by the shareholder, the sum shall not be treated as a payment in respect of the shares until the sum becomes due and payable on those shares and in the mean time shall be deemed to be a loan to the company upon which the company may pay interest at the rate prevailing as may be agreed between the board of directors and the shareholder.

*Forfeiture of shares*

18. Where a shareholder fails to pay any call or instalment of a call, including a sum which is a call under clause 15, the board of directors may at any time after the failure during the time that a part of the call or instalment remains unpaid, serve a notice on the shareholder requiring payment of so much of the call or instalment as is unpaid, together with the interest which may have accrued.
19. The notice shall name a further day not earlier than the expiration of fourteen days from the date of service of the notice on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the times appointed, the shares in respect of which the call was made will be liable to be forfeited.

*Companies Bill, 2018*

20. If the requirements of the notice are not complied with, a share in respect of which the notice was given may, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.
21. A forfeited share may be cancelled by alteration of this constitution or may be retained as a treasury share until sold or otherwise disposed of on the terms and in the manner that the board of directors considers fit.
22. A person whose shares have been forfeited ceases to be a member in respect of the forfeited shares and is bound to surrender to the company for cancellation the share certificate or certificates in respect of the shares so forfeited but shall, despite that, remain liable to pay to the company the moneys which, at the date of the forfeiture, were payable by that person to the company in respect of the shares, but that liability shall cease if and when the company receives payment in full of the moneys in respect of the shares.
23. A statutory declaration in writing that the declarant is a director or the secretary of the company and that a share in the company has been duly forfeited on the date stated in the declaration, is conclusive evidence of the facts stated in the declaration as against the persons claiming to be entitled to the share.

*Lien*

24. (1) The company shall have a first and paramount lien on all shares issued with an unpaid liability for the moneys, whether presently payable or not, called or payable at a fixed time in respect of that share.  
(2) The company's lien extends to the dividends payable on the shares.
25. Where a sum in respect of which the company has a lien is presently payable by the board of directors, after serving the notice required by paragraphs 18 and 19, the company may at any time before the payment required by the notice has been made, sell a share on which the company has the lien instead of forfeiting it in accordance with paragraph 18.
26. (1) To give effect to a sale under paragraph 25, the board of directors may authorise a person to transfer the shares sold to the purchaser of those shares.  
(2) The purchaser shall be registered as the holder of the share comprised in the transfer and the purchaser is not bound to see to the application of the purchase money nor shall the purchaser's title to the shares be affected by an irregularity or invalidity in the proceedings in reference to the sale.



*Companies Bill, 2018*

27. The proceeds of the sale shall be received by the company and applied in payment of the part of the amount in respect of which the lien exists that is presently payable, and the residue shall, subject to a like lien for sums not presently payable, as existed upon the shares before the sale, be paid to the person entitled to the share at the date of the sale but the company is not bound to make the payment unless and until that person has surrendered to the company for cancellation the share certificate or certificates relating to the shares so sold.

*Transfer and transmission of shares*

28. Subject to paragraph (4) (a) shares shall be transferable and transfers shall be registered in the manner provided by sections 98 and 101 of the Act.
29. In the event of the death of a shareholder or in the event of the ownership of a share devolving upon a person by reason of that person being the legal personal representative, receiver, or trustee in bankruptcy of the holder, or by operation of law, section 102 of the Act shall apply.

*Dividends*

30. The company may, by ordinary resolution, declare dividends in respect of a year or any other period but a dividend shall not exceed the amount recommended by the board of directors.
31. A dividend shall not be paid unless,
- (a) the company will, after the payment, be able to pay its debts as they fall due; and
  - (b) the amount of the payment does not exceed the amount of the company's income surplus immediately before making of the payment.
32. The board of directors may, before recommending a dividend, set aside out of the profits or income surplus of the company the sums that they think proper in order to provide for a known liability, including a disputed or contingent liability, or as a depreciation or replacement provision and may carry forward any profits or income surplus which they may consider prudent not to distribute.
33. Dividends shall be declared and paid as a fixed sum for each share and not as a proportion of the amount paid in respect of a share.
34. The board of directors may deduct from a dividend payable to a shareholder the sums of money presently payable by the shareholder to the company in respect of the shares of the shareholder.

*Companies Bill, 2018*

35. (1) A dividend payable in cash may be paid by cheque or warrant sent by post directed to the registered address of the shareholder or, in the case of joint holders, to the registered address of the one who is first named on the register of members, or to the person and to the address that the holder or joint holders may in writing direct.
- (2) The cheque or warrant shall be made payable to the order of the person to whom it is sent.
- (3) Any one of two or more joint holders may give effectual receipts for any dividends.
- (4) A dividend payment shall be accompanied by a statement showing the gross amount of the dividend, and the tax deducted or deemed to be deducted from the gross amount.
36. A dividend shall not bear interest against the company.

*Capitalisation Issues and Non-Cash Dividends*

37. The company, on the recommendation of the directors, may exercise the powers conferred by section 77 of the Act,
- (a) to make capitalisation issues of shares in accordance with subsection (1) of section 77,
  - (b) to resolve, in accordance with subsection (3) of section 77, that a sum standing to the credit of the company's income surplus and which could have been distributed by way of dividend shall be applied in paying up amounts for the time being unpaid on shares,
  - (c) to direct, in accordance with subsection (4) of section 77, that payment of a dividend shall be wholly or partly by distribution of securities for money or fully paid shares or debentures of another body corporate or of fully paid debentures of the company.

*Accounts and audit*

38. Auditors, qualified in accordance with section 138 of the Act, shall be appointed and their duties regulated in accordance with sections 139 to 143 of the Act.
39. The board of directors shall cause proper books of account to be kept and financial statements to be prepared, audited and circulated in accordance with sections 127 to 137 of the Act.

*Companies Bill, 2018*

*General meetings and resolutions*

40. The powers of the members in general meeting shall be as stated in section 144 of the Act.
41. Annual general meetings shall be held in accordance with section 157 of the Act.
42. Extraordinary general meetings may be convened by the directors whenever they think fit in accordance with section 158 of the Act and shall be convened by the directors on a requisition of members in accordance with section 282 of the Act.
43. Notice of general meetings shall be given in accordance with sections 160 and 168 and paragraphs 2 to 6 of the Eighth Schedule to the Act and accompanied by any statements required to be circulated with the notice in accordance with section 168 and paragraphs 5 and 6 of the Eighth Schedule of the Act.
44. Meetings may be attended by the persons referred to in section 157 of the Act but a member shall not be entitled to attend unless all calls or other sums presently payable by that member in respect of shares in the company have been paid.
45. The quorum required for a general meeting shall be as stated in paragraph 8 of the Eighth Schedule of the Act.
46. (1) In accordance with paragraph 9 of the Eighth Schedule of the Act, a member entitled to attend and vote at a meeting of the company is entitled to appoint another person, whether a member of the company or not, as a proxy to attend and vote instead of that member and the proxy shall have the same rights as the member to speak at the meeting.  
(2) An instrument appointing a proxy shall be in the following form or a form as near to that form as circumstances admit.

“John Mensah & Co., Limited

I/We .....of .....being a member/members of the above-named company hereby appoint of or failing him/her of as my/our proxy to vote for me/us on my/our behalf at the annual/extraordinary general meeting of the company to be held on the .....day of ..... 20..... and at any adjournment thereof.

Signed this                      day of                      20

This form is to be used:

\*In favour of resolution numbered 1 against

\*In favour of resolution numbered 2 against”

*Companies Bill, 2018*

[Delete if only one resolution is to be proposed; add further instructions if more than two resolutions are to be proposed.]

Unless otherwise instructed, the proxy will vote as the proxy thinks fit.

\*Strike out whichever is not desired.

47. A body corporate which is a member of the company may attend and vote by proxy or by a representative appointed in accordance with paragraph 11 of the Eighth Schedule to the Act.
48. (1) Meetings shall be conducted in accordance with paragraphs 12 to 19 of the Eighth Schedule to the Act.  
(2) On a poll being demanded, the chairperson of the meeting shall not be required to direct a postal ballot in accordance with subparagraphs (f), (g) and (h) of paragraph 16 of the Eighth Schedule to this Act unless the chairperson thinks fit or an ordinary resolution to that effect is moved at the meeting and passed on a show of hands.
49. In accordance with section 163 of this Act a resolution in writing signed by the members for the time being entitled to attend and vote at general meetings, or being bodies corporate by their duly authorised representatives, and if the company has only one member entitled to attend and vote, the vote by that member shall be as valid and effective for all purposes, except as provided by section 163 as if the resolution had been passed at a general meeting of the company duly convened and held, and if described as a special resolution shall be deemed to be a special resolution within the meaning of the Act.
50. Minutes of general meetings shall be kept in accordance with section 166 of the Act.
51. If at any time the shares of the company are divided into different classes, this constitution shall apply to a meeting of a class of members in like manner as they apply to general meetings but the necessary quorum shall be as set out in section 164 of the Act.

*Companies Bill, 2018*

*Votes of members*

52. Subject to any rights or restrictions for the time being attached to a class of preference shares and which may be validly attached, that class pursuant to section 51 of the Act,
- (a) on a show of hands each member and each proxy lawfully present at the meeting shall have one vote, and on a poll each member present in person or by proxy shall have one vote for each share held by that member; or
  - (b) in the event of a postal ballot being directed pursuant to subparagraphs (f), (g) and (h) of paragraph 16 of the Eighth Schedule to the Act, each member entitled to attend and vote at the meeting shall have one vote for each share held by that member.

*Directors*

53. The number of directors, not being less than two nor more than five, shall be determined by ordinary resolution of the members in general meeting and until so determined shall be two.
54. The continuing directors may act despite a vacancy in their body but if and so long as their number is reduced below two or below the number fixed by the directors as the necessary quorum they may act for four weeks after the number is so reduced, but after that, may act only for the purpose of increasing their number to that number or of summoning a general meeting of the company and for no other purpose.
55. The appointment of directors shall be regulated by sections 172 and 283 of the Act.
56. The persons referred to in section 173 of the Act shall not be competent to be appointed directors of the company.
57. A director need not be a member of the company or hold any shares in the company.
58. The office of director shall be vacated in accordance with section 175 of the Act and a director may be removed from office in accordance with section 176 of the Act.

*Companies Bill, 2018*

59. (1) The company may appoint substitute directors in accordance with section 180 of the Act and a director may appoint an alternate director in accordance with section 181 of the Act.
- (2) An alternate director shall not be entitled to be remunerated otherwise than out of the remuneration of the director appointing that alternate director.
60. At least one director of the company shall at all times be present in Ghana.
61. The remuneration payable to a director in whatever capacity shall be determined or approved by the members in general meeting in accordance with section 185 of the Act.
62. The proceedings of the directors shall be regulated by section 188 of the Act and the board of directors may delegate any of their powers to committees of the directors in accordance with that section.
63. Minutes of meetings of the board of directors and of a committee of directors shall be kept in accordance with section 188 of the Act.

*Powers and duties of directors*

64. (1) The business of the company shall be managed by the directors who may pay all expenses incurred in promoting and registering the company.
- (2) Subject to section 189 of the Act, the board of directors may exercise the powers of the company, including power to borrow money and to mortgage or charge its property and undertaking or a part of the property and undertaking and to issue debentures, which are not by the Act or this constitution required to be exercised by the member in general meeting.
65. In a transaction with the company or on its behalf and in the exercise of their powers the directors shall observe the duties and obligations imposed on them by sections 190 to 192 of the Act.
66. Subject to compliance with section 194 of the Act, a director may enter into a contract with the company and the contract or any other contract of the company in which a director is in any way

*Companies Bill, 2018*

interested, shall not be liable to be avoided nor shall a director be liable to account for a profit made by virtue of that contract by reason of the director holding the office of director or of the fiduciary relationship established by the status as a director.

67. A director may act personally or by the firm of that director in a professional capacity for the company, except as auditor, and the director or the firm shall be entitled to proper remuneration for professional services as if the director were not a director.

*Executive and managing directors*

68. The board of directors may exercise the powers conferred by section 183 of the Act to appoint one or more of their body to any other office or place of profit under the company, other than the office of auditor, for the period and on the terms that they may determine and, subject to the terms of an agreement entered into in a particular case, may revoke that appointment.

69. (1) The board of directors may exercise the power conferred by section 184 of the Act to appoint one or more of their number to the office of managing director for the period and on the terms that they may determine and, subject to the terms of an agreement entered into in a particular case, may revoke the appointment and the appointment shall be automatically determined if the holder of the office ceases from any cause to be a director.

(2) The directors may entrust to and confer on a managing director any of the powers exercisable by them on the terms and with the restrictions that they think fit, and either collaterally with, or on the exclusion of, their own powers, and subject to the terms of an agreement entered into in a particular case, may from time to time revoke or vary all or any of those powers.

70. Remuneration shall not be payable to a director in respect of any office or place of profit to which the director is appointed in this constitution unless and until the terms of the appointment have been approved by ordinary resolution of the company in general meeting in accordance with section 185 of the Act.

*Companies Bill, 2018*

*Secretary and officers and agents*

71. The Secretary shall be appointed by the board of directors for the time, at the remuneration, and on the conditions that it considers fit, and a secretary so appointed may be removed by the board of directors, subject to the right of the secretary to claim damages if removed in breach of contract.
72. A provision in the Act or this constitution requiring or authorising a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the secretary.
73. (1) The board of directors may from time to time appoint officers and agents of the company and may appoint a body corporate, firm, or body of persons, whether nominated directly or indirectly, by the board of directors, to be the attorney or attorneys of the company for the purposes and with the powers, authorities and discretions, not exceeding those vested in or exercisable by the directors in this constitution, and for the period and subject to the conditions that it may consider fit.  
(2) The powers of attorney may contain the provisions for the protection and convenience of persons dealing with that attorney that the directors may consider fit and may also authorise that attorney to delegate all or any of the powers, authorities and discretions vested in that attorney.

*Service of documents*

74. A document may be served by the company on a member, debenture holder or director of the company in the manner provided by section 273 of the Act.

*Winding-up*

75. (1) Where the company is being wound up the liquidator may, with the sanction of a special resolution of the company and any other sanction required by the Act or by the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) or a statutory modification or re-enactment of that Act, divide amongst the members in specie or



*Companies Bill, 2018*

kind the whole or a part of the assets of the company, whether they consist of property of the same kind or not, and may for that purpose set the value that the liquidator thinks fair on the property to be divided and may determine how the division shall be carried out as between the members or different classes of members.

(2) The liquidator may, with the like sanction, vest the whole or a part of the assets in trustees upon the trusts for the benefit of the members that the liquidator, with the like sanction, thinks fit.

(3) Despite subclauses (1) and (2), a member shall not be compelled to accept any securities on which there is a liability.

*Interpretation*

76. In this constitution unless the context otherwise requires,
- (a) “Act” means the Companies Act, ..... (Act .....);
  - (b) words or expressions have the meanings assigned to them in the Act; and
  - (c) references to sections of the Act mean the sections as specified in the Act.

**THIRD SCHEDULE**

*(sections 24, 25, 27 and 284)*

*Constitution for a Public Company Limited by Shares*

1. Pursuant to section 18 of the Act, a company has, for the furtherance of its authorised businesses the powers of a natural person of full capacity.
2. The powers of the board of directors are limited in accordance with section 195 of the Act.
3. (1) The liability of the members of the company is limited.  
(2) Without limiting any special rights previously conferred on the holders of any existing shares or class of shares but subject to the Act, shares in the company may be issued by the directors and any such shares may be issued with the rights or restrictions that the directors may determine, subject to section 192 and any other provision of the Act, and any ordinary resolution of the company.

*Shares and variation of rights*

4. The company may, by special resolution amending this constitution
  - (a) increase the number of its shares by creating new shares;
  - (b) reduce the number of its shares by cancelling shares which have not been taken or agreed to be taken by a person, or by consolidating its existing shares, whether issued or not, into a smaller number of shares;
  - (c) provide for different classes of shares by attaching to certain of the shares preferred, deferred or other special rights or restrictions whether in regard to dividend, voting, repayment, or otherwise but the voting rights of equity shares shall comply with sections 34 and 53 of the Act and the voting rights of preference shares shall comply with sections 34 and 52 of the Act; and
  - (d) in accordance with section 61 of the Act create preference shares which are, or at the option of the company are liable, to be redeemed on the terms and in the manner that may be provided, but subject to compliance with sections 62 to 65 of the Act.

*Companies Bill, 2018*

5. On the issue of any new or unissued shares in the company the directors shall comply with section 189 of the Act.
6. If at any time the shares are divided into different classes, the rights attached to a class may be varied with the written consent of the holders of at least three-fourths of the issued shares of that class or the sanction of a special resolution of the holders of the shares of that class.
7. Subject to compliance with sections 62 to 65 of the Act the company may exercise the powers conferred by section 61 of the Act, to,
  - (a) purchase its own shares;
  - (b) acquire its own shares by a voluntary transfer to it or to nominees for it; or
  - (c) forfeit in the manner appearing in this constitution any shares issued with an unpaid liability for non-payment of calls or other sums payable in respect of the shares.
8. The company may pay commission or brokerage to a person in consideration of that person subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares in the company provided that the payment does not exceed ten for each hundred of the price at which the shares are issued.
9. Share certificates shall be issued in accordance with section 55 of the Act.
10. (1) Where shares are issued on the terms that a part of the price payable for the shares is not payable at a fixed time, the board of directors may from time to time make calls on the shareholders in respect of any moneys unpaid on their shares, provided that a call shall not be payable less than twenty-eight days from the date fixed for the payment of the last preceding call, and each shareholder shall, subject to receiving not less than fourteen days notice specifying the time or times and place of payment, pay to the company at the time or times and place so specified the amount called on the shares of that shareholder.  
(2) A call may be revoked or postponed as the directors may determine.

*Companies Bill, 2018*

11. A call is made at the time when the resolution of the directors authorising the call was passed and may be required to be paid by instalments.
12. The joint holders of a share are jointly and severally liable to pay all calls in respect of that share.
13. If a sum called in respect of a share is not paid before or on the day appointed for payment, the person from whom the sum is due shall pay interest on that sum from the date appointed for payment to the time of actual payment at the yearly rate not exceeding five for each hundred that the board of directors may determine, but the board of directors shall be at liberty to waive payment of the interest wholly or in part.
14. A sum which by the terms of issue of a share becomes payable on application for the shares or on allotment, or at a fixed date shall for the purposes of this constitution be treated as a call duly made and payable on the date on which by the terms of issue the sum becomes payable, and in the case of non-payment the relevant provisions of this constitution as to payment of interest and expenses, forfeiture, sale or otherwise shall apply as if that sum had become payable by virtue of a call duly made and notified.
15. As between shares of the same class the company shall not differentiate between the holders as to the amount of calls to be paid or the times of payment.
16. If the company receives from a shareholder all or any part of the moneys not presently payable or called upon any shares held by the shareholder, the sum shall not be treated as a payment in respect of the shares until the sum becomes due and payable on the shares and in the meantime the sum shall be treated as a loan to the company upon which the company may pay interest at the yearly rate not exceeding five percent for each hundred as may be agreed between the board of directors and the shareholder.

*Companies Bill, 2018*

*Forfeiture of shares*

17. If a shareholder fails to pay any call or instalment of a call, including a sum treated as a call under clause 14 of this constitution, the board of directors may at any time during the time that a part of the call or instalment remains unpaid, serve a notice on the shareholder requiring payment of so much of the call or instalment as is unpaid, together with the interest which may have accrued.
18. The notice shall name a further day, not earlier than the expiration of fourteen days from the date of service of the notice on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the times appointed, the shares in respect of which the call was made will be liable to be forfeited.
19. If the requirements of the notice are not complied with, a share in respect of which the notice has been given may, at any time, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.
20. A forfeited share may either be cancelled by amendment of this constitution or may be retained as a treasury share until sold or otherwise disposed of on the terms and in the manner the board of directors considers fit.
21. A person whose shares have been forfeited ceases to be a member in respect of the forfeited shares and that person shall surrender to the company for cancellation the share certificate or certificates in respect of the shares so forfeited but shall, nonetheless, remain liable to pay to the company moneys which, at the date of the forfeiture, were payable by that person to the company in respect of the shares, but the liability of that person shall cease if and when the company receives payment in full of the moneys in respect of the shares.
22. A statutory declaration in writing that the declarant is a director or the secretary of the company and that a share in the company has been duly forfeited on the date stated in the declaration, is conclusive evidence of the facts stated in the declaration as against a person claiming to be entitled to the share.

*Companies Bill, 2018*

*Lien*

23. (1) The company shall have a first and paramount lien on the shares issued with an unpaid liability for the moneys, whether presently payable or not, called or payable at a fixed time in respect of the shares.  
(2) The company's lien extends to all dividends payable on the shares.
24. If a sum in respect of which the company has a lien is presently payable, the board of directors after serving the notice required by clauses 17 and 18 of this constitution may, at any time before the payment required by the notice has been made, sell a share on which the company has a lien instead of forfeiting it in accordance with clause 19 of this constitution.
25. (1) To give effect to the sale, the board of directors may authorise a person to transfer the shares sold to the purchaser of the shares.  
(2) The purchaser shall be registered as the holder of the shares comprised in the transfer and the purchaser shall not be bound to see to the application of the purchase money nor shall the title to the shares be affected by an irregularity or invalidity in the proceedings in reference to the sale.
26. The proceeds of the sale shall be received by the company and applied in payment of the part of the amount in respect of which the lien exists as is presently payable, and the residue shall, subject to a like lien for sums not presently payable as existed upon the shares before the sale, be paid to the person entitled to the share at the date of the sale but the company is not bound to make the payment unless and until that person has surrendered to the company for cancellation the share certificate or certificates relating to the shares so sold.

*Transfer and transmission of shares*

27. (1) The board of directors may decline to register,  
(a) the transfer of a share on which there is an unpaid liability;  
or

*Companies Bill, 2018*

- (b) the transfer of a share to a person who is an infant or to a person found by a court of competent jurisdiction in Ghana to be a person of unsound mind.
- (2) Subject to subclause (1), there shall be no restriction on the right to transfer any shares in the company.
- 28. Shares shall be transferable and transfers shall be registered in the manner provided by sections 98 and 101 of the Act.
- 29. In the event of the death of a shareholder or in the event of the ownership of a share devolving on a person by reason of that person being the legal personal representative, receiver or trustee in bankruptcy of the holder, or by operation of law, section 102 of the Act shall apply.

*Dividends*

- 30. The company may by ordinary resolution declare dividends in respect of a year or other period but a dividend shall not exceed the amount recommended by the board of directors.
- 31. The board of directors may exercise the power conferred by section 304 of the Act to pay interim dividends.
- 32. A dividend shall not be paid unless,
  - (a) the company will, after the payment, be able to pay its debts as they fall due;
  - (b) the amount of the payment does not exceed the amount of the company's income surplus immediately before the making of the payment.
- 33. The board of directors may, before recommending a dividend, set aside out of the profits or income surplus of the company, the sums that it considers proper in order to provide for a known liability, including a disputed or contingent liability, or as a depreciation or replacement provision and may carry forward any profits or income surplus which it may consider prudent not to distribute.
- 34. The dividends shall be declared and paid as a fixed sum for a share and not as a proportion of the amount paid in respect of a share.

*Companies Bill, 2018*

35. The board of directors may deduct from a dividend payable to a shareholder the sums of money presently payable by the shareholder to the company in respect of the shares.
36. (1) A dividend payable in cash may be paid by cheque or warrant or electronic transfer sent by post directed to the registered address of the shareholder or, in the case of joint holders, to the registered address of the person who is first named on the register of members, or to the person and to the address that the holder or joint holders may in writing direct.
- (2) A cheque or warrant shall be made payable to the order of the person to whom it is sent.
- (3) Any one of two or more joint holders may give effectual receipts for any dividends.
- (4) A dividend payment shall be accompanied by a statement showing the gross amount of the dividend, and the tax deducted or deemed to be deducted from the gross amount.
37. A dividend shall not bear interest against the company.

*Capitalisation issues and non-cash dividends*

38. The company, on the recommendation of the directors, may exercise the powers conferred by section 77 of the Act,
- (a) to make capitalisation issues of shares in accordance with subsection (1) of section 77;
  - (b) to resolve, in accordance with subsection (3) of section 77 that a sum standing to the credit of the company's income surplus and which could have been distributed by way of dividend shall be applied in paying up amounts for the time being unpaid on shares; or
  - (c) to direct, in accordance with subsection (4) of section 77 that payment of a dividend shall be wholly or partly by distribution of securities for money or fully paid shares or debentures of another body corporate or of fully paid debentures of the company.

*Branch registers*

39. The company may exercise the powers conferred by sections 106 and 107 of the Act with respect to the keeping of branch registers



*Companies Bill, 2018*

and the board of directors may, subject to those sections, make the regulations that they think fit respecting the keeping of those registers and may vary the regulations subject to those sections.

*Accounts and audit*

40. The board of directors shall cause proper books of account to be kept and financial statements to be prepared, audited and circulated in accordance with sections 127 to 137 of the Act.
41. Auditors, qualified in accordance with section 138 of the Act, shall be appointed and their duties regulated in accordance with sections 139 to 142 of the Act.

*General meetings and resolutions*

42. The powers of the members in general meeting shall be as stated in section 144 of the Act.
43. Annual general meetings shall be held in accordance with section 157 of the Act.
44. Extraordinary general meetings may be convened by the directors whenever they think fit in accordance with section 158 of the Act and shall be convened by the directors on a requisition of members in accordance with section 307 of the Act.
45. Notice of general meetings shall be given in accordance with paragraph 1 to 6 of the Eighth Schedule to the Act and section 168 of the Act and accompanied by any statements required to be circulated with the notice in accordance with paragraphs 5 and 6 of the Eighth Schedule to the Act and section 168 of the Act.
46. Meetings may be attended by the persons referred to in paragraph 7 of the Eighth Schedule to the Act but a member is not entitled to attend unless the calls or other sums presently payable by the member in respect of shares in the company have been paid.
47. The quorum required for a general meeting shall be as stated in paragraph 8 of the Eighth Schedule to the Act.
48. (1) In accordance with paragraph 9 of the Eighth Schedule to the Act a member entitled to attend and vote at a meeting of the company is entitled to appoint another person, whether a member of

*Companies Bill, 2018*

the company or not, as a proxy to attend and vote instead of that member and the proxy shall have the same rights as the member to speak at the meeting.

(2) An instrument appointing a proxy shall be in the following form or a form as near to that form as circumstances admit:

“Gower McKenzie Company Limited

I/We..... of .....being a member/members of the above-named company hereby appoint ..... of.....as my/our proxy to vote for me/us on my/our behalf at the annual/extraordinary general meeting of the company to be held on the ..... day of .....20 ..... and at any adjournment of that meeting.

Signed this ..... day of.....19 .....

This form is to be used,

\*in favour of resolution numbered 1 against

\*in favour of resolution numbered 2 against”

[Delete if only one resolution is to be proposed; add further instructions if more than two resolutions are to be proposed.]

Unless otherwise instructed, the proxy will vote as the proxy thinks fit.

\*Strike out whichever is not desired”.

49. A body corporate which is a member of the company may attend and vote either by proxy or by a representative appointed in accordance with paragraph 11 of the Eighth Schedule to the Act.
50. (1) Meetings shall be conducted in accordance with paragraphs 12 to 19 of the Eighth Schedule to the Act.
- (2) On a poll being demanded the chairperson of the meeting shall not be required to direct a postal ballot in accordance with subparagraphs (f), (g) and (h) of paragraph 16 of the Eighth Schedule to the Act unless the chairperson thinks fit or an ordinary resolution to that effect is moved at the meeting and passed on a show of hands.

*Companies Bill, 2018*

51. In accordance with section 163 of the Act, a resolution in writing signed by the members for the time being entitled to attend and vote at general meetings, or being bodies corporate by their duly authorised representatives, and if the company has only one member by that member shall be as valid and effective for all purposes, except as provided by section 163 as if the resolution had been passed at a general meeting of the company duly convened and held, and if described as a special resolution shall be treated as a special resolution within the meaning of the Act.
52. Minutes of general meetings shall be kept in accordance with section 166 of the Act.
53. If at any time the shares of the company are divided into different classes, this constitution shall apply to meetings of a class of members in like manner as they apply to general meetings but so that the necessary quorum shall be as set out in section 164 of the Act.

*Votes of members*

54. Subject to any rights of restrictions for the time being attached to a class of preference shares and which may be validly attached to that class pursuant to section 52 of the Act,
  - (a) on a show of hands each member and each proxy lawfully present at the meeting shall have one vote, and on a poll each member present in person or by proxy shall have one vote for each share held by that member; or
  - (b) in the event of a postal ballot being directed pursuant to subparagraphs (f), (g) and (h) of paragraph 16 of the Eighth Schedule to the Act, each member entitled to attend and vote at the meeting shall have one vote for each share held by that member.

*Directors*

55. The number of directors, not being less than five nor more than twelve, shall be determined by ordinary resolution of the members in general meeting and until so determined shall be seven.

*Companies Bill, 2018*

56. The continuing directors may act despite a vacancy in their number but if and so long as their number is reduced below two or below the number fixed by the directors as the necessary quorum they may act for four weeks after the number is so reduced, but after that, may act only for the purpose of increasing their number to that number or of summoning a general meeting of the company and for no other purpose.
57. The appointment of directors shall be regulated by sections 172, 308 and 309 of the Act.
58. The persons referred to in section 173 of the Act shall not be competent to be appointed directors of the company.
59. A director need not be a member of the company or hold any shares in the company.
60. The office of director shall be vacated in accordance with section 175 of the Act and a director may be removed from office in accordance with section 176 of the Act.
61. (1) The company may appoint substitute directors in accordance with section 180 of the Act and a director may appoint an alternate director in accordance with section 181 of the Act.  
(2) An alternate director is not entitled to be remunerated otherwise than out of the remuneration of the director appointing the alternate director.
62. At least one director of the company shall at all times be present in Ghana.
63. The remuneration payable to a director in whatever capacity shall be determined or approved by the members in general meeting in accordance with section 185 of the Act.
64. The proceedings of the directors shall be regulated by section 188 of the Act and the board of directors may delegate any of their powers to committees of the directors in accordance with that section.
65. Minutes of meetings of the board of directors and of a committee of directors shall be kept in accordance with section 188 of the Act.

*Companies Bill, 2018*

*Powers and duties of directors*

66. (1) The business of the company shall be managed by the directors who may pay all expenses incurred in promoting and registering the company.
- (2) Subject to section 189 of the Act, the board of directors may exercise the powers of the company, including the power to borrow money and to mortgage or charge its property and undertaking or any part of the property and undertaking and to issue debentures, that are not by the Act or this constitution required to be exercised by the members in general meeting.
67. In a transaction with the company or on its behalf and in the exercise of their powers the directors shall observe the duties and obligations imposed on them by sections 190 to 192 of the Act.
68. Subject to compliance with section 194 of the Act, a director may enter into a contract with the company and the contract or any other contract of the company in which a director is in any way interested shall not be liable to be avoided nor shall a director be liable to account for a profit made pursuant to that contract by reason of the director holding the office of director or of the fiduciary relationship established in respect of the contract.
69. A director may act personally or by the firm of the director in a professional capacity for the company, except as auditor, and the director or the firm shall be entitled to proper remuneration for professional services as if the director were not a director.

*Executive and managing directors*

70. The board of directors may exercise the powers conferred by section 183 of the Act to appoint one or more of their number to any other office or place of profit under the company other than the office of auditor for the period and on the terms that they may determine and, subject to the terms of an agreement entered into in a particular case, may revoke the appointment.
71. (1) The board of directors may exercise the power conferred by section 184 of the Act to appoint one or more of their number to

*Companies Bill, 2018*

the office of managing director for the period and on the terms that they may determine and, subject to the terms of an agreement entered into in a particular case, may revoke the appointment which shall be automatically determined if the holder of the office ceases from any cause to be a director.

(2) The directors may entrust to and confer on a managing director any of the powers exercisable by them on the terms and with the restrictions that they think fit, and collaterally with, or to the exclusion of, their own power, and subject to the terms of an agreement entered into in a particular case, may revoke or vary all or any of those powers.

72. Remuneration shall not be payable to a director in respect of any office or place of profit to which the director is appointed in this constitution unless and until the terms of the appointment have been approved by ordinary resolution of the company in general meeting in accordance with section 185 of the Act.
73. The secretary shall be appointed by the board of directors for the time, at the remuneration, and on the conditions that the board of directors considers fit and a secretary so appointed may be removed by them, subject to the right of the secretary to claim damages if removed in breach of contract.
74. A provision in the Act or this constitution requiring or authorising a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to that person acting both as director and as, or in place of, the secretary.
75. (1) The board of directors may appoint officers and agents of the company and may appoint a body corporate, firm or body of persons, whether nominated directly or indirectly, by the board of directors, to be the attorney or attorneys of the company for the purposes and with the powers, authorities and discretions, not exceeding those vested in or exercisable by the directors in this constitution, and for the period and subject to the conditions that they may think fit.

*Companies Bill, 2018*

(2) The powers of attorney may contain provisions for the protection and convenience of persons dealing with the attorney which the directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

*Service of Documents*

76. A document may be served by the company on a member, debenture holder or director of the company in the manner provided by section 273 of the Act.

*Winding up*

77. (1) If the company is being wound up, the liquidator may, with the sanction of a special resolution of the company and any other sanction required by the Act or by the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) divide amongst the members in specie or kind the whole or part of the assets of the company, whether they consist of property of the same kind or not, and may for the purpose set a value that the liquidator considers fair upon the property to be divided and may determine how the division shall be carried out as between the members or different classes of members.

(2) The liquidator may, with the like sanction vest the whole or a part of the assets in trustees upon the trusts for the benefit of the members that the liquidator, with the like sanction, thinks fit.

(3) Despite any other provisions of this clause, a member shall not be compelled to accept any securities on which there is a liability.

*Interpretation*

78. In this constitution unless the context otherwise requires,

- (a) "Act" means the Companies Act, ..... (Act .....);
- (b) words or expressions have the meaning assigned to them in the Act; and
- (c) references to sections of the Act mean the sections as specified in the Act.

**FOURTH SCHEDULE**

*(sections 24, 25, 27 and 284)*

*Constitution of a Company Limited by Guarantee*

1. The income and property of the Society shall be applied solely towards the promotion of the objects of the Society and a portion of the income or property shall not be paid or transferred, directly or indirectly, by way of dividend, bonus or profit to a person who is a member of the Society or of its Council, but
  - (a) the constitution shall not prevent the payment in good faith, of reasonable and proper remuneration to an officer of the Society, or to a member of the Society in return for any services actually rendered to the Society nor shall it prevent the payment of interest at a yearly rate not exceeding the Ninety-One Day treasury bill rate for each hundred on money lent, or reasonable and proper rent for premises let to the Society;
  - (b) a member of the Council of the Society shall not be appointed to a salaried office of the Society or office of the Society paid by fees;
  - (c) a remuneration or other benefit in money or moneys worth shall not be given by the Society to a member of the Council except repayment of out-of-pocket expenses and interest at the rate mentioned in paragraph (a) on money lent or reasonable and proper rent for premises let to the Society.
2. Pursuant to section 18 of this Act, the Society has the powers of a natural person of full capacity.
3.
  - (1) The board of directors of the Society shall be known as the Council.
  - (2) The first members of the Council are,  
Justice S. K. Date-Bah  
Dr. Tony Oteng Gyasi  
Mr. Felix Ntrakwah



*Companies Bill, 2018*

Prof. Philip Bondzi-Simpson

Mr. Sal Amegavie

Mr. Felix Addo

Nana Kwadwo Ohene-Obeng

Mrs. Naana P.J. Dontoh

Mrs. Jemima Oware

Mr. Charles Crabbe

Mrs. Mavis Amoa

4. The powers of the Council are limited in accordance with sections 189 and 195 of the Act.
5. The liability of the members is limited.
6. Each member of the Society undertakes to contribute to the assets of the Society in the event of it being wound up while that person is a member or within one year after that person ceases to be a member, for payment of the debts and liabilities of the Society and of the costs of winding up the amount that may be required not exceeding [five thousand cedis].
7. If upon the winding up or dissolution of the Society there remains after the discharge of its debts and liabilities a property of the Society, the property shall not be distributed among the members but shall be transferred to any other company limited by guarantee having objects similar to the objects of the Society or applied to a charitable object, the other company or charity to be determined by ordinary resolution of the members in general meeting before the dissolution of the Society.

*Ordinary members*

8. (1) The subscribers of this constitution and any other persons who the Council admits to ordinary membership shall be members of the Society.  
(2) The members in general meeting may by ordinary resolution prescribe qualifications for membership of the Society and unless the resolution otherwise provides, a person shall not be admitted to membership by the Council unless that person has the prescribed qualifications.

*Companies Bill, 2018*

*Associate members*

9. (1) The society in general meeting may resolve by ordinary resolution that the Council may admit to associate membership of the Society and may prescribe qualifications for the associate membership.
- (2) Associate members shall be permitted to take part in the proceedings and functions of the Society that the resolution shall prescribe or, in default of prescription, that the Council considers fit, but shall not be members of the Society in its corporate capacity and shall not have a vote on a resolution at a general meeting of the Society, or be counted towards a quorum.

*Honorary membership*

10. (1) The Society in general meeting may resolve by ordinary resolution that the Council may admit to honorary membership of the Society a person, whether or not an ordinary or associate member of the Society, who in the opinion of the Council has rendered significant service to the Society or to any of the objects which the Society is formed to promote.
- (2) An honorary member, unless also admitted as an ordinary member of the Society, shall have the same rights as an associate member and if also admitted as an ordinary member shall have the same rights as an ordinary member but is not liable to pay a subscription to the Society.

*Resignation or exclusion of members*

11. Subject in the case of ordinary members of the Society, to compliance with section 8 of the Act,
- (a) any ordinary, associate or honorary member may resign membership by notice in writing to the Council;
  - (b) the Council may exclude from membership of the Society an ordinary or associate member,
    - (i) if the subscription payable to the Society by the ordinary or associate member is not paid six months after the same became due and payable; or

*Companies Bill, 2018*

- (ii) if in the opinion of the Council the continued membership of that person would be detrimental to the interests of the Society or to the furtherance of its objects.

*Subscriptions*

- 12. (1) Ordinary and associate members shall pay the annual subscriptions that the members in general meeting on the recommendation of the Council may determine by ordinary resolution.
- (2) The subscription is due and payable on admission to membership and on the first day of January in each year or on any other date that the resolution shall provide.
- (3) The subscription may differ as between ordinary and associate members and a different subscription may be prescribed in the case of corporate bodies admitted to membership or in the case of a person admitted to membership as representing an institution or unincorporated association.

*Accounts and audit*

- 13. The Council shall cause proper books of account to be kept and financial statements to be prepared, audited and circulated in accordance with sections 127 to 137 of the Act.
- 14. Auditors, qualified in accordance with section 138 of the Act, shall be appointed and their duties regulated in accordance with sections 139 to 143 of the Act.

*General meetings and resolutions*

- 15. Annual general meetings shall be held in accordance with section 157 of the Act.
- 16. Extraordinary general meetings may be convened by the Council whenever it considers fit in accordance with section 158 of the Act, and shall be convened on the requisition of ordinary members in accordance with section 307 of the Act.

*Companies Bill, 2018*

17. Notice of general meetings shall be given in accordance with section 168 and paragraph 1 to 6 of the Eighth Schedule of the Act and accompanied by any statements required to be circulated with the notice in accordance with section 168 and paragraphs 5 and 6 of the Eighth Schedule of the Act.
18. General meetings may be attended by the persons referred to in paragraph 7 of the Eighth Schedule of the Act and the quorum required shall be as stated in paragraph 8 of the Eighth Schedule of the Act.
19. A member is not entitled to attend or vote at a general meeting by proxy.
20. A body corporate which is a member of the Society may attend and vote at a general meeting by a representative appointed in accordance with paragraph 11 of the Eighth Schedule of the Act.
21. (1) General meetings shall be conducted in accordance with paragraphs 12 to 19 of the Eighth Schedule of the Act.  
(2) The President, or in the absence of the President, the Vice-President of the Society, shall preside as chairperson at every general meeting but if neither is present within five minutes after the time appointed for holding the meeting the members present shall choose one of their number to be chairperson of the meeting.  
(3) On a poll being demanded on a resolution at a general meeting, the chairperson of the meeting may direct a postal ballot of the ordinary members in accordance with subparagraphs (f), (g) and (h) of paragraph 16 of the Eighth Schedule of the Act and shall so direct if an ordinary resolution to that effect is moved at the meeting and passed on a show of hands or if the resolution concerned is,
  - (a) a special resolution, or
  - (b) a resolution referred to in clauses 8, 9, 10, 11 or 12 of this constitution.
22. In accordance with section 163 of the Act, a resolution in writing signed by the members, or being bodies corporate by their duly authorised representatives, shall be as valid and effective for all purposes, except as provided by section 163, as if the same had

*Companies Bill, 2018*

been passed at a general meeting of the Society duly convened and held, and if described as a special resolution shall be deemed to be a special resolution within the meaning of the Act and this constitution.

23. Minutes of general meetings shall be kept in accordance with section 166 of the Act.

*Votes of members*

24. Each ordinary member present at a general meeting shall have one vote on a show of hands or a poll and if a postal ballot is directed in accordance with clause 21 and subparagraphs (f), (g) and (h) of paragraph 16 of the Eighth Schedule of the Act, each ordinary member, whether or not present at the meeting, shall have one vote.

*The Council*

25. The number of members of the Council, not being less than two nor more than twelve, shall be determined by ordinary resolution of the members in general meeting and until so determined shall be nine.
26. The continuing members of the Council may act despite a vacancy in their number but if and so long as their number is reduced below two or below the number fixed by the Council as the necessary quorum, they may act for four weeks after the number is so reduced, but after that may act only for the purpose of increasing their number to that number or of summoning a general meeting of the Society and for no other purpose.
27. Members of the Council shall be appointed from among the ordinary members of the Society in the manner set out in this clause:
- (a) at the first annual general meeting of the Society the members of the Council shall retire from office and at the annual general meeting in a subsequent year one-third of their number or, if their number is not three or a multiple of three, then the number nearest one-third shall retire from office;
  - (b) the members of the Council to retire in every year shall be those who have been longest in office since their last election, but as between persons who became members on the same day those to retire shall, unless they otherwise agree among themselves, be determined by lot;

*Companies Bill, 2018*

- (c) election to the Council shall be by secret ballot at which an ordinary member wishing to nominate another ordinary member or member for election to the Council shall notify the Secretary in writing, accompanied by the nominee's consent in writing, at least twenty-one days before the date of the annual general meeting of the Society;
- (d) a retiring member is eligible for re-election without nomination and shall be deemed to stand for re-election unless that retiring member notifies the Secretary in writing at least twenty-one days before the date of the annual general meeting, that the retiring member does not wish to stand for re-election;
- (e) if the number of nominees competent for appointment as members of the Council and retiring members offering themselves for re-election exceeds the number of vacancies to be filled, the Secretary shall, at least fourteen days before the date of the annual general meeting, send to each ordinary member a ballot paper containing a list of the names of the nominees and retiring members offering themselves for re-election requesting that ordinary member to indicate by means of a distinctive mark on the ballot paper the names of the persons for whom the ordinary member votes, and each member may vote for one or more persons not exceeding in number the number of vacancies to be filled;
- (f) a ballot paper shall not be valid unless returned to the registered office of the Society not less than twenty-four hours before the time appointed for the annual general meeting and shall be counted by scrutineers appointed at the meeting who shall inform the chairperson of the meeting of the votes obtained by each candidate, and the chairperson shall announce the names of the successful candidates to the meeting;
- (g) a ballot paper is not valid on which votes have been cast in excess of the number of vacancies, and in case of doubt as to the validity of a ballot paper or the intention of the voter,

*Companies Bill, 2018*

the decision of the chairperson of the meeting shall be final and conclusive;

- (h) if the number of competent nominees and retiring members offering themselves for re-election does not exceed the number of vacancies, the chairperson of the meeting shall, subject to article 296 of the Constitution, declare the candidates duly elected;
  - (i) if the number so elected is less than the number of vacancies, the remaining vacancies may be filled as casual vacancies;
  - (j) a casual vacancy in the number of members of the Council may be filled by the Council or by ordinary resolution of the members in general meeting in accordance with section 172 of the Act.
28. The persons referred to in section 173 of the Act are not competent to be appointed members of the Council.
29. Membership of the Council shall be vacated in accordance with section 175 of the Act and a member may be removed from the Council in accordance with section 176 of the Act.
30. (1) The proceedings of the Council shall be regulated by section 188 of the Act.
- (2) At the meetings of the Council, the President or in the absence of the President the Vice-President if present, shall be chairperson.
31. Minutes of meetings of the Council and of a committee of the Council shall be kept in accordance with section 188 of the Act.

*Powers and duties of the Council*

32. (1) The activities of the Society shall be managed by the Council who may pay the expenses incurred in promoting and registering the Society.
- (2) Subject to section 189 of the Act, the Council may exercise all the powers of the Society, including power to borrow money and to mortgage or charge its property and to issue debentures, that are not by the Act or this constitution required to be exercised by the members in general meeting.

*Companies Bill, 2018*

33. In a transaction with the Society or on its behalf and in the exercise of their powers, the members of the Council shall observe the duties and obligations imposed on them by sections 190 to 192 of the Act.
34. To the extent permitted by clause 1 of this constitution and subject to compliance with section 194 of the Act, a member of the Council may enter into a contract with the Society and the contract or any other contract of the Society in which a member of the Council is in any way interested shall not be liable to be avoided, nor shall a member of the Council be liable to account for a profit made as a result of that contract by reason of that member being a member of the Council or of the fiduciary relationship established of the contract.

*President and Vice-President*

35. (1) The Council at its first meeting and at its first meeting held after each annual general meeting shall elect from its members a President and Vice-President of the Society who shall hold office for the ensuing year or until their successors are elected.  
(2) A vacancy occurring in these offices shall be filled in like manner at the next meeting of the Council held after the occurrence of the vacancy.

*Committees*

36. (1) The Council may appoint committees from among its own members or from the members of the Society or from a combination of both.  
(2) The President, or if unable or unwilling to act, the Vice-President, shall ex officio be a member of every committee.  
(3) The terms of reference and duration of office of the committees shall be prescribed by the Council and the committees are committees of the Council for the purposes of the Act.

*Secretary and treasurer and officers*

37. (1) The Council shall appoint a secretary and a treasurer or a secretary/ treasurer who may be one of its own members or a member of the Society or neither.



*Companies Bill, 2018*

(2) If one of its own number is appointed, the office shall be an honorary one without remuneration.

(3) The Council may also appoint any other officer and agent as may be necessary or expedient.

*The Seal*

38. (1) The Council is empowered to adopt a common seal for use by the Society and shall provide for the safe custody of the seal.

(2) The seal shall only be used by the authority of the Council or of a committee of the Council authorised by the Council in that behalf, and an instrument to which the seal is affixed shall be signed by a member of the Council and shall be countersigned by the Secretary or a second member of the Council or by some other person appointed by the Council for the purpose.

39. A document may be served by the Society on an ordinary member, debenture holder or member of the Council in the manner provided by section 273 of the Act and may be served in like manner on an associate or honorary member either personally or at the address supplied by that member to the Society for the purpose of service of notices.

*Interpretation*

40. In this constitution, unless the context otherwise requires,
- (a) “Act” means the Companies Act, ..... (Act .....)  
or a statutory modification or re-enactment of the Act;
  - (b) words or expressions have the meaning assigned to them in the Act; and
  - (c) references to sections of the Act mean the sections as specified in this Act.

**FIFTH SCHEDULE**

*(Section 126)*

**CONTENTS OF ANNUAL RETURN**

1. The name of the company.
2. The nature of the authorised business or businesses of the company or, if the company is not formed for the purpose of carrying on a business, the nature of its objects.
3. The address of the company's registered office, the number of the post office box of the registered office and the telephone contact of the company.
4. The address of the company's principal place of business in Ghana and where applicable the website address.
5. The particulars with respect to the persons who at the date of the return are the directors and secretary of the company as are required by section 215 of this Act to be contained in the register of directors and secretary.
6. The following personal particulars of every member of the company:
  - (a) the names and surnames and all former forenames and surnames;
  - (b) the nationality;
  - (c) residential and postal addresses;
  - (d) business occupation; and
  - (e) the number of shares held at the date of the return.
7. The following particulars of each beneficial owner of the company;
  - (a) the full name and any other former or other name;
  - (b) the date and place of birth;
  - (c) the telephone number;
  - (d) the nationality, national identity number, passport number or other appropriate identification, and proof of identity;
  - (e) residential postal and e-mail address, if any;
  - (f) place of work and position held;
  - (g) the nature of interest including the details of the legal, financial, security, debenture or informal arrangement giving rise to the beneficial ownership; and
  - (h) confirmation as to whether the beneficial owner is a politically exposed person.

*Companies Bill, 2018*

8. Particulars of shares transferred since the last return by persons who are still members of the company, that is to say, the number of the shares and the date of registration of the transfer.
9. Particulars of shares transferred since the last return by persons who have ceased to be members of the company, that is to say, the number of the shares and the date of registration of the transfer and the folio of the register containing particulars of that member.
10. If the company's register of members is kept and maintained elsewhere than at the registered office of the company, the address at which it is kept.
11. If the company maintains a register of debenture holders elsewhere than at the registered office of the company, the address at which it is kept.
12. Particulars of the total amount of the indebtedness of the company in respect of the charges, particulars of which are required to be registered with the Registrar pursuant to Part L of Chapter Two of the Act.
13. The names, countries of incorporation, and nature of the businesses of the subsidiaries of the company and of the bodies corporate in which the company is beneficially entitled to equity shares conferring the right to exercise more than twenty-five for each hundred of the votes exercisable at a general meeting of the body corporate, but the information required by this paragraph need not be given if, and to the extent that, the information would conflict with a direction given by the Registrar under subsection (6) of section 136 of the Act.
14. The number of directors meetings held within the year.
15. The date of the last Annual General Meeting and the number of Extraordinary General Meetings held within the year.
16. The financial statements and the audited independent report.
17. If the company has shares,

*Companies Bill, 2018*

- (a) the amount of its stated capital, distinguishing between the amounts attributable to each of the items specified in subsection (1) of section 68 of the Act;
  - (b) the number of its authorised shares of each class;
  - (c) the number of its issued shares of each class;
  - (d) the number of its treasury shares of each class;
  - (e) the total amount of any unpaid instalments or calls which are due and payable and the number and class of shares concerned;
  - (f) the total number of shares of each class which have been forfeited;
  - (g) in the case of a company limited by shares,
    - (i) the total amount of the unpaid liability, on its shares of each class, which is not yet due for payment, and
    - (ii) the amount, if any, of the unpaid liability on its shares which, pursuant to section 57 of the Act, the company has resolved shall not be capable of being called up except in the event and for the purpose of the company being wound up.
18. The date of filing the last Annual Returns.
19. Unclaimed dividends.

**SIXTH SCHEDULE**

*(Sections 129, 130, 131, 317(4) (b) and 317 (8))*

**FINANCIAL STATEMENTS**

**PART ONE**

**PROVISIONS AS TO INCOME STATEMENT**

1. There shall be separately shown,
  - (a) gross sales, less discounts, returns, and allowances, or, where appropriate, the amount of operating or other equivalent revenues;
  - (b) the cost of goods sold as normally computed under the system of accounting followed or, where appropriate, the operating or other equivalent expenses;
  - (c) selling, general and administrative expenses, and any other expenses that under the system of accounting followed would normally be deducted in arriving at the trading profit;
  - (d) income from investments;
  - (e) income from any other sources, distinguishing between each significant source of income;
  - (f) the amount charged to revenue by way of provision for the loss, diminution in value, depreciation, renewal or replacement of assets, in the Schedule referred to as depreciation or replacement provision in respect of non current assets;
  - (g) interest on the company's debentures and other loans other than those classified in the balance sheet as current liabilities;
  - (h) interest in respect of other loans and indebtedness of the company;
  - (i) the aggregate of the amounts paid or payable by the company to the directors of the company for the financial year required to be disclosed in accordance with section 132 of this Act, together with a statement, by way of note, of the amounts paid or payable by other persons than the company;
  - (j) the remuneration of the auditors of the company including the sums paid by the company in respect of the auditors' expenses;
  - (k) the amounts of the charges and credits for income tax showing, by way of note or otherwise, the amounts of each distinct tax with a description of the tax and a statement of the period in respect of which it is payable;

*Companies Bill, 2018*

- (l) a profit or loss arising on the sale, realisation or disposal of non current assets;
  - (m) any preliminary expenses, and expenses incurred on the issue of shares or debentures, including the sums paid by way of commission or brokerage on the issue of shares or debentures disclosed in the notes of the financial statements;
  - (n) the amount of the voluntary contributions to any charitable or other funds, other than pension funds for the benefit of employees of the company or an associated company; and
  - (o) any other expenses, distinguishing between each significant class by nature and function.
2. If any of the items shown in the income statement are stated net of income tax this shall be indicated.
  3. There shall be stated by way of note or otherwise any material respects in which any items shown in the income statement are affected by,
    - (a) transactions of a sort not usually undertaken by the company or other circumstances of an exceptional or non-recurrent nature;
    - (b) a change in the basis of accounting;
    - (c) an amount relating to an earlier financial year; and
    - (d) an adjustment arising from the over or under statement of revenue or expenses in the income statement of an earlier financial year;

and a statement made under this paragraph shall indicate the amount by which the income statement has been affected and whether that represents an addition to or a deduction from the profit that would otherwise have been shown.

4. If an item in the income statement includes an amount in respect of money provided under paragraph (c) of section 60 of the Act this fact shall be indicated by way of note or otherwise and the amount of the item stated, and so far as any money provided under that subsection is included in the amount stated in accordance with section 132 of the Act the amount so included shall also be indicated.
5. The balance of the income statement after the inclusion of the items required by paragraphs 1 to 4 so far as these are relevant to the figures in the income statement, shall be transferred to a financial statement to be called the income surplus account.

*Companies Bill, 2018*

6. An amount shall not be credited to the income statement that cannot properly enter into the composition of the income surplus in accordance with section 71 of the Act.
7. An amount shall not be debited to the income statement in respect of an addition to a reserve other than by way of transfer of the balance of the income statement for the financial year to the income surplus account, clearly indicated and in particular an amount shall not be debited to the income statement other than as a transfer to the income surplus account unless it is the amount of an actual money outlay or is in the opinion of the directors reasonably necessary.
8. An amount shall not be credited to the income statement in respect of a withdrawal from a reserve other than by way of transfer of the balance of the income statement for the financial year to the income surplus account clearly indicated.
9. If a company is under an obligation to transfer or set aside a sum to reserve out of its profits this obligation is fulfilled if the sum is transferred to stated capital or if a note is made on the balance sheet in accordance with paragraph 31 of this Schedule to the effect that the company is under an obligation to withhold from distribution as dividend a corresponding part of the income surplus.
10. Except in the case of the first income statement account drawn up after the commencement of the Act the corresponding amount of each item for the immediately preceding financial year shall be shown.
11. Where the amount of an item shown in the income statement or included in an amount shown cannot be determined with substantial accuracy, an estimated amount described as an estimate shall be included in respect of that item and shall be distinguished, by way of note or otherwise, together with a description of the item.
12. A provision of this Schedule with respect to the information to be shown in the income statement does not require the amount of an item that is of no material significance to be shown separately.

PART TWO  
**PROVISIONS AS TO BALANCE SHEET**

*General*

13. The assets and liabilities shall be classified under headings appropriate to the company's business, distinguishing between current and non current assets, and between current and non current liabilities, and each class shall be described in a way adequate to indicate the general nature of the assets or liabilities included in that class. This information should be included in the notes to the financial statements and should be consistent with industry best practice.

*Assets*

14. Without limiting paragraph 13, the following classes of assets shall, so far as they are appropriate to the company's affairs, be distinguished, namely,
- (a) interests in land, distinguishing between land owned absolutely and land held for a term of years or other period;
  - (b) goodwill, patents, trade-marks, development expenditure, and other intangible assets of a like nature;
  - (c) investment securities;
  - (d) loans and advances;
  - (e) trading stocks, distinguishing where practicable between,
    - (i) stocks of raw materials and components;
    - (ii) work-in-progress;
    - (iii) stocks of finished products;
    - (v) other stocks;
  - (f) trade receivables;
  - (g) bills of exchange and promissory notes;
  - (h) payments-in-advance;
  - (i) marketable securities; and
  - (j) cash in hand and in the bank.
15. A class of assets shall not stand in the balance sheet at a value, which, after deduction of the aggregate depreciation or replacement provision relating to the assets is in the opinion of the directors greater than,



*Companies Bill, 2018*

- (a) the value which those assets could reasonably be expected to realise in the market after deduction of any expenses incurred in order to realise them; or
  - (b) the value which is reasonably justified by the expected contribution of those assets to the business, whether by sale in the ordinary course of business or otherwise; but in the case of a company whose sole or main object is that of carrying on the business of extracting a mineral deposit the Registrar may, on the application of the company, and on the conditions that the Registrar considers appropriate, authorise a wasting asset held for the purpose of the business in question to be shown in the balance sheet at cost.
- 16. Assets shall be shown at a fair value and other assets are held net of impairment.
- 17. (1) There shall be included in or attached to the balance sheet in respect of each class of non current assets shown in the balance sheet a statement containing the following information, that is to say,
  - (a) the gross value;
  - (b) the original cost, if this differs from the gross value;
  - (c) the aggregate depreciation or replacement provision;
  - (d) if the gross value differs from the original cost, a statement explaining how the gross value has been determined, and as at what date.
- 18. There shall be shown the aggregate of the amounts due to the company.
- 19. There shall be shown the aggregate of the amounts due to the company in respect of advances made in accordance with paragraph (d) of section 133 of the Act.
- 20. The amount of any preliminary expenses, and expenses incurred on the issue of shares or debentures, including any sums paid by way of commission or brokerage on the issue of shares or debentures, shall be debited to the income statement and shall not be treated as an asset.

*Companies Bill, 2018*

*Liabilities*

21. For the purposes of the Act, current liabilities are liabilities due and payable, other than liabilities the payment of which may, at the company's option, be postponed, within twelve months of the date of the balance sheet together with any other liabilities that are under normal accounting principles appropriately so classified.
22. Without limiting paragraph 13 of this Schedule each of the following classes of liabilities shall, so far as they are applicable to the company's business, be distinguished, namely,
  - (a) bank borrowings and overdrafts;
  - (b) bills of exchange and promissory notes payable;
  - (c) trade receivables;
  - (d) the net amount payable to members in respect of dividends declared;
  - (e) any amounts due to directors and other officers of the company other than items arising in the ordinary course of business;
  - (f) income tax, distinguishing between different taxes and between amounts due in respect of different fiscal periods;
  - (g) debts secured by debentures, other than those shown under sub-paragraph (a) stating in respect of each class of debentures the date or dates on or after which the company has the option of redemption, and the date or dates on or before which the company is under the obligation finally to redeem the loans or debentures or any part of the loans or debentures specifying in each case the proportion of the total issue that may or must be redeemed, and the redemption price;
  - (h) any borrowing other than those stated in this paragraph; and
  - (i) other accrued liabilities.
23. A liability shall not stand in the balance sheet at a value less than the amount at which it is repayable, other than at the company's option, at the balance sheet date or, if it is not then repayable, at the amount at which it will first become so repayable after that date

*Companies Bill, 2018*

less, where appropriate, a reasonable deduction for discount until that date.

24. If a liability of the company is secured otherwise than by the operation of law on any assets of the company, the fact that the liability is so secured shall be stated, together with a statement of the assets upon which it is secured, and, where more than one class of liabilities is so secured, their relative priorities with respect to payment of interest and redemption.
25. If any of the company's debentures have been beneficially acquired by the company or by a nominee acting on behalf of the company, the amount of these, calculated on the same basis as the total amount standing in the balance sheet in respect of the debentures of that class, shall, unless the debentures so purchased are cancelled, be shown as a deduction from that total; and if the amount of the debentures purchased is greater or less than the amount expended upon purchase, the difference shall be shown in the income statement as if it were a premium or discount on debentures.
26. There shall be stated by way of note or otherwise, particulars of any debentures of the company that have been redeemed or purchased by or on behalf of the company which the company has power to re-issue.
27. There shall be included in or attached to the balance sheet in respect of each class of liabilities referred to in subparagraphs (f) and (g) of paragraph 22 of this Schedule that is shown in the balance sheet, or in the balance sheet at the end of the immediately preceding financial year, a statement containing the following information, namely,
  - (a) the balance shown at the end of the immediately preceding financial year;
  - (b) the amounts of additions to, and deductions from, the balance sheet during the financial year ending on the balance sheet date, with particulars of the additions and deductions sufficient to identify clearly the source of each item; and
  - (c) the balance at the date of the balance sheet.

*Companies Bill, 2018*

*Surplus*

28. There shall be recorded in an account, to be called the capital surplus account, the amount, by which the surplus, as defined in section 70 of the Act, exceeds the credit balance on the share deals account plus the balance on the income surplus account if a credit or minus of that balance is a debit.
29. (1) There shall be shown,
- (a) the stated capital of the company distinguishing between amounts relating to different classes of shares;
  - (b) the amount standing to the credit of the capital surplus account;
  - (c) the amount standing to the credit of the share deals account;
  - (d) the balance of the income surplus account, and if that balance is a debit balance it shall be deducted from the sum of the three preceding amounts.
- (2) There shall be included in or attached to the balance sheet in respect of each item referred to in subparagraph (1) of this paragraph that is shown in the balance sheet or in the balance sheet at the end of the immediately preceding financial year, a statement containing the following information, namely
- (a) the balance shown at the end of the immediately preceding financial year;
  - (b) the amounts of any additions to, and deductions, from that balance during the financial year, with particulars of the additions and deductions sufficient to identify clearly the source of each item; and
  - (c) the balance at the date of the balance sheet.
- (3) The aggregate amounts of dividends paid or recommended, net of the tax deductible from those amounts distinguishing between dividends on different classes of shares, shall be debited to the income surplus account.
30. There shall be shown in the balance sheet, or in a schedule attached to the balance sheet,

*Companies Bill, 2018*

- (a) the amount of stated capital attributable to each of the items specified in subsection (1) of section 68 of the Act, distinguishing, in the case of items (a) and (b) between different classes of shares;
  - (b) the number of authorised shares of each class;
  - (c) the number of issued shares of each class;
  - (d) the number of treasury shares of each class;
  - (e) the amount of any unpaid instalments or calls on shares which are due and payable and the number and class of shares concerned;
  - (f) in the case of a company limited by shares,
    - (i) the amount of the unpaid liability, on its shares of each class, which is not yet due for payment; and
    - (ii) the amount of the unpaid liability which, pursuant to section 57 of the Act, the company has resolved shall not be capable of being called up except in the event and for the purpose of the company being wound up;
  - (g) in respect of any shares on which there are any arrears of fixed dividends, the total amount of the arrears, stating whether the amount is net or gross of the tax that may be deducted;
  - (h) if an issue of shares has been made in contemplation of the redemption of preference shares out of the proceeds of the issue, a statement to that effect and of the total amount made available for use in the redemption; and
  - (i) the number of shares which a person has an option to subscribe for, distinguishing those in respect of which the option can be exercised by directors of the company, together with the following particulars of each option, that is to say,
    - (i) the period or periods during which it is exercisable; and
    - (ii) the price or prices during each period to be paid for shares subscribed for under the option.
31. There shall be stated by way of note an amount standing to the credit of the income surplus account which the company is, in accordance with paragraph 9 of this Schedule or otherwise, under an obligation not to distribute by way of dividend.

*Companies Bill, 2018*

*Supplementary*

32. There shall be stated by way of note or otherwise,
  - (a) the basis on which foreign currencies have been converted into Ghanaian money;
  - (b) particulars of a charge on the assets of the company to secure the liabilities of any other person, including a statement of the amount or estimated amount secured;
  - (c) the general nature of any contingent liabilities not provided for and not otherwise disclosed and the amount or estimated amount of those liabilities;
  - (d) the general nature of contracts for capital expenditure not provided for and the amount or estimated amount of those contracts; and
  - (e) the general nature of any credit facilities available to the company under a contract, other than trade credit available in the ordinary course of business, and not taken up at the end of the financial year.
33. Except in the case of the first balance sheet drawn up after the commencement of the Act there shall be shown the corresponding amount of each item for the immediately preceding financial year.
34. Where an item shown in the balance sheet or included in amounts shown in the balance sheet cannot be determined with substantial accuracy, an estimated amount described as such shall be included in respect of that item and shall be distinguished, by way of note or otherwise, together with a description of the item.
35. A provision of this Schedule with respect to the information to be shown in the balance sheet does not require the amount of an item that is of no material significance to be shown separately.

PART THREE

**PROVISIONS APPLICABLE TO HOLDING COMPANIES**

36. This Part of this Schedule shall apply where the company is a holding company as defined in the First Schedule.
37. There shall be stated by way of note or otherwise,
  - (a) the total number of shares held by or on behalf of the company in each of its associated companies, and
  - (b) the total number of the shares and amount of debentures of the company held by or on behalf of subsidiaries,but excluding in both cases shares and debentures held as personal representative or as trustee of a trust in which neither the company nor any of its associated companies is beneficially interested otherwise than by way of security in the ordinary course of business, distinguishing shares and debentures of different classes, and stating the total number of shares and the amount of debentures of each class in issue at the date of the balance sheet.
38. Where it is reasonably practicable, the amount included under each head of revenue or expense shown in the income statement that is received or receivable from, or paid or payable to, an associated company shall be distinguished.
39. The amount included in each class of assets shown in the balance sheet in respect of financial interests in associated companies shall be distinguished.
40. The amount included in each class of liabilities shown in the balance sheet in respect of indebtedness to associated companies shall be distinguished.
41. Where consolidated financial statements are not prepared, there shall be attached to the balance sheet a statement showing,
  - (a) the reasons why subsidiaries are not dealt with in consolidated financial statements;

*Companies Bill, 2018*

- (b) the net aggregate amount, so far as it concerns the interests of the holding company, of the balances transferred from the income statements of the subsidiaries to their income surplus accounts, or the equivalent amount in the case of foreign or other subsidiaries not having income surplus accounts,
  - (i) for the respective financial years of the subsidiaries ending with or during the financial year of the company giving, so far as is practicable the same information with respect to that amount as is required by paragraph 3 of this Schedule to be given with respect to the company's income statement;
  - (ii) for the total period covered by their previous financial years since they respectively became the holding company's subsidiaries so far as it has not been dealt with in the company's accounts of a previous financial year;
- (c) the net aggregate amount so transferred so far as this amount is dealt with in the company's accounts for the financial year; and
- (d) any qualifications contained in the report of the auditors of the subsidiaries on their financial statements for their respective financial years ending as stated in subparagraph (i) of paragraph (b), and any note or saving contained in those financial statements to call attention to a matter which, apart from the note or saving, would properly have been referred to in that qualification in so far as the matter which is the subject of the qualification or note is not covered by the company's own financial statements and is material from the point of view of the company's interest, or, in so far as the information required by this paragraph is not obtainable, a statement that it is not obtainable.



*Companies Bill, 2018*

42. Items (b) and (c) of paragraph 41 shall apply only to the amounts that could properly enter into the composition of the holding company's income surplus.
43. There shall be stated by way of note, in accordance with subsection (10) of section 131 of the Act, in relation to subsidiaries, whose financial years do not coincide with that of the company,
  - (a) the reasons why the company's directors consider that the subsidiaries' financial years should not so coincide; and
  - (b) the name of each subsidiary whose financial year does not coincide with that of the holding company and the date on which its relevant financial year ended.
44. The consolidated financial statements, if prepared as consolidated financial statements, shall combine the information contained in the separate balance sheets and income statements of the holding company and of the subsidiaries dealt with by the consolidated financial statements with the adjustments, that the directors consider appropriate, and the consolidated financial statements shall, in giving the information comply, so far as is practicable, with the requirements of the Act as if they were the financial statements of a single company.
45. Where consolidated financial statements are prepared and the financial statements of some subsidiaries are not incorporated in the consolidated financial statements, the consolidated financial statements shall incorporate with respect to those subsidiaries information equivalent to that required to be given in the holding company's financial statements when consolidated financial statements are not prepared.
46. Where consolidated financial statements are prepared other than in the form of consolidated financial statements they shall provide the same information, so far as is relevant and material, as would have been provided by consolidated financial statements.

PART FOUR

**EXEMPTIONS  
FOR SPECIAL CLASSES OF COMPANIES**

47. Paragraphs, 4, 5, 6, 9, 19, 28, 29, 30 and 31 of this Schedule shall not apply to a company limited by guarantee.
48. (1) A company licensed to carry on the business of banking shall not be subject to Part One or Two of this Schedule other than paragraphs 1 *(f)*, *(g)*, *(i)*, *(j)* and *(o)*, 2, 3 *(a)* and *(b)* and paragraphs 4, 5, 9, 10, 11, 12, 13, 15, 16, 18, 19, 20, 23, 25, 26, 30, 31, 33, 34 and 35.
- (2) Where a banking company as is referred to in subparagraph (1) has reserves which are not separately stated in its balance sheet, a heading in its balance sheet stating an amount arrived at after taking into account that reserve or a transfer to, or from, that reserve shall be so framed or marked as to indicate that fact, and its income statement shall indicate by appropriate words the manner in which the amount stated for the company's profit or loss has been arrived at.
49. (1) The Minister may in the national interest and by legislative instrument, prescribe that companies of a class described in the instrument shall be exempt from any of the provisions of this Schedule, but a company taking advantage of this paragraph shall be subject to the conditions prescribed in the instrument as to matters to be stated in the financial statements or by way of note to the financial statements and as regards information to be furnished to the Minister or to the Registrar.
- (2) If the Minister is satisfied that any of the conditions has not been complied with in the case of a company, the Minister may direct that so long as the direction remains in force the company shall be excluded from the exemption, wholly or to the extent specified in the direction, although the company is a company of the class prescribed in the instrument.

*Companies Bill, 2018*

50. Despite an exemption conferred by or under this Part of this Schedule, the financial statements of a company shall give the true and fair view required by the Act, but the financial statements shall not be regarded as not giving a true and fair view by reason of the fact that they do not comply with any of the provisions of this Schedule from which the company is exempt by reason of this Part of this Schedule or an instrument made under the Schedule.
51. Where the company entitled to an exemption under this Part of this Schedule is a holding company, the consolidated financial statements, if prepared as consolidated financial statements, shall be regarded as complying with the requirements of the Act if they comply with the requirements applying to the separate financial statements of the company.

**SEVENTH SCHEDULE**

*(section 137)*

*Matters to be Expressly Stated in Auditors' Report*

1. Whether they have obtained the information and explanations which to the best of their knowledge and belief were necessary for the purposes of their audit.
2. Whether, in their opinion, proper books of account have been kept by the company, so far as appears from their examination of those books, and proper returns adequate for the purposes of their audit have been received.
3. Whether the company's balance sheet and income statement dealt with by the report are in agreement with the books of account and returns.
4. Whether, in their opinion and to the best of their information and according to the explanations given them, the financial statements give the information required by this Act in the manner so required and give a true and fair view,
  - (a) in the case of the balance sheet, of the state of the company's affairs at the end of its financial year; and
  - (b) in the case of the income statement, of the profit or loss for its financial year;or, give a true and fair view of the balance sheet or the income statement subject to the non-disclosure of any matters, to be indicated in the report, which by virtue of Part Four of the Sixth Schedule to the Act are not required to be disclosed.
5. In the case of a holding company submitting consolidated financial statements, whether, in their opinion, the consolidated financial statements have been properly prepared in accordance with the 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 so far as concerns the interests of the company or so as to give a true and fair view of those affairs or of the loss or profit subject to the non-disclosure of any matters, to be indicated in the report, which by virtue of Part Four of the Sixth Schedule to the Act are not required to be disclosed.

**EIGHTH SCHEDULE**

*(Sections 157, 160, 161, 164, 168, 169, 176, 239, 282, 307 (5))*

*Procedure for General Meetings*

**1. Notice of meetings**

- (a)* Meetings, other than adjourned meetings, shall be convened by notice in writing to the persons who are, under subparagraph *(f)*, entitled to receive notice of general meetings.
- (b)* Subject to subparagraphs *(c)* and *(d)*, twenty-one days notice at the least or in the case of a special resolution under section 2 of the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180), seven days notice exclusive of the day on which the notice is served, but inclusive of the day for which notice is given, shall be given.
- (c)* A company's registered constitution may provide for a period of notice longer, but not shorter, than that specified in subparagraph *(b)*.
- (d)* A meeting of a company shall, although it is called by shorter notice than that specified in subparagraph *(b)*, or in the company's registered constitution, be deemed to have been duly called if it is so agreed,
  - (i)* in the case of a meeting called as the annual general meeting, by the members entitled to attend and vote at that meeting, and
  - (ii)* in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, which is a majority holding not less than ninety-five per cent of the shares giving a right to attend and vote at the meeting or, in the case of a company limited by guarantee, by a ninety-five per cent majority in number of the members.
- (e)* Where the members are entitled to vote only on some resolutions to be moved at the meeting and not on others, those members shall be taken into account for the purposes of

*Companies Bill, 2018*

subparagraph (d) in respect of the former resolutions and not in respect of the latter.

- (f) The persons entitled to receive notice of general meetings, are,
- (i) every member;
  - (ii) every person on whom the ownership of a share devolves by reason of that person being a legal personal representative, receiver or a trustee in bankruptcy of a member;
  - (iii) every director of the company; and
  - (iv) every auditor for the time being of the company.

**2. Contents of notice**

- (a) The notice of a meeting shall specify
- (i) the place, date and hour of the meeting,
  - (ii) the general nature of the business to be transacted at the meeting in sufficient detail to enable those to whom it is given to decide whether to attend or not; and
  - (iii) where the meeting is to consider a special resolution shall set out the terms of the resolution.
- (b) In the case of notice of an annual general meeting, a statement that the purpose is to transact the ordinary business of an annual general meeting is a sufficient specification that the business is,
- (i) to declare a dividend;
  - (ii) consideration of the financial statements and reports of the directors and auditors;
  - (iii) the election of directors in the place of those retiring;
  - (iv) the fixing of the remuneration of the auditors; and
  - (v) for the removal and election of auditors and directors;
- (c) A business may not be transacted at a general meeting unless notice of it has been duly given.

**3. Service of notice**

- (a) Notice may be given by the company to a member or director personally, or
  - (i) by sending it through the post addressed to the member or director at the registered address of the member or director, or
  - (ii) by leaving it for the member or director with a person apparently over the age of sixteen years at that address.
- (b) Notice may be given to the joint holders of a share by giving the notice to the joint holder named first in the register of members in respect of the share.
- (c) Notice may be given to a person on whom ownership of a share has devolved by reason of that person being a legal personal representative, receiver or trustee in bankruptcy of a member personally, or
  - (i) by sending it through the post addressed to that person by name, or
  - (ii) by the title of representatives of the deceased or receiver or trustee of the bankrupt, or
  - (iii) by any like description, at the address supplied for the purpose by that person, or
  - (iv) by leaving it for that person with a person apparently over the age of sixteen years at that address, or,
  - (v) until that address has been supplied, by giving the notice in a manner in which the same might have been given if the death, receivership or bankruptcy had not occurred.
- (d) Where a notice is sent by post, service is effected by properly addressing, pre-paying, and posting a letter containing the notice and is considered to have been effected at the expiration of forty-eight hours after the letter containing the notice is posted.
- (e) The letter need not be registered but where it is sent to an address outside Ghana it shall be despatched by air mail.

**4. Accidental failure to give notice**

The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, a person entitled to receive notice shall not invalidate the proceedings at that meeting.

**5. Circulation of members' resolutions and supporting circulars**

- (a) A company shall, at its own expense, on the request in writing of a member entitled to attend and vote at a general meeting, include in the notice of that general meeting notice of a resolution which may properly be moved and is intended to be moved at that meeting and, at the like request, include in that notice a statement of not more than five hundred words with respect to the matter referred to in the proposed resolution or any other business to be dealt with at that meeting.
- (b) If the proposed resolution is not passed at that meeting, that resolution or one substantially to have the same effect shall not be moved at a general meeting within three years, unless the
  - (i) directors otherwise agree, or
  - (ii) request within three years is supported in writing by members of the company representing not less than one-twentieth of the total voting rights of the members having at the date of the request a right to vote on the resolution to which the request relates.
- (c) For the purposes of subparagraph (a), a company is not bound to give notice of a resolution or to circulate a statement unless the written request or requests, signed by the member or members concerned, together with the resolution and statement, are deposited at the registered office of the company not less than six weeks before the meeting.
- (d) If, after the documents have been deposited, a general meeting is called for a date not more than six weeks after the deposit, the documents shall be deemed to have been properly deposited.



**6. Circulation of members' circulars**

- (a) A company shall, at the request in writing of a member entitled to attend and vote at a general meeting but, unless the company otherwise resolves, at the expense of that member, circulate to members of the company a statement of not more than one thousand words with respect to a business to be dealt with at that meeting.
- (b) The statement shall be circulated to members of the company in a manner permitted for service of notice of the meeting and, so far as practicable, at the same time as notice of the meeting, or, if that is impracticable, as soon as possible after the giving of the notice of the meeting.
- (c) A company is not bound to circulate the statement unless,
  - (i) the written request, signed by the member concerned, together with the statement, is deposited at the registered office of the company not less than ten days before the meeting; and
  - (ii) there is also deposited with the request a sum of money reasonably sufficient to meet the company's expenses in giving effect to the request.

**7. Attendance at meetings**

- (a) Despite a contrary provision in a company's registered constitution, the following persons are entitled to attend a general meeting of the company, namely,
  - (i) every member of the company;
  - (ii) every director of the company;
  - (iii) the secretary of the company; and
  - (iv) every auditor for the time being of the company.
- (b) For the purposes of subparagraph (a),
  - (i) if a company's constitution so provides, a member is not entitled to attend unless the calls or other sums of money presently payable by that member in respect of shares in the company have been paid;
  - (ii) a member who is the holder of preference shares only is not entitled to attend if the right to do so is validly suspended in accordance with section 52.
- (c) Subparagraph (b) does not preclude any other person from attending a general meeting with the permission of the chairperson of the meeting.

**8. Quorums**

- (a) Subject to subparagraph (b), a business shall not be transacted at a general meeting unless a quorum of members is present at the time when the meeting proceeds to discuss that business, but where a quorum is present the meeting may validly proceed with that business despite that a quorum is not present throughout.
- (b) In dealing with a quorum under subparagraph (a), where any members present are entitled to vote only on some resolutions and not on others, those members shall be counted towards a quorum in respect of the former resolutions but not in respect of the latter.
- (c) Unless otherwise provided in a company's constitution, a quorum is constituted,
  - (i) if the company has only one member, by that member present in person or, where proxies are allowed, by proxy;
  - (ii) in any other case, by two members present in person or, where proxies are allowed, by proxy, or one member so present holding shares representing more than fifty per cent of the total voting rights of the members having a right to vote at the meeting.
- (d) Unless otherwise provided in the company's constitution, if a quorum is not present within half an hour after the time appointed for the meeting, the meeting if convened on the requisition of members in accordance with sections 282 and 307 of the Act, shall be dissolved, and in any other case shall stand adjourned to the same day, in the next week at the same time and place or to any other day, place and time that the directors may determine.
- (e) If at the adjourned meeting a quorum is not present within half an hour after the time appointed, the member or members present shall constitute a quorum.
- (f) Where the meeting is adjourned to the same day, place and time in the following week, a notice is not required to be given, otherwise notice of the adjourned meeting shall be published in at least one daily newspaper circulating in the district in which is situated the registered office of the company.

**9. Proxies**

- (a) A member of a company entitled to attend and vote at a meeting of the company is entitled to appoint another person, whether a member of the company or not, as a proxy to attend and vote instead of that member and the proxy shall have the same rights as the member to speak at the meeting.
- (b) Unless a company's registered constitution otherwise provides, subparagraph (a) shall not apply in the case of a company limited by guarantee.
- (c) The instrument appointing the proxy shall be in writing signed personally by the appointor or the appointor's agent duly authorised in writing or, if the appointor is a body corporate, under the seal of the body corporate or signed personally by an officer or agent duly authorised.
- (d) An instrument appointing a proxy shall be in the form prescribed in the Second Schedule, or in the form that a company's registered constitution provides, but despite a provision in the company's constitution, an instrument in the form prescribed in the Second Schedule shall be sufficient.
- (e) Unless a company's registered constitution otherwise provides, the instrument appointing a proxy and the power of attorney or other authority under which it is signed or a notarised copy of that power or authority, shall be deposited with the designated receiving officer
  - (i) by electronic mail;
  - (ii) personally at the registered office of the company, or at any other place within the Republic as specified in the notice convening the meeting; or
  - (iii) by any other means approved by the company, not less than forty-eight hours before the time for holding the meeting or adjourned meeting, or not later than twenty-one days before the meeting or in the case of a poll, not less than twenty-four hours before the time appointed for the taking of the poll and in default the instrument of proxy shall not be treated as valid.

*Companies Bill, 2018*

- (f) A provision contained in a company's registered constitution is void in so far as it would have the effect of requiring the documents referred to in the constitution to be deposited more than forty-eight hours before the time for holding the meeting or adjourned meeting or, in the case of a poll, more than twenty-four hours before the time appointed for taking the poll.
- (g) Where instruments of proxy have been deposited in accordance with subparagraph (e), a person entitled, in that person's own right or as proxy for another member or members, or partly in one way and partly in another, to more than ten per cent of the total voting rights of the members entitled to vote at the meeting shall be entitled, at any time during business hours before the conclusion of the meeting or the taking of the poll, but subject to any reasonable restrictions that the company may impose, to inspect the deposited instruments of proxy and the original or copy of powers of attorney or other authority under which they are signed.
- (h) The appointment of a proxy shall be terminated by the death or insanity of the appointor or by the revocation of the proxy or the authority under which it was executed, and the personal attendance of a member at the meeting or the later appointment of another proxy in respect of the same share shall be deemed to be a revocation.
- (i) A vote given in accordance with the terms of an instrument of proxy may be treated by the company as valid despite the termination or revocation of the appointment so long as an intimation in writing of the termination or revocation or of the events causing the same has not been received by the company, at its registered office or other place appointed for the deposit of instruments of proxy, before the commencement of the meeting or adjourned meeting or more than twenty-four hours before a poll.
- (j) If, for the purpose of a meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense, then,

*Companies Bill, 2018*

- (i) the invitations shall be sent to the members entitled to attend and vote at the meeting;
  - (ii) the invitations shall be accompanied by forms for the appointment of a proxy which shall entitle the members to direct the proxy to vote either for or against each resolution;
  - (iii) where instruments of proxy are duly completed and returned in accordance with the instructions in the invitation and are not revoked then, the chairperson of the meeting shall demand a poll after a vote by show of hands unless the result on the show of hands is in accordance with the directions given in the instruments of proxy and on a poll, the votes of the members concerned shall be deemed to be cast in accordance with the directions, in the instruments of proxy despite the absence, abstention, or purported vote to the contrary of the proxy.
- (k) Where a member, not having been invited so to do, requests the company to issue that member with a form of appointment of proxy or a list of persons willing to act as proxy, the company may issue the form or list to that member without doing so to the other members entitled to attend and vote but the form or list shall be available on request in writing to that member and any forms of appointment so issued shall comply with subsubparagraph (ii) of subparagraph (j) and shall be deemed to be an instrument of proxy to which subsubparagraph (iii) of subparagraph (j) applies.

**10. Obtaining proxies by misrepresentation**

- (a) The vote of a proxy shall not be rejected at a meeting on the ground that the appointment of a proxy was obtained by misrepresentation.
- (b) The Court may, on the application of
  - (i) the company,
  - (ii) a member entitled to vote at the meeting, or
  - (iii) the Registrar,annul the appointment of a proxy if satisfied that the appointment was obtained by a material misrepresentation of fact whether made fraudulently or not.

- (c) Where an order is made, the Court may further order that the holding of the meeting shall be postponed until the date that the Court may order and may give any ancillary or consequential directions that it considers fit.

**11. Representation of corporations at meetings**

- (a) A body corporate, whether a company within the meaning of this Act or not, may, by resolution of its directors or other governing body, authorise a person it considers fit to act as its representative,
  - (i) if it is a member of a company, at any meeting of the company; or
  - (ii) if it is a creditor, including a debenture holder, of a company, at a meeting of any creditors of the company held in pursuance of this Act or of the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) or of any rules made under this Act or that Act or in pursuance of the provision contained in a debenture or trust deed.
- (b) A person authorised under subparagraph (a), on production of a copy of the resolution by which that person was authorised, is entitled to exercise the same powers on behalf of the body corporate which that person represents as that body corporate could exercise if it were an individual shareholder, creditor or holder of debentures of that other company.
- (c) This paragraph does not preclude a body corporate from appointing a proxy to attend and vote on its behalf.

**12. Chairperson of meetings**

- (a) Unless otherwise provided in a company's registered constitution, the chairperson of the board of directors shall preside as chairperson at a general meeting of the company.
- (b) If the board does not have a chairperson or, if the chairperson is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act, the directors present shall elect one of their number to be chairperson of the meeting.
- (c) If a director is not present or willing to act, the members present shall choose one of their number to be chairperson of the meeting.

**13. Adjournments**

- (a) The chairperson may, with the consent of the meeting at which a quorum is present, and shall if so directed by an ordinary resolution passed at the meeting, adjourn the meeting from time to time and from place to place but a business shall not be transacted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place and an additional business of which due notice shall be given as in the case of an original meeting.
- (b) Where a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- (c) Subject to this section, and unless a company's registered constitution otherwise provides, it is not necessary to give notice of the adjournment of a meeting at which a quorum was present, or of the business to be transacted at the adjournment.

**14. Types of resolution**

- (a) A resolution is an ordinary resolution when it is passed by a simple majority of votes cast by the members of the company who, being entitled so to do, vote in person or, where proxies are allowed, by proxy at a general meeting.
- (b) A resolution is a special resolution when it is passed by not less than three-fourths of the votes cast by the members of the company who being entitled so to do, vote in person or, where proxies are allowed, by proxy at a general meeting of which, notice specifying the intention to propose the resolution as a special resolution, has been duly given.
- (c) A reference in this Act or in the registered constitution of a company, debentures or debenture trust deed to an ordinary or special resolution of a meeting of a class of shareholders, creditors, or debenture holders bears a like meaning to that specified in subparagraph (a) or (b) of this paragraph with the substitution of the members of the class for the members of the company.

**15. Amendments**

The terms of a resolution, special or ordinary, before a general meeting may be amended by ordinary resolution moved at the meeting if by the terms of the resolution as amended adequate notice of the intention to pass the resolution can be deemed to have been given in accordance with paragraph 2.

**16. Procedure on voting**

- (a) Unless a company's registered constitution otherwise provides, a resolution put to the vote of a meeting shall be decided on a show of hands unless a poll is, before or on the declaration of the result of the show of hands, demanded by,
  - (i) the chairperson,
  - (ii) at least three members present in person or by proxy, or
  - (iii) a member or the members present in person or by proxy and representing not less than one-twentieth of the total voting rights of the members having the right to attend and vote on the resolution.
- (b) A provision contained in a company's registered constitution regarding voting procedure is void in so far as it would have the effect,
  - (i) of excluding the right to demand a poll on a question other than the election of the chairperson or the adjournment of the meeting; or
  - (ii) of making ineffective a demand for a poll on a question which is made by the persons specified in subparagraph (a) (i), (ii) or (iii).
- (c) The demand for a poll may be withdrawn.
- (d) On a show of hands each member who is personally present and entitled to vote and each proxy for a member entitled to vote shall have one vote.
- (e) Unless a poll is effectively demanded, a declaration by the chairperson that a resolution has, on a show of hands been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the meeting is conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against the resolution.



*Companies Bill, 2018*

- (f)* If a poll is effectively demanded it shall be taken at the time and in the manner that the chairperson directs.
- (g)* In place of directing that a poll shall be taken of those members present in person or by proxy at the poll, the chairperson may direct that voting shall be by postal ballot of the members entitled to attend and vote on the resolution.
- (h)* For the purposes of subparagraph *(g)*, ballot papers shall be served on the members entitled to attend and vote on the resolution in the same manner as notice of the meeting is required to be given to them and the members may cast their votes by personally completing the ballot papers or by having the ballot papers completed by a proxy of theirs whose instrument of appointment has been deposited, in accordance with subparagraph *(e)* of paragraph 9, not less than twenty-four hours before the time appointed for the closing of the ballot.
- (i)* Despite subparagraph *(f)* of this paragraph, a postal ballot in accordance with subparagraphs *(g)* and *(h)* shall be directed by the chairperson if,
  - (i)* the company's constitution so provides, or
  - (ii)* on or after the chairperson has directed a poll, an ordinary resolution in favour of a postal ballot under this subparagraph is moved at the meeting and passed on a show of hands.
- (j)* A postal ballot in accordance with subparagraphs *(g)* and *(h)* of this paragraph shall be deemed to be a poll.
- (k)* Except as otherwise provided in a company's registered constitution, on a poll each shareholder entitled to vote shall have one vote for each share held by the shareholder and each member of a company limited by guarantee shall have one vote.
- (l)* On a poll a member entitled to more than one vote, or a proxy representing more than one member or a member entitled to more than one vote, need not, in voting, use all the votes or cast all the votes the member uses in the same way.

*Companies Bill, 2018*

- (m) Unless a company's registered constitution otherwise provides, in the case of an equality of votes, whether on a show of hands or a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded is entitled to a second or casting vote.

**17. Voting by joint holders**

In the case of joint holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted, to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

**18. Votes by persons of unsound mind**

A member of unsound mind may vote, whether on a show of hands or a poll, by the person appointed for the purpose by the Court and the person so appointed may vote by proxy.

**19. Date of passing of resolutions**

- (a) A resolution is passed at an adjourned meeting, on the date on which it was in fact passed at the adjourned meeting.
- (b) A resolution is passed on a poll, on the day on which the result of the poll is declared, and not on any earlier day.

*Companies Bill, 2018*

**NINTH SCHEDULE**  
*(Section 286)*

**FORM OF STATEMENT IN LIEU OF PROSPECTUS AND  
FINANCIAL STATEMENT AND REPORT TO  
ACCOMPANY THE STATEMENT**

PART ONE

**FORM OF STATEMENT AND PARTICULARS TO BE  
CONTAINED IN THE STATEMENT**

Statement in Lieu of Prospectus delivered for registration by [insert full  
name of company]

1. Unless more than two years have elapsed since the registration of the  
company

- |   |  |
|---|--|
| (a) the amount or estimated amount<br>of the expenses incidental or pre-<br>liminary to the promotion and<br>registration of the company; | (a)  |
| (b) by whom these expenses have been paid<br>or are payable;  | (b)  |
| (c) the names of the promoters;   | (c)  |
| (d) the amount paid or intended to be paid to<br>any promoter;  | (d) Name of Promoter<br>.....<br>Amount in Gh cedis<br>..... |

*Companies Bill, 2018*

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|--|--|
| <p>(e) the consideration for the payment;</p> <p>(f) any other benefit given or intended to be given to any promoter;</p>  | <p>(e)</p> <p>(f) Name of Promoter<br/>                 .....<br/>                 Nature and value<br/>                 of benefit<br/>                 .....</p> |
| <p>(g) the consideration for the giving of that benefit;</p> <p>(h) full particulars of the nature and extent of the interest of every director and proposed director of the company in the promotion of the company</p> | <p>(g)</p> <p>(h)</p>  |
- 
2.
The name, address and professional qualification of the company's auditors, and if auditors have not been appointed a statement to that effect.
2.
  3.
The names and addresses of the company's bankers and legal practitioners
3.
  4.
The names, countries of incorporation, and nature of the business of the subsidiaries of the company and of the bodies corporate in which the company is beneficially entitled to equity shares conferring the right to exercise more than twenty-five for each hundred of the votes exercisable at a general meeting of the body corporate; but if, on the application of the directors of the company, the Registrar is satisfied that mention of any of the matters referred to in this paragraph would be harmful to the business of the company or any of its associated companies the Registrar may direct that the matter need not be stated. If the company is a subsidiary, the name, country of incorporation and nature of the business of the holding company and the number of each class of shares of the company held by the holding company.
4.

*Companies Bill, 2018*

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|-----|--|-------------------------|
| 5.  | Where the company is proposing to acquire securities in a body corporate in this Schedule called a proposed subsidiary which, by reason of the acquisition or anything to be done in consequence with the requisition or in connection with the acquisition will become a subsidiary of the company, the name, country of incorporation, and nature of the business of that proposed subsidiary. | 5.                      |
| 6.  | Where the company is proposing to acquire a business, a full description of the nature of that business.   | 6.                      |
| 7.  | Whether in the opinion of the directors the company's working capital is sufficient and, if not how it is proposed to provide the additional working capital thought by the directors to be necessary.   | 7.                      |
| 8.  | The amount of the company's stated capital distinguishing between each of the items specified in subsection (1) of section 68 of the Act and, in the case of items (a) and (b) between different classes of shares.  | 8.<br>(a)<br>(b)<br>(c) |
| 9.  | The number and description of the company's<br>(a) authorised shares of each class,<br>(b) issued shares of each class, and<br>(c) treasury shares of each class.  | 9.<br>(a)<br>(b)<br>(c) |
| 10. | The amount paid on the issued shares of each class<br>(a) in cash, and<br><br>(b) otherwise than in cash.  | 10.<br>(a)<br><br>(b)   |

*Companies Bill, 2018*

11. The amount remaining payable on the issued shares of each class 11.
- (a) presently due for payment, (a)
  - (b) not yet due for payment, and (b)
  - (c) which the company has resolved shall not be capable of being called up except in the event and for the purposes of the company being wound up. (c)
12. The amounts of the dividends per share paid by the company in respect of each class of share in each of the five completed the statement, and particulars of any cases in which dividends have not been paid in respect of a class in any of those years. 12.
13. (1) The number of unissued shares of each class agreed to be issued and the amount payable therefore 13. (1)
- (2) in cash, and (2)
  - (3) otherwise than in cash. (3)
14. (1) The name of every holder and, if known, beneficial owner of more than twenty-five for each hundred of the company's shares of a class of share; and 14. (1)
- (2) the number and description of the shares held or owned. (2)

*Companies Bill, 2018*

- |     |  |         |
|-----|--|---------|
| 15. | The amount of the outstanding debentures issued or agreed to be issued by  | 15.     |
|     | (a) the company, and   | (a)     |
|     | (b) any of its subsidiaries and proposed subsidiaries.   | (b)     |
| 16. | The amount of any bank overdrafts of   | 16.     |
|     | (a) the company, and   | (a)     |
|     | (b) any of its subsidiaries and proposed subsidiaries.   | (b)     |
| 17. | The nature of the consideration for the issue of any of the company's shares or debentures issued or agreed to be issued otherwise than for cash.  | 17.     |
| 18. | Particulars of the shares or debentures of any of the company's subsidiaries and proposed subsidiaries which have, within the two years immediately preceding the date of the statement, been issued or which are proposed to be issued otherwise than for cash and the nature of the consideration. | 18.     |
| 19. | (1) Particulars of the shares or debentures of the company or any of its subsidiaries and proposed subsidiaries which have, within two years immediately preceding the date of the statement, been issued for cash, stating  | 19. (1) |
|     | (2) the price, and   | (2)     |
|     | (3) if not already fully paid, the dates when any instalments are payable.   | (3)     |
| 20. | Where the shares or debentures of the company or any of its subsidiaries and proposed subsidiaries are under option, or agreed conditionally or unconditionally to be put under option,  | 20.     |
|     | (a) the number and description of the shares,  | (a)     |
|     | (b) the amount and description of the debentures,  | (b)     |

*Companies Bill, 2018*

- (c) the period during which the option is exercisable, (c)
- (d) the price to be paid for the shares or debentures, (d)
- (e) the consideration for the grant of the option; and (e)
- (f) the persons to whom the option was given, or, if given to existing shareholders or debenture holders, as shareholders or debenture holders the relevant shares or debentures. (f)

21. Where a property has been acquired or is proposed to be acquired by the company or any of its subsidiaries and proposed subsidiaries, except where the contract for its acquisition was either completed and a purchase money fully paid more than two years before the date of the statement, or entered into in the ordinary course of business and there is no connection between the contract and the incorporation of the company or its conversion from a private to a public company,

- (a) the names and addresses of the vendors (a) Name of vendor.....
- (b) the amount paid or to be paid in cash, shares, debentures or otherwise to each vendor stating
  - (i) the total purchase price paid or to be paid, (i) .....
  - (ii) the amount paid or to be paid in cash, (ii) .....
  - (iii) the amount paid or to be paid in shares and the number and description of such shares, (iii) Shares.....
  - (iv) the amount paid or to be paid in debentures and the number and denomination of such debentures, and (iv) Amount in Debentures .....
  - (v) the nature of, and value attributed to, other consideration; (v) Nature..... Value.....
- (b) Name of Vendor .....



*Companies Bill, 2018*

- (i) .....
- (ii) .....
- (iii) Amount paid in shares  
.....
- (iv) Amount in Debentures  
.....
- (v) Nature.....  
Value.....

- (c) the total amount paid or to be paid in, (c)
  - (i) cash, (i)
  - (ii) shares, (ii)
  - (iii) debentures, and (iii)
  - (iv) other consideration; (iv)
  - (v) specifying the amount paid or to (v)  
be paid for goodwill;
- (d) full particulars of the nature and extent (d)  
of the interest, direct or indirect, of every  
director or proposed director of the com-  
pany or any of its subsidiaries and pro-  
posed subsidiaries in that property;
- (e) particulars of all transactions relating to (e)  
that property which were entered into or  
completed within the two years immedi-  
ately preceding the date of the statement.

22. (1) The dates of, parties to, and general nature of every material contract, other than contracts entered into in the ordinary course of business, or completed more than two years before the date of this statement.

(2) The place and time, not being less than twenty-eight days at which such contracts or copies of the contract or, in the case of any contract not reduced into writing, a memorandum giving full particulars thereof in a language acceptable to the Registrar, may be inspected.

(2) Address  
Between the.....of.....  
and the.....of.....  
from.....until.....  
(Saturdays, Sundays and  
public holidays excepted)

*Companies Bill, 2018*

23. Names, and the former names, addresses and business occupations of the company's directors of proposed directors and secretary, or proposed secretary, and particulars of any other directorships held by the directors or proposed directors, in the manner prescribed by section 215 of the Act. 23.

**DIRECTORS AND PROPOSED DIRECTORS**

Name	Former Names	Address	Business Occupation	Other Directorships	Whether vetted appointed or not
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**SECRETARY OR PROPOSED SECRETARY**

Name	Former Names	Address	Business Occupation	Other Directorships	Whether vetted appointed or not
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24. Names, and addresses of accountants making the reports, if any, delivered for registration with this statement. 24.

(Signatures of the persons above-named as directors or proposed directors or of their agents authorised in writing) .....

.....

.....

Date .....

PART TWO

**FINANCIAL STATEMENTS AND REPORTS TO  
ACCOMPANY STATEMENT**

**25.** Where the company has been incorporated for more than fifteen months,

- (a) copies of the financial statements, consolidated accounts and reports required to be circulated to the members and debenture holders of the company in accordance with section 128 of the Act in respect of each of the five completed financial years immediately preceding the date of the statement, or in respect of each of the financial years since the incorporation of the company if this occurred less than five years before that date: but the accounts and reports shall not be required for a financial year in respect of which copies of the accounts and reports have been annexed to the annual return of the company in accordance with section 281 of the Act.
- (b) Unless the auditors' reports on the accounts for those financial years have been made by auditors duly qualified under section 138 of the Act to be appointed auditors of the company if it had been a public company at the date of each auditor's report, a report by accountants duly qualified under section 138 of the Act to be appointed auditors of the company with respect to the profits or losses of the company in each of these financial years and with respect to the assets and liabilities of the company as at the end of the last financial year, or, if the company is a holding company a like report with respect to the profits or losses and assets and liabilities of the company and its subsidiaries, so far as these profits or losses and assets can properly be regarded as attributable to the interests of the company.

*Companies Bill, 2018*

**26.** Where the company, whether or not incorporated for more than fifteen months, at any time within the five years immediately preceding the date of the statement has acquired a business or a subsidiary, or where at the date of the statement, the company proposes to acquire a business or a proposed subsidiary,

- (a) copies of the financial statements of the business, or subsidiary or proposed subsidiary in respect of each of the five financial years immediately preceding the date of the statement, or in respect of each of the financial years since the commencement of that business or the incorporation of that subsidiary or proposed subsidiary, if that occurred less than five years before the date of the statement: but it shall not be necessary to deliver for registration copies of the financial statements of a business or subsidiary for a financial year in respect of which the profit or losses and assets and liabilities of the business or subsidiary are dealt with in the accounts or consolidated financial statements of the company for that financial year;
- (b) a report by accountants duly qualified under section 307 of the Act to be appointed auditors of the company with respect to the profits or losses of that business or subsidiary or proposed subsidiary in respect of each of the financial years for which an income statement has been delivered for registration pursuant to sub-paragraph (a) of this paragraph and with respect to the assets and liabilities of that business or subsidiary or proposed subsidiary as at the end of its last financial year: but
  - (i) the report shall deal with the profits or losses and assets and liabilities of a subsidiary or proposed subsidiary which can properly be regarded as attributable to the interests of the company;
  - (ii) when the report relates to a financial year before the subsidiary became a subsidiary of the company or relates to a proposed subsidiary, only those of its

*Companies Bill, 2018*

profits or losses and assets and liabilities shall be regarded as attributable to the interests of the company as would have been properly attributable if the company had held the securities in the subsidiary or proposed subsidiary which it holds at the date of the statement or proposes to acquire;

- (iii) where that subsidiary or proposed subsidiary has itself subsidiaries, the report shall be extended to the profits or losses and assets and liabilities of that subsidiary or proposed subsidiary and its subsidiaries so far as the same can properly be regarded as attributable to the interests of the company;
- (iv) the report required by this paragraph need not extend to a period in respect of which the profits or losses of that business or the appropriate part of the profits or losses of that subsidiary are dealt with in the accounts or consolidated financial statements of the company; and
- (v) the report required by this paragraph need not extend to the assets and liabilities of a business or subsidiary if the same or the appropriate part of the assets and liabilities are dealt with in the last balance sheet of the company.

27. (1) In making a report that is required by paragraph 25 or 26 of this Schedule, the accountants shall make the adjustments that are in their opinion appropriate.

(2) Where the adjustments are made, the statement shall, in accordance with subsection (3) of section 286 of the Act, have endorsed on, or attached to, the statement, a written statement signed by the accountants setting out the adjustments and giving the reasons for the adjustments.

*Companies Bill, 2018*

**TENTH SCHEDULE**

*(Sections 287, 288, 289, 290, 291, 295 and 325 (3))*

**CONTENTS OF PROSPECTUS ON GENERAL INVITATION**

Pursuant to subsection (8) of section 291 of the Act, the prospectus shall state at its head a statement to the effect that,

“A copy of this prospectus has been delivered to the Securities and Exchange Commission in accordance with subsection (1) of section 291 of the Companies Act, ..... (Act.....) For the financial soundness of the company of the value of the securities on offer, investors are advised to consult a dealer, investment advisor or any other professional for appropriate advice”.

PART ONE

**MATTERS TO BE SPECIFIED**

1. The full name of the company.
2. (1) A full description of the securities which the public are being invited to acquire, and of the terms on which they are being invited to acquire the securities including,
  - (a) the date prior to the expiration of which applications will not be accepted or treated as binding;
  - (b) if securities are being offered for subscription or purchase, the total amount payable for each share or debenture and the amount payable on application, allotment, and otherwise for each share or debenture;
  - (c) the policy which will be adopted if applications exceed the shares or debentures on offer.(2) Where the securities are unsecured debentures they shall be described as “unsecured loan stock”, “unsecured notes” or the like, and not as “debentures” or “bonds”.
3. Whether application has been or is being made to a stock exchange for permission to deal in the securities concerned.
4. If so, whether the stock exchange is an approved stock exchange.
5. If not, a statement that there will not be a market for the securities and that a holder wishing to dispose of those securities may be unable to do so.
6. The full name, address and business occupations of every person making the invitation, if other than the company.
7. The address and the number of the Post Office Box and the electronic address of the company’s registered office.
8. The full name, address and business occupation of every director and proposed director and of the secretary or proposed secretary of the company.
9. The name, address and professional qualification of the company’s auditors.
10. The name and address of the registration officer, if any.
11. The name and address of an underwriter of the invitation.
12. The names and addresses of the company’s bankers, stock-brokers and legal practitioners.
13. If the invitation relates to debentures, the name and addresses of any trustees for debenture holders, the date of the resolutions creating the debentures, and short particulars of the security for the debentures or, if the debentures are unsecured, a statement to that effect.

*Companies Bill, 2018*

14. The authorised business or businesses of the company.

15. A brief summary of the history of the company and of any businesses to which it has succeeded.

16. (1) The names, countries of incorporation, and nature of the businesses of the subsidiaries of the company and of the bodies corporate in which the company is beneficially entitled to equity shares conferring the right to exercise more than twenty-five for each hundred of the votes exercisable at a general meeting of the body corporate.

(2) If the company is a subsidiary, the name, country of incorporation and nature of the business of the holding company and the number of each class of shares of the company held by the holding company.

17. Where the company is proposing to acquire securities in a body corporate, in this Schedule called a proposed subsidiary, which, by reason of the acquisition or anything to be done in consequence of or in connection with, the requisition will become a subsidiary of the company, the name, country of incorporation, and nature of the business of that proposed subsidiary.

18. Where the company is proposing to acquire a business, a full description of the nature of that business.

19. The situation, area, and tenure, including, where appropriate, the rent and unexpired term of a lease or concession, of the main places of business of the company and its subsidiaries and proposed subsidiaries.

20. A statement as to,

(a) the financial and trading prospects of the company together with a material information which may be relevant to those prospects; and

(b) the material changes in the financial or trading position of the company which may have occurred since the end of the last completed financial year of the company.

21. A statement by the directors of the company that in their opinion the company's working capital is sufficient or, if not, it is proposed to provide the additional working capital thought by the reductions to be necessary.

22. The amount or estimated amount of the expenses incidental and preliminary to the invitation, including the expenses of an application to a stock exchange for permission to deal in the securities concerned in the invitation, and by whom the expenses are payable.

23. Particulars of any commissions paid within the two preceding years, or payable, as commission for acquiring any shares or debentures of the company or of any of its subsidiaries and proposed subsidiaries.



*Companies Bill, 2018*

**24.** Where the company is inviting or, under section 279 of the Act, is deemed to be inviting, the public to subscribe for any of its shares or debentures,

- (a) a statement or an estimate of the net proceeds of the issue and a statement as to how the proceeds were or are to be applied;
- (b) the minimum amount which in the opinion of the company's directors must be raised by the issue in order to provide sums, or, if part of the sums is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters;
  - (i) the purchase price of a property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;
  - (ii) any expenses incidental and preliminary to the invitation and issue, including the expenses of an application to a stock exchange for permission to deal in the shares or debentures, payable by the company, and the commission so payable to a person in consideration of that person agreeing to subscribe for, or of that person procuring or agreeing to procure subscriptions for, any shares or debentures of the company;
  - (iii) the repayment of any moneys borrowed by the company in respect of any of the matters stated in this paragraph; and
  - (iv) working capital; and
- (c) the amounts to be provided in respect of the matters stated in subparagraph (b) of this paragraph otherwise than out of the proceeds of the issue and the sources out of which these amounts are to be provided.

**25.** Where a person other than the company is inviting the public to purchase any shares or debentures of the company, whether or not, under section 279 of the Act, the invitation is made by the company,

- (a) if the shares or debentures were issued by the company for cash, a statement of the price for each share or debenture at which those shares or debentures were issued, and of the total net proceeds of the issue;
- (b) if the shares or debentures were issued by the company for a consideration other than cash, a statement of the nature of the consideration and an estimate by the directors of its fair value and of the price for each share or debenture which it represents; and

*Companies Bill, 2018*

- (c) if the person making the invitation did not acquire the shares or debentures directly from the company on their issues,
  - (i) if that person purchased them for cash, a statement of the price for each share or debenture at which that person purchased the share or debenture or, if purchased over a period of time at different prices, the lowest and highest prices, and the total purchase price paid by that person; or
  - (ii) if that person acquired them for a consideration other than cash, a statement of the nature of the consideration and an estimate by that person of its fair value and of the price for each share or debenture which it represents.

**26.** The stated capital of the company, distinguishing between each of the items specified in subsection (1) of section 68 of the Act, and, in the case of items (a) and (b) between different classes of shares.

**27.** The number and description of the company's authorised shares of each class, issued shares of each class, and treasury shares of each class.

**28.** The amount paid on the issued shares of each class

- (a) in cash, and
- (b) otherwise than in cash.

**29.** The amount remaining payable on the issued shares of each class, distinguishing between the amount presently due for payment and the amount not yet due for payment and, in the latter case, stating what amount the company has resolved shall not be capable of being called up except in the event and for the purpose of the company being wound up.

**30.** The number of unissued shares of each class agreed to be issued and the amount payable for the shares distinguishing between the amount payable in cash and the amount payable otherwise than in cash.

**31.** If the company's shares are divided into different classes, the rights in respect of voting, repayment, and dividends and any other special rights attached to the several classes and a statement as to the consents necessary for the variation of those rights.

*Companies Bill, 2018*

**32.** The amounts of the dividends for each share paid by the company in respect of each class of share in each of the ten completed financial years of the company immediately preceding the date of publication of the prospectus and particulars of any cases in which dividends have not been paid in respect of a class of shares in any of those years.

**33.** If any of the company's shares are redeemable preference shares, the earliest date on which the company has power to redeem those shares.

**34.** The name of every holder and beneficial owner of more than twenty-five for each hundred of the company's shares or a class of shares and the number and description of the shares held or owned.

**35.** The amount of the outstanding debentures issued or agreed to be issued by the company and any of its subsidiaries and proposed subsidiaries or, if none, a statement to that effect.

**36.** Particulars of any bank overdrafts of the company and any of its subsidiaries and proposed subsidiaries as at the latest practicable date, which shall be stated, or if there are no bank overdrafts, a statement to that effect.

**37.** The nature of the consideration for the issue of any of the company's shares or debentures issued or proposed to be issued otherwise than in cash.

**38.** Particulars of any shares or debentures of any of the company's subsidiaries and proposed subsidiaries which have, within two years immediately preceding the publication of the prospectus, been issued, or which are proposed to be issued, otherwise than for cash and the nature of the considerations.

**39.** Particulars of any shares or debentures of the company or any of its subsidiaries and proposed subsidiaries which have, within two years immediately preceding the publication of the prospectus, been issued, or which are proposed to be issued, for cash, the price and terms upon which the shares or debentures have been or are to be issued and, if not already fully paid, the dates when any instalments are payable.

**40.** Particulars of any shares or debentures of the company or any of its subsidiaries and proposed subsidiaries which are under option, or agreed conditionally or unconditionally to be put under option, with the price to be paid for the securities under option, the duration of the option, the consideration for which the option was granted, and the name

*Companies Bill, 2018*

and address of the grantee, but where the option is to the shareholders or debenture holders or a class of the shareholders or debenture holders it shall be sufficient, so far as names are concerned, to record that fact without giving the names and addresses of the grantees.

41. Where property has been acquired or is proposed to be acquired by the company or any of its subsidiaries and proposed subsidiaries, except where the contract for its acquisition was completed and the purchase money fully paid, more than two years before the date of publication of the prospectus, or entered into in the ordinary course of business and there is no connection between the contract and the invitation,

- (a) the names and addresses of the vendors, and
- (b) the amount paid or to be paid in cash, shares, debentures or otherwise to the vendor and, where there is more than one separate vendor or the company or subsidiary or proposed subsidiary is a sub-purchaser, the amount so paid or to be paid to each vendor, distinguishing between the amounts paid or to be paid,
  - (i) in cash,
  - (ii) in shares,
  - (iii) in debentures,
  - (iv) the nature of, and value attributed to any other consideration, and
  - (v) the amount paid or payable for goodwill;
- (c) full particulars of the nature and extent of the interest, direct or indirect, of every director or proposed director of the company or any of its subsidiaries and proposed subsidiaries in that property; and
- (d) particulars of the transactions relating to that property which were entered into or completed within the two years immediately preceding the date of publication of the prospectus.

42. Unless more than two years have elapsed since the registration of the company,

- (a) the amount or estimated amount of the expenses incidental or preliminary to the promotion and registration of the company and by whom those expenses have been paid or are payable;

*Companies Bill, 2018*

- (b) the names of the promoters of the company;
- (c) the amount of the cash or securities paid, or benefit given or proposed to be given to a promoter and the consideration for the payment or benefit; and
- (d) full particulars of the nature and extent of the interest of every director and proposed director in the promotion of the company.

43. Where the prospectus includes a statement purporting to be made by an expert, a statement that the expert has given and has not withdrawn the written consent of the expert to the publication of the prospectus with the statement included in the form and context in which it is included.

44. The dates of, parties to, and general nature of, every material contract, other than contracts entered into in the ordinary course of business or completed more than two years before the date of publication of the prospectus.

45. (1) A reasonable time, not being less than twenty-eight days during which, and place at which, the following documents, or certified copies of those documents may be inspected, namely,

- (a) the company's constitution;
- (b) where the invitation relates to debenture, the debenture trust deed;
- (c) each contract disclosed pursuant to paragraph 44 of this Schedule or, in the case of a contract not reduced into writing, a memorandum giving full particulars of the contract;
- (d) the financial statements, consolidated accounts and reports required to be circulated to the members and debenture holders of the company in accordance with section 128 of the Act, for the five financial years of the company immediately preceding the date of publication of the prospectus or, if the company has been incorporated for less than five years, for the number of years in respect of which it has or should, in accordance with section 128, have circulated the accounts and reports;
- (e) the financial statements of every subsidiary and proposed subsidiary of the company and of every business acquired or to be acquired by the company for each of its five financial

*Companies Bill, 2018*

years immediately preceding the date of publication of the prospectus, or, if a subsidiary or proposed subsidiary has been incorporated or a business has been carried on for less than five years, for the number of financial years completed since its incorporation or commencement except that this subparagraph shall not apply to the financial statements of a subsidiary or business in respect of any financial years in which the profits or losses and assets and liabilities of the subsidiary or business are dealt with in the accounts or consolidated accounts of the company;

- (f) the other reports, letters, balance sheets, valuations and statements by an expert any part of which is extracted or referred to in the prospectus; and
- (g) a written statement, signed by the accountants making the reports required under Part Two of this Schedule, setting out the adjustments made by them in arriving at the figures shown in their report and giving the reasons for the adjustments.

(2) If the whole or a part of any of the above-mentioned documents is in any other language, a certified translation of the document or of the parts of the document shall be made available in a language acceptable to the Registrar for inspection instead of the original or a certified copy.

**46.** The names and addresses of the accountants making the reports required under Part Two of this Schedule.

**PART TWO**

**REPORTS TO BE SET OUT**

**47.** (1) A report by accountants duly qualified under section 138 of the Act to be appointed auditors of the company,

- (a) with respect to the profits or losses of the company in respect of each of the ten completed financial years immediately preceding the publication of the prospectus, or in respect of each of the financial years since the incorporation

*Companies Bill, 2018*

of the company if this occurred less than ten years before the publication and if the last financial year of the company ended more than three months before the date of the publication of the prospectus, with respect to the profits or losses from the end of the last financial year to the latest practicable date not being less than three months before the date of the publication of the prospectus;

- (b) where the company is a holding company, in lieu of the report required by subparagraph (a) of this paragraph, a like report with respect to the profits or losses of the company and of its subsidiaries, so far as the profits or losses can properly be regarded as attributable to the interests of the company;
- (c) with respect to the assets and liabilities of the company as at the end of its last financial year or, if the financial year ended more than three months before the date of publication of the prospectus, as at the latest practicable date not being less than three months before the date of publication of the prospectus;
- (d) where the company is a holding company, in lieu of the report required by subparagraph (c) of this paragraph, a like report with respect to the assets and liabilities of the company, and of its subsidiaries so far as the assets can properly be regarded as attributable to the interests of the company;
- (e) with respect to the aggregate emoluments paid by the company to the directors of the company or an associated company during the last period for which the accounts have been made up, and the amount by which the emoluments would differ from the amounts payable under any arrangements in force at the date of publication of the prospectus; and
- (f) with respect to any other matters which appear to the accountants to be relevant having regard to the purpose of the report.

*Companies Bill, 2018*

(2) In making the report the accountants shall make the adjustments that are in their opinion appropriate for the purposes of the prospectus.

**48.** (1) Where within the ten years immediately preceding the publication of the prospectus the company has acquired a business or a subsidiary, or where at the date of the publication of the prospectus the company proposes to acquire a business or a proposed subsidiary, a report in a manner stated in this paragraph by accountants duly qualified under section 138 of the Act to be appointed auditors of the company,

(a) with respect to the profits or losses of that business or subsidiary or proposed subsidiary in respect of each of the ten financial years immediately preceding the publication of the prospectus, or in respect of each of the financial years since the commencement of that business or the incorporation of that subsidiary or proposed subsidiary if that occurred less than ten years before the publication of the prospectus, and if the last financial year of that business, subsidiary or proposed subsidiary ended more than three months before the date of the publication of the prospectus, with respect to the profits or losses from the end of the last financial year to the latest practicable date not being less than three months before the date of the publication of the prospectus; but

- (i) the report shall deal with any of the profits or losses of a subsidiary or proposed subsidiary that can properly be regarded as attributable to the interests of the company;
- (ii) where the report relates to a financial year before the subsidiary became a subsidiary of the company or relates to a proposed subsidiary only any of its profits or losses shall be regarded as attributable to the interests of the company which would have been properly so attributable if the company had held the securities in the subsidiary or proposed subsidiary which it holds at the date of publication of the prospectus or proposes to acquire;



*Companies Bill, 2018*

- (iii) where the subsidiary or proposed subsidiary has itself subsidiaries the report shall be extended to the profits or losses of the subsidiary or proposed subsidiary and its subsidiaries so far as those profits or losses can properly be regarded as attributable to the interests of the company; and
    - (iv) the report required by this paragraph need not extend to a period in respect of which the profits or losses of that business or the appropriate part of the profits or losses of that subsidiary are dealt with in the report required under paragraph 47;
  - (b) where a business or subsidiary has been acquired since the latest date to which the accounts of the company have been made up, or where the company proposes to acquire a business or a proposed subsidiary, with respect to the assets and liabilities of that business or that subsidiary or proposed subsidiary as at the end of its last financial year or, if the financial year ended more than three months before the date of publication of the prospectus, as at the latest practicable date not being less than three months before the date of publication of the prospectus but
    - (i) the report shall deal with the assets and liabilities of the subsidiary or proposed subsidiary so far as the assets and liabilities can properly be regarded as attributable to the interests of the company;
    - (ii) in relation to a proposed subsidiary only the assets and liabilities shall be regarded as attributable to the interests of the company which would have been properly so attributable if the company had held the securities in the proposed subsidiary which it proposes to acquire;
    - (iii) where the subsidiary or proposed subsidiary has itself subsidiaries the report shall be extended to the assets and liabilities of that subsidiary or proposed subsidiary and its subsidiaries so far as those assets and liabilities can properly be attributable to the interests of the company;
  - (c) with respect to any other matters which appear to the accountants to be relevant having regard to the purpose of the report.
- (2) In making the report, the accountants shall make the adjustments, that are in their opinion appropriate for the purposes of the prospectus.

*Companies Bill, 2018*

**ELEVENTH SCHEDULE**

*(Section 354)*

**Fees payable to the Registrar**

ITEM	SUBJECT	FEES
1.	For registration of a company with shares .	GH¢ 120.00
2.	For registration of a company limited by guarantee.	GH¢ 120.00
3.	On conversion of a company limited by shares to a company limited by guarantee for registration of the conversion including a change of name and the issue of a certificate to that effect.	GH¢ 100.00
4.	On change of name otherwise than on conversion of company limited by shares to a company limited by guarantee for registration of new name and the issue of a certificate to that effect.	GH¢ 50.00
5.	For reservation of a name pursuant to sub section 13 of section 21.	GH¢ 25.00
6.	For the filing of any annual returns pursuant to section 126.	GH¢ 35.00
7.	For registration of any statement in lieu of prospectus pursuant to section 286.	—
8.	For registration of any prospectus pursuant to section 291.	—
9.	For registration of document delivered by an external company pursuant to section 313.	US\$1000.00 or its Ghana Cedi equivalent

*Companies Bill, 2018*

10.	For obtaining the consent of the Registrar to the invitation of deposits pursuant to section 299 including the registration of any advertisement or circular in connection therewith.	—
11.	For registration of financial statements of an external company pursuant to section 317.	US\$ 500.00 or its Ghana Cedi equivalent
12.	For registration of any document other than a document in connection with the above items.	GH¢ 20.00
13.	For registration of any document other than a document in connection with the above in respect of an external company US\$ 200.00 or its Ghana Cedi equivalent.	US\$ 200.00 or its Ghana Cedi equivalent

Date of *Gazette* notification: 20th April, 2018.



## **Companies Bill, 2018**

### MEMORANDUM

The purpose of the Bill is to amend, consolidate and revise the law relating to companies and reproduce substantially with amendments the Companies Act, 1963 (Act 179). Even though to a large extent it is a statutory re-enactment of the Companies Code, it also reflects several novel concepts in company law pertinent to new trends in business practices. It is intended to enhance significantly, the legal and regulatory framework for doing corporate business in the country.

Company legislation in Ghana dates from the year 1907 when the Companies Ordinance was enacted. Its introduction had been accentuated partly by the influx of a number of South African companies, especially in the mining sector, and the growth of the then perceived advance of the economy. The 1907 legislation was a mere re-enactment of the English Companies Act of 1862. But then in 1907, the English 1862 Act was already obsolete and amendments were made in the United Kingdom to turn it into the Companies (Consolidation) Act, 1908. Until the appointment of the Gower Commission in August 1958, the 1907 Ordinance, almost without an amendment, remained the only statute law in dealing with companies.

The Gower Commission gave the private sector and the business community the opportunity to be heard. Their views were taken into consideration and resulted in a new approach to company legislation which informed the Gower recommendations and formed the basis of the Companies Code, 1963 (Act 179).

The Companies Code, 1963 now called the Companies Act, 1963 (Act 179), pursuant to the Laws of Ghana (Revised Edition) Act, 1998 (Act 562), has stood the test of time. It has been amended only five times in over forty years of its existence. Provisions relating to mutual funds and unit trusts have been omitted in the Bill as they have been comprehensively dealt with by the Securities Industry Act, 2016 (Act 929).

The present re-enactment maintains as much as possible the language of the 1963 legislation so that the Final Report of the Commission of Enquiry into the working and administration of the Company Law of Ghana would still be of assistance when problems of interpretation arise bearing in mind section 10 of the Interpretation Act, 2009 (Act 792). A Supplementary Report to the Gower Commission's Report reflects the new provisions embodied in this Bill and advances in company law learning.

## **Companies Bill, 2018**

Professional bodies and interest groups met in Accra on the 26<sup>th</sup> of February and the 29<sup>th</sup> of April in 2003 on the 1963 legislation as part of the Law Revision exercise. The various comments and criticisms have been taken into account in revising the 1963 legislation.

Further initiatives were undertaken in 2008 towards soliciting the concerns of the public with a view to incorporating the new trends in company law practice. A Committee of Experts with Justice S. K. Date-Bah as the chairperson was appointed in April 2008 to take responsibility for developing further proposals for the revision of the Companies Act, 1963 (Act 179) based on the concerns of the public and initiatives proposed by the Committee of Experts. Proposals developed reflect the Committee's initiatives and the memoranda and comments received from the general public, in particular the local business community. Several major workshops were held in 2008 in Accra, Kumasi and Tamale to discuss the proposals developed by the Committee of Experts. An Interim Report prepared by the Committee of Experts elaborated its proposals for reform and crystallised the concerns of the general public on their proposals. This report constituted the initial drafting instructions for the preparation of the novel provisions in the Bill. Subsequent to the presentation of the first report, the Committee of Experts engaged in further consultations with identified stakeholders at a plenary session held in Koforidua in October, 2009 to obtain further views to fine tune its conclusions on the reforms proposed.

The highlights of the Committee of Expert's policy recommendations are reflected in the Bill and represent the reforms of a new legal framework to improve the regulatory environment for business and achieve private sector growth.

Over the past decades, a small minority of companies have hidden their business dealings behind a complicated web of shell companies. This cloak of secrecy has fuelled global corruption, money laundering, and the movement of other illicit flows.

The cloak of secrecy has also enabled corrupt individuals to hide their moneys. This has resulted in the fact that most businesses and governments do not know who they are dealing with and this is unfair to citizens who abide by the rules. The Panama Papers which are an unprecedented leak of about eleven point five million files from the database of the world's fourth biggest offshore law firm, have shown that Government needs to continue to take firm action on increasing beneficial ownership transparency.

## **Companies Bill, 2018**

Critical to making beneficial ownership transparency a tool for fighting corruption and detecting inappropriate government conflicts of interest is the identification of beneficial owners who are politically exposed persons. The Bill therefore requires the identification of members and beneficial owners of companies who are politically exposed persons and for this information to be submitted to the Registrar for registration.

There is a global emerging consensus that central registers of companies are the most effective way of indicating information on the beneficial owners of a company; and the information obtained from these registers are the most effective way of tackling corruption.

The benefits of requiring companies to keep registers include the fact that businesses can identify who really owns the companies they are trading with; countries will have easy access to the data entered in the register, so that they know who they are really going into business with; and civil society and citizens may use information entered in the register to fight corruption.

Moreover, law enforcement agencies would have easy access to critical information required to undertake their mandate.

Chapter One of the Bill (*clauses 1 to 5*) deals with preliminary provisions. The provisions relate to the application of the Act, application of particular Chapters, prohibition of any association exceeding twenty members, companies formed for special purposes and saving of equity and common law.

Chapter Two of the Bill (*clauses 6 to 279*) which is made up of twenty-four parts (Part A – X) applies to every company and provides a regime for the formation, incorporation, and capacity of companies. Other matters dealt with in this Chapter relate to the company's constitution of a company, membership of companies, shares, stated capital and dividends, debentures and branch registers. The subjects of registration of charges, the registered office of companies, accounts and audit and acts by or on behalf of a company are also dealt with in this Chapter. Provisions on meetings and resolutions, directors, the Company Secretary, arrangements and mergers, receivers and managers, winding up and documents are the additional content of Chapter Two.

It is important to note that in connection with the formation of a company, the age of majority proposed for the incorporation of a company has been reduced from twenty-one years to eighteen years.

## Companies Bill, 2018

This is to bring it in line with the voting age. Furthermore, pre-incorporation contracts are required to be submitted for ratification by a company no later than eighteen months after incorporation.

Even though the distinction between private companies and public companies is retained, the Bill draws a marked distinction between the suffix for public companies limited by shares and private companies limited by shares.

The modalities for the incorporation of companies have been given significant consideration in terms of expediency and the ease of doing business. In effect, the application process for incorporation is now a one step process by which all vital information for the purposes of the incorporation of a company is filed with the Registrar at once. In other words, the requirement of a certificate to commence business is no more considered necessary in view of the short circuit process of incorporation.

Another salient matter is the filing of the constitution of a company previously termed as “Regulations”. The replacement of the term “Regulations” with the word “constitution” or expression “registered constitution” is to give the advantage of aligning Ghana with jurisdictions that have adopted a unitary company constitution. To achieve efficiency and relative simplicity, the Bill provides for the default constitutions set out in the Second, Third and Fourth Schedules. One of the constitutions set out in the Schedules is deemed to be the constitution of a company depending on whether the company is a private, public or non profit making one. However, the Bill takes cognisance of the fact that, a company may choose to depart from the provisions of the relevant Schedules in which case it provides for the filing of a registered constitution accordingly.

A policy recommendation reflected in the Bill is that of the complete abolition of the *ultra vires* doctrine which has already been partially abolished by the existing Companies Act, 1963 (Act 179). The import of this is that, the actions of a company shall not be invalidated as against third parties on grounds of *ultra vires*. This however does not preclude actions being brought against members of the company and the seeking of reliefs in the best interests of a company.



## **Companies Bill, 2018**

In view of the application of international accounting and auditing standards, this Chapter of the Bill evinces some changes as regards terminology. References in the Companies Bill to 'profit and loss account' have been replaced with the terminology of 'financial statement' and 'consolidated financial statement'. The Bill also reflects the adoption of current international accounting standards of the International Federation of Accountants.

As compared to Act 179, the Bill has synchronised the qualifications for auditors in both public and private companies by providing similar qualifications for both categories. Furthermore, the cluster of provisions on auditors have been brought under one part for ease of reference and consistency.

Provisions in this Chapter bring to the fore a new dimension to the division of powers between the General Meeting of a company and the Board of Directors. The new concept of major transactions is introduced.

This Chapter also takes a new position on the use of the common seal of a company. The sole requirement of the corporate common seal of a company has been dispensed with. In view of this, the Bill reflects some consequential changes to other provisions in the Bill. The import of these provisions is not the single requirement of the corporate common seal but alternatively the signatures of two directors and the company secretary. The reason for making this change is to provide for greater simplicity in company administration.

In the Bill, majority of the provisions on the proceedings of meetings of a company have been incorporated in the Eighth Schedule.

The provisions on directors have been consolidated under this Chapter. Of significant note regarding the provisions on directors is the automatic disqualification of a director. The circumstances in which this disqualification is invoked are outlined in the provisions on directors.

The Bill evinces a novel concept that deals with disclosure of potential conflict of interests of directors. This alters the position in Act 179 which required that directors' interests be recorded in the minutes of directors' meetings. The introduction of this concept requires potential conflict of interests to be entered in the Interests Register.

## **Companies Bill, 2018**

Another useful innovative concept expressed in Chapter Two of the Bill, relates to the use of company information which restricts a director from disclosing company information that would not otherwise be available to a director except for special purposes.

Additional provisions on the qualification of a Company Secretary have been provided for. Unlike the position of Act 179, the Bill makes it mandatory for a person desirous of being a Company Secretary to possess a professional qualification or tertiary level qualification to enable that person perform the requisite functions. Furthermore, the Bill provides additional duties required of a Company Secretary.

The Bill gives consideration to another new concept in company law which is the minority buy-out. The rationale for this is to strengthen the position of minority shareholders by including provisions for compulsory buy-back of the shares of the minority without the intervention of the court.

Even though the provisions on arrangements and amalgamations have not been revised much from what is provided in Act 179, the Bill provides a different rendition for the meanings of the words 'arrangement' and 'amalgamation' (now merger). With respect to the word 'amalgamation' the definition is akin to that provided in the Companies Act, 1963 (Act 179). The word 'amalgamation' which has been replaced with the word 'merger' gives a meaning that connotes the consolidation of companies towards the formation of one company.

Further provisions have been provided for in this Chapter to cater for the service of documents electronically and by facsimile machine. This concept of electronic communication is extended to cover the keeping of books and registers which may also be done electronically.

Chapter Three of the Bill (*clauses* 280 to 285) contains additional provisions applicable to private companies only. These provisions relate to the default in complying with conditions constituting a private company, documents to be annexed to the annual return of a private company, requisitioning extraordinary general meetings and the appointment and removal of directors. Other provisions are for the unanimous agreement by shareholders and the conversion of a private company to a public company.

## Companies Bill, 2018

Chapter Four of the Bill (*clauses* 286 to 311) projects provisions applicable to public companies only. The Chapter contains provisions that deal with the dividends and transfers, annual returns and auditors, extraordinary general meetings and the directors of public companies.

Chapter Five of the Bill (*clauses* 312 to 326) is exclusive to external companies. The clauses in this Chapter provide for the documents, returns and financial statements of an external company. Other matters dealt with relate to local managers, service on the external company, registration of particulars of charges, winding up proceedings and the cessation of business.

This Chapter introduces further provisions on winding up of an external company by taking account of the duties of the liquidator of an external company. It also provides for the winding up of an external company that is engaged in a specified business in the name of a deposit taking business under the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930), a mutual fund company or a life insurance company under the Insurance Act, 2006 (Act 724).

Chapter Six of the Bill (*clauses* 327 to 369) provides for miscellaneous offences and the legal proceedings in Parts A and B. A significant part of Chapter Six (Parts C and D) relates to the establishment of the Office of the Registrar of Companies and its correlative administrative and financial provisions. The establishment of the Office of the Registrar of Companies is the reflection of a major policy decision. The rationale for this is to create a more efficient and self financing autonomous body corporate to deal with the registration and regulation of corporate bodies. However, the Office of the Registrar starts off on a footing of a Category III subvented agency with a view to its conversion to a Category IV subvented agency when commercially viable, in accordance with the Subvented Agencies Act, 2006 (Act 706).

There are some additional significant matters in this Chapter worthy of note. The first relates to the establishment of a *Companies Bulletin* akin to the *Official Gazette*. Its introduction in the Bill is exclusively for the publication of company law matters in the Bill related to the regulation of companies. Its prominence in the Bill is due to the fact that it serves as a channel to access information on companies and to disseminate information about the operations and regulation of companies.

## **Companies Bill, 2018**

Another matter is to do with the payment of fees for matters provided for in this Bill. The fees are to be prescribed by the Office of the Registrar in consultation with the Minister responsible for Finance and are to be published in the *Companies Bulletin*.

A further matter deals with the changing terrain for the operation of businesses. The Bill introduces a new dimension to doing business by making provision for electronic applications for incorporation, filing documents, payments and service of notices, sending documents in relation to meetings in electronic form and the transfer of dematerialised holdings and record of securities.

### **CHAPTER ONE PRELIMINARY PROVISIONS**

*Clause 1* states that the Bill applies to all companies formed in the Republic whether before or after the commencement of the Bill. The *clause* also preserves the validity of relevant acts done before the commencement of the Bill. *Clause 2* expresses further the application of the Bill to specific companies namely all companies, private companies, public companies, external and non-Ghanaian companies.

*Clause 3* prohibits the formation of a company or an association which consists of more than twenty persons from carrying on a business that has for its object the acquisition of gain unless it is registered as a company in accordance with this Bill or formed in pursuance of any other enactment.

*Clause 4* connotes a saving provision as it preserves the business of banking, insurance or any other business subject to special regulation from being affected or abrogated. *Clause 5* continues in force the rules of equity and of common law applicable to companies.

# Companies Bill, 2018

## CHAPTER TWO

### PROVISIONS APPLICABLE TO ALL COMPANIES

#### *Part A: Formation and Incidental Matters*

*Clauses 6 to 11* are on the formation and incidental matters. *Clause 6* states the right of a person to form a company. *Clause 7* enumerates the types of companies that can be incorporated namely a company limited by shares, a company limited by guarantee, an unlimited company or an external company. Either of these companies can be a private or public company. *Subclause (5)* specifies the attributes of a private company as a company which restricts the right to transfer shares, limits the total number of members and debenture holders; prohibits the company from making an invitation to the public to acquire shares or debentures of the company and finally prohibits the company from making an invitation to the public to deposit money for fixed periods or payable at call irrespective of bearing interest. This *clause* draws a distinction between companies limited by shares or unlimited companies and companies limited by guarantee. Whereas the former category is required to be registered with shares, the latter category, companies limited by guarantee, cannot be registered with shares or create shares.

*Clause 8* provides for companies limited by guarantee. These companies can only be lawfully incorporated for the purpose of making profits for the furtherance of their objects. The *clause* provides a correlative penalty for its contravention. It also states the liability of members of such a company to be not less than the amount of money specified in the application required for incorporation.

The conversion of a company limited by shares to a company limited by guarantee is provided for in *clause 9*. This *clause* states the conditions precedent to the conversion. Associated with the conversion is the change of name which is restricted to compliance with *clause 21* or the approval of the Registrar in the case where the name used appears misleading or undesirable.

*Clause 10* clearly spells out who a promoter is and the duties of a promoter. Of significant note is the nature of the relationship of a promoter with the respective company. This is intended to be a fiduciary one and as such, the *clause* makes a promoter accountable for property or information acquired for the company. Conditions for rescinding a transaction between a promoter and the company are stated in *subclause (5)*.

## **Companies Bill, 2018**

*Clause 11* relates to the ratification of pre-incorporation contracts. The time frame within which these contracts may be ratified is eighteen months.

### *Part B: Incorporation of Companies*

*Clauses 12 to 17* are on the incorporation of companies. *Clause 12* provides a person of age eighteen years and above with the right to apply for the incorporation of a company. *Clause 13* outlines the process and requirement for the application for incorporation of a company. As part of the process of application, the subscriber is required to sign and indicate the number of shares that are taken but must take at least one share. In *clause 14*, the Registrar is required to certify the incorporation of a company and the liability of its members in the case of a limited liability company.

*Clause 15* provides that the certificate of incorporation or a copy of that certificate, certified as correct by the Registrar, is conclusive evidence that the company has been duly incorporated under the Bill and that proceedings shall not be brought in a court to cancel or annul the incorporation. *Clause 16* states that *clause 15* does not preclude the institution of proceedings to wind up the company in accordance with *clause 257*.

*Clause 17* provides that where there is an error or omission in a document containing particulars delivered to the Registrar under *clause 13*, the company and every signatory of the document is without limiting *clause 329*, liable to pay to the Registrar, an administrative penalty of one hundred and fifty penalty units. These penalties affect the company and its officers in default.

### *Part C: Capacity of Companies*

*Clauses 18 to 22* are on the capacity of companies. *Clause 18* relates to the powers of companies. It draws a distinction between a company with a default constitution as that provided in the relevant Schedule of the Bill and a company with a registered constitution. The latter case provides for the restriction of the capacity of the company by virtue of a provision contained in the registered constitution.

## Companies Bill, 2018

*Clause 19* reflects the abrogation of the ultra vires doctrine. By this *clause*, the actions of a company shall not be invalidated as against third parties on grounds of *ultra vires*. This however does not preclude actions being brought against members of the company and the seeking of reliefs for the best interests of a company.

*Clause 20* deals with the alteration of objects or business. In this *clause*, a company may change the business for which it was incorporated to carry on or in the case of a company not formed for the purpose of carrying on a business, its objects by special resolution.

Details on the use of the name of a company, the change of a name and the correlative time frames for compliance with the change of name are provided for in *clause 21*. *Subclause (9)* provides that where a company defaults in complying with a direction under *subclause (6), (7) or (8)*, the Registrar shall change the name of the company in the Register. *Subclause (14)* states that a change of name by a company does not affect the rights or obligations of the company or render defective legal proceedings by or against the company, and legal proceedings that might have been continued or commenced against the company by its former name can continue or commence against it by its new name. *Clause 22* deals with the reservation of a name for a company. A time limit of two months is placed on the reservation of a name pending the due registration of the company.

### *Part D: The Company's Constitution*

Provisions on the company's constitution are provided in *clauses 23 to 32*. In *clause 23*, a company has the option to have a registered constitution which must be certified and delivered by the subscriber to the Registrar before incorporation or after incorporation where the constitution is adopted or amended after incorporation. *Clauses 24 and 25* provide for and distinguish the effect of the Bill on a company with a registered constitution and without a registered constitution.

*Clause 26* indicates the contents of a registered constitution which include the name of the company, the names of the first directors, and the powers of the directors and shares of the company where applicable. The objects and nature of business which the company is authorised to carry on need not be stated.

## Companies Bill, 2018

*Clause 27* outlines the form of constitutions including unlimited constitutions. References are made to the correlative Second, Third and Fourth Schedules. In the case of a registered constitution, it is required to be printed, type written or in any other legible form acceptable to the Registrar.

*Clause 28* requires subscription to a constitution to be done by one or more subscribers in the presence of a witness who shall attest to the signing.

In *clause 29*, the effect of a company constitution is expressed as a contract under seal between the company and each member or officer and between the members or officers themselves. *Subclause (4)* places some restriction on the provisions of a registered constitution. It invalidates a registered constitution which is inconsistent with the Bill.

Matters that relate to the adoption, alteration and revocation of a constitution are the content of *clause 30*. The adoption, alteration and revocation must be done by special resolution of the shareholders or members of a company and subject to conditions provided in the *clause* and the Bill. Provision is made in *clause 31* for a new constitution and also empowers the Registrar to require by notice in writing a company to deliver a single document that incorporates the provisions of the actual constitution of a company and amendments to that constitution.

*Clause 32* requires a company to furnish members with copies of its registered constitution where applicable and amendments to the constitution. A penalty is provided for a company in default.

### *Part E : Membership of Companies*

*Clause 33* specifies the status of subscribers to the incorporation of a company and members and their correlative rights. This *clause* also links the tenure of membership of a company with shares, with the shares or circumstances of death. Tenure of membership of a company limited by guarantee continues until death, retirement or exclusion from membership.

The voting rights of members at meetings and the register of members are provided for in *clauses 34* and *35* respectively. In *clause 36*, the time period for the opening and inspection of the register is stated, indicating that members can inspect free of charge and non members for a fee.



## Companies Bill, 2018

Despite a company's obligation to open the register of members during business hours in *clause 36*, *clause 37* empowers a company to close the register for a period not exceeding in the whole, thirty days in each year by giving notice in the form of advertisement in a daily newspaper. *Clause 38* creates an avenue of redress for aggrieved persons, members of a company or the company to rectify the register by application to the court. However a company on its own initiative may rectify an error or omission in the register of members provided that the person concerned agrees to the rectification. In *clause 39*, the register of members is evidential of matters required by the Bill to be inserted in the register.

*Clause 40* enjoins a member of a company with shares, before winding up to contribute to the balance of the amount payable as regards the shares held by that member in accordance with the terms of the agreement under which the shares were issued or in accordance with a call validly made by the company. The *clause* also extends the liability to contribute to the assets of the company to past members where the debts and liabilities of the company and the costs of winding up have to be met.

*Clause 41* prohibits a company from conducting business for more than six months without at least one member and makes the directors jointly and severally liable for payment of all the debts and liabilities of the company incurred during the said period.

### *Part F: Shares*

*Clause 42* states that the legal nature of shares that a member holds in a company is a personal estate and does not form part of a real estate, nor is it immovable property. Another characteristic of a share created or issued under this Bill is indicated in *clause 43* which describes it as a share of no par value.

*Clauses 44* and *45* provide for the issue of shares and the payment of shares respectively. It is important to note that *clause 45* states the position of the commensurate value for shares. The first scenario is that except on a capitalisation issue, shares must be paid for in cash. The second scenario is that shares may be obtained with consideration other than cash provided that, there is a written contract to that effect duly stamped and evidencing

## Companies Bill, 2018

the terms of the agreement and true value of the consideration or particulars in the prescribed form of the agreement duly stamped and registered.

*Clause 46* mandates a company which issues shares other than a re-issue of treasury shares to deliver within twenty-eight days to the Registrar for registration, a return in the prescribed form indicating details of stated capital, number or authorised shares of each class, total number of treasury shares and the total number of issued shares. *Clause 47* provides the penalties for non compliance with *clause 45* or *46*.

*Clause 48* states the meaning of payment in cash for shares. This is tied to the time of receipt of cash and to deduction of cash payment made for the sale of property or the rendering of services in connection with the purchase of shares.

*Clause 49* deals with the classification of shares and indicates that shares are not of the same class unless they rank at the same rate for all purposes. The classification of shares is elaborated on in *clause 50* which prohibits the variation of rights associated with a class of shares unless provided for in the constitution of a company. It must be noted that the rights of a dissenting minority to apply to the court to have a variation of class rights cancelled have been excluded in this clause. This was the former position but in view of *clause 220* which postulates the novel buy-out provision, this right has been dispensed with.

*Clause 51* draws a distinction between a preference share and an equity share. Whilst *clause 52* defines the suspension and voting rights of preference shares, *clause 53* defines the voting rights of equity shares.

*Clause 54* enumerates the cannons of construction of class rights. *Clause 55* mandates a company to deliver to a registered holder of a share, a share certificate within two months after the issue of any of its shares or after registration of the transfer of a share. The certificate must have been certified by two directors and the Company Secretary. *Subclause (2)* imposes further obligations on a company for the renewal of a share certificate.

*Clause 56* delineates the full effect of a share certificate. The right of a company to reserve the unpaid liability on its shares is provided for in *clause 57*.

## Companies Bill, 2018

*Clause 58* specifies the prohibited transactions in shares by a company. The *clause* prohibits a company from altering the number of its shares, releasing its shareholders in respect of liability on shares, providing financial assistance for the subscription and purchase of its shares and prohibits the acquisition of the shares of a company by its holding company as well as provides for sanctions for the contravention of the prohibitions. In effect, a company in the management of its shares is restricted in what it can do.

*Clause 59* indicates the modes for the alteration of the number of shares in a company. This can be done by increasing, reducing or consolidating the shares.

*Clause 60* provides exemptions from the prohibitions provided in *clause 58*.

*Clause 61* limits the application of *clause 58* which prohibits the acquisition by a company of its own shares to circumstances enumerated in *clause 61*. *Clause 62* specifies the conditions under which a company can redeem its redeemable preference shares. Relief is provided in this *clause* for a shareholder by application to the court where a company fails to redeem shares within twenty-eight days after service of notice to redeem.

Although *clause 63* generally precludes a company from purchasing its own shares, it spells out circumstances where a company can purchase its own shares. *Clause 64* places a limit on the number of shares acquired by a company. *Clause 65* authorises a company to open a share deals account when it first redeems or purchases any of its shares otherwise than on redemption of redeemable preference shares out of the proceeds of a fresh issue of shares in accordance with paragraph (b) of *subclause (1)* of *clause 62*. This *clause* also spells out the processes of debiting and crediting the share deals account.

*Clause 66* represents a waiver or modification provision in relation to a company which is for the time being an authorised mutual fund. *Clause 67* deals with the acquisition of shares by a holding company.

### *Part G: Stated capital and dividends*

*Clause 68* generally defines what constitutes stated capital and how it may be reduced. *Clause 69* further defines the amount by which stated capital may be deemed to be reduced. *Clause 70* states the meaning of

## Companies Bill, 2018

“surplus” as the difference between the assets of a company with shares and its liabilities as indicated in its accounts prepared and audited in accordance with *clauses* 127 to 142.

*Clause* 71 states the meaning of “income surplus” and alludes to *clause* 70 for the meaning of “surplus”. *Clause* 72 which is on the legality of dividend payments provides for a more extensive provision on the payment of dividends as compared to that provided for in Act 179. This *clause* provides for greater participation of shareholders of the company in the decision on how the assets of the company are distributed. There is now a time frame within which dividends are to be paid and a company’s constitution may also prescribe modes for the payment of dividend without reference to the shareholders’ resolution subject to their notification of the dividend recommended by the directors. In furtherance of *clause* 72, *clause* 73 makes provision for unclaimed dividend accounts and their management. Responsibilities are assigned to the Registrar and the respective company in pursuance of the management of the unclaimed dividends in *clause* 74.

*Clause* 75 prohibits a company limited by guarantee from paying a dividend or making a distribution or return of its assets to its members. A restriction is placed on the declaration of dividends not recommended by the directors of a company in *clause* 76. The content of *clause* 77 deals with capitalisation issues and non-cash dividends.

### *Part H : Resolutions Reducing Capital, Shares or Liability*

*Clause* 78 deals with matters that require a special resolution and are subject to confirmation by the court. *Clause* 79 outlines the application process for an order of a court to confirm a resolution. *Clauses* 80 and 81 respectively deal with the order confirming the resolution and the requirement of the registration of the order and its correlative minute. *Clause* 82 provides protection for creditors who in view of a debt or claim, oppose the confirmation.

### *Part I: Debentures and Debenture Stock*

*Clause* 83 deals with the issue of debentures, the creation of debenture stock and the ranking of debentures. This *clause* also excludes a debenture holder from being a member of a company despite a provision in the debenture or a company’s constitution.

## Companies Bill, 2018

The specific performance of a contract with a company to take up and pay for a debenture of the company and the documents of title to debentures are the content of *clauses* 84 and 85. *Clause* 86 deals with the effect of statements in debentures.

Perpetual debentures and convertible debentures are the subjects of *clauses* 87 and 88. It must be noted that, matters on debentures concerning documents of title, *clause* 85 and convertible debentures, *clause* 88 are subject to the application of the Central Securities Depository Act, 2007 (Act 733).

The characteristics and effect of debentures secured and unsecured or naked are dealt with in *clause* 89. *Clause* 90 defines what a floating charge is and its effect on a company's assets. *Clause* 91 outlines the circumstances where the court may appoint a receiver or manager as the case may be when a fixed or floating charge becomes enforceable. Whilst *clause* 92 relates to the payment of preferential creditors out of assets that are subject to a floating charge, *clause* 93 deals with the limitation of efficacy of floating charges in liquidations. *Clause* 94 states that *clauses* 244 to 256 applies to the appointment of receivers by or on behalf of debenture holders.

Provision is made in *clause* 95 for the appointment of trustees for debenture holders to safeguard the rights of the debenture holders and to exercise the rights, powers and discretions conferred on them as trustees by the trust deed. *Clause* 96 deals with the meetings of debenture holders which a trust deed may provide for or which a Registrar may direct. The modalities for the re-issue of a debenture are contained in *clause* 97.

### *Part J : Transfer of Shares and Debentures*

*Clause* 98 broaches the subject on dealings with shares by indicating the restrictions on the transfer of shares. A written transfer of shares has no restriction but a company's constitution can impose restrictions. *Clauses* 99 and 100 provide respectively for the register of debentures and the restrictions on the transfer of debentures. The restriction on the transfer of debentures may be imposed by virtue of the terms of a debenture, *clause* 100.

## Companies Bill, 2018

*Clause 101* proscribes entries into the register of members of any notice of a trust, express, implied or constructive or of any equitable, contingent, future or partial interest in a share or debenture or a fractional part of a share or debenture. The *clause* contains further conditions and restrictions for the registration of transfer of shares and debentures.

*Clause 102* specifies the circumstances in which shares or debentures may be transferred by operation of law. *Clause 103* affords protection to beneficiaries of shares or debentures or the dividends or interest on those shares or debentures. However, this *clause* does not apply to a company the shares of which are dealt with by virtue of a scheme established under the Central Securities Depository Act, 2007 (Act 733).

*Clause 104* provides for the certification of transfers but excludes its application to a company with shares operated by virtue of a scheme established under the Central Securities Depository Act, 2007 (Act 733).

*Clause 105* which deals with a company's lien on shares subjects its application to the Central Securities Depository Act, 2007 (Act 733) in the case of a company with shares. Furthermore, it is stated that the company's lien shall not extend to shares on which there does not exist an unpaid liability.

### *Part K : Branch Registers*

*Clause 106* empowers a company that has shares to keep in a country outside the Republic, a branch register of shareholders or debenture holders residing in that country or in any other country outside the Republic. The regulation regarding the keeping of branch registers, inspection of the register, conditions for registration of shares or debentures and the discontinuance of a branch register are the content of *clause 107*. *Clause 108* makes an exemption for an instrument of transfer of a share or debenture registered in a branch register. *Clause 109* deals with branch registers kept in the Republic in respect of which the Minister may by legislative instrument direct the application of *clauses 36* and *38* on the inspection and rectification of the register.

### *Part L : Registration of Particulars of Charges*

*Clause 110* deals with the registration of particulars of charges created by companies. It indicates the requisite particulars for the creation of a valid charge. The *clause* also excludes a category of charges that are not

## Companies Bill, 2018

affected by the application of the *clause*. *Clause* 111 deals with charges to secure fluctuating amounts and modifies the particulars required for the creation of a valid charge under *subclause* (6) of *clause* 110.

*Clauses* 112 and 113 deal respectively with charges on property acquired and existing charges. *Clause* 114 authorises a company to send to the Registrar for registration the particulars required to be sent under *clauses* 110 to 113. *Clause* 115 mandates the Registrar to keep with respect to each company, a register of the particulars duly delivered pursuant to *clauses* 110 to 113, to enter the particulars in the register and to provide a certificate as conclusive evidence of the registration of particulars of the charge registered.

*Clause* 116 places a responsibility on a company to endorse the registration of debentures. It also provides a penalty for a false endorsement or delivery of a false endorsement. *Clause* 117 deals with the entry of satisfaction on discharge making the Registrar responsible for this. *Clause* 118 makes provision for the rectification of the register of particulars of charges.

*Clause* 119 deals with the registration of enforcement of security. A responsibility to ensure good record keeping is imposed on a company under *clause* 120. A company is required to keep a copy of every instrument creating a charge of particulars required to be registered in accordance with *clauses* 110 to 113 at the registered office of the company and at any other office in the country at which its register of debenture holders is kept. *Clause* 121 states that the effect of registration of particulars under *clauses* 113 to 120 constitutes actual notice of the particulars.

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

*Clause* 122 requires a company to have a registered office within twenty-eight days after the date of its incorporation. Other requirements are a telephone contact, post office box address and electronic mail address. The *clause* imposes a penalty in case of default by the company. *Clause* 123 requires a company to give the Registrar notice of the location of a registered office or a change in location of its registered office.

## Companies Bill, 2018

*Clause 124* makes provision for the Registrar to require a company to change its registered office address despite the fact that the original address technically complies with the requirements of *clause 122*. The *clause* also provides for the right of appeal to the court from the Registrar's decision. The rationale is to address cases where there appears to be an intentional obscurity by way of the provision of insufficient information.

Details of how a company should publicise its name as a company are the content of *clause 125*. These details relate to its conspicuous position, its common seal, and the location of its name on letters, invoices, receipts, notices and negotiable instruments. Penalties are provided for persons who use the seal of the company or sign on behalf of the company inaccurately or in error.

*Clause 126* deals with the delivery to the Registrar by the company, of the company's annual return for registration. Delivery must relate to matters specified in the Fifth Schedule. This *clause* of the Bill presents a revised position in terms of the time frame for the submission of the annual return. The period for filing the annual return of a company has been reduced from forty-two days to thirty-six days. Where a company defaults in complying with this *clause*, every officer of the company and the company are liable to a fine.

### *Part N : Accounts and Audit*

*Clause 127* deals with the keeping of books of account and the preparation of financial statements. This *clause* states the import of keeping proper books of account. *Subclause (4)* indicates where the books of account should be kept and requires them to be open to inspection by the directors, Company Secretary and auditors of the company. *Subclause (5)* requires the financial statements to comprise an income statement, balance sheet, cash flow statement and summary of significant accounting policies and explanatory notes. It must be noted that paragraph *(b)* of *subclause (5)* sets a standard for the preparation of the statements which must comply with international financial reporting standards approved by the Institute of Chartered Accountants, Ghana or any other standards approved or adopted by the Institute.



## Companies Bill, 2018

*Clause 128* deals with the circulation within eighteen months after incorporation of a company, of financial statements, the directors' report and the auditors' report to members of the company and debenture holders whose addresses are known. The same information is required to be laid before the company in a general meeting. Of significant note is the use of new terminology as regards the provisions on accounts. References to income statement, balance sheet and cash flow statements are now termed financial statements and references to group financial statements is now termed consolidated financial statements.

*Clause 129* provides the relevant period over which financial statements prepared should cover. Similarly, *clause 130* provides for the state of presentation for a balance sheet.

Consolidated financial statements are dealt with in *clause 131*. This *clause* applies where at the end of a company's financial year, the company has subsidiaries. The consolidated financial statements are expected to give a true and fair view of the profit or loss and of the state of affairs of the company and the subsidiaries dealt with by the consolidated account as a whole.

*Clauses 132* and *133* deal respectively with the particulars of directors' emoluments and pensions and the particulars of amounts due from officers. *Clause 134* supplements *clauses 127* to *133* regarding financial statements including notes on these financial statements.

*Clause 135* makes provision on the signing and publication of financial statements. This *clause* lists the conditions precedent to the publication or circulation of a copy of a financial statement.

*Clause 136* provides for the directors' report. The *clause* specifies the content of the report which include the state of the affairs of the company, particulars of entries in the interests register during the financial year, the total amount of donations made by the company and any subsidiary during the financial year and the amount payable by way of audit fees.

*Clause 137* provides for the auditors' report. The required contents of the report are stated to include the books of account of the company,

## Companies Bill, 2018

financial statements of a company, consolidated financial statements and matters specified in the Seventh Schedule. The introduction of current accounting standards is evinced in this *clause* which requires that the audit of the financial statement be conducted in compliance with international financial standards adopted by the Institute of Chartered Accountants, Ghana and terminology used is subject to approval of the Institute of Chartered Accountants, Ghana.

The qualifications of auditors of both private and public companies are provided for in *clause* 138. The *clause* also enumerates the indices for disqualification of an auditor. The *clause* empowers the Registrar by legislative instrument to disqualify a person otherwise qualified from acting as auditor of a private company and to remove that disqualification at any time.

*Clause* 139 provides for the appointment of auditors. The conditions precedent for this are the consent of the auditor to be appointed as auditor and qualification for the appointment in accordance with *clause* 138. The *clause* also indicates the mode of appointment and the tenure of an existing auditor.

*Clause* 140 indicates how the remuneration due an auditor is determined. The expenses paid or payable by the company in respect of the auditors' expenses are included in the expression "remuneration".

*Clause* 141 states the conditions that must be satisfied before an auditor can be removed. The *clause* also requires that the auditor concerned be heard. *Clause* 142 deals with the functions of an auditor who is required to stand in a fiduciary relationship to the members of the company as a whole. The rights of an auditor are also stated in this *clause*.

*Clause* 143 presents a new position. It prohibits the conflict of interest scenario where an audit firm and its partner and employees engage in relationships that would create a mutual and conflicting interest between the firm and audit client. The effect of this *clause* is applied to the appointment of an auditor appointed to perform the services of a receiver.

### *Part O : Acts by or on behalf of the Company*

*Clause* 144 provides for a company to act through its members in general meeting or its board of directors or through officers or agents

## Companies Bill, 2018

appointed by, or under authority derived from the members in general meeting or the board of directors.

*Clause 145* requires the approval by way of a special resolution at a shareholders' meeting of a major transaction involving the acquisition or disposition of more than seventy five percent of the assets of a company; or the acquisition of rights or interests or incurring of obligations or liabilities the value of which amounts to more than seventy five per cent of the total assets of the company.

*Clause 146* deals with the delegation of powers of the board of directors to committees and managing directors. *Clause 147* indicates the effect of an act of the members in general meeting of the board of directors, or of a managing director while carrying on in the usual way the business of the company to be the act of the company itself with criminal and civil liability as if the company was a natural person.

*Clause 148* defines the acts of an officer or agent of a company as not being the act of the company unless specific circumstances prevail. *Clause 149* states what constitutes constructive notice of registered documents. Apart from the circumstances indicated in *clause 121*, the mere registration of particulars or documents by the Registrar does not constitute constructive notice of registered documents.

The circumstances that invoke the presumption of regularity are enumerated in *clause 150*. *Clause 151* does not absolve a company from liability of an officer or agent of the company who has acted fraudulently or forged a document purporting to be sealed by or signed on behalf of the company.

*Clause 152* deals with the form and validity of contracts and *clause 153* deals with the validity of bills of exchange and promissory notes. *Clause 154* indicates the mode for the authentication of a document or proceeding which is, signing by an officer of the company. An officer is defined in the context of this provision as a director, secretary or any other person authorised by the board of directors or Managing Director of a company to sign on behalf of the company.

*Clause 155* provides a company with a power of attorney to execute deeds on its behalf in a place outside the Republic. *Clause 156* provides for the use of a common seal of the company including a facsimile of the common seal in a territory, district or place outside the Republic.

## **Companies Bill, 2018**

### *Part P : General Meetings and Resolutions*

*Clause 157* deals with annual general meetings. This *clause* states the time period for holding annual general meetings. *Clause 158* provides for extraordinary general meetings. The *clause* indicates when such meetings may be convened. *Clause 159* requires that general meetings be held in the Republic.

*Clause 160* provides for the option to appoint a proxy to attend and vote except that there must be a notice to that effect. The proxy need not be a member of the company. *Clause 161* deals with compliance with proxy arrangements. Reference is made in this *clause* to the correlative Eighth Schedule where details of the arrangements are specified.

*Clause 162* empowers the court to call meetings of a company if it is impracticable to call a meeting of a company in a manner in which meetings of the company may be called, or to conduct a meeting in the manner prescribed by a company's constitution.

*Clause 163* deals with written resolutions including special resolutions. *Clause 164* applies the provisions on general meetings to class meetings. The requirement for the registration of certain resolutions is the content of *clause 165*. *Clause 166* deals with the minutes of general meetings and *clause 167* provides for the inspection of minute books.

*Clause 168* is on members' circulars and *clause 169* is on the governance of proceedings at meetings of a company.

### *Part Q : Directors, Secretary and other Officers of a Company*

*Clause 170* provides an explicit meaning for "directors". The *clause* distinguishes between a duly appointed director and a person who holds out as a director or knowingly allows to be held out as a director.

*Clause 171* states that a company incorporated after the commencement of this Bill should have at least two directors. It provides a penalty for the contravention of this *clause* if after four weeks, a company does not have the required number of directors. The conditions that must be satisfied before a person is appointed a director are stated in *clause 172* and include the consent of the director and a statutory declaration required to be made by the person intended to be director. Other matters provided for in this *clause* relate to the regulation of the appointment of directors and the filling of a casual vacancy. It must be

## Companies Bill, 2018

noted that, this provision changes the previous position on the appointment of directors. *Clause 172* empowers the court to appoint a director on the application of a shareholder or creditor. The power of appointment is not limited to the Registrar.

*Clause 173* enumerates the categories of persons that are not eligible for appointment as directors. By this *clause*, a body corporate is not eligible to act as a director. *Clauses 174* and *175* deal respectively with directors' share qualification and vacation of office of a director. *Clause 176* lays down the procedure for the removal of directors.

*Clause 177* describes the circumstances where a person is restrained from managing a company. In *subclause (2)*, the circumstances where a person is automatically disqualified for appointment as director or to act as a director of a company for a period of five years are enumerated. This covers the offence involving insider dealing. The *clause* further provides a disqualified director with the option to apply for reinstatement before the expiration of the five year automatic disqualification period. In the event of judicial or discretionary disqualification, the category of persons who may apply for an order for disqualification has been expanded by *subclause (6)* to include any member or officer of the company, and a person who can demonstrate an interest in the case.

*Clause 178* requires a director to report to the Board and Company Secretary on the director's disqualification on becoming aware of it. The *clause* provides a correlative penalty for non disclosure or misreporting.

*Clause 179* mandates the board of directors of a company to fill a vacancy of a disqualified director when the company concerned ceases to have the minimum number of directors. *Clauses 180* and *181* provide for substitute directors and alternate directors respectively.

*Clause 182* requires the presence of at least one director of the company resident in the Republic at all times. *Clauses 183* and *184* deal with the roles of executive directors and managing directors.

*Clause 185* provides for the remuneration and other benefits of a director by way of salary, fees payable, compensation for loss of

## Companies Bill, 2018

employment as director or former director, indemnity and insurance. A company's constitution may make provision for these benefits.

*Clause 186* provides a company with the option to state in its trade circulars and business letters on or in which the company's name appears, the present forenames and surnames and any former name of every director including substitute directors but excluding alternate directors.

*Clause 187* prohibits the assignment of the office of director or an officer of a company to another person.

*Clause 188* delineates the proceedings of directors and requires that minutes of the proceedings of meetings of directors be entered in a book for the purpose.

*Clause 189* places limitations on the powers of directors. *Clause 190* expressly provides for the duties of directors. A director is by this *clause* expected to stand in a fiduciary relationship towards the company as a whole, and to act in the best interest of the company. *Clause 191* precludes a director from exercising powers outside the ambit of the powers conferred in this Bill, without the approval of an ordinary resolution of the company.

*Clause 192* prohibits a director from conflicting personal interest and duty to the company without the consent of the company. *Clause 193* explains what constitutes consent.

*Clause 194* enables a director to enter into contracts in which he or she has an interest provided the nature and interest in the contract is declared and other conditions stated in the *clause* are satisfied. *Clause 195* mandates a director who has an interest that is likely to create a conflict of interest between that director and the company, to disclose that interest by causing the entry of that interest to be entered in the Interests Register established under *clause 196*.

*Clause 196* of the Bill mandates a company to maintain an Interests Register in which any conflict of interest raised by a director at a meeting of the Board is required to be entered.

*Clause 197* describes the circumstances in which a director should act in a professional capacity for the company. *Clause 198* of the Bill

## Companies Bill, 2018

introduces a new concept which relates to the use of company information. The *clause* precludes a director from disclosing information to any person or making use of or acting on information being information that would not otherwise be available to that director except for restricted purposes. Furthermore, a director is required to account for any monetary gain made by the use of the information.

*Clause 199* prescribes civil liabilities for breach of duty under *clauses 190 to 192 and 198*. *Clause 200* provides for proceedings which may be instituted by the company or a member of the company to enforce the liabilities referred to in *clause 199*; to restrain a threatened breach of duty under *clauses 190 to 192* or to recover from a director of the company a property of the company. *Clause 200* also creates an avenue for a member to bring a derivative action or to sue in a representative capacity on behalf of that member and all other members except members who are defendants to the action.

*Clause 201* deals with derivative actions. These actions may be initiated by a shareholder or director of the company by application to the court. *Clauses 202 and 203* provide for the costs of derivative actions and the powers of the court regarding derivative actions. *Clause 204* prohibits the compromise, settlement or withdrawal of derivative actions without the approval of the court.

*Clause 205* deals with the regulation of proceedings relevant to representative actions. *Clause 206* specifies the conditions precedent to the payment of directors for loss of office and *clause 207* indicates circumstances in which payments to directors in connection with take over bids may be made. *Clause 208* supplements *clauses 206 and 207*. The *clause* also defines the meaning of payment for the purpose of the *clause* and *clauses 206 and 207*. *Clause 209* outlines the duties of directors as regards sales or purchases of the company's securities.

*Clause 210* requires a company to keep a register to show in respect of each director of the company, the number and description of shares and the amount of the debentures of the company or an associated company.

*Clause 211* mandates a company to have a Company Secretary. The *clause* specifies penalties against a company and its officers where

## Companies Bill, 2018

the company carries on business for more than six months without a Company Secretary. The penalties may be financial or administrative in nature. Other related matters dealt with in this *clause* are the appointment of the Company Secretary or persons to act as Company Secretary, the qualifications for a Company Secretary and the consent to serve as Company Secretary.

*Clause 212* distinctly enumerates the principal duties of a Company Secretary. *Clause 213* spells out the prohibition of the act of dual capacity as director and secretary and *clause 214* prohibits the payment of tax-free payments to a director or Company Secretary by a company.

*Clause 215* requires a company to keep at its registered office a register of its directors including substitute directors, but excluding alternate directors. The details of the content of the register are specified in this *clause*.

*Clause 216* requires a company to register a change that occurs among its directors or in respect of its Company Secretary, within twenty-eight days of the change. *Clause 217* is a saving provision for existing rules of common law and equity relating to principal and agent and master and servant to apply to the rights, duties and liabilities of officers and agents of companies.

### *Part R : Protection Against Illegal Action or Oppressive Action*

*Clause 218* makes provision for the court to grant an injunction to restrain a company from doing an act or entering into a transaction which is illegal or beyond the power or capacity of the company or which infringes a provision of its constitution; and from taking action on a resolution not properly passed in accordance with this Bill or the company's constitution.

*Clause 219* offers a remedy against oppression which a company, member of a company or debenture holder may apply to the court for, on specified grounds. *Clauses 220 to 227* provide the remedy of compulsory purchase of minority shareholders. However the condition precedent to this is that, the minority shareholder cannot be bought out if he or she voted wholly or partly in favour of a proposed amendment or major transaction. The time frame of one year in *subclause (5)* of *clause 220* acts as the trigger for the reinstatement of the minority shareholder should



## Companies Bill, 2018

the company not carry out the proposed objects or major transaction within the stated time frame.

### *Part S : Inspection and Investigation of Companies*

In pursuance of *clauses* 127 to 137, regarding the maintenance and auditing of accounts, *clause* 228 empowers the Registrar to make necessary enquiries. Further to *clause* 228, *clause* 229 empowers the court to order the Registrar to appoint competent inspectors to investigate the affairs of a company and to report on the affairs to the Registrar in the manner that the court directs. *Clause* 230 enables a company to pass a special resolution to give power to the Registrar to appoint competent inspectors to investigate the affairs of a company and to report to the Registrar on this. *Clause* 231 extends the power to investigate the affairs of a company to that of companies associated with the body corporate which is undergoing investigation by an inspector appointed for the purpose.

*Clauses* 232 to 234 relate respectively to the production of documents and evidence, the inspectors' reports and proceedings after investigations. *Clause* 235 deals with the management of expenses of investigations of companies. *Clause* 236 provides for access to information pursuant to an investigation regarding ownership of shares or debentures. *Clause* 237 is a saving provision which excludes the application of *clauses* 228 to 236 to disclosure to the Registrar or inspector when dealing with a legal practitioner of privileged communication or when dealing with the bankers of a body corporate.

### *Part T : Arrangements and Mergers*

*Clauses* 238 to 243 deal with arrangements and mergers. These provisions indicate how arrangements and mergers may be effected, the court's intervention to regulate arrangements and mergers, information on arrangements and mergers and the acquisition of shares in companies affected by an arrangement or merger.

### *Part U : Receivers and Managers*

*Clause* 244 lists the category of persons who are eligible to be appointed or to act as receivers or managers of a property or an undertaking of a company. The *clause* further states that in the opinion

## Companies Bill, 2018

of the Registrar, a person must have the requisite expertise and skill to manage and administer a company in receivership. *Clause 245* empowers the court to appoint a receiver or manager on behalf of secured creditors or debenture holders of a company which is being wound up under the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180).

*Clauses 246* and *247* deal with the duties of receivers and managers respectively. *Clause 248* denies a receiver immunity and the defence to proceedings against the receiver for breach of duty in connection with the sale of property. The *clause* also denies a receiver compensation or indemnity from property in receivership as regards any liability incurred by the receiver arising from the sale of property.

The powers of receivers and managers are enumerated in *clause 249*. *Clauses 250* and *251* deal respectively with the appointment of receivers and managers by the court and out of court.

*Clause 252* indicates the extent of liability of receivers and managers on contracts. *Clause 253* deals with the notification of the appointment of a receiver and manager. *Clause 254* applies the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) to the submission of a statement of affairs and of periodical accounts where a manager is appointed for the whole or substantially the whole of the undertaking of a company on behalf of the holders of debentures secured by a floating charge.

The procedural requirements for the delivery of accounts of receivers are provided for in *clause 255*. *Clause 256* indicates the circumstances where a receiver's duties may be enforced.

### *Part V : Winding Up*

*Clauses 257* to *272* deal with the winding up of a company. Related matters include the modes of winding up in *clause 257*; the procedure on resolution for liquidation, *clause 259*; the statement and accounts of the final financial year of a company in liquidation, *clause 260*; the resolution for appointment and removal of liquidator, *clause 261*; and remuneration of liquidator in *clause 262*. *Clause 258* is significant as it requires an affidavit of solvency to be made by the majority of directors to the effect that they have made a full enquiry into the affairs of the company and formed the

## Companies Bill, 2018

opinion that the company will be able to pay its debts and liabilities in full within a period not exceeding twelve months from the commencement of the winding up specified in the affidavit.

Other matters related to winding up are in respect of the disqualification of a liquidator, *clause 263*; the status of a liquidator, *clause 264*; cessation of directors' powers, *clause 265*; the powers of a liquidator, *clause 266*; the books and accounts during private liquidation, *clause 267*; and the liquidation account, *clause 268*. The duty of a liquidator in a private liquidation, stay of proceedings, dissolution of companies and dissolution without full winding up are the contents of *clauses 269, 270, 271 and 272* respectively.

### *Part W : Documents*

*Clause 273* describes the process for the service of documents by a company on a member, debenture holder or director. The *clause* also indicates that the service of a document includes sending the document by electronic mail, or facsimile machine. *Clause 274* covers circumstances in which a document may be served on a company which includes by electronic mail, facsimile, depositing it or sending it by post. *Clause 275* which supplements *clauses 273 and 274* provides for the service of documents by a liquidator, documents sent to shareholders or creditors by electronic means and proof of the receipt of documents served. *Clause 276* provides for the keeping of a register, minute book or book of account required by the Bill by a system of mechanical and electronic recording.

### *Part X : Invitations to the Public*

*Clause 277* prohibits a person from making an invitation to the public to acquire or dispose of shares or debentures of a company or to deposit money with a company for a fixed period or payable at call whether bearing or not bearing interest unless the company involved is a public company and the appropriate provisions in Part A of Chapter Four of the Bill are complied with. *Clause 278* provides a meaning of "invitations to the public". *Clause 279* relates to invitations to the public made in respect of shares or debentures deemed to be made by a company.

# **Companies Bill, 2018**

## CHAPTER THREE

### **ADDITIONAL PROVISIONS APPLICABLE TO PRIVATE COMPANIES ONLY**

*Clause 280* states the effect of the non compliance of a private company with a condition by virtue of its incorporation to mean it being perceived as a public company.

*Clause 281* specifies the documents required to be annexed to the annual return of a private company. *Clauses 282* and *283* respectively deal with the requisitioning of extraordinary general meetings of a private company and the appointment and removal of directors of private companies.

*Clause 284* on the unanimous agreement by shareholders, states that shareholders of a private company may agree to any action which has been taken or is to be taken by the company despite a provision in the constitution of the company. The *clause* enumerates the matters which shareholders may agree to or concur with.

*Clause 285* deals with the conversion of a private company to a public company. The *clause* states expressly the conditions under which the conversion may be effected.

## CHAPTER FOUR

### **ADDITIONAL PROVISIONS APPLICABLE TO PUBLIC COMPANIES ONLY**

#### *Part A : Prospectuses and Statements in Lieu of Prospectus*

*Clause 286* requires a public company after its incorporation or after its conversion from a private company to deliver to the Registrar for registration, a statement in lieu of a prospectus within twenty eight days. The statement in lieu of prospectus is required to be signed by every person named in the statement as director or proposed director in the form set out in Part One of the Ninth Schedule and in the cases mentioned in Part Two of that Schedule.

## Companies Bill, 2018

*Clause 287* indicates the mode by which an invitation to the public to acquire or dispose of shares or debentures of a public company may be made irrespective of *clause 277* on the control of public invitations. *Clause 288* provides for matters related to the general and restricted invitations to the public. *Clause 289* takes cognisance of the possibility of the requirements in the Tenth Schedule being burdensome in the event of a proposal to make a general invitation to the public to acquire shares or debentures. This *clause* makes provision for certificates of exemption in such circumstances.

Where a prospectus relating to an invitation to the public in respect of shares or debentures of a public company includes a statement purporting to be made by an expert, *clause 290* prohibits its delivery without the written consent of the expert. Registration procedures regarding prospectuses are the content of *clause 291*.

*Clause 292* provides the yardstick for treating applications, offers or acceptances in response to prospectus as binding. This *clause* terms the period as the “waiting” period which occurs twenty-one days before which the applications, offers or acceptances may no longer be considered as binding. *Clause 293* provides a person with the opportunity to withdraw applications in respect of shares or debentures within a stated period. Invitations in respect of securities to be dealt in on a stock exchange are dealt with in *clause 294*.

*Clause 295* pegs the basic minimum subscription for shares and debentures at not less than twenty percent of the subscription price. *Clause 296* provides a civil remedy for persons who acquire or dispose of the shares or debentures on the faith of the correlative prospectus despite the fact that, the prospectus contains an untrue statement or an omission. A further remedy in *clause 297* provides the person concerned with a right to rescind the acquisition or disposition of the shares or debentures.

*Clause 298* makes it mandatory for shares offered to the public to have voting rights attached to the shares. *Clause 299* lays bare the conditions that must prevail if a public company wishes to make an invitation to the public to deposit money. It requires that the public company be licensed under this Act or any other relevant enactment to carry on banking business or the written consent of the Registrar has been obtained to make an invitation and the invitation has been made in accordance with the conditions and restrictions that the Registrar has imposed.

## Companies Bill, 2018

*Clause 300* prohibits the waiver and notice clauses requiring or binding a person to waive compliance with a *clause* of Part A of Chapter Four or purporting to affect a person with notice of a contract, document or matter not specifically referred to in a prospectus or statement in lieu of prospectus, advertisement or circular. *Clause 301* relates to the criminal liability for mis-statements and makes a person who authorises the publication of prospectus, advertisement or circular in relation to an invitation of the public which contains an untrue statement or omission liable. *Clause 302* empowers the Registrar to waive or modify the requirement of a provision of Part A of Chapter Four.

### *Part B : Dividends and Transfers*

*Clause 303* limits the liability of shareholders in public companies to restore illegal dividends paid to them. *Clause 304* empowers directors of a public company with shares to pay interim dividends on account of dividends to be declared by the company in accordance with *clause 76*. *Clause 305* deals with the restrictions on the transferability of securities of public companies. It prohibits the imposition by a constitution of a company to restrict the right to transfer shares except in the cases of unpaid liability or incapacity to hold shares.

### *Part C : Annual Documents Accompanying Returns*

*Clause 306* indicates the documents required to be annexed to annual returns of a public company.

### *Part D : Extraordinary General Meetings*

*Clause 307* is an express provision on extraordinary general meetings of public companies. The procedure for convening such meetings is outlined in this *clause*.

### *Part E : Directors*

*Clauses 308* to *311* deal respectively with the rotation of directors of a public company, voting for directors of a public company and cumulative voting for directors of a public company. *Clause 311* proscribes a public company from making a loan to a person who is its director or a director of an associated company, or to enter into a guarantee or provide a security in connection with a loan made to that person by any other person.

# **Companies Bill, 2018**

## CHAPTER FIVE

### **PROVISIONS APPLICABLE TO EXTERNAL COMPANIES**

The definition of “external company” is clearly stated in *clause 312*. The *clause* also applies *clauses 313 to 319* to external companies in the context of the definition for an external company. *Clause 312* simply describes an external company to be a body corporate formed outside the country which at or subsequent to the commencement of the Act has an established place of business in the country. The expression “established place of business” is defined in *clause 312*.

*Clause 313* specifies the documents that must be delivered to the Registrar by an external company within one month after the establishment of the place of business. By this *clause*, the Registrar is required to register the documents in the register of external companies and publish the particulars in relation to the documents in the *Companies Bulletin*.

*Clauses 314 to 319* deal respectively with returns required on alteration of registered particulars of an external company; local managers service on an external company; financial statements of an external company; the obligation of an external company to display or state its name; and the publication of the names of the local managers or local agents of an external company.

*Clause 320* extends the application of Part L of Chapter Two on the registration of particulars of charges to charges on property in the Republic which are, or have been created, to charges on property in the Republic acquired, by an external company.

*Clause 321* provides extensively for the winding up of an external company. The *clause* takes into consideration the duties of a liquidator of an external company. *Clause 322* provides for the winding up of external companies which are involved in specified business, such as deposit-taking businesses under the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930), collective investment schemes or life insurance companies. The *clause* mandates the court to determine whether the assets of a company in the country should be segregated for debts of that company in the country to be given priority over debts and

## Companies Bill, 2018

liabilities to other parties outside the country. *Clause 323* deals with the procedures that must be complied with on the cessation of the business of an external company. *Clause 324* states the penalties and disabilities consequent to the non-compliance of an external company or a local manager or process agent of an external company with *clauses 307 to 323*. *Clause 325* relates to public invitations made in the Republic regarding an invitation to the public to acquire or dispose of shares or debentures of an external company or to deposit money with an external company for a fixed period or payable at call. The *clause* applies Part X of Chapter Two and Part A of Chapter Four for the purpose of control of public invitations. *Clause 326* relates to the control of public invitations regarding other non-Ghanaian companies being associations incorporated or to be incorporated outside the Republic but that are not external companies as defined by *clause 312*.

### CHAPTER SIX

#### SUPPLEMENTARY

##### *Part A : Miscellaneous Offences*

*Clauses 327 to 333* provide for a group of miscellaneous offences that relate to inducing persons to invest, false statements and the improper use of “incorporated” or “limited” and the publication of misleading statements regarding shares or capital.

##### *Part B : Legal Proceedings*

*Clauses 331, 332 and 333* respectively provide for costs in actions by limited companies, contribution between joint wrongdoers and the power of the court to grant relief in proceedings against a member, officer or auditor of a company for default or breach of duty in this Bill.

##### *Part C : Establishment of the Office of the Registrar of Companies*

*Clause 334* establishes the Office of the Registrar of Companies as a statutory corporate body and provides it with financial autonomy which is subject to the provisions of the Bill, *clause 335*. The object and functions



## Companies Bill, 2018

of the Office of the Registrar are stated in *clause 336*. *Clause 337* provides for the governing body of the Office of the Registrar of Companies, the Board. The composition of the governing body consists of a chairperson and representatives from the Attorney-General's Department, Ministry of Trade and Industry and the Ministry of Finance and the Registrar of Companies. Representatives from the private sector include persons from the Private Enterprise Foundation, the business academia, the corporate law academia and the Ghana Bar Association.

*Clauses 338 to 342* are standard provisions on the tenure of office, of members of the Board, meetings of the Board, disclosure of interest, establishment of committees and fees and allowances. The option to decentralise the Office is also provided for in *clause 343*. *Clause 344* empowers the Minister to give policy directives to the Board in writing.

### *Part D : Administrative and Financial Provisions of the Office of the Registrar*

*Clause 345* makes provision for the appointment of the Registrar of Companies. Provision is also made in the *clause* for the Deputy and Assistant Registrars to act for the Registrar. *Clauses 346 and 347* provide respectively for the appointment of other staff and the funds of the Office of the Registrar.

*Clause 348* vests the Board with power to manage and control the finances of the Office of the Registrar and determine matters arising out of the financial administration of the Office. The management of funds is to be done in compliance with the Public Financial Management Act, 2016 (Act 921 ). The expenses of the Office of the Registrar such as capital expenditure and other administrative expenses are to be paid from the funds provided under *clause 347*. In accordance with the Ministries, Departments and Agencies (Retention of Funds) Act, 2007 (Act 735), the Office of the Registrar is authorised to retain all moneys realised in the performance of the functions of the Office. This will enable the Office to operate as a Category III Subvented Agency as proposed under *subclause (1) of clause 367*. *Clause 349* enables the Office of the Registrar to obtain loans and credit facilities that the Office requires for the implementation of its functions.

*Clauses 350 and 351* are the standard provisions on accounts and audit and annual reports.

## **Companies Bill, 2018**

### *Part E : General Provisions*

*Clause 352* places a duty on the Registrar to report to the Minister every year on the operation of the Bill, indicating general statistical information relating to the registration and dissolution of companies and cases where there has been a waiver or modification of compliance with any of the provisions of the Bill.

*Clause 353* establishes the *Companies Bulletin* as an official bulletin to be kept and managed in both hard copy and electronic forms. The Registrar is responsible for ensuring accessibility to it. *Clause 354* places a duty on the Office of the Registrar to, in consultation with the Minister responsible for Finance, prescribe fees chargeable under the Bill.

*Clauses 355 to 360* relate to matters on the translation of documents; registration of documents; prescribed forms; inspection, copies and evidence of registered documents; authentication of documents issued by the Registrar; and the enforcement of duty to make returns.

*Clause 361* provides for matters relating to electronic transactions. By this *clause*, the Registrar may authorise certain acts to be effected electronically. The acts specified include the incorporation of a company, payment of fees, submission of annual return and the filing of notices or documents. Others are the keeping and maintenance of a register, arrangements, amalgamations and sale of undertakings and reports on statistical data on companies. In the case of the operation of a system of dematerialised or immobilised securities electronically, a security is not required to have a distinctive number. The *clause* further provides for new companies to post on their websites, information required to be filed with the Registrar.

*Clause 362* makes it possible for the Registrar to seek directions from the court in relation to a matter arising in connection with the Registrar's functions in the Bill. *Clause 363* extends the application of the provisions of the Bill by legislative instrument made by the Minister to an unregistered company being a body corporate formed in the Republic otherwise than in the Bill or to certain classes of these bodies corporate or certain named bodies corporate.

## Companies Bill, 2018

*Clause 364* provides for the Minister to, by legislative instrument, make Regulations regulating the exercise by the Registrar of any of the powers and discretions conferred on the Registrar by the Bill. These Regulations include matters related to the payment of moneys to the Registrar for publication in the *Companies Bulletin*, the classification of companies, the amendment of Schedules and administrative and other penalties for offences committed under the Bill. The *clause* also empowers the Minister to make Regulations on the advice of the Board for the effective implementation of the provisions of the Bill.

*Clause 365* provides for the interpretation of words and phrases as used in the context of the Bill and as defined in the First Schedule. *Clause 366* is on repeal and savings.

*Clause 367* deals with transitional provisions. The transfer of rights, assets and liabilities are exclusively related to matters concerning the registration and regulation of companies. Other transfers relate to personnel seconded to or employed for or by the Registrar-General's Department. In providing for the transfer of personnel, the Bill takes cognisance of conditions of service and retirement benefits and construes the transfer to the Office of the Registrar as a continuous service in the Legal Service. It must be noted that the status of the Office of the Registrar will at the start of its operations, be a Category III subvented agency as classified under the Subvented Agencies Act, 2006 (Act 706) and will remain under the Ministry of Justice. When it becomes viable and self sufficient, it will convert to a Category IV subvented agency where it would be completely self financing.

*Clause 368* provides that the Electronic Transactions Act, 2008 (Act 772) is to be read as one with *clause 361* of the Bill and that in instances of conflict between *clause 361* of the Bill and Act 772, *clause 361* is to prevail.

## **Companies Bill, 2018**

*Clause 369* empowers the Minister to effect the coming into force of the Bill by publication in the *Gazette* and further sets a time frame within which the Office of the Registrar of Companies is to be established.

The Schedules relate to definitions, the constitution for the various types of companies, contents of an annual return, accounts, auditor's report, procedure for general meetings, the form of statements in lieu of prospectus, financial statements and reports to accompany the statements, contents of a prospectus on general invitations and fees payable to the Registrar.

GLORIA AFUA AKUFFO (MISS)  
*Attorney-General and Minister for Justice*

Date: 19th April, 2018.