LAWS OF GHANA

COMPANIES ACT, 1963 ACT 179

ARRANGEMENT OF SECTIONS

g gp

PART F

Shares

y

g

186. Restraining fraudulent persons from managing companies.

187. Substitute directors.

188. Alternate directors.

189. Presence of directors in Ghana.

190. Secretary.

191. Avoidance of acts in dual capacity as director and secretary.

192. Executive directors.

193. Managing directors.

194. Remuneration of directors.

195. Prohibition of tax-free payments.

196. Register of directors and secretary.

197. Registration of particulars of directors and secretaries.

198. Publication of names of directors.

199. Prohibition of assignment of offices.

200. Proceedings of directors.

201. Minutes of directors' meetings.

202. Limitations on the powers of the directors.

203. Duties of directors.

204. Exercise of directors' powers.

205. Conflicts of duty and interest.

y

206.

Consent of company.

207.

Contracts in which directors are interested.

208.

Directors acting professionally.

209.

Civil liabilities for breach of duty.

210.

Legal proceedings to enforce liabilities.

211.

Payments to directors for loss of office or on transfer of the company's

undertaking.

pyp p

q gp

ACT 179

COMPANIES ACT, 19631(1)

AN ACT to amend and consolidate the law relating to companies and to provide for related matters.

CHAPTER ONE

Preliminary

1.

Commencement

Spent.2(2)

2.

Interpretation

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

3.

Application of Act

Spent.3(3)

4.

Application of particular chapters of the Act

(1)

Chapter III applies to private companies but not to public companies.

(2)

Chapter IV applies to public companies but not to private companies.

(3)

Chapter V does not apply to companies formed in the Republic.

5.

Prohibition of partnerships exceeding twenty members

A company, association or partnership 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, association or partnership, or by its individual members, unless it is registered as a company under this Act or is formed in pursuance of any other enactment for the time being in force.

6.

Companies formed for special purposes

This Act shall not abrogate or affect a special legislation relating to companies carrying on the

business of banking, insurance or any other business which is subject to special regulation.

7.

Saving of equity and common law

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

CHAPTER TWO

Provisions Applicable to all Companies

PART A

Formation and Matters Incidental Thereto

8.

Right to form a company

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

9. Types of company

(1) An incorporated company may be,

(a) a company limited by shares, that is a company having the liability of its members limited to the amount, unpaid on the shares respectively held by them, or

(b) a company limited by guarantee, that is a company having the liability of its members limited to the amount that the members may respectively undertake to contribute to the assets of the company in the event of its being wound up, or

(c) an unlimited company, that is a company not having a limit on the liability of its members.

(2) A company of any of the types specified in subsection (1) may be a private company or a public company.

(3) A private company is a company which by its regulations,

(a) restricts the right to transfer its shares,

(b) limits the total number of its members and debenture holders to fifty, 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.

(4) 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.

(5) Any other company is a public company.

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

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

10.

Companies limited by guarantee

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

(2) Where a company limited by guarantee carries on business for the purpose of making profits, 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 a fine not exceeding 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 seven million cedis.

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

(5) If in breach of subsection (3), the total liability of the members of a company limited by guarantee is at any time less than [seven million cedis], every director and member of the company who is cognisant of the breach is liable to a fine not exceeding [five hundred penalty units].

11. Conversion of company limited by shares to company limited by guarantee

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

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

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

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

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

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

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

(b) 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; and from the date mentioned in the certificate

(c) the company shall be converted into a company limited by guarantee,

(d) the shares in the company shall be validly surrendered and cancelled despite section 56, and

(e) members of the company who have not agreed to contribute to the assets of the company in the event of its being wound up shall cease to be members of the company.

(3) Except in accordance with subsection (3) of section 15, the company may not change the name under which it was registered prior to the conversion; but the omission of the word “Limited” as the last word of the name of the company after conversion shall not be regarded as a change of name.

(4) 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 (5) of section 15, 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.

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

(6) 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 legal proceedings by or against the company.

12. Duties of promoters

(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.

(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 a loss suffered by it by reason of the promoter's failure so to do.

(4) A promoter who acquires a property or an 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 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, or

(b) by all the members of the company, or

(c) by the company at a general meeting at which neither the promoter nor the holders of 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 any of its rights 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 thinks fit from liability if in all the circumstances, including lapse of time, the Court thinks it equitable so to do.

13. Pre-incorporation contracts

(1) A contract or any other transaction purporting to be entered into by a company prior to its formation or by a person on behalf of the company prior to its formation may be ratified by the company after its formation.

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

(3) Prior to ratification by a company, the person or persons who purported to act in the name or on

behalf of the company are, in the absence of express agreement to the contrary, personally bound by the contract or the other transaction and are entitled to the benefit of the contract or the other transaction.

14. Formation of companies

(1) After the commencement of this Act, a company shall be formed in accordance with this section.

(2) The promoter shall deliver to the Registrar for registration a copy of the proposed Regulations of the company which shall comply with sections 16 to 18.

(3) The Registrar shall register the Regulations, unless in the opinion of the Registrar,

(a) the Regulations do not comply with this Act,

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

(c) any of the subscribers to the Regulations is an infant or of unsound mind, or

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

(4) On registration of the Regulations, the Registrar shall certify under the Registrar's seal that the company is incorporated and, in the case of a limited company, that the liability of its members is limited.

(5) From the date of registration mentioned in the certificate of incorporation, the company is a body corporate by the name contained in the Regulations and, subject as provided in sections 27 and 28 is capable of exercising the functions of an incorporated company.

(6) The Registrar shall insert a notice in the Gazette stating the issue of the certificate of incorporation and the terms of the certificate.

(7) The certificate of incorporation, or a copy of that certificate, certified personally as correct by the Registrar, or the Gazette containing the notice referred to in subsection (6) is conclusive evidence that the company is duly registered and incorporated under this Act and proceedings shall not be brought in a Court to cancel or annul the registration.

(8) Subsection (7) does not prejudice the institution of proceedings to wind up the company in accordance with section 247.

15. Names of companies

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

(2) Spent.4(4)

(3) A company shall not be registered by a name which, in the opinion of the Registrar, is misleading or undesirable.

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

(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 sanction of the Registrar, and if the Registrar so directs within six months of its being registered by that name, shall change it within a period of six weeks from the date of the direction or any other longer period allowed by the Registrar.

(6) If 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.

(7) 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.5(5)

(8) If a company defaults in complying with a direction under subsection (5), (6) or (7), the company and any of the directors of the company who is cognisant of the default is liable to a fine not exceeding [twenty five penalty units].

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

(10) Pursuant to subsection (9), the Registrar shall advertise the change in the Gazette and in one newspaper published in Ghana and circulating in the district in which the registered office of the company in situated.

(11) A certificate or an advertisement in the Gazette under this section is conclusive evidence of the change to which it relates.

(12) 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.

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

(14) A reservation under subsection (13) shall be for a period that the Registrar thinks fit not exceeding two months and during the period of reservation a company shall not be registered under the reserved name or under any other name which in the opinion of the Registrar is too like the reserved name.

PART B

The Company’s Regulations

16. Contents of Regulations

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

(2) The Regulations of a company shall state,

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

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

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

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

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

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

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

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

(a) contain a regulation in terms of regulation 3 of Table B in the Second Schedule, with the modifications that the Registrar shall allow, stating that the income and property of the company shall be applied solely towards the promotion of its objects, and that a portion of the income or property shall not be paid or transferred directly or indirectly to the members of the company except as permitted in the Regulations;

(b) state that each 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 one year after that person ceases to be a member, for the payment of the debts and liabilities of the company and of the costs of winding up, the amount that may be required not exceeding a specified amount; and

(c) state that if, on the winding up of the company there remains after the discharge of all its debts and liabilities a property of the company that property shall not be distributed among the members but shall be transferred to some other company limited by guarantee having objects similar to the objects of the company or applied to some charitable object, any other

company or charity to be determined by the members prior to the dissolution of the company.

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

17. Form of Regulations

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

(a) a private company limited by shares,

(b) a public company limited by shares,

(c) a company limited by guarantee,

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

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

(3) The Regulations shall be printed, type written, or in any other legible form acceptable to the Registrar.

18. Subscribing to Regulations

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

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

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

19. Regulations of existing companies

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

(2) A reference in this Act to the Regulations of a company shall, in the case of an existing company

which has not adopted Regulations in lieu of its memorandum and articles, be a reference to its memorandum and articles of association.

(3) Subsection (1) does not authorise a company to alter the substance, as opposed to the form, of its Regulations except as mentioned in section 22.

20. Prints of Tables A and B

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

21. Effect of Regulations

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

(2) Where the Regulations empower 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 Regulations 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 324 shall apply.

22. Alteration of Regulations

(1) A company may, by special resolution, alter or add to its Regulations or adopt new Regulations.

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

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

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

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

(d) an alteration or addition shall not be made which shall conflict with an order of the Court made under section 218;

(e) if at any time the shares of the company are divided into different classes the rights attached

to a class may be altered in accordance with section 47 or 231 but not otherwise;

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

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

(h) except in accordance with section 231, a member of the company is not bound by an alteration made in the Regulations after the date on which that person became a member, if and in so far as the alteration requires that member to take more shares than the number held by that member on the date on which the alteration 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 alteration, unless that member agrees in writing, before or after the alteration is made, to be bound by the alteration;

(i) an alteration 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;

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

23. Copies of Regulations

(1) A company shall, on being required by a member, send to that member a copy of its Regulations on payment of the sum of [one hundred thousand cedis] or a lesser sum that the company may prescribe.

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

(3) If a company makes default in complying with this section the company and every officer of the

company who is in default is liable for each offence to a fine not exceeding [fifty penalty units].

PART C

Capacity of Companies

24. Powers of companies

Except to the extent that a company's Regulations otherwise provide, a company registered after the commencement of this Act and an existing company which, pursuant to section 19, adopts Regulations in

lieu of its memorandum and articles of association shall have, for the furtherance of its objects and of a business carried on by it and authorised in its Regulations, all the powers of a natural person of full capacity.

25. Limits of company's authority

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

(2) A breach of subsection (1) of this section may be asserted in proceedings under section 210, 218 or 247 or under subsection (4) of this section.

(3) Despite subsection (1) of this section, an act of a company or 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 of the company or that the company was otherwise exceeding its objects or powers.

(4) The Court may prohibit, by injunction, the doing of an act or the conveyance or transfer of a property in breach of subsection (1) of this section, 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.

(5) If the transactions sought to be prohibited in proceedings under subsection (4) are being, or are to be, performed or made pursuant to 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 to the company or to the other parties to the contract compensation for the loss or damage sustained by them 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.

26. Alteration of authorised businesses

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

(2) An application made to the Court for the alteration under subsection (1) to be annulled, shall not have effect except in so far as it is confirmed by the Court.

(3) Within twenty-eight days of the passing of the 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.

(4) An application to the Court under this section shall be made within sixty days after the passing of the resolution.

(5) An application to the Court under this section may be made,

(a) by the Registrar, or

(b) in the case of a private company, by a member or by anyone to whom notice has to be given under subsection (2), or

(c) in the case of a public company,

(i) by the holders of not less than fifteen percent in the aggregate of the company's issued shares or any class of those holders or, if the company does not have shares, by not less than fifteen percent of the company's members;

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

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

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

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

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

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

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

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

(9) If a company makes default in giving or publishing a notice or delivering a document as required by this section, the company and every officer of the company who is in default is liable to a fine not exceeding [fifty penalty units].

PART D

Commencement of Business

27. Filing of particulars

(1) A company registered after the commencement of this Act shall not transact a business, exercise a borrowing power, or incur an indebtedness, except that which is incidental to its incorporation or to

obtaining subscriptions to or payment for its shares, until it has delivered to the Registrar a return in duplicate in the prescribed form giving particulars, as at the date of the return, of

(a) its name;

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

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

(d) the name and address of its auditor;

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

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

(g) if the company has shares,

(i)

the amount of its stated capital, as defined in section 66,

(ii)

the number of its authorised shares of each class, and

(iv)

the number of its issued shares of each class and the amount paid on those 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 remaining payable on those shares distinguishing between the amount presently due for payment and the amount not yet due for payment.

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

(3)

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

(4)

The Registrar shall register the return and publish a copy of the return in the Gazette.

28.

Minimum capital

(1) A company limited by shares shall not transact a business, exercise a borrowing power, or incur an indebtedness, except that which is incidental to its incorporation or to obtaining subscriptions to or payment for its shares, until,

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

(i)

twenty million cedis of which at least five million cedis shall be paid in cash within

the meaning of section 45 in respect of a public company, or

(ii)

five million cedis of which at least one million cedis shall be paid in cash within the

meaning of section 45 in respect of a private company,6(6) and

(b) the company has delivered to the Registrar for registration a declaration in the prescribed

form verifying that the payments have been received.

(2) An existing company limited by shares shall not continue after the expiration of six months from

the commencement of this Act to transact a business, exercise a borrowing power, or incur an

indebtedness unless,

(a) prior to the expiration of the six months and whether before or after the commencement of

this Act, there has been paid to it for the issue of its shares consideration to the value of at

least twenty million cedis of which at least five million cedis have been paid in cash within

the meaning of section 45; and

(b) the company has delivered to the Registrar for registration a declaration in the prescribed

form verifying that the payments have been received.

(3) For the purposes of this section, a value attributed to the goodwill of a business or to services

rendered or to be rendered to the company shall not be regarded as valuable consideration for the issue of

shares.

(4) The declarations referred to in subsections (1) and (2) shall be signed by all the directors and by

the secretary of the company.

29. Penalties for breach of section 27 or 28

(1) In the event of default in complying with section 27 or section 28,

(a) the company and every officer of the company who is in default is liable to a fine not

exceeding [twenty-five penalty units] for each day during which the default continues, and

(b) the rights of the company concerned under or arising out of a contract made during the time

that the default continues, except the contracts that are incidental to obtaining subscriptions

to or payments for its shares, shall not be enforceable by action or other legal proceedings.

(2) For the purposes of subsection (1)

(a) the company may apply to the Court for relief against the disability imposed by paragraph

(b) of subsection (1) and the Court, on being satisfied that it is just and equitable to grant

relief, may grant that relief generally or as respects a particular contract and on the

conditions that the Court may impose;

(b) that subsection shall not prejudice the rights of any other parties as against the company, or any other person, in respect of a contract mentioned in paragraph (b) of that subsection;

(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 that contract, that subsection shall 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.

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

(a) in the case of a person named as one of the first directors, that director was named without that director's consent, or

(b) all reasonable and practicable steps were taken by that director to prevent the default, or

(c) that director honestly believed on reasonable grounds that paragraphs (a) and (b) of subsection (1) of section 28 had been complied with prior to the incurring of the debt or liability.

(4) Where there is an error or omission in a return or declaration delivered to the Registrar under section 27 or section 28, then, without prejudice to section 321, the company and every signatory of the return or declaration is liable to a fine not exceeding [one hundred and fifty penalty units].

PART E

Membership of Companies

30. Constitution of membership

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

(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 the Regulations of the company conferred and imposed on 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, and a holder of a share is a member of the company.

(5) Membership of a company with shares continues until a valid transfer of all the shares held by the

member is registered by the company, or until all the shares are transmitted by operation of law to another person or forfeited for non-payment of calls under the Regulations, or until the member dies.

(6) Membership of a company limited by guarantee continues until the member dies, or validly retires or is excluded from membership in accordance with the Regulations.

31. Right of member to attend and vote

(1) Subject to section 49, a member has, despite a provision in the Regulations, the right to attend a general meeting of the company and to speak and vote on a resolution before the meeting.

(2) The company's Regulations may provide that a member is not entitled to attend and vote unless all calls or any other sums presently payable by that member in respect of shares in the company have been paid.

32. Register of members

(1) A company shall keep in Ghana a register of its members and enter in the register,

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

(b) the date at which a person was entered in the register as a member, and

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

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

(3) The entry required under paragraph (c) of subsection (1) 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, and all entries relating to that person may be deleted from the register after the expiration of six years from the date when that person ceased to be a member.

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

(5) An existing company shall, within twenty-eight days of the coming into operation of this Act, send to the Registrar for registration, notice in the prescribed form, of the place where its register of members is kept and a 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.

(6) A company shall not be bound to send notice under subsection (5) where the register has, at all times since it came into existence, or in the case of a register in existence at the commencement of this

Act, at all times since then, been kept at the registered office of the company.

(7) Where a company defaults in complying with this section, the company and every officer of the company who is in default is liable to a fine not exceeding twenty-five penalty units for every day during which the default continues.

(8) 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 33, the registration officer is liable to the same penalties as if the registration officer were an officer of the company and the power of the Court under subsection (4) of section 33 shall extend to the making of orders against the registration officer and the officers and employees of the registration officer.

33. Inspection of register

(1) Except when the register of members is closed in accordance with section 34, the register and the index of the names of the members of the company shall, during business hours, 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 [ten thousand cedis] or a lesser sum that the company may prescribe, for each inspection.

(2) Not less than two hours each, 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 [ten thousand cedis] or a lesser sum that the company may prescribe, for every hundred words or part of hundred words required to be copied; and the company shall cause a copy so required by a person to be sent to that person within a period of ten days commencing on the day next after the day on which the requirement is received by the company.

(4) If an inspection required under this section is refused, or if a copy required under this section is not sent within the proper period, the company and every officer of the company who is in default is liable in respect of each offence to a fine not exceeding [twenty-five penalty units] for every day during

which the default continues.

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

34. Power to close register

A company may, on giving notice by advertisement in a daily newspaper circulating in the district in which the registered office of the company is situated, close the register of members or that part of the

register relating to a class of members for any time or times not exceeding in the whole thirty days in each year.

35. Rectification of register

(1) A person aggrieved, or 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 32, are required to be entered on the register.

(2) Where an application is made under subsection (1), the Court may either 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) On an application under subsection (1) being made, the Court may decide a question relating to the title 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 may decide a question necessary or expedient to be decided for rectification of the register.

(4) A company may, without application to the Court, at any time rectify 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.

36. Register to be evidence

The register of members is prima facie evidence of any of the matters which are, by this Act, directed or authorised to be inserted in the register.

37. Liability of members

(1) Prior to 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 pursuant to the company's Regulations.

(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 under a provision to

that effect in the company's Regulations, but that member's liability shall cease if 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 payment of its debts and liabilities and for the costs, charges and expenses of the winding up and for the adjustment of the rights of the members and past members among themselves but subject to the following qualifications:

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

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

(c) in the case of a company limited by shares, a contribution shall not be required from a member or past member exceeding the amount 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 undertaken to be contributed by that member to the assets of the company in the event of its being wound up;

(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 for which that member is liable to contribute in accordance with this section, but that sum shall be taken into account for the purposes of final adjustment of the rights of the members and former members amongst themselves.

(5) For the purposes of this section, "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.

38. Companies ceasing to have members

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.

PART F

Shares

39. Nature of shares

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

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

40. No par shares

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

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

(a) an unpaid liability on those shares, and

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

41. Issue of shares

(1) Shares up to the total number authorised by the company's Regulations may be issued 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 or as may be specified in the Regulations.

(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 37.

42. Payment of shares

(1) Except on a capitalisation issue pursuant to subsection (1) of section 74, 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 any 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 74.

(4) The statement in the agreement of the value of the non-cash consideration is prima facie evidence of the true value of the consideration, but when a company limited by shares is in course of being wound up under the Bodies Corporate (Official Liquidation) Act, 1963 (Act 180), the liquidator or 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 that it shall direct.

43. Return of issues

(1) Where a company issues shares, other than a re-issue of treasury shares as defined in subsection (3) of section 59, 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 66;

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

(c) the total number of its issued shares of each class and the amount paid 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 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.

(2) A company registered after the commencement of this Act shall not be required to deliver a return under subsection (1) in respect of an issue of shares made prior to the delivery to the Registrar of the return required by section 27.

44. Penalties for non-compliance with section 42 or 43

Where a company defaults in delivering a document required under section 42 or 43, the company and every officer of the company who is in default is liable to a fine not exceeding twenty-five penalty units for every day during which the default continues.

45. Meaning of payment in cash

(1) Shares shall not be deemed to have been paid for in cash except to the extent that the company has actually received cash for the shares at the time of, or subsequent 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 a payment 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.

46. Classification of shares

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

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

47. Variation of class rights

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

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

(3) Except as provided in subsection (2), a company may, by special resolution, alter its Regulations

by inserting in the Regulations provisions regarding the variation of the rights of a class or by modifying the terms of those provisions.

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

(5) Despite a provision in the Regulations to the contrary, the rights attached to a class of shares first issued after the commencement of this Act 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) For the purposes of this section, a resolution of a company is a variation of the rights of a class if the implementation of that resolution would have the effect

(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.

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

(8) An application to the Court under subsection (7) shall be made within sixty days of the date on which the variation was effected and may be made on behalf of the shareholders entitled to make the

application by one or more of their number as they may appoint in writing.

(9) Where an application is made under subsection (7), the company shall forthwith deliver to the Registrar for registration notice in the prescribed form of that fact.

(10) The Court, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested in the application,

(a) shall, if it is satisfied that the variation would unfairly prejudice the shareholders of any class, cancel the variation, or

(b) shall, if not so satisfied, confirm the variation.

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

(12) Where a company defaults in delivering to the Registrar the notice or order referred to in subsection (9) or (11), the company and every officer of the company who is in default is liable to a fine not exceeding fifty penalty units.

48. Preference and equity shares

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

49. Suspension of voting rights of preference shares

(1) Despite section 31, the Regulations may provide that the right of holders of preference shares to attend and vote at a general meeting of the company may be suspended on the conditions that may be specified.

(2) Despite a provision to the contrary in the Regulations, preference shares issued after the commencement of this Act shall carry the right to attend general meetings and on a poll at these 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 the Regulations may provide, after the due date of the dividend; or

(b) on a resolution which varies the rights attached to these shares; or

(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.

(3) Subject to section 31 and to subsections (1) and (2) of this section, preference shares issued after

the commencement of this Act shall carry the right on a poll at a general meeting of the company to one vote, and to one vote only, in respect of each share.

(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 that 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) of this section a dividend is due on the date appointed in the Regulations for the payment of the dividend for a year or other period, or if a date is not appointed, on the day immediately following the expiration of the year or other period, and whether or not the dividend has been earned or declared.

50. Votes of equity shares

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

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

51. Cannons of construction of class rights

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

(a) unless the contrary intention appears, a dividend shall not be 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 shall not be payable on any shares ranking subsequent to that class of shares until all the arrears of the fixed dividend have been

paid;

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

(d) if a class of shares is expressed to have a right to a preferential dividend, then, unless the contrary intention appears, that class shall 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 then, unless the contrary intention appears, that class

shall 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;

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

52. Repealed.6a(7)

53. Issue of share certificates

(1) 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 under the common seal of the company stating,

(a) the number and class of shares held by that holder and the definitive numbers of the shares,

(b) the amount 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 not exceeding [ten thousand cedis] 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.

(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 a fine not exceeding fifty penalty units, and, on application being made 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 all the costs of, and incidental to, the application.

54. Effect of share certificates

(1) Statements made in a share certificate under the common seal 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 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 a 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.

55.

Reserve liability

(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 would up.

(2) Where a resolution is passed under subsection (1) that portion shall not be capable of being called up except in the event and for the purpose stated in that subsection.

56.

Prohibited transactions in shares

(1)

Except as provided in this section, a company shall not,

(a) alter the number of its shares or the amount remaining payable on those shares,

(b) release a shareholder or former shareholder from a liability on the shares,

(c) provide a 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 on 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 11.

(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 a fine not exceeding [five hundred penalty units],

(b) if the breach is of paragraph (c) or (d) of subsection (1) then,

(i)

the transaction concerned is voidable, except in favour of a genuine purchaser or seller of shares without knowledge of the breach, by the company and a payment made by the company in respect of that transaction is immediately repayable with interest at the rate of five percent per annum or a higher rate that the Courts may think fit to order,

and

(ii) whether or not the transaction is avoided, every officer of the company who is in default is liable to a fine not exceeding five hundred penalty units or twice the amount of a provision or payment made by the company in respect of the transaction,

whichever is the greater.

57.

Alteration of number of shares

(1)

A company may, by alteration of its Regulations,

(a) increase the number of its shares by creating new shares, 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 the amounts paid, and an unpaid liability on the shares and a fixed sum of money by way of dividend or repayment to which the shares were entitled, shall also be consolidated.

58.

Financial assistance for acquisition of shares

Section 56 does not prohibit

(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 is authorised by the Regulations and does not exceed ten percent of the price at which the shares are issued or a lesser rate as may be specified in the Regulations; or

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

(c) the provision by a company in accordance with a scheme for the time being in force of money for the purchase of 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; or

(d) the making 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; or

(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; or

(f) in the case of a public company some or all of whose equity shares are dealt in on an approved stock exchange or in respect of which an application has been made to an approved stock exchange for permission to deal in those shares, the payment of commissions, fees, costs and expenses and the giving of 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, provided that

(i)

an application for permission to deal in those securities has been or is to be made to an approved stock exchange, and

(ii) the financial assistance given is in good faith in the interests of the company.7(8)

59.

Acquisition by company of its own shares

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

(a) create and issue 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 in the Regulations and may convert existing shares, whether issued or not, into those redeemable preference shares, or

(b) purchase its own shares, or

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

(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) Where authorised by its Regulations, 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 the company by alteration of its Regulations cancels those shares; and until re-issued or cancelled, those shares shall be referred to as treasury shares.

(5) Except as provided in section 67 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.

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

60. Redemption of redeemable preference shares

(1) Despite a provision in the Regulations 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 63 or out of transfers to that account in the manner referred to in that section from income surplus as defined in section 70, or

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

(2) If redeemable preference shares have become redeemable in accordance with the Regulations and the funds of the company are sufficient to entitle it, under subsection (1), 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 in accordance with the Regulations.

(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 all other shareholders whose shares are due for redemption; and the Court, if satisfied that the conditions of this subsection are fulfilled, may order the company to redeem the shares and may require the company and the officer of the company who is in default to bear all the costs of, and incidental to, the application.

(4) Section 324 shall apply to an application to the Court under subsection (3).

61. Purchase by a company of its own shares

Despite a provision in the Regulations to the contrary, a company shall not purchase any of its own shares except on compliance with the following conditions:

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

(b) redeemable preference shares shall not be purchased at a price greater than the lowest price at which they are then redeemable or will be redeemable at the next date at which they are due or liable to be redeemed; and

(c) a purchase shall not be made in breach of section 62.

62. Limit on number of shares acquired

(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 percent 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, the number of those shares has been reduced,

subsection (1) shall apply as if the number originally issued, including shares of that class cancelled before the reduction took effect, had been the number as so reduced.

63. Share deals account

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

(2) There shall be debited to the share deals account the sums of money which the company shall 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 60 and 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.

(3) If at any time the total amount to be debited to the share deals account under subsection (2) exceeds the amount credited to that amount in accordance with subsections (1) and (2), an amount equal to the excess shall be transferred to the credit of that account from income surplus, as defined in section 70, 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 60, shall not be made by the company unless its income surplus is sufficient to enable the transfer to be made.

(4) An amount shall not be debited or credited to the share deals account, otherwise than in accordance with subsections (1), (2) and (3) of this section, except on a transfer to stated capital in accordance with section 66 or under an order of the Court under section 77 or 231.

(5) A true copy of the share deals account, showing the class and number of shares involved in each transaction and the price paid or received for those shares, shall be kept in a separate book at the registered office of the company and shall during business hours, subject to reasonable restrictions that the company's Regulations may impose, be allowed for inspection, be open to the inspection of a member

without charge and of any other person on payment of [twenty-five thousand cedis] or a lesser sum that the company may prescribe, 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 the inspection under subsection (5).

(7) 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 charge not exceeding ten thousand cedis for every hundred words or part of the account.

(8) If an inspection required under subsection (5) is refused or if a copy required to be sent under subsection (7) is not sent within the proper time, the company and every officer of the company who is in default is liable to a fine not exceeding [twenty-five penalty units] for every day during which the default continues, and the Court may by order compel an immediate inspection or furnishing of a copy.

64. Modification of sections 59 to 63 in relation to authorised mutual funds8(9)

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

65. Acquisition of shares of holding company

(1) Despite section 56, 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, at the commencement of this Act, a holder of shares of its holding company or a subsidiary which acquired shares in its holding company before it became a subsidiary of that holding company, may continue to hold 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 future shares in the holding company except on a capitalisation issue in accordance with subsection (1) of section 74.

PART G

Stated Capital and Dividends

66. Meaning of “stated capital”

(1) The stated capital of a company with shares shall consist of the sum of

(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 deductions for expenses or commissions, and

(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 which the company by special resolution resolves to transfer to stated

capital from surplus, as defined in section 69 including the credit balance on the share deals account referred to in section 63.

(2) Paragraph (a) or (b) of subsection (1) shall not require the proceeds or value of the consideration received on the re-issue of treasury shares to be added to stated capital; and for this purpose, when a company having treasury shares makes an issue of shares, the issue shall, until the number of treasury shares of that class is exhausted, be deemed to be an issue of those treasury shares and not a first issue of further shares, unless the company otherwise determines.

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

(4) 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 so raised and the total stated capital, distinguishing between the amounts attributable to each of the items specified in subsection (1) of this section.

(5) Where the company defaults in delivering to the Registrar the particulars required under subsection (4), the company and every officer of the company who is in default is liable to a fine not exceeding [twenty-five penalty units] for every day during which the default continues.

67. Reduction of stated capital

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

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

(3) Subject to subsections (1) and (2) of this section and to section 68, a company may not reduce its stated capital except in accordance with sections 75 to 79.

68. Modification of sections 66 and 67 in relation to authorised mutual funds9(10)

In relation to a company which is for the time being an authorised mutual fund within the meaning of section 319 sections 66 and 67 shall have effect subject to the terms of any directions made by order of the Registrar pursuant to section 319.

69. Meaning of “surplus”

The surplus of a company with shares is the amount 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 123 to 136 exceed its stated capital.

70. Meaning of “income surplus”

The income surplus of a company with shares is the surplus, as defined in section 69, less the amounts

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 profit

and loss account, 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.

71. Legality of dividend payments

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

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

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

(2) Where a payment, return or distribution is made in contravention of subsection (1),

(a) every director of the company who is in default is jointly and severally liable to restore to the company the total amount by which the payment, return or distribution contravenes subsection (1), with interest on that amount at the yearly rate of five percent;

(b) unless, within twelve months after the date of the payment, return or distribution, the total amount with interest on the payment, return or distribution shall be 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 received by the shareholder in contravention of subsection (1);

(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 knowing that it contravenes subsection (1) to the extent of the amount received by the shareholder with interest on that account at the rate of five percent per annum.

(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 all other shareholders or creditors, of the company and section 324 shall apply.

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

72. Prohibition of payment of dividends by companies limited by guarantee

(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 rate of five percent per annum and every officer of the company who is in default is liable to a fine not exceeding [five hundred penalty

units].

73. Declaration of dividends

(1) Subject to sections 71 and 72 a company may by ordinary resolution declare dividends in respect of any year or 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 293.

74. Capitalisation issues and non-cash dividends

(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 66, 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 credited as fully paid to the members who would have been entitled to receive that sum had it been lawfully distributed by way of dividend and in the same proportions and so that the sum so transferred to stated capital shall be deemed to be paid, otherwise than in cash, on 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 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 66.

(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 may make a provision which they think fit for the case of any shares, debentures, or securities for money becoming distributable in fractions and may issue fractional certificates or, in the case of a distribution in accordance with subsection (4), but not in the case of a capitalisation issue in accordance with subsection (1), 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 the transfers 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

75. Resolutions requiring confirmation of Court

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

(a) reduce its stated capital in any way;

(b) extinguish or reduce the unpaid liability on any of its shares;

(c) resolve to pay or return to its shareholders any of its assets which are in excess of the wants of the company;

(d) alter its Regulations by cancelling any of its shares.

(2)

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

(3) If the resolution requiring confirmation varies the rights attached to a class of shares, the resolution shall not be effective unless section 47 has been complied with.

(4) This section does not require confirmation by the Court of a transaction validly effected under any of the sections 71 to 74.

76.

Application for confirming order

(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 shareholders, and in any other case if the Court so directs, the following provisions shall have effect unless, having regard to the special circumstances of the

case, the Court otherwise directs:

(a) every 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;

(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;

(ii)

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

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

77. Order confirming the resolution

The Court, if satisfied,

(a) with respect to every creditor of the company who under section 76 is entitled to oppose on the ground that the creditor's consent has been obtained or the debt or claim of that creditor has been discharged or secured, and

(b) that sections 75 and 76 have been duly complied with, and

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

may make an appropriate order confirming the resolution on the terms and conditions.

78. Order and minute to be registered

(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 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, and not before, the resolution for reduction shall take effect.

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

79. Protection of Creditors

(1) If 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 not exceeding 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) if 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 37.

(2) Subsection (1) does not affect the rights of the members among themselves and, except as provided in that subsection, 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,

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 and in addition commits an offence and is liable on conviction to a term of imprisonment not exceeding two years, or to a fine not exceeding five hundred penalty units.

PART I

Debentures and Debenture Stock

80. Issue of debentures or debenture stock

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

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

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

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

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

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

81. Specific performance of contract for debentures

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

82. Documents of title to debentures

(1) 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.

(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

debenture stock certificate on payment of a fee not exceeding [ten thousand cedis] 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.

(3) Where a company defaults in complying with this section the company and an officer of the company who is in default is liable to a fine not exceeding [two hundred and fifty penalty units] and on 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.

83. Effect of statements in debentures

(1) Statements made in debentures or debenture stock certificates 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 secured thereby.

(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.

84. Perpetual debentures

A condition contained in a debenture or in a trust deed for securing any debentures, whether issued or executed before or after the commencement of this Act, 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.

85. Convertible debentures

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.

86. Secured or naked debentures

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

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

(3) A charge securing debentures 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 324 shall apply.

(5) Where debentures are secured by a charge sections 107 to 118 relating to registration of particulars of charges, shall apply.

87. Meaning of "floating charge"

(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, or

(b) the Court appoints a receiver or manager of the assets on the application of the holder, or

(c) the company goes into liquidation.

(3) On the happening of any of the events specified in subsection (2), the charge shall be deemed to crystallise and to become 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 chargee, or the chargee withdraws from possession, before the charge has been fully discharged, the charge shall be deemed to cease to be a fixed charge and again become a floating charge.

(5) A fixed charge on a property shall have priority over a floating charge affecting that property unless the terms on which the floating charge was granted prohibited the company from granting 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.

88. Powers of the Court

(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.

(5) In this Act, unless the context otherwise requires, “receiver” includes “manager”.

89. Payment of preferential creditors out of assets subject to a floating charge

(1) Where a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge or possession is taken by or on behalf of those 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) to be paid in priority to all other debts, shall be paid out of the assets coming to the hands of the receiver or other person taking that possession in priority to a claim for principal or interest in respect of the debentures.

(2) If the receiver or any other person taking possession as provided for in subsection (1) makes a repayment in respect of the debenture before discharging all 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) 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.

90. Limitation of efficacy of floating charges in liquidations

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 subsequent to, the creation of the charge and in consideration for the charge, together with interest on that amount at the yearly rate of five percent.

91. Application of sections 236 to 245

Sections 236 to 245 shall apply to, and on the appointment of, a receiver by or on behalf of the debenture holders.

92. Trustees for debenture holders

(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) The 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 upon them by the trust deed.

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

(4) 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) shall 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 any 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 the hearing of the application in chambers.

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

93. Meetings of debenture holders

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

(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.

94. Re-issue of redeemed debentures

(1) Where, before or after the commencement of this Act, a company has redeemed 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 shall have the same priority as if the debenture had never been redeemed.

(4) The re-issue of a redeemed debenture shall be treated as the issue of a new debenture for the purposes of stamp duty but not for any other purpose including 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) The 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 the company's Regulations 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.

PART J

Transfer of Shares and Debentures

95. Restrictions on transferability of shares

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

(2) Subject to section 294, the company's Regulations 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 the 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 Ghana to be an infant or a person of unsound mind.

96. Register of debentures

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

(2) Subject to sections 103 to 106, the register of debenture holders shall be kept and maintained at the address at which the register of members is kept and sections 32 to 36 shall apply, particularly subsection (5) of section 32 regarding 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.

97. Restrictions on transferability of debentures

(1) Except as expressly provided in the terms of any 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 294, 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.

(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.

98. Registration of transfers

(1) Subject to sections 99 and 100, 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 shall not be bound by, or be compelled in any way to recognise, any other rights in respect of a share or debenture except an absolute right to the entirety 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, so far as concerns the

company, remains the holder of the share or debenture.

(3) Despite anything contained in the Regulations of a company or in a contract, the 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 prejudice a power of the company to register a person to whom the right to any shares or debentures has been transmitted by operation of law.

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

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

(8) Where a company defaults in complying with subsection (3) or (7) of this section, the company and every officer of the company who is in default is liable to a fine not exceeding [five hundred penalty units].

99. Transmission of shares or debentures by operation of law

(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 that evidence being produced as the company may properly require, be registered personally as the holder of the share or debenture or transfer the same to some 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 shall, prior to registration of that person or a transferee, be entitled 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 shall not, before being registered as a member in respect of the share, be entitled to attend and vote at a meeting of the company.

(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 other moneys

payable in respect of the share or debenture until the requirements of the notice have been complied with.

100. Protection of beneficiaries

(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 the Rules of the High Court.

(2) Despite subsection (1) of section 98, the company shall enter on the register of members or debenture holders, the fact that the notice has been served and 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 the Rules.

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

101. Certification of transfers

(1) Where the holder of any 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 relative certificates may be delivered to the company or to the registration officer of the company with a request to certificate the instrument of transfer.

(2) If a company or its registration officer endorses on an instrument of transfer the words “certificate lodged”, or words to the like effect, this shall be taken as a representation to 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 as show a prima facie title to the shares or stock in the transferor named in the instrument of transfer but not as a representation that the certificates are genuine or that the transferor has 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 any of its officers for whose act of signing it the company is liable under sections 139 to 143, 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 139 to 143.

(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 certificate 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.

(7) For the purposes of subsections (5) and (6) the certifications are 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.

102. Company's lien on shares

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

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

PART K

Branch Registers

103. Power for company to keep branch register

(1) A company having shares may, if so authorised by its Regulations, cause to be kept in 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.

(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 a fine not exceeding twenty-five penalty units for every day during which the default continues.

104. Regulations as to branch registers

(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 32 to 36 and 96 to 98 required to be kept, but the advertisement before closing the branch register shall be inserted in a 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 may be 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 and that duplicate is, for the purposes of this Act, a

part of the principal register.

(4) 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 any shares or debentures registered in a branch register shall not, during the continuance of that registration, be registered in any other register.
(5) A company may discontinue a branch register, and the entries in that register shall be transferred to the principal register.
(6) Subject to this Act, a company may, by, its Regulations, make provisions that it thinks fit respecting the keeping of branch registers.
(7) Where a company defaults in complying with subsection (3), the company and every officer of the company who is in default is liable to a fine not exceeding [twenty-five penalty units] for each day during which the default continues.
(8) 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.
105. Stamp duties in case of securities registered in branch registers
An instrument of transfer of a share or debenture registered in a branch register, 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.

106. Provisions as to branch registers kept in Ghana
(1) If, by virtue of the law in force in a country, companies incorporated under that law have power to keep in the Republic branch registers of their shareholders or debenture holders, the Minister may, by legislative instrument, direct that sections 33 and 35 shall, subject to the modifications and adaptations

specified in the instrument, apply to and in relation to those branch registers kept in the Republic as they apply to and in relation to registers of companies within the meaning of this Act.

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

PART L

Registration of Particulars of Charges

107. Registration of particulars of charges created by companies

(1) A charge, other than a charge specified in subsection (4), 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 twenty-eight days after the date of its creation.

(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 prejudice a contract or an obligation for repayment of the money secured by the contract or obligation and 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 a contract.

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

(5) Subject to subsections (6) and (7) 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 secured by the charge, or the maximum sum of money deemed to be secured by the charge in accordance with section 108,

(d) short particulars of the property charged,

(e) the persons entitled to the charge, and

(f) in the case of a floating charge, the nature of 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.

(6) 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 twenty-eight 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,

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

(c) the names of the trustees, and

(d) the particulars specified in paragraphs (b), (d) and (f) of subsection (5) of this section,

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

(7) For the purposes of subsections (1) and (6), 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.

(8) 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.

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

108. Charges to secure fluctuating amounts

(1) Where a charge, particulars of which require registration under section 107, is expressed to secure the sums of money due or to become due or some other uncertain or fluctuating amount, the particulars required under paragraph (c) of subsection (5) of section 107 shall state the maximum sum deemed to be secured by the charge, being the maximum sum covered by the stamp duty paid on the charge and the charge is void, so far as a security on the company’s property is conferred by the registration, as respects 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, prior to the commencement of the winding up of the company amended particulars of the charge stating the increased maximum sum deemed to be secured by the charge, together with the original instrument by which the charge was created or evidenced, are delivered to the Registrar for registration,

then, as from the date of 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, prior to the date of the delivery, has acquired any proprietary rights in, or a fixed or floating charge on, the property subject to the charge.

109. Charges on property acquired

(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 107, the company shall deliver to the Registrar 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 (7) and (8) of section 107, for registration within twenty-eight days after the date on which the acquisition is completed.

(2) The particulars requiring registration under subsection (1) shall be those specified in subsection (5) of section 107 with the addition of the date of the acquisition of the property by the company.

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

110. Existing charges

(1) Where, at the date of commencement of this Act, a company has property on which there is a charge particulars of which would require registration if it had been created by the company after the date of that commencement then, unless the charge has been discharged or the property has ceased to be held by the company prior to the expiration of six months from the date of that commencement, the company shall, within that time deliver to the Registrar particulars of the charge as prescribed by section 107 for registration together with the document by which the charge was created or a copy of that document certified as required by that section.

(2) An existing company shall prior to 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 who is in default is liable to a fine not exceeding [twenty-five penalty units].

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

111. Duty of company to deliver particulars for registration

(1) A company shall send to the Registrar for registration the particulars required to be sent under sections 107 to 110, 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, then, unless the particulars have been duly delivered for registration by any other person, the company and every officer of the company who is in default is liable to a fine not exceeding [five hundred penalty units].

112. Register of particulars of charges

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

(2) The Registrar shall give a certificate personally signed by the Registrar of the registration of particulars of a charge registered in pursuance of sections 107 to 110 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 107 to 110 have been complied with.

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

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

113. Endorsement of registration on debentures of a series

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

(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 or before the commencement of this Act.

(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 a fine not exceeding [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 conviction to a term of imprisonment not exceeding five years or to a fine not exceeding one thousand penalty units or to both the imprisonment and the fine.

114. Entry of satisfaction on discharge

The Registrar, on 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.

115. Rectification of register of particulars of charges

(1) The Court, on being satisfied
(a) that the omission to register particulars of a charge within the time required by this Act, or
(b) that the omission or mis-statement of any 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
(c) 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 seem to the Court 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, prior to the date of actual registration of particulars of the charge, has acquired any proprietary rights in, or a fixed or floating charge on, the property subject to the charge, and shall be ineffective against the liquidator and any creditors of the company if the winding up of the company commences before the date of actual registration.

116. Registration of enforcement of security

(1) If a person obtains an order for the appointment of a receiver of a 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) If 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 a fine not exceeding [twenty-five penalty units] for every 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, within ten days of so ceasing to act or to remain in possession, give notice to that effect in the prescribed form to the Registrar who shall enter the notice in the register of particulars of charges.

(4) A person who defaults in complying with the requirements of subsection (3) is liable to a fine not exceeding [twenty-five penalty units] for every day during which the default continues.

(5) The Registrar shall publish a copy of a notice given under this section in the Gazette.

117. Copies of charges to be kept by company

(1) A company shall keep a copy of every instrument creating a charge of which particulars require to be registered under sections 107 to 110 at the registered office of the company and at any other office in the Republic 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 shall be sufficient.

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

(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

(a) by a member or creditor of the company without fee, and

(b) by any other person on payment of a fee, not exceeding [ten thousand cedis] for each inspection, that the company may prescribe.

(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 who is in default is liable to a fine not exceeding [five hundred penalty units] and in the event of refusal the Court may by order compel an immediate inspection of the copies.

118. Registration constituting notice

The registration of particulars under sections 107 to 118 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

119. Registered office

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

(2) Where a company defaults in complying with subsection (1), the company and every officer of the company who is in default is liable to a fine not exceeding [twenty-five penalty units] for every day during which the default continues.

120. Notice of situation of registered office

(1) Notice of the situation of the original registered office of the company and of the number of its post office box shall be given to the Registrar for registration in accordance with section 27.

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

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

(4) If the notice given to the Registrar by an existing company prior to the commencement of this Act pursuant to section 52 of the Companies Ordinance (Cap. 193) has not given both the situation of the company's registered office and the number of its post office box, an amended notice in the prescribed form shall be given to the Registrar for registration within twenty-eight days of the commencement of this Act.10(11)

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

(6) Where a company defaults in complying with subsection (2), (3) or (4) of this section the company and every officer of the company who is in default is liable to a fine not exceeding [twenty-five penalty units] for every day during which the default continues.

121. Publication of name of company

(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 easily legible, and

(b) have its name engraved in legible characters on its seal, and

(c) have its name accurately mentioned in legible characters at the head of all business letters, invoices, receipts, notices, or any other publications 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 every officer of the company who is in default is liable to a fine not exceeding [two hundred and fifty penalty units].

(3) Where an officer of the company or a person purporting to act on its 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 is liable to a fine not exceeding [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 prejudice to a right of indemnity which that person may have against the company or any other person.

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

122. Annual return

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

(2) A company need not make a return under subsection (1),

(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 forty-two days after the first despatch to its members and debenture holders of the statements, accounts, and reports referred to in section 124.

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

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

(5) The Registrar, after registering the annual return, shall publish in the Gazette 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 269 and in the case of a public company by the documents specified in section 295.

(7) Where a company defaults in complying with this section, the company and every officer of the company who is in default is liable to a fine not exceeding [twenty-five penalty units] for every day during which the default continues.

PART N

Accounts and Audit

123. Keeping of books of account

(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 property 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, and

(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 profit and loss accounts and balance sheets in accordance with sections 125 to 131 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 264, by a system of mechanical recording, or otherwise.

(4) The books of account shall be kept at the registered office of the company or at any other place that the directors consider fit, and shall be open during normal business hours to inspection by the directors, secretary and auditors of the company.

124. Circulation of profit and loss account, balance sheet and reports

(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 holder of debentures of the company a copy of each of,

(a) a profit and loss account and balance sheet prepared and signed in accordance with sections 125 to 131, and

(b) a report by the directors in accordance with section 132, and

(c) a report by the auditors in accordance with section 133.

(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 profit and loss accounts and balance sheets and directors' and auditors' reports.

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

(4) The Registrar may for good reason, extend the periods of eighteen months and fifteen months referred to in subsection (1) of this section and, in the circumstances referred to in subsection (11) of section 127, may waive the requirements of this section in respect of a calendar year.

125. Profit and loss account

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

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

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

(b) the Registrar may for a good reason extend the period of nine months.

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

(4) The profit and loss account shall, subject to subsection (5) of section 127, relating to consolidated profit and loss account,

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

(b) comply with the requirements of sections 127 to 131 and Part One of the Fourth 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 Fourth 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) of this section to give a true and fair view of the profit or loss of the company.

126.

Balance sheet

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

127.

Group accounts

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

(2) Accounts and statements dealing with the profit or loss and the state of affairs of the company and the subsidiaries, that is to say, the group accounts, shall, subject to subsection (3) of this section, be sent to the members and debenture holders of the company with the company's own profit and loss account and balance sheet pursuant to section 124.

(3)

Despite a provision of subsection (2),

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

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

(i)

it is impracticable or would be of no real value to the members and debenture holders of the company in view of the insignificance of the amount involved; or

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

(iii)

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

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

(4) Subject to subsection (5), the group accounts shall be consolidated accounts comprising,

(a) a consolidated profit and loss account dealing with the profit or loss of the company and all

subsidiaries to be dealt with in the group accounts, and

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

(5) Where the company's directors are of the opinion that it is better for the purpose of presenting the same or equivalent information in a form which may be more readily appreciated by the members and debenture holders, the group accounts may be prepared in a form other than that required by subsection (4), and, in particular, may consist

(a) of more than one set of consolidated accounts dealing respectively with the company and various groups of subsidiaries, or

(b) of separate accounts, dealing with each of the subsidiaries, attached to the company's accounts, or

(c) of statements expanding the information about the subsidiaries in the company's own accounts, or

(d) any combination of those forms.

(6) The group profit and loss account may be wholly or partly incorporated in the company's own profit and loss account and a consolidated profit and loss account dealing with the company and all or any of its subsidiaries shall be deemed to be a profit and loss account of the company complying with subsection (4) of section 125 so long as it complies with the requirements of this section and shows how much of the consolidated profit or loss for the financial year is dealt with in the accounts of the company.

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

(8) The accounts of the company and the group accounts, shall comply with the requirements of Part Three of the Fourth Schedule.

(9) The Registrar may, on the application or with the consent of the company's directors modify in relation to that company any of the requirements in Part Three of the Fourth 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 (7) of this section to give a true and fair view of the profit or loss and the state of affairs of the company and the subsidiaries as a whole, so far as concerns the interests of the company.

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

(11) Where it appears to the Registrar desirable for a holding company or subsidiary company to extend its financial year so that the subsidiary's financial year may end with that of the holding company,

and for that purpose to postpone the despatch of the accounts and reports referred to in section 124 from one calendar year to another, the Registrar may direct that the despatch of the accounts by one or other of these companies shall not be required in the earlier of the calendar years.

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

128. Particulars of directors' emoluments and pensions

(1) In a note to the accounts 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 papers or the company has obtained the information from the persons concerned or has the right to obtain it under section 130, 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) shall include 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 an associated company.

(3) The amount to be shown under paragraph (b) of subsection (1) shall include a 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 shall not be 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 any sums of money 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 paid by, or receivable from, the company or any other person.

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

(8) For the purposes of subsection (7), the sums of money 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.

129. Particulars of amounts due from officers

(1) In a note to the accounts 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 officers of the company or an associated company, and

(b) the maximum amount of the sums of money due to the company and the associated companies at any time during the company's financial year from officers of the company or 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 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 shall not require to be separately shown, namely,

(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;

(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 [twenty million cedis] or two percent of the stated capital of the company concerned, whichever is the less, and is certified by the directors of the company concerned to have been made in accordance with 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 shall be taken as referring 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 301 prohibiting loans by public companies to their directors or directors of their associated companies.

130. Provisions supplemental to sections 123 to 129

(1) A reference in this Act to a profit and loss account or balance sheet or to the accounts of a company, include the notes on those accounts and a document annexed to those accounts giving information which is required by this Act.

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

(3) Where a person, who is a director of a company, fails to take the reasonable steps necessary to secure compliance with sections 123 to 129 that person is, in respect of each offence, liable to a term of imprisonment not exceeding two years or to a fine not exceeding five hundred penalty units or to both the imprisonment and the fine.

(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 that offence unless the Court finds that 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 128 and 129; 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 shall not be 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 a fine not exceeding [two hundred and fifty penalty units].

(8) A company shall give the 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 to comply with section 128 and 129.

(9) Where a company defaults in complying with subsection (8) the company and every officer of the company, who is in default is liable to a fine not exceeding [two hundred and fifty penalty units].

131. Signing and publication of accounts

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

(a) the company attaches to that account or balance sheet a copy of each of the other documents referred to in paragraphs (a), (b) and (c) of subsection (1) of section 124 and of any group accounts required under section 127, and

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

(2) Subsection (1) shall not prohibit the publication of,

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

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

(3) In the event of a breach of subsection (1) the company and every officer of the company who is in default is liable to a fine not exceeding [one hundred and fifty penalty units].

132. Directors' report

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

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

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

(4) The report shall contain a list of bodies corporate in relation to which 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

(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 percent of the votes exercisable at a general meeting of the body corporate.

(5) The list referred to in subsection (4) shall distinguish between bodies corporate falling within paragraph (a) and paragraph (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.

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

(7) If, on application made by the directors, the Registrar is satisfied that mention of any of the matters referred to in subsections (3), (4), (5) and (6) 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.

(8) A director who fails to take the reasonable steps necessary to comply with this section is liable to a fine not exceeding [two hundred and fifty penalty units].

133. Auditors' report

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

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

(3) 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 124.

134. Appointment and remuneration of auditors

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

(a) has, prior to the appointment, consented in writing to be appointed, and

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

(2) A partnership firm may be appointed, in the name of the firm, as auditors of a company, but, whether or not 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) The first auditors of a company incorporated after the commencement of this Act shall be appointed within three months of the incorporation of the company or prior to the delivery to the Registrar of the particulars required under section 27, and every existing company shall, unless it already has duly qualified auditors, appoint auditors within three months after the commencement of this Act.11(12)

(4) Despite a contrary provision in the company's Regulations, auditors shall be appointed by ordinary resolution of the company and not otherwise.

(5) For the purposes of subsection (4),

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

(b) if a company does not have an auditor for a continuous period of three months the Registrar may appoint auditors.

(6) An existing auditor shall continue in office until,

(a) that auditor ceases to be qualified for appointment, or

(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 135 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 auditor the surviving or continuing auditor or auditors may act.

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

(8) Within three months after the commencement of this Act an existing company shall give notice in the prescribed form to the Registrar for registration of the names and addresses of its auditors.12(13)

(9) 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.

(10) A company shall give notice to the Registrar if at any time after the commencement of this Act a continuous period of three months has elapsed without the company having a duly qualified auditor.

(11) The remuneration of the auditors,

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

(b) subject to paragraph (a), shall be fixed by an ordinary resolution of the company or in a manner that the company by ordinary resolution may determine.

(12) For the purposes of subsection (11), the sums of money paid or payable by the company in respect of the auditors' expenses shall be included in the expression "remuneration".

(13) Where a company commits a breach of 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 who is in default is liable to a fine not exceeding [two hundred and fifty penalty units].

(14) For the purposes of subsections (7), (8) and (9)

(a) where a partnership firm has appointed auditors in the name of the firm, the firm 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 are auditors of the company is not a change in the auditors.

135. Removal of auditors

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

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

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

(b) in the case of a resolution to remove an auditor appointed by the directors in accordance with subsection (4) of section 134 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, copies of which the company shall send with every notice of the annual general meeting or, if the statement is received too late, shall forthwith circulate to every person entitled under section 154 to notice of the meeting in the same manner as notices of meetings are required to be given.

(4) The company need not 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 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; and 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.

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

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

136. Functions of auditors

(1) The auditors of a company while acting in the performance of their functions under this Act are not officers or agents of the company, but

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

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

(2) A provision, whether contained in the Regulations 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 accounts 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 auditors of a company are entitled

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

(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 them as auditors.

(5) The auditors of a company may apply to the Court for directions in relation to a matter arising in

connection with the performance of their functions under this Act; and on that application the Court may give the directions that the Court thinks just; and unless the Court otherwise directs the costs of the application shall be paid by the company.

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

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

PART O

Acts by or on Behalf of the Company

137. Division of powers between general meeting and board of directors

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

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

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

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

(5) Despite subsection (3), 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 and on behalf of the company if the board of directors refuse or neglect 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 action to be taken by the board.

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

138. Delegation to committees and managing directors

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

(a) may exercise their powers through committees consisting of 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.

139. Acts of the company

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

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

(a) the company shall 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 power or of the irregularity;

(b) if in fact a business is being carried on by the company, the company shall not escape liability for facts undertaken in connection with that business merely because the business in question was not among the businesses authorised by the company's Regulations.

140. Acts of officers or agents

(1) Except as provided in section 139, the acts of an officer or agent of a company are not the acts of the company, unless,

(a) the company, acting through its members in general meeting, 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 the officer or agent as having its authority to act in the matter, in which event the company shall be 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 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 prior to action by that officer or agent or by subsequent ratification; and knowledge of action by that officer or agent and acquiescence in that action by the members for the time being entitled to attend general meetings of the

company or by the directors for the time being or by the managing director for the time being, shall be equivalent to ratification by the members in general meeting, board of directors, or managing director.

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

141. No constructive notice of registered documents

Except as mentioned in section 118, regarding particulars in the register of particulars of charges, a person does not 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.

142. Presumption of regularity

(1) A person having dealings with a company or with someone deriving title under the company is

entitled to assume,

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

(b) that a person described in the particulars filed with the Registrar pursuant to sections 27 and 197 as a director, managing director or secretary of the company, or represented by the company, acting through its members in general meeting, board of directors, or managing director, as an officer or agent of the company, has been duly appointed and has authority to exercise the powers and perform the functions customarily exercised or performed by a director, managing director, or secretary of a company carrying on business of the type carried on by the company or customarily exercised or performed by an officer or agent of the type concerned;

(c) that the secretary of the company, and 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;

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

(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 Regulations provide that authority to act in the matter may be delegated to a committee or to an officer or agent.

143. Liability of company not affected by officer's fraud or forgery

Where, in accordance with sections 139 to 142, 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.

144. Form of contracts

A contract on behalf of a company may be made, varied or discharged

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

(b) if the contract, if made between individuals would be by law required to be in writing or to be evidenced in writing by the parties to be charged therewith or 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 in the name or on behalf of the company;

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

145. Bills of exchange and promissory notes

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

(2) The company and its successors shall be bound if the company is, in accordance with sections 139 to 143, 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).

146. Authentication of documents

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

147. Execution of deeds abroad

(1) A company may, by writing under its common seal, 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 and under the attorney's seal shall bind the company and have the same effect as if it were under the common seal of the company.

148. Official seal for use abroad

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

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

(3) The company may, by writing under its common seal, authorise 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.

(4) A person dealing with an agent of the company in reliance on the writing conferring the authority is entitled to assume that the authority of the agent continued during the period mentioned in the writing or, if a period is not there mentioned, then until that person has actual notice of the revocation or determination of the authority.

(5) The person affixing the official seal shall, by writing personally signed by that person, certify on the document to which the seal is affixed, the date on which and the place at which it is affixed.

PART P

General Meetings and Resolutions

149. Annual general meetings

(1) Except as provided in subsection (3), 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 notices calling it;

and not more than fifteen months shall elapse between the date of one annual general meeting and the

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

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

(3) 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.

(4) If the annual general meeting is not held in accordance with subsection (1), 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 calling, holding and conducting of that meeting, the operation of the company's Regulations and sections 151 to 155, 161, 163, 166, 167, and 169 to 173.

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

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

(7) If an annual general meeting of the company is not held in accordance with subsection (1), or in complying with any directions of the Registrar under subsection (4) or in complying with subsection (2), (5) or (6) of this section, the company and every officer of the company who is in default is liable to a fine not exceeding [one hundred and fifty penalty units].

150. Extraordinary general meeting

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

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

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

accordance with section 297.

151. Place of meetings

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

152. Length of notice of meetings

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

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

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

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

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

(b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority holding not less than ninety-five percent 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 percent majority in number of the members.

(5) Where any members are entitled to vote only on some resolutions to be moved at the meeting and not on others, those members shall be taken into account for the purposes of subsection (4) in respect of the former resolutions and not in respect of the latter.

153. Contents of notice

(1) The notice of a meeting shall specify the place, date and hour of the meeting, and the general nature of the business to be transacted at the meeting in sufficient detail to enable those to whom it is given to decide whether to attend or not; and where the meeting is to consider a special resolution shall set out the terms of the resolution.

(2) In the case of notice of an annual general meeting, a statement that the purpose is to transact the ordinary business of an annual general meeting is a sufficient specification that the business is,

(a) to declare a dividend,

(b) consideration of the accounts and reports of the directors and auditors,

(c) the election of directors in the place of those retiring,

(d) the fixing of the remuneration of the auditors, and

(e) if the requirements of sections 135 and 185 are duly complied with, the removal and election of auditors and directors.

(3) A business may not be transacted at a general meeting unless notice of it has been duly given.

(4) In every case in which a member is entitled, pursuant to section 163 to appoint a proxy to attend and vote instead of that member, the notice shall contain with reasonable prominence, a statement that the member has the right to appoint a proxy to attend and vote instead of that member and that the proxy need not be a member of the company; and if default is made in complying with this subsection as respects a meeting, every officer of the company who is in default is liable to a fine not exceeding [one hundred and fifty penalty units].

154. Persons entitled to notice

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

(a) every member,

(b) 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,

(c) every director of the company, and

(d) every auditor for the time being of the company.

155. Service of notice

(1) Notice may be given by the company to a member or director personally or by sending it through the post addressed to the member or director at the registered address of the member or director or by leaving it for the member or director with a person apparently over the age of sixteen years at that address.

(2) Notice may be given to the joint holders of a share by giving the notice to the joint holder named first in the register of members in respect of the share.

(3) Notice may be given to a person 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 by sending it through the post addressed to that person by name, or by the title of representatives of the deceased or receiver or trustee of the bankrupt, or by any like description, at the address supplied for the purpose by that person, or by leaving it for that person with a person apparently over the age of sixteen years at that address, or, 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.

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

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

156. Accidental failure to give notice

The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, a

person entitled to receive notice shall not invalidate the proceedings at that meeting.

157. Circulation of members' resolutions and supporting circulars

(1) 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 with 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.

(2) If the proposed resolution is not passed at that meeting that resolution or one substantially to the same effect shall not be moved at a general meeting within three years, unless the directors otherwise agree or unless the request within three years is supported in writing by members of the company representing between them not less than one-twentieth of the total voting rights of the members having at the date of the request a right to vote on the resolution to which the request relates.

(3) For the purposes of subsection (1), 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.

(4) If, after the documents have been deposited, a general meeting is called for a date six weeks or less after the deposit, the documents shall be deemed to have been properly deposited.

158. Circulation of members circulars

(1) 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.

(2) 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.

(3) A company is not bound to circulate the statement unless,

(a) the written request, signed by the member concerned, together with the statement, is deposited at the registered office of the company not less than ten days before the meeting, and

(b) 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.

159. General provisions affecting sections 157 and 158

(1) A company is not bound under section 157 or 158 to circulate a resolution or statement if, on the application of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by those sections are being abused to secure needless publicity for defamatory matter; and the Court may order the company's costs on an application under subsection (1) to be paid in whole or in part by the member making the request, although that member is not a party to the application.

(2) Where a company defaults in complying with section 157 or 158, every officer of the company who is in default is liable to a fine not exceeding [one hundred and fifty penalty units].

160. Attendance at meetings

(1) Despite a contrary provision in the company's Regulations the following persons are entitled to attend a general meeting of the company, namely,

(a) every member of the company,

(b) every director of the company,

(c) the secretary of the company, and

(d) every auditor for the time being of the company.

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

(a) if the company's Regulations so provide, 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;

(b) 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 49.

(3) Subsection (2) does not preclude any other persons from attending a general meeting with the permission of the chairman of the meeting.

161. Quorum

(1) 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 although a quorum is not present throughout.

(2) In dealing with a quorum under subsection (1) 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.

(3) Unless otherwise provided in the company's Regulations, a quorum is constituted,

(a) if the company has only one member, by that member present in person or, where proxies are allowed, by proxy;

(b) 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 percent of the total voting rights of the members having a right to vote at the meeting.

(4) Unless otherwise provided in the company's Regulations, if a quorum is not present within half an hour after the time appointed for the meeting, the meeting if convened on the requisition of members in accordance with section 271 or 297, 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, and if at the adjourned meeting a quorum is not present within half an hour after the time appointed the member or members present shall constitute a quorum.

(5) Where the meeting is adjourned to the same day, place and time in the following week a notice need not 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.

(6) Where a quorum is present the meeting shall be deemed to be duly conducted although only one member or one proxy is present.

162. Power of Court to order meeting

(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 the Regulations or this Act, the Court may, on the application of a director or member of the company, or of the Registrar, order a meeting of the company to be called, held and conducted in the manner directed by the Court; and that order may give any ancillary or consequential directions that it thinks expedient.

(2) A meeting called, held and conducted in accordance with an order under subsection (1) shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.

163. Proxies

(1) 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.

(2) Unless the company's Regulations otherwise provide, subsection (1) shall not apply in the case of a company limited by guarantee.

(3) The instrument appointing the proxy shall be in writing under the hand of the appointor or the appointor's agent duly authorised in writing or, if the appointor is a body corporate, under seal or under the personal signature of an officer or agent duly authorised.

(4) An instrument appointing a proxy shall be in the form prescribed by Table A in the Second Schedule or in the form that the company's Regulations may provide; but, despite a provision in the company's Regulations, an instrument in the form prescribed by Table A is sufficient.

(5) Unless the company's Regulations otherwise provide, the instrument appointing a proxy and the power of attorney or other authority under which it is signed or a notarially certified copy of that power or

authority shall be deposited at the registered office of the company or at any other place within Ghana as specified in the notice convening the meeting not less than forty-eight hours before the time for holding the meeting or adjourned meeting or, in the case of a poll, not less than twenty-four hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.

(6) A provision contained in a company's Regulations is void in so far as it would have the effect of requiring the documents referred to in the Regulations 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.

(7) Where instruments of proxy have been deposited in accordance with subsection (5), 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 percent of the total voting rights of the members entitled to vote at the meeting shall be entitled, at any time during business hours prior to the conclusion of the meeting or the taking of the poll, but subject to any reasonable restrictions that the company may impose, to inspect the deposited instruments of proxy and the original or copy powers of attorney or any other authority under which they are signed.

(8) 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.

(9) 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.

(10) 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,

(a) the invitations shall be sent to the members entitled to attend and vote at the meeting;

(b) the invitations shall be accompanied by forms for the appointment of a proxy which shall entitle the members to direct the proxy to vote for or against each resolution;

(c) where instruments of proxy are duly completed and returned in accordance with the instructions in the invitation and are not revoked then,

(i)

the chairman 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

(ii)

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.

(11) 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 paragraph (b) of subsection (10) and shall be deemed to be an instrument of proxy to which paragraph (c) of subsection (10) applies.

(12) An officer of the company who knowingly authorises or permits a breach or non-observance of subsection (7), (8), (10) or (11) is liable to a fine not exceeding [two hundred and fifty penalty units] and in the event of a refusal to permit inspection in accordance with subsection (7) the Court may by order compel an immediate inspection.

164. Obtaining proxies by misrepresentation

(1) The vote of a proxy shall not be rejected at a meeting on the ground that the appointment of a proxy was obtained by misrepresentation.

(2) The Court may, on the application of the company or a member entitled to vote at the meeting or the Registrar, annual the appointment of a proxy if satisfied that the appointment was obtained by a material misrepresentation of fact whether made fraudulently or not.

(3) 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 appropriate ancillary or consequential directions.

165. Representation of corporations at meetings

(1) 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 thinks fit to act as its representative,

(a) if it is a member of a company, at any meeting of the company;

(b) if it is a creditor, including a 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.

(2) A Person authorised under subsection (1), 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.

(3) This section does not preclude a body corporate from appointing a proxy to attend and vote on its behalf.

166. Chairman of meetings

Unless otherwise provided in the company's Regulations, the chairman of the board of directors shall preside as chairman at a general meeting of the company, or if the board does not have a chairman or, if the chairman 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 chairman of the meeting, or, if a director is not present or willing to act, the members present shall choose one of their number to be chairman of the meeting.

167. Adjournments

(1) The chairman 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.

(2) 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.

(3) Subject to this section, and unless the company's Regulations otherwise provide, it shall not be 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.

168. Types of resolution

(1) 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.

(2) 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.

(3) A reference in this Act or in the Regulations, 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 meeting to that specified in subsection (1) or (2) with the substitution of the members of the class for the members of the company.

169. 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 section 153.

170. Procedure on voting

(1) Unless the company's Regulations otherwise provide, a resolution put to the vote of a meeting shall be decided on a show of hands unless a poll is, before or on the declaration of the result of the show of hands, demanded by,

(a) the chairman,

(b) at least three members present in person or by proxy, or

(c) 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.

(2) A provision contained in the company's Regulations regarding voting procedure is void in so far as it would have the effect,

(a) of excluding the right to demand a poll on a question other than the election of the chairman or the adjournment of the meeting; or

(b) of making ineffective a demand for a poll on a question which is made by the persons specified in any of paragraphs (a), (b) or (c) of subsection (1).

(3) The demand for a poll may be withdrawn.

(4) 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.

(5) Unless a poll is effectively demanded, a declaration by the chairman that a resolution has, on a show of hands been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the meeting is conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against the resolution.

(6) If a poll is effectively demanded it shall be taken at the time and in the manner that the chairman shall direct.

(7) In lieu of directing that a poll shall be taken of those members present in person or by proxy at the poll, the chairman may direct that voting shall be by postal ballot of the members entitled to attend and vote on the resolution.

(8) For the purposes of subsection (7), 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 either 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 subsection (5) of section 163, not less than twenty-four hours before the time appointed for the closing of the ballot.

(9) Despite subsection (6), a postal ballot in accordance with subsections (7) and (8) shall be directed by the chairman if,

(a) the company's Regulations so provide, or

(b) on or after the chairman has directed a poll, an ordinary resolution in favour of a postal ballot under this subsection is moved at the meeting and passed on a show of hands.

(10) For all the purposes of this Act, a postal ballot in accordance with subsections (7) and 8) shall be

deemed to be a poll.

(11) Except as otherwise lawfully provided in the company's Regulations, on a poll each shareholder entitled to vote shall have one vote for each share held by the shareholder and each member of a company limited by guarantee shall have one vote.

(12) 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.

(13) Unless the company's Regulations otherwise provide, in the case of an equality of votes, whether on a show of hands or a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second or casting vote.

171. Voting by joint holders

In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted, to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

172. 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 that may be appointed for the purpose by the Court and the person so appointed may vote by proxy.

173. Date of passing of resolutions

(1) Where a resolution is passed at an adjourned meeting, the resolution is, for all purposes, passed on the date on which it was in fact passed at the adjourned meeting.

(2) Where a resolution is passed on a poll it is for all purposes passed on the day on which the result of the poll is declared, and not on any earlier day.

174. Written resolutions

(1) Except as provided in subsection (3), a resolution in writing signed by 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, and, if the company has only one member entitled to vote by that

member, shall be as valid and effective for all purposes as if the resolution has been passed at a general meeting of the company duly convened and held; and if described as a special resolution shall be deemed to be a special resolution within the meaning of this Act.

(2) The resolution shall be deemed to have been 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 prima facie evidence that it was signed by that member on that date.

(3) Subsections (1) and (2) do not apply to a resolution to remove an auditor, which can be passed only at an annual general meeting in accordance with section 135, or to remove a director, which can be passed only at a general meeting in accordance with section 185.

175. Application of sections 152 to 174 to class meetings

(1) Sections 152 to 174 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) of this section, 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;

(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) The company's Regulations may provide for a larger, but not for a smaller, quorum for the purposes of subsection (2).

176. Registration of copies of certain resolutions

(1) A certified true copy of a special resolution of a general meeting or of a class of members and of a resolution to which a specified proportion of a class of members have consented in writing and which would not have been effective for its purpose, unless the written consent had been given, without the passing of a special resolution, shall be forwarded to the Registrar for registration within twenty-eight days after the passing of the resolution or the making of the copy.

(2) The copy shall be printed, typewritten, or in any 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 Regulations issued after the passing of the resolution, but where the sole effect of the special resolution is to amend the Regulations, this subsection is sufficiently complied with if a copy of the Regulations issued 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 who is in default is liable to a fine not exceeding [twenty-five penalty units] for each default.

177. Minutes of general meetings

(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 chairman of the meeting at which the proceedings took place or of the next succeeding meeting, is prima facie evidence of the proceedings.

(3) Where minutes have been made in accordance with this section then, 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 every officer of the company who is in default is liable to a fine not exceeding [two hundred and fifty penalty units.]

178. Inspection of minute books

(1) The books containing the minutes of proceedings of a general meeting or class meeting of a company held after the commencement of this Act, shall be kept at the registered office of the company and shall, during business hours, subject to reasonable restrictions that the company's Regulations may impose, be allowed for inspection, be open to the inspection of a member without charge.

(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, within ten days after the member has made a request in that behalf to the company, with a copy of the minutes at a charge not exceeding [ten thousand cedis] for every hundred words.

(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 who is in default is liable in respect of each offence to a fine not exceeding [twenty-five penalty units] for every day during which the default continues and the Court may, by order, compel an immediate inspection or furnishing of a copy.

PART Q

Directors and Secretary

179. Meaning of "directors"

(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, who is not 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 duly 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 a fine not exceeding 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.

180. Number of directors

(1) A company incorporated after the commencement of this Act shall have at least two directors.

(2) A company incorporated prior to the commencement of this Act shall, after the expiration of six months from the commencement of this Act, have at least two directors.13(14)

(3) If at any time the number of directors is less than two in breach of subsection (1) or subsection (2), and the company continues to carry on business for more than four weeks after that time, the company and every director and member of the company who is in default is liable to a fine not exceeding [twenty-five penalty units] for every day during which it so carries on business after the expiration of the four weeks without having at least two directors.

(4) 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.

(5) Subject to this section, the number of directors shall be fixed by, or in accordance with, the company’s Regulations.

181. Appointment of directors

(1) A person shall not be appointed a director of a company unless that person has, prior to the appointment, consented in writing to be appointed.

(2) The first directors of a company shall be named in the company’s Regulations.

(3) Subject to this section and to sections 182 and 183, the appointment of directors shall be regulated by the company’s Regulations, and except as otherwise provided in the Regulations, section 272 shall regulate the appointment of directors of a private company and sections 298 and 299 the appointment of directors of a public company.

(4) The Regulations of a company may provide for the appointment of a director or directors by a class of shareholders, debenture holders, creditors, employees or any other person.

(5) Despite a provision to the contrary in the company's Regulations, a casual vacancy in the number of directors may be filled by,

(a) the continuing directors or director although their number may have been reduced below that fixed as the necessary quorum of directors, or

(b) by an ordinary resolution of the company in general meeting.

(6) In exercising their power to fill a vacancy under subsection (5) the directors shall observe the rules laid down in sections 203 and 204 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) If the casual vacancy filled under subsection (5) is one which, under the terms of the company's Regulations, should be filled by an appointment by a class of shareholders, debenture holders, creditors, employees, or 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 so soon as any other director is duly appointed in accordance with the Regulations.

182. Competence of directors

(1) The following persons shall not be competent to be appointed or to act as directors of a company, namely,

(a) an infant,

(b) a person found by a court of competent jurisdiction to be a person of unsound mind,

(c) a body corporate,

(d) a person in respect of whom an order has been made under section 186 while 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) If any of the persons 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 is liable on conviction to a term of imprisonment not exceeding five years or to a fine not exceeding one thousand penalty units or to both the imprisonment and the fine.

(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 who knowingly permitted it so to act or to be appointed is liable to a fine not exceeding 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 who is in default is liable to a fine not exceeding one thousand penalty units.

(5) The company's Regulations may lawfully provide that classes of persons additional to those provided in subsection (1) are incompetent to be directors of the company.

183. Directors' share qualification

(1) Unless the company's Regulations otherwise provide, a director need not be a member of the company or hold shares in the company.

(2) Where the Regulations require 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 Regulations; and the office shall be vacated if that person fails to do so, or if at any time after the expiration of that period that person ceases to hold that qualification.

(3) Where the company amends its Regulations so as to introduce or increase the requirement of a share qualification every director holding office at the date of the alteration 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.

(4) A person vacating office under this section is not qualified to be re-appointed a director of the company until that person has obtained the qualification.

184. Vacation of office of director

(1) The office of director shall be vacated if the director becomes incompetent to act as a director by virtue of section 182 or if the director ceases to hold office by virtue of section 183 or if the director resigns from office by notice in writing to the company.

(2) The company's Regulations may lawfully provide for the termination or vacation of office in circumstances additional to those specified in subsection (1).

185. Removal of directors

(1) Subject to section 300 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 its Regulations 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 shall be deemed to have been properly given for the purposes of subsection (2).

(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 forthwith 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 forthwith circulate to every person entitled under section 154 to notice of the meeting in the same manner as notices of meetings are required to be given.

(6) The company need not send or circulate the statement under paragraph (b) of subsection (5)

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

(b) if the Court, on application by the company or any other person who claims to be aggrieved, so orders on being satisfied

(i) that the statement is unreasonable 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 prejudice to the director's right to be heard orally on the resolution, the director may, unless the Court makes an order under subsection (6) also require that the written statement by the director is 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 181.

(9) This section shall not be taken as depriving a director who has a service agreement with the company of a right to compensation to which the director is lawfully entitled under that agreement on the termination of the directorship or of a right to damages if the removal from the directorship constitutes a breach of the service agreement.

186. Restraining fraudulent persons from managing companies

(1) Where,

(a) a person is convicted on indictment, whether in the Republic or else where, of an offence involving fraud or dishonesty or of an offence in connection with the promotion, formation or management of a body corporate, or

(b) a person is adjudged bankrupt whether in the Republic or elsewhere, or

(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 a fraud or breach of duty in relation to a body corporate,

the Court, on its own motion or on the application of any of the persons referred to in subsection (3), 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 that may be specified in the order.

(2) An order under paragraph (a) of subsection (1) may be made by a court in the Republic before which the person is convicted as well as by the High Court.

(3) An application for an order under this section may be made by the Registrar or by the Official Trustee, or by the trustee in bankruptcy of the person concerned or by the liquidator of a body corporate.

(4) A person intending 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 if the application is made by a person other than the Registrar.

(5) 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 and draw the attention of the Court to the relevant matters.

(6) 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 the relevant matters.

(7) 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 Gazette.

(8) The Registrar shall maintain a register or orders made under this section and shall enter in the register particulars of each order and of a leave granted and the register shall be open to the inspection of a person on payment of [ten thousand cedis] for each inspection.

(9) A person who acts in contravention of an order made under this section is liable, in respect of each offence, on conviction to a term of imprisonment not exceeding two years or to a fine not exceeding five hundred penalty units or to both the imprisonment and the fine.

187. Substitute directors

(1) Unless the company’s Regulations otherwise provide, 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.

(3) A substitute director shall not be counted as a director for the purposes of a provision in this Act or the company's Regulations prescribing a minimum or maximum number of directors, other than a provision relating to a quorum, and 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.

(4) Except as provided by subsection (3), a substitute director shall be deemed to be a full director of the company for all purposes and shall be appointed and may be removed in the same way as directors are required to be appointed and removed, and shall not cease to be a director by reason of the fact that the director for whom that person is a substitute ceases to be a director.

188. Alternate directors

(1) Unless prohibited by the Regulations a director may, 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, appoint another director or any other person approved by a resolution of the board of directors, as an alternate director.

(2) The appointment shall be in writing signed by the appointor and appointee and lodged with the company.

(3) An alternate director so appointed

(a) shall, for the period of the appointment, be deemed for all purposes to be 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 Regulations, directors may be so required;

(c) is not entitled to appoint an alternate director;

(d) shall not be counted as a director for the purposes of a provision of this Act or the Regulations relating to the minimum or maximum number of directors, other than a provision relating to quorum.

(4) The company is not liable to pay additional remuneration by reason of the appointment of an alternate director.

(5) The Regulations of the company may provide that the alternate director shall be entitled to receive from the company during the period of the appointment the remuneration to which the appointor, but for the appointment, would have been entitled and that the appointor shall not be entitled to remuneration for that period, but, in the absence of that provision in the Regulations, the alternate director shall not be entitled to be remunerated otherwise than by the director appointing the alternate director.

(6) An alternate director who is personally a director shall have an additional vote for each director for whom the alternate director acts as alternate at every meeting of the directors.

(7) The appointment of an alternate director shall cease at the expiration of the period for which the appointment was made, or if the appointor gives written notice to that effect to the company, or if the

appointor ceases for a reason to be a director, or if the alternate director resigns by notice in writing to the company.

(8) Until the cessation of the appointment of an alternate director both the appointor and appointee are and may act as directors of the company, but an alternate, 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.

189. Presence of directors in Ghana

(1) At least one director of the company shall at all times be present in Ghana.

(2) In the event of a wilful breach of this section, the company and every director of the company who is in default is liable to a fine not exceeding [twenty-five penalty units] for every day during which the default continues.

(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 present in Ghana is not enforceable by action or other legal proceedings.

(4) For the purpose 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 respects a particular contract and on the conditions that the Court may impose;

(b) that subsection does not prejudice the rights of any other parties as against the company, or any other person in respect of the contract;

(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.

190. Secretary

(1) A company shall have a secretary and if a company carries on business for more than six months without a secretary, the company and every officer of the company who is in default is liable to a fine not exceeding [twenty-five penalty units] for each day that the company continues to carry on business without a secretary after the expiration of the period of six months.

(2) Anything required or authorised to be done by or to the secretary may, if the office is vacant or there is not, for any other reason, a secretary capable of acting, be done by or to an assistant or a deputy secretary or any officer of the company appointed by the directors to be acting secretary.

(3) Unless the Regulations otherwise provide, the secretary shall be appointed by the directors for the term, at the remuneration and on the conditions that the directors think fit, and may be removed by them, subject to the right of the secretary to claim damages from the company if removed in breach of contract.

(4) The secretary may be a body corporate.

191. Avoidance of acts in dual capacity as director and secretary

A provision requiring or authorising a thing to be done by or to a director and the secretary shall not be satisfied by it being done by or to the same person acting both as director and as, or in place of, the secretary.

192. Executive directors

Unless the company's Regulations otherwise provide,

(a) a director may hold any other office or place of profit under the company, other than the office of auditor, in conjunction with the office of director;
(b) the directors may from time to time appoint one or more of their number 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 194 and subject to section 195 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;
(d) in exercising their powers under this section the directors shall observe the rules laid down in

sections 203 and 204 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.

193. Managing directors

Unless the Company's Regulations otherwise provide,

(a) the directors may from time to time appoint one or more of their number to the office of managing director and section 192 shall apply to that appointment;
(b) the appointment of 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;
(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.

194. Remuneration of directors

(1) Subject to this section, the fees and other remuneration 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 the Regulations or in an agreement, which provision or agreement is void.

(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) Where the Regulations of an existing company contain a provision fixing the fees payable to the directors that provision shall continue in operation and have effect until the date of the first annual general meeting of the company held next after the commencement of this Act.14(15)

(4) Unless otherwise resolved, the fees payable to directors shall be deemed to accrue from day to day and the directors are also 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.

(5) Where a director holds any other office or place of profit under the company in accordance with section 192 or 193, 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 and until the terms of the appointment to that office have been approved by ordinary resolution of the company.

(6) Where a director holds an office or a place of profit under an appointment made prior to the sixth day of April, 1961 and the terms of the appointment contain provisions relating to the remuneration, those provisions, although not approved by ordinary resolution of the company, shall continue in operation and have effect,

(a) if the appointment is for a fixed term, not determinable by the company or on the director ceasing to be a director, until the expiration of that fixed period or the earlier determination of the appointment;

(b) in any other case, until the date of the first annual general meeting of the company held next after the commencement of this Act, or the earlier determination of the appointment.15(16)

195. Prohibition of tax-free payments

(1) A company shall not pay a director or 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 secretary except under a contract which was in force prior to the sixth day of April, 1961 and provides expressly, and not by reference to the company's Regulations, for payment of that remuneration.

(2) A provision contained in a company's Regulations or in a resolution of a company or of a

company's directors, or in a contract, other than a contract that is excepted from subsection (1), for payment of that remuneration shall have effect as if it provided for payment, as a gross sum of money, subject to income tax, of the net sum of money for which it actually provides.

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

196. Register of directors and secretary

(1) A company shall keep at its registered office a register of its directors including substitute directors appointed in accordance with section 187 but excluding alternate directors appointed in accordance with section 188 and secretaries.

(2) The register shall contain with respect to each director,

(a) the present forenames and surname,

(b) the former forename or surname,

(c) the usual residential address,

(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 secretary or, where there are joint 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 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 Regulations impose be open to the inspection of a member of the company without charge and any other person on payment of [ten thousand cedis] or a less sum that the company may prescribe, 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 who is in default is liable to a fine not exceeding [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 sections 197 and 198,

(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 prior to 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;

(iii)

in the case of a married woman, the name by which she was known prior to the marriage.

197.

Registration of particulars of directors and secretaries

(1) An existing company shall, within twenty-eight days after the commencement of this Act, send to the Registrar for registration a return in the prescribed form containing the particulars specified in the register referred to in section 196.16(17)

(2) A company incorporated after the commencement of this Act shall include the particulars specified in the register in the statement required to be sent to the Registrar in accordance with section 27.

(3) A company shall, within twenty-eight days of a change occurring among its directors or in its secretary or in any of the particulars contained in the register, other than those required under paragraph (e) of subsection (2) of section 196 send to the Registrar for registration notification in the prescribed form of the change, specifying the date of the change.

(4) Where a company defaults in complying with subsection (1) or (3), the company and every officer of the company who is in default is liable to a fine not exceeding [twenty-five penalty units] for every day during which the default continues.

(5) A director or secretary who resigns from office shall be deemed to be in default unless notification of the resignation is duly given to the Registrar in accordance with subsection (3) of this section.

198.

Publication of names of directors

(1) A company shall in all trade circulars and business letter on or in which the company’s name appears state in legible characters with respect to every director, including substitute directors appointed in accordance with section 187 but excluding alternate directors appointed in accordance with section 188,

(a) the present forenames and surname, and

(b) any former forenames or surname.

(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 subsection (1) in respect of a

company.

(3) Where a company defaults in complying with this section, the company and every officer of the company who is in default is liable to a fine not exceeding [twenty-five penalty units] for each offence.

199. Prohibition of assignment of offices

A provision in the Regulations of a company or in an agreement purporting to empower a director or any other officer to assign the office of that director or other officer to another person and a purported assignment of the office is void.

200. Proceedings of directors

Subject to any contrary provisions in the Regulations,

(a) the directors may meet together in the Republic or elsewhere for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, and may delegate any of their powers to committees consisting of the member or members of their number 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;

(b) a director may, and the 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 Ghana;

(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-man 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 number 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 chairman of their meetings and determine the period for which the chairman is to hold office, but if a chairman is not elected, or if at a meeting, the chairman is not present within five minutes after the time appointed for holding the meeting, those present may choose one of their number to be

chairman 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 chairman shall have second or casting vote;

(i) attendance and voting by proxy shall not be permitted at meetings of directors or committees of directors;

(j) a resolution in writing, signed by 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.

201. Minutes of directors' meetings

(1) 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.

(2) A minute kept under subsection (1) if purporting to be signed by the chairman of the meeting at which the proceedings took place or of the next succeeding meeting, is prima facie evidence of the proceedings.

(3) Where minutes have been made in accordance with this section then, until the contrary is proved, the meeting shall be deemed to be duly convened, held and conducted and the appointments of directors shall be deemed to be valid.

(4) Where a company fails to comply with subsection (1) the company and every officer of the company who is in default is liable to a fine not exceeding [five hundred penalty units].

202. Limitations on the powers of the directors

(1) Despite subsection (3) of section 137 or a provision in the company's Regulations, the directors of a company with shares shall not, without the approval of an ordinary resolution of the company,

(a) sell, lease or otherwise dispose of the whole, or substantially the whole, of the undertaking or of the assets of the company;

(b) issue 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;

(c) make voluntary contributions to charitable or any other funds, 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 [twenty million cedis] or two percent of the income surplus of the company at the end of the immediately preceding financial year, whichever is the greater.

(1A) Subsection (3) shall not apply to a public company some or all of whose equity shares are dealt

in on an approved stock exchange.17(18)

(2) A resolution of the company shall not be effective as approving of a transaction as is referred to in 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 of 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) Despite a provision of this Act or in the company's Regulations 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 direct 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 all the existing shareholders or to all the holders of the shares of the class or classes being issued in proportion to their existing holdings or, in the case of a public company, to members of the public.

(4A) Subsection (4) may be disapplied with the approval of an ordinary resolution of a public company some or all of whose equity shares are dealt in on an approved stock exchange or in respect of

which an application has been made to an approved stock exchange for permission to deal in those shares.18(19)

(5) For the purposes of subsection (4), 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.

(6) 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, that under the Regulations of the company, that director is required to hold by way of share qualification.

(7) Unless the company's Regulations otherwise provide, the directors of a company with shares shall not, without the approval of an ordinary resolution of the company, exercise the company's power to borrow money or to charge any of its assets where the moneys to be borrowed or secured, together with the amount remaining undischarged of moneys already borrowed or secured, apart from temporary loans

obtained from the company's bankers in the ordinary course of business, will exceed the stated capital for the time being of the company.

(8) 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 139 to 143 shall apply to transactions of the type referred to in this section although the conditions have not been fulfilled.

203. Duties of directors

(1) A director of a company stands in a fiduciary relationship towards the company and shall observe the utmost good faith towards the company in a transaction with it or on its behalf.

(2) A director shall act at all times in what the director believes to be the best interests of the company as a whole so as to preserve its assets, further its business, and promote the purposes for which it was formed, and in the manner that a faithful, diligent, careful and ordinarily skilful director would act in the circumstances.

(3) In considering whether a particular transaction or course of action is in the best interests of the company as a whole a director may consider the interests of the employees, as well as the members, of the company, and, when appointed by, or as representative of, a special class of members, employees, or creditors may give special, but not exclusive, consideration to the interests of that class.

(4) A provision, whether contained in the Regulations 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.

204. Exercise of directors' powers

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 Regulations or exercise those powers for a purpose different from that for which those powers were conferred although they may believe the exercise to be in the best interests of the company.

205. Conflicts of duty and interest

Despite a provision in the company's Regulations to the contrary, a director shall not, without the consent of the company in accordance with section 206, place that director in a position in which the director's 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 the money or property of the company or a 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 207.

206. Consent of company

(1) For the purposes of section 205, the company does not consent unless, after full disclosure of all 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 all 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.

207. Contracts in which directors are interested

(1) Unless otherwise provided in the company's Regulations, a director, despite section 205 is entitled to enter into a contract with the company and, subject to compliance with section 203 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 of that 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 of any effect unless it is given at a meeting of the directors, or the director giving the notice takes all reasonable steps to secure that it is brought up and read at the next meeting of directors after it is given;

(d) 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.

(6) In the case of a proposed contract in which the director is personally interested, the director shall, prior to the passing 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.

(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; or

(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) The book shall be open for inspection without charge by any director, secretary, auditor or member of the company at the registered office of the company and shall be produced at every general meeting of the company, and at a meeting of the directors if a director so requests in sufficient time to enable the book to be available at the meeting.

(11) A director who fails to comply with a provision of this section and an officer who fails to comply with subsection (5) and (6) is liable to a fine not exceeding [five hundred penalty units].

(12) Where a company fails to comply with subsections (9) and (10), the company and every officer of the company who is in default is liable to a fine not exceeding [five hundred penalty units] and if an inspection or a production required under subsection (1) is refused the Court may by order compel an immediate inspection or production.

(13) For the purposes of this section, an interest merely as holder of debentures, or of not more than two percent of the shares or a class of shares, of a public company is not a material interest.

208. Directors acting professionally

Unless otherwise provided in the company's Regulations, a director may, despite section 205, 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.

209. Civil liabilities for breach of duty

Where a director commits a breach of duty under sections 203 to 205,

(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.

210. Legal proceedings to enforce liabilities

(1) Proceedings to enforce the liabilities referred to in section 209 or to restrain a threatened breach of a duty under sections 203 to 205, or to recover from a director of the company a property of the company may be instituted by the company or by a member 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) At a general meeting for the purposes of subsection (2), neither the proposed defendants nor the holders of the 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 225 be

instituted in the name of the company by the Registrar.

(5) Where proceedings are instituted by a member, that member shall sue in a representative capacity on behalf of that member and all other members, except any that are defendants to the action, and shall join the company as a defendant; and to that representative action the provisions of section 324 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, and

(b) may if it thinks fit order the member to give security for payment of the costs of the defendants, and

(c) may direct that the action or a 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 it thinks fit if, in all the circumstances including lapse of time, the Court thinks it equitable so to do.

(8) In proceedings under this section the Court may, in the interests of justice, order that a sum 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; and in that event the Court may order that the necessary enquiries shall be made to ascertain the identity of the members and former members concerned and may give the consequential directions that may be necessary or expedient.

(9) Proceedings under this section shall not be dismissed, settled or compromised without the approval of the Court after notice of the proposed dismissal, settlement or compromise has been given to all members of the company and to the Registrar in the manner that the Court directs.

(10) 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.

(11) If the Court does not approve the dismissal 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.

211. Payments to directors for loss of office or on transfer of the company’s undertaking

(1) A company shall not make to a director or former director of the company or an associated company a payment by way of compensation for loss of an office in the company or an associated

company, or as consideration for or in connection with retirement from office of that director or former director, without particulars with respect to 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 206.

(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 with respect to 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 206.

(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 205.

212. Payments to directors in connection with take-over bids

(1) Where an offer is made for the acquisition of shares of a company on the terms that the offer is available for acceptance,

(a) by the shareholders 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 shareholder, 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,

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 shares in the company held by the director or former director 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 all 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 shareholders.

(2) Where

(a) the director or former director fails to take the reasonable steps mentioned in subsection (1), 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 is liable to a fine not exceeding [one hundred and fifty penalty units].

(3) The payment referred to in subsection (1) 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 the purpose by notice complying with subsection (6), 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.

(4) Where a payment is to be distributed in accordance with subsection (3), 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 shall be jointly and severally liable to distribute the payment among the persons who have sold their shares as a result of the offer in proportion to the numbers 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.

(5) For the purposes of subsection (4),

(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 prior to 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 of 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.

(6) The notice of a general meeting summoned for the purposes of subsection (3) shall be convened, held and conducted as nearly as may be in accordance with this Act and the company's Regulations relating to general meetings of the company, and the notices convening the meeting shall state that if the resolutions 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.

(7) 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.

(8) For the purposes of paragraph (b) of subsection (1),

(a) when the offer is made by a body corporate, the shares are owned beneficially by that body corporate if the are owned beneficially by it or by any of its associated companies or by the controlling shareholders of it; and

(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.

213. Provisions supplemental to sections 211 and 212

(1) For the purposes of sections 211 and 212 and of the section, the expression "payment" includes a benefit or an advantage whether in cash or in kind.

(2) Sections 211 and 212 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 212 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 211 or of an offer referred to in subsection (1) of section 212 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 211 and 212, where

(a) a payment, which is not a remuneration properly payable in accordance with section 194, 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 211 or of the date making an offer referred to in subsection (1) of section 212, 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,

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.

214. Duties of directors in connection with sales or purchases of the company's securities

(1) If a director of a company, having acquired as a director of the company a 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), 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 to be maintained in accordance with section 215, 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 prejudice the right of the company to proceed against a director for breach of section 205.

215. Register of director's holdings

(1) A company shall keep a register showing, as respect each director of the company, the number and description and, in the case of debentures, the amount, of the shares in or debentures of the company or an associated company of which that director is the holder or in which the director has, directly or indirectly, a beneficial interest or right to acquire, or of which that director has an option to buy or sell; but the register need not include shares in a body corporate which is the wholly owned subsidiary of another body corporate.

(2) 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.

(3) Where shares or debentures fall 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 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.

(4) The register shall be kept at the same place as the register of members maintained in accordance with section 32, and shall be open to inspection during business hours, subject to the reasonable restrictions that the company's Regulations 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.

(5) Not less than two hours in each day other than a Saturday, a Sunday or a public holiday shall be allowed for inspection under subsection (4).

(6) The register shall also 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.

(7) A director of the company shall give notice to the company of the matters relating to that director

as may be necessary for the purposes of complying with subsections (1) and (3).

(8) 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 occurring which requires recording.

(9) 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.

(10) If default is made in complying with subsections (7), (8) and (9), the director concerned is liable to a fine not exceeding [five hundred penalty units] for each default.

(11) If default is made in complying with subsections (1), (3), (4), (5) or (6), the company and every officer of the company who is in default is liable to a fine not exceeding [five hundred penalty units], and if an inspection required under subsections (4) and (6) is refused the Court may by order compel an immediate inspection of the register.

(12) The company shall not, by virtue of anything done for the purposes of this section, be affected with notice of, or put on enquiry as to, the right of a person in relation to any shares and debentures.

(13) 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.

216. General saving of existing law relating to officers

The rights, duties and liabilities of officers and agents of companies shall continue to be governed by the rules of the common law and equity relating to principal and agent and master and servant except in so far as those rules are inconsistent with the express provisions of this Act.

PART R

Protection Against Illegal or Oppressive Action

217. Injunction or declaration in the event of illegal or irregular activity

(1) The Court on the application of a member may by injunction restrain the 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 Regulations, or from acting on a resolution not properly passed in accordance with this Act and the company's Regulations, 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 and without prejudice to section 25.

(4) The right afforded to a member to apply to the Court under subsection (1) is without prejudice to a right that member may have to institute proceedings against a director of the company pursuant to section 210 or to apply to the Court under section 218.

(5) In any 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.

218. Remedy against oppression

(1) A member or debenture holder of a company or, in a case falling within section 225, 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 some 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 prejudice to the generality of this subsection, the Court may by order,

(a) direct or prohibit an act or cancel or vary a transaction or resolution; or

(b) regulate the conduct of the company's affairs in future; or

(c) provide for the purchase of the shares or debentures of any members or 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 59 to 63 other than subsections, (5) and (6) of section 59.

(3) Where an order under this section makes an alteration in or addition to any of the company's Regulations then despite anything in any other provision of this Act but subject to the provisions of the order, the company shall not without the leave of the Court, make a further alteration in or addition to the Regulations inconsistent with the provisions or the order.

(4) An office copy of an order under this section altering or adding to the company's Regulations 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 who is in default is liable to a fine not exceeding [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.

219. Enquiries by the Registrar

(1) In order to ensure that the provisions of sections 123 to 133 relating to 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,

(a) that a provision of this Act is not being complied with, or

(b) that 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) that the business of the company is being conducted with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose or that the business of the company is being conducted or the powers of the directors are being exercised in a manner oppressive to a part of the members or debenture holders or in disregard of their proper interests as members, shareholders, officers or debenture holders, or

(d) that 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

(e) that the members of the company have not been given all the information with respect to its affairs that they might reasonably expect,

the Registrar may by written order call on the company to produce for 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 that is specified in the order and all persons who are or have been officers of the company shall so far as lies within their power, produce the books or furnish the information or explanation.

(4) Where the company defaults in complying with subsection (3), the company and an officer of the

company who is in default is liable to a fine not exceeding [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 likewise liable to a fine not exceeding [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 225, or

(b) report the circumstances in writing to the Court.

(6) This section does not require a company licensed under [section 24 of the Companies Ordinance (Cap. 193)] or a statutory re-enactment or modification of that Ordinance, to carry on banking business to produce its books containing details of the accounts with it of its banking customers.

220. Appointment of inspector under order of the Court

(1) The Court may order the Registrar to appoint one or more competent inspectors to investigate the affairs of a company and to report 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 219, or

(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 may require for the purpose of showing that the applicants have good reason for requiring the investigation; and the Court may, before ordering the appointment of an inspector, require the applicants to give security to an amount not exceeding [five million cedis] for payment of the costs of the investigation;

(b) at least fourteen days' previous notice of the application shall be given to the Registrar who shall be entitled to be represented at the hearing and to give evidence and call witnesses.

(3) 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.

221. Appointment of inspector on special resolution of the company

The Registrar shall appoint one or more competent inspectors to investigate the affairs of a company and to report 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.

222. Power to carry investigation into the affairs of associated companies

If an inspector appointed under section 220 or section 221 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.

223. Production of documents and evidence

(1) The officers and agents of the company and of the officers and agents of any other body corporate whose affairs are investigated by virtue of section 222,

(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, and

(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.

(3) If 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 it 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 in like manner as if the offender had been guilty of contempt of the Court.

(4) If 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; and on that examination,

(a) the inspector may take part personally or by a legal practitioner;

(b) the Court may put the questions to the person examined that the Court thinks fit;

(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 any answers 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.

(5) Despite anything in paragraph (c) of subsection (4), the Court may allow the person examined costs, and the costs so allowed shall be paid as part of the expenses of the investigation.
(6) 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 auditors.
224. Inspectors’ report
(1) The inspectors may, and, if so directed by the Registrar, shall, make interim reports to the Registrar, and on the conclusion of the investigation shall make a final report to the Registrar.
(2) 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 a 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 222 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 220, furnish a copy to the Court; and
(d) where the inspectors are appointed under paragraph (c) of subsection (1) of section 220, furnish at the request of the applicants for the investigation, a copy 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.
225. Proceedings after investigations
If as a result of an information obtained in accordance with section 219 or as a result of a report made under section 224, 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, and if the Attorney-General

considers that the case is one in which a prosecution ought to be instituted, shall institute proceedings accordingly;

(b) a company ought to be wound up or that an application should be made to the Court under section 218, 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 218;

(c) proceedings ought in the public interest to be brought by a company against a director or former director of a company under section 210 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 226, shall indemnify the company or body corporate against the costs or expenses incurred by it in connection with those proceedings.

226. Expenses of investigations

(1) The expenses of, and incidental to, an investigation by the Registrar under section 219 or by inspectors appointed by the Registrar under section 220 or 221 shall be defrayed in the first instance by the Registrar out of moneys provided by Parliament, 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 225 or who is ordered to restore property or pay damages or compensation in proceedings brought by virtue of paragraph (c) of section 225 may in the same proceedings be ordered to pay the expenses to the extent that may be specified in the order;

(b) a body corporate in whose name proceedings are brought by virtue of paragraph (c) of section 225 is liable to the amount or value of any sums or property recovered by it as a result of those proceedings, and the expenses shall be a first charge on those sums or property;

(c) a body corporate dealt with by the report of an inspector appointed under section 220 or 221 and the applicants, other than the Registrar, for the investigation where the inspector was appointed under section 220 is liable to the extent that the Registrar shall direct.

(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 225 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), then by those liable under paragraph (b), and finally by those liable under paragraph (c).

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

(1) Where it appears to the Registrar that there is good reason to investigate the ownership of any

shares in or debentures of a company or where the directors of a company so request in writing, 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.19(20)

(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 someone 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 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 person 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 an information required of that person under this section, or who in giving that information makes a statement which is false in a material particular is liable to a term of imprisonment not exceeding six months or to a fine not exceeding seven hundred and fifty penalty units or to both, 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 be order direct that the shares or debentures shall, until further order, be subject to the restrictions imposed by subsection (6).

(6) Where share 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 right of those shares or debentures or in

pursuance of an offer made to the holders of those shares or debentures;

(d) except in a liquidation, a payment shall not be made of the sums due from the company on those shares or debentures.

(7) Where the Registrar makes an order directing that shares or debentures shall be subject to the restrictions, or refuses to make an order directing that they shall cease to be subject to those restrictions, a person 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, or

(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 time being subject to the restriction that voting rights shall not be exercisable in respect of those shares or debentures, or

(c) being the holder of any shares or debentures fails to notify of the restrictions any other holder or proxy for an holder whom that holder does not know to be aware of the restrictions,

is liable to a term of imprisonment not exceeding six months or to a fine not exceeding seven hundred and fifty penalty units or to both, and where shares or debentures in a company are issued in contravention of the restriction, the company and every officer of the company who is in default is liable to a fine not exceeding [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, an information obtained by the Registrar as a result of the Registrar's or the inspector's investigation and may cause that information to be published.

(12) The expenses of an investigation under this section shall be defrayed by the Registrar out of

moneys provided by Parliament.

228. Saving for legal practitioners and bankers

Sections 219 to 227 do not require disclosure to the Registrar or to an inspector appointed by the Registrar,

(a) by a legal practitioner, of a privileged communication made to the legal practitioner in that capacity except as regards the name and address of the client;

(b) by the bankers of a body corporate in their capacity as bankers of the body corporate, of an information as to the affairs of any of their customers other than the body corporate.

PART S

Arrangements and Amalgamations

229. Meaning of “arrangement” and “amalgamation”

In this Act,

(a) “arrangement” means a change in the rights or liabilities of members, debenture holders or creditors of a company or any class of them or in the Regulations of a company, other than a

change effected under a provision of this Act or by the unanimous agreement of all the parties affected by the arrangement;

(b) “amalgamation” means a merger of the undertakings or a part of the undertakings of two or more companies or of the undertakings or part of the undertakings of one or more companies and one or more bodies corporate.

230. Arrangement and amalgamation by sale of undertaking for securities to be distributed

(1) With a view to effecting an arrangement or amalgamation, a company may by special resolution resolve that the company be put into members’ voluntary liquidation and that the liquidator be authorised to sell the whole or part of its undertaking or assets to another body corporate, whether a company within the meaning of this 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 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 under this section 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 passing of the special resolution referred to in subsection (1) an order is made under section 218 or for the winding up of the company under the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180), the arrangement or amalgamation and the sale and distribution shall not be valid unless sanctioned by the Court;

(b) if 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 passing of the resolution, dissents from the arrangement or amalgamation in respect of any 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) If 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 president for the time being of the Institute of Chartered Accountants in Ghana in accordance with the law relating to arbitration.

(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, had 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 a creditor 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 any other like interest in that body corporate, and

(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 passing 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) of this section.

(9) Subsection (8) does not authorise a company

(a) to purchase its shares except in accordance with sections 59 to 64;

(b) to make a distribution to its shareholders except in accordance with sections 71 to 79 or in a liquidation.

231. Arrangement or amalgamation with Court approval

(1) Where an arrangement or amalgamation is proposed, whether or not involving a compromise between a company and its creditors or members or any class or classes of them, the Court, on the summary application of the company or a member or creditor of the company or, in the case of a company being wound up, of the liquidator, 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 subsections (7), (8), (9) and (10) of section 170.

(2) If a three-fourths majority of each class of members concerned and a majority in number representing three-fourths in value of each class of creditors concerned approves the arrangement or amalgamation the approval shall be referred to the Registrar who shall appoint one or more competent reporters to investigate the fairness of the arrangement or amalgamation and to report on the arrangement or amalgamation to the Court.

(3) The remuneration of the reporters shall be fixed by the Registrar and it and the proper expenses of the investigation shall be borne by the company or any other party to the application who the Court orders.

(4) If the Court, after considering the report, makes an order confirming the arrangement or amalgamation, with or without modifications, the arrangement or amalgamation 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.

(5) On the hearing by the Court of the application to confirm the arrangement or amalgamation, a member or creditor of the company claiming to be affected by the arrangement or amalgamation is entitled to be represented and to object.

(6) The Court may prescribe the terms of a condition of its confirmation including a condition that any members shall be given rights to require the company to purchase their shares at a price fixed by the Court or to be determined in a manner provided in the order.

(7) An arrangement or amalgamation may be carried out in accordance with this section although it

could have been accomplished under section 230 or any other provision of this Act; but sections 75 to 79 shall also be complied with if the arrangement or amalgamation is one which, by virtue of section 75

requires the confirmation of the Court in accordance with those sections.

(8) An order made under subsection (4) 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 Gazette.
(9) A copy of the order shall be annexed to every copy of the company's Regulations issued by the company after the order has been made; and if a company defaults the company and every officer of the company who is in default is liable to a fine not exceeding [twenty-five penalty units] in respect of every copy in respect of which default is made.
232. Powers of the Court for facilitating arrangements or amalgamations
(1) Where an application is made to the Court under section 231 and it is shown to the Court that under the arrangement or amalgamation 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 amalgamation 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 the shares, debentures or other like interests in that company which, under the arrangement or amalgamation, are to be allotted or appropriated by that company to or for 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 the persons who, within the time and in the manner that the Court directs, dissent from the arrangement or amalgamation;
(f) the incidental, consequential and supplemental matters that are necessary to secure that the arrangement or amalgamation is fully and effectively carried out.
(2)
Where an order under this section 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 amalgamation, is to cease to have effect.
(3) Where an order is made under this section, 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; and where the company defaults in complying with this subsection, the company and every officer of the company who is in default is liable to a fine not exceeding [twenty-five penalty units]

for each day during which the default continues.

(4)

In this section,

“property” includes property right 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.

233. Information as to arrangements and amalgamations

(1) Where notice of a resolution to approve an arrangement or amalgamation under section 230 or 231 is sent to members or creditors of a company, there shall be sent also a statement explaining the effect of the arrangement or amalgamation 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 the effect on those interests of the arrangement or amalgamation 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 statement; and the member or creditor shall, on making application in the manner indicated in the notice, be furnished by the company, free of charge, with a copy of the statement.

(3) Where the arrangement or amalgamation affects the rights of 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.

(4) Where a company defaults in complying with a requirement of this section, the company and an officer of the company who is in default is liable to a fine not exceeding [seven hundred and fifty penalty units]; and for the purposes of this subsection a liquidator of the company or a trustee of a deed securing debentures of the company is an officer of the company.

(5) For the purposes of subsection (4),

(a) 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;

(b) that subsection does not derogate from the power of the Court under section 217 or 218 to declare ineffective a special resolution passed pursuant to section 230.

(6) 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 a fine not exceeding [one hundred and fifty penalty units].

234. Power to acquire shares of minority on acquisition of subsidiary company

(1) Where a body corporate, whether a company within the meaning of this 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, then, provided that 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 shall apply if,

(a) the offer by the transferee company is made to the holders of the whole of the shares in the

transferor company, other than those already held by the transferee companies 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;

(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 and when the notice is given the transferee company is entitled and bound, unless on an application made by the shareholder in accordance with subsection (4) the Court thinks fit to order otherwise, to acquire those shares on the terms of the offer.

(4) At any time within a period of two months from the service of the notice referred to in subsection

(3), 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.

(5) On an application to the Court under subsection (4) the Court, before making an order may refer the matter to the Registrar who shall appoint one or more competent reporters to investigate the fairness of the offer and to report on the fairness to the Court.

(6) The remuneration of the reporters shall be fixed by the Registrar and it and the proper expenses of the investigation shall be borne by the transferee company or by the applicant or both as the Court shall order.

(7) Where the Court makes an order under subsection (4), that the transferee company shall be bound to acquire the shares concerned on terms different from those of the original offer then, unless the Court otherwise orders, 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.

(8) 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 an additional consideration to which the former holder would have been entitled had the shares been acquired on the terms ordered by the Court.

(9) Where notice is given by the transferee company under subsection (3) and the Court has not, on an application by the shareholder under subsection (4), 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 (4) 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, and the transferor company shall then register the transferee company as the holder of those shares.

(10) The sums of money received by the transferor company under subsection (9) shall be paid into a

separate bank account and the sums 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 and shares were received.

235. Rights of minority on acquisition of subsidiary company

(1) Where, as a result of an offer to the shareholders of a company or any of them, shares in that company are transferred to another body corporate, whether a company within the meaning of this Act or not, in this section called the transferee company, or its nominee and those shares, together with any other shares in the first mentioned company held by, or by a nominee for, the transferee company, or by a nominee for, any of its associated companies at the date of the transfer, comprise or include three-fourths of the shares in the first named company or any class of those shares, then,

(a) the transferee company shall within one month from the date of the transfer, unless on a previous transfer it has already complied with this requirement, give notice of that fact in the prescribed form to the holders of the remaining shares or of the remaining shares of 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 any 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, thinks fit to order.

(3) On an application to the Court under subsection (2), the Court, may refer the matter to the Registrar who shall appoint one or more competent reporters to investigate the fairness of the offer and in that event subsections (5) and (6) of section 234 shall apply.

PART T

Receivers and Managers

236. Disqualification for appointment as receiver

(1) The following persons are not competent 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;

(c) a body corporate;

(d) a person in respect of whom an order has been made under section 186, while 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 director or auditor of a company is not qualified for appointment as a receiver or manager of a property or an undertaking of that company.
(3) An appointment made in contravention of this section is void; and if any of the persons named in subsection (2) of this section or in paragraphs (a), (c), (d) or (e) of subsection (1) of this section acts as a receiver or manager that person is liable to a fine not exceeding [seven hundred and fifty penalty units] or, in the case of an individual, to a term of imprisonment not exceeding six months or to a fine not exceeding seven hundred and fifty penalty units, or to both the imprisonment and the fine.
237. Power to appoint Official Trustee
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), the Official Trustee may be appointed.

238. Powers of receivers and managers
(1) A person appointed receiver of a property of a company shall, subject to the rights of any prior encumbrances, take possession of and protect the property, receive the rents and profits and discharge the outgoings in respect of the property and realise the security of those on whose behalf that person is appointed; but unless also appointed manager that person shall not carry on any business or undertaking.
(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.
(3) 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 unless the receiver or manager is discharged.
(4) If, 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 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.
239. Receivers and managers appointed by Court
A receiver or manager of a property or an undertaking of a company appointed by the Court shall be deemed to be an officer of the Court and not of the company and shall act in accordance with the

directions and instructions of the Court.

240. Receivers and managers appointed out of Court

(1) A receiver or manager of a property or an undertaking of a company appointed out of Court under a power contained in an instrument shall, subject to section 241, be deemed to be an agent of the person or persons on whose behalf the appointment is made; and if appointed manager of the whole or a part of the undertaking of a company the receiver or manager shall also be deemed to be an officer of the company and to stand in a fiduciary relationship to it, and section 203 shall apply to a manager as if the manager were a director of the company.

(2) In the exercise of the powers conferred under subsection (1) the receiver or manager may, pursuant to subsection (3) of section 203, give special, but not exclusive, consideration to the interests of those on whose behalf the appointment is made.

(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 appropriate directions, or make an appropriate order declaring the rights of persons before the Court or otherwise.

(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) 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 in excess of that so fixed for that period, 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.

(6) The power conferred by paragraph (c) shall not be exercised as respects 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.

241. Liabilities of receivers and managers on contracts

(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 is entitled, subject to the rights of any prior encumbrances, 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 under a power contained in an instrument is also

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).

242. Notification that receiver or manager has been appointed

(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 116 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, being a document on or in which the name of the company appears, shall contain a statement that a receiver or manager has been appointed.

(2) If default is made in complying with the requirements of subsection (1) relating to invoices, orders or business letters the company and the officer, liquidator, receiver or manager of the company who is in default is liable to a fine not exceeding [one hundred penalty units].

243. Accounts where manager appointed to enforce a floating charge

(1) Where a manager is appointed of the whole or substantially the whole of the undertaking of a company on behalf of the holders of debentures secured by a floating charge, section 19 of the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) shall apply as regards the submission of a statement of affairs and of periodical accounts by the manager as if the company had been ordered to be wound up under 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 to a fine not exceeding [twenty-five penalty units] for every day during which the defaults continues.

244. Delivery to Registrar of accounts of receivers

(1) Except where section 243 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;

(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 to a fine not exceeding [twenty-five penalty units] for every day during which the default continues.

245. Enforcement of receivers' duties

(1) Where a receiver or manager of a property or an undertaking of a company,

(a) having defaulted in filing, delivering or making a return, an account, or any other document or in giving a notice which the 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 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 U

Winding Up

246. Modes of winding up

(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

(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 a property of the company, being a document in or on which the name of the company appears, shall contain a statement that the company is being wound up under this Part.

(4) If default is made in complying with subsection (3), the company and an officer of the company and a liquidator, receiver or manager who is in default is liable to a fine not exceeding [one hundred penalty units].

247. Declaration of solvency

(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 not exceeding twelve months from the commencement of the winding up that may be specified in the affidavit.

(2) An affidavit made under subsection (1) shall not have effect for the purposes of this Act unless,

(a) it is made within five weeks immediately preceding the date of the passing 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, is liable to a term of imprisonment not exceeding one year or to a fine not exceeding seven hundred and fifty penalty units 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.

248. Procedure on resolution for liquidation

(1) A company may be wound up by way of private liquidation if,

(a) the company resolves by special resolution that it shall be wound up by way of private

liquidation, and

(b) prior to the date of the resolution an affidavit declaring that the company is solvent is made in accordance with section 247.

(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 passing of the resolution, send to the Registrar a copy of the resolution and the Registrar shall publish the resolution in the Gazette.

249. Statement and accounts of final financial year

(1) For the purposes of sections 123 to 136 the final financial year of a company in liquidation under this Part ends immediately prior to 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 124 shall be sent to the liquidator appointed in accordance with section 250 as well as to every member and debenture holder of the company in accordance with section 124;

(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.

250. Resolution for appointment and removal of liquidator

(1) The resolution for the private liquidation of a company shall include the appointment as liquidator of a person 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.

(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 Gazette.

251. Remuneration of liquidator

For the purposes of a private liquidation the company shall, in general meeting, fix the remuneration to be paid to a liquidator appointed for the purpose of liquidation; and where the appointment of a liquidator is made by the Court the remuneration of the liquidator shall be fixed by the Court.

252. Disqualification of liquidator

(1) The following persons are not competent 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 on indictment, whether in the Republic 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;

(e) an undischarged bankrupt or any other person subject to insolvency proceedings under the Insolvency Act, 1962 (Act 153).

(2) A director of a company is not qualified for appointment as a liquidator of that company.

(3) Subject to subsection (4), an auditor of a company may be appointed as liquidator of that company.

(4) An auditor of a company shall not be appointed as liquidator in a private liquidation unless on the appointment, a special resolution is duly passed dispensing with the auditing of the accounts of that auditor, and that auditor, or another auditor if more than one, is duly qualified under section 296 for appointment as auditor of a public company.

(5) An appointment made in contravention of this section is void.

(6) If any of the persons named in paragraph (a), (c), (d), or (e) of subsection (1) or in subsection (2) acts as liquidator of a company, that person is liable to a fine not exceeding [seven hundred and fifty penalty units] or in the case of an individual to a term of imprisonment not exceeding five years or to a fine not exceeding seven hundred and fifty penalty units or to both the imprisonment and the fine.

253. Status of liquidator

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 203 to 216 shall,

with the necessary changes, apply.

254. Cessation of directors' powers

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.

255. Powers of liquidator

(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).

(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.

(3) The Court shall have the same powers in relation to the liquidator in a private liquidation as are by the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) conferred on it in relation to official liquidations; and 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 that Act and, on that application, the Court may give the directions or make an order that the Court thinks just.

256. Books and accounts during private liquidation

(1) The liquidator in a private liquidation shall keep proper records and books of account with respect to the acts and dealings of the liquidator and of the conduct of the winding up and of the receipts and payments by the liquidator and, so long as the liquidator carries on the business of the company, shall keep a distinct account of the trading.

(2) In the event of the winding up continuing for more than a year the liquidator

(a) shall summon a general meeting of the company at the end of the first year from the commencement of the winding up and of each succeeding year, or at the first convenient date within three months of the end of the year or a longer period that the Registrar may allow, and

(b) shall 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 thereafter 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

(a) shall prepare and send to every member of the company final accounts of the winding up showing how the winding up has been conducted, the result of the trading during 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) shall 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 send to the Registrar for registration copies of the accounts laid before the meeting and a statement of the holding of the meeting and of its date.

(5) Where a quorum was not present at the meeting the liquidator shall in lieu of the statement mentioned, send a statement that the meeting was duly convened and that a quorum was not present at the meeting.

(6) The records, books and accounts referred to in this section 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 prior to 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 the information required by this Act in the manner required by this Act and give 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,

(a) the liquidator, or one of the liquidators if more than one, is duly qualified under section 296 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 Regulations of the 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 thereafter 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 is liable to a fine not exceeding [two hundred and fifty penalty units] for each default.

257. Liquidation account

(1) The liquidator shall open a 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) If, on the application of the company or any other person interested in the liquidation proceedings,

it appears to the Court before the termination of the liquidation, that assets have been lost to the estate by reason of a default by the liquidator, the Court may order that the private liquidation account be credited with the sum of money that appears to the Court to be just.

258. Duty of liquidator in case of insolvency

(1) If in a private liquidation the liquidator is at any time of the opinion that the company may not be able to pay its debts in full within the period stated in the affidavit made under section 247 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) shall register both the notice and the statement and publish a copy of the notice in the Gazette.

(4) Where the liquidator fails to comply with this section the liquidator is liable to a fine not exceeding [seven hundred and fifty penalty units].

259. Stay of proceedings

(1) At any time during the course of a private liquidation and prior to the dissolution of the company, the company in general meeting may, by special resolution, resolve that, subject to the confirmation of the Court, the liquidation proceedings shall be stayed.

(2) After the passing of the special resolution, application may be made to the Court by the liquidator or a member of the company; and the Court may, and subject to terms and conditions that the Court thinks fit, order that the liquidation be stayed, that the liquidator be discharged and that the directors be permitted to resume the management of the company.

(3) At least twenty-eight days before the hearing of the application to the Court under 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 if the notice is not given, the applicant, and the Registrar shall publish the notices in the Gazette.

(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) If 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 Gazette; and on that publication, the liquidation shall be deemed to have ceased and the company shall continue to be a going concern subject however, to the terms or conditions of the order.

260. Dissolution of companies

(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 Gazette and the company is dissolved as at the date of the publication of the notification in the Gazette.

(2) Where a company is dissolved, the Court may, at any time within two years after the date of the dissolution, 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 appropriate terms, declaring the dissolution void and ordering the name of

the company to be restored to the register.

(3) An office copy of an order made under subsection (2) shall be delivered to the Registrar for registration and the Registrar shall publish the order in the Gazette and the name of the company shall be restored to the register and the company shall be deemed to have continued in existence as if it had not been dissolved except that for the purposes of a period of limitation the period between dissolution and restoration shall not be counted.

(4) 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.

261. Dissolution without full winding up

(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 in operation, the Registrar may send to the company by registered post a letter enquiring whether the company is carrying on business or is in operation.

(2) If the Registrar does not within two months of sending the letter receive an answer to that letter, the Registrar may send to the company by registered post a second letter, referring to the first letter and stating that an answer has not been received by the Registrar, and that if an answer is not received to the second letter within two months from the date of the second letter, a notice will be published in the Gazette with a view to striking the name of the company off the register.

(3) If the Registrar receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within the specified time after sending the second letter receive an answer to the second letter, the Registrar may publish in the Gazette and send to the company by registered post a notice that at the expiration of three months from the date of that notice the name of the company shall, unless cause is shown to the contrary, be struck off the register and the company shall 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 Gazette 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).

(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 Gazette and on that publication in the Gazette 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 Gazette in accordance with subsection (5), the Court may, on application being made for this purpose by a liquidator or by any former officer, member or creditor of the company or by a person claiming through or under any of them, make an order on the appropriate terms, declaring the dissolution void and ordering the name of the company to be restored to the register and subsection (3) of section 260 shall apply as if the order was one made under section 260.

(8) A notice or letter to be sent under this section to a company may be addressed to the company at its registered office or, if an office has not been registered, to its last known place of business, or to the

care of an officer of the company or, if there is no officer of the company whose name and address are known to the Registrar, may be sent to the person or each of the persons who subscribed the Regulations of the company addressed to that person at the address mentioned in the subscription to the Regulations.

PART V

Documents

262. Service of documents by company

(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 holder, or directors, or if 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 on the person on whom the 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 or by sending it through the post in a prepaid letter addressed to that person by name, or by the title of representative of the deceased, receiver or trustee of the bankrupt, or by any like description, at the address supplied for the purpose by that person or by leaving it for that person with a person apparently over the age of sixteen years at that address, or until that address has been supplied, by serving the document in a manner in which the document might have been served if the death, receivership or bankruptcy had not occurred.

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

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

263. Service of documents on company

(1) A document may be served on a company by leaving it at, or sending it by post to, the registered office of the company, or the latest office registered by the Registrar as the registered address of the company.

(2) 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; and 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.

(3) Where a company does not have a registered office, service on a director of the company or, if the company does not have a director 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.

(4) If it is proved that a document was in fact received by the board of directors, managing director or secretary of a company the document shall be deemed to have been served on the company although service may not have been effected in accordance with subsection (1), (2) or (3).

(5) 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.

264. Books and registers

(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 recording or otherwise.

(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 mechanical recording is adopted, adequate arrangements shall be made for making the information in the recording available in an intelligible from 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 who is in default is liable to a fine not exceeding [two hundred and fifty penalty units.]

PART W

Invitations to the Public

265. Control of public invitations

(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 IV of this Act 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 persons making the invitation and an officer of a body corporate making the invitation who is in default is liable on conviction

(a) in the case of a body corporate, to a fine not exceeding one thousand penalty units, and

(b) in any other case to a term of imprisonment not exceeding two years or to a fine not exceeding one thousand penalty units or to both the imprisonment and the fine.

(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, but the fact that it is too late to rescind shall not prejudice the right of that person to recover compensation from a person other than the company.

266. Meaning of “invitations to the public”

(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) published, advertised or disseminated in Ghana by newspaper, broadcasting, cinematograph, 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 any one or more persons on the terms that the persons to whom it is made may renounce or assign the benefit of the invitation or of the shares or debentures to be obtained under the invitation in favour of any other person;

(d) made to any 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.

(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, not being greater in number than is prescribed by subsection (3) of section 9 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.

267. Offers for sale deemed to be made by company

(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, then, 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 and a person who acquires any of these shares or debentures in response to the invitation is an allottee from the company of those shares or debentures.

(2) 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.

CHAPTER THREE

Additional Provisions Applicable to Private Companies Only

268. Default in complying with conditions constituting a private company

(1) Where a private company defaults in complying with any of the conditions in its Regulations specified in subsection (3) of section 9, sections 295 and 301 shall apply to the company as if it were a public company.

(2) The Court, on being satisfied that the failure to comply with the conditions, 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, 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 thinks just and expedient, order that the company be relieved of the consequences of the default.

269. Documents to be annexed to the annual return of a private company

(1) With the annual return required by section 122 a private company shall send to the Registrar for registration,

(a) a certificate that the company has not, since the date of the last return, or, in the case of the first return, since the date of incorporation of the company, issued an invitation to the public to acquire shares or debentures of the company or to deposit money with the company; and

(b) a certificate 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,

(a) a copy of every profit and loss account, balance sheet, and group accounts circulated to the members and debenture holders pursuant to section 124 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 accounts and reports referred to in section 124 have been sent to the members and debenture holders in accordance with that section; and

(c) a copy of the auditors' report so sent; and

(d) except in the case of a company limited by guarantee, a certificate that, to the best of the knowledge and belief of the persons signing the certificate, a body corporate is not or has not been at any time beneficially interested, otherwise than by way of security, in the issued shares 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) of this section.

(3) The certificates required by paragraphs (a) and (b) of subsection (1) and paragraph (b) of subsection (2) of this section shall be signed by a director and by the secretary of the company.

(4) The copies required by paragraph (a) of subsection (2) of this section 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) of this section shall be certified by the auditors to be a true copy and the statement referred to in that paragraph shall be signed by the auditors.

(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 the 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 the issued shares of the body corporate.

270. Qualification of auditors of private companies

(1)

A person is not qualified for appointment as auditor of a private company unless,

(a) that person is, under the Chartered Accountants Act, 1963 (Act 170), a member of the Institute of Chartered Accountants, or

(b) that person is a practising accountant within the meaning of that Act,

and is not disqualified under subsection (3) of this section.

(2) If at any time within ten years from the commencement of this Act the Registrar is satisfied that the provisions of subsection (1) of this section have become or are about to become unworkable by reason of the shortage in Ghana of persons with the requisite qualifications, the Registrar may, by legislative instrument suspend the operation of that subsection (1) for the period or periods, not exceeding in all a total period of five years, as the Registrar shall think fit, and so long as the suspension is in operation any person shall be qualified to be appointed auditor of a private company unless disqualified under subsection (3) of this section.20(21)

(3)

A person is disqualified for appointment as auditor of a private company, 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 134;

(f) one in respect of whom an order has been made under section 186 while 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;

(h) for the time being disqualified from acting as auditor of a company by order of the Registrar under subsection (5) of this section.

(4) Paragraph (b) of subsection (3) does not disqualify,

(a) 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 or registration officer of the company or of an associated company;

(b) any person who, prior to the sixth day of April, 1961, was acting as auditor of a company from continuing to act or to be appointed as auditor of that company.21(22)

(5) 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.

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

(7) A person not qualified for appointment as auditor who acts as auditor of a private company is liable to a fine not exceeding [seven hundred and fifty penalty units] and the company by whom that

person is appointed and an officer of that company who is in default is liable to a fine not exceeding [seven hundred and fifty penalty units].

271. Requisitioning extraordinary general meetings of a private company

(1) The directors of a private company, despite a provision in its Regulations, 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 deposited at the registered office of the company.

(3) If the directors do not, within seven days from the date of receipt of the requisition at the registered office of the company, proceed duly to convene a meeting for a date not later than twenty-eight days after the receipt of the requisition, 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.

(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 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 sections 152 to 155.

272. Appointment and removal of directors of private companies

(1) The appointment and removal of directors of a private company shall, subject to sections 180 to 185, be regulated by the company's Regulations.

(2) In the absence of a contrary provision in the company's Regulations, each of the existing directors shall continue to hold office until the director vacates office under section 184 or is removed under section 185; and the 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 the Regulations.

273. Conversion of private company to public company

(1) A private company shall be converted into a public company if it alters its Regulations in a manner that the Regulations do not include the provisions which, under subsection (3) of section 9, are required to be included in the Regulations of a company in order to constitute it a private company.

(2) Within twenty-eight days after the date of the special resolution altering the Regulations, the company shall deliver to the Registrar for registration,

(a) a copy of the resolution in accordance with section 176; and

(b) unless the company is a company limited by guarantee, a prospectus complying with the Seventh Schedule, or a statement in lieu of prospectus complying with the Sixth Schedule.

(3) The Registrar shall publish the notice of the conversion of the company in the Gazette.

(4) If default is made in complying with subsection (1) or (2) of this section the company and an officer of the company who is in default is liable to a fine not exceeding [five hundred penalty units].

CHAPTER FOUR

Additional Provisions Applicable to Public Companies Only

PART A

Prospectuses and Statements in lieu of Prospectus

274. Statement in lieu of prospectus

(1) A public company shall, within twenty-eight days after its incorporation, or after its conversion from a private company in accordance with section 273, 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 Sixth Schedule and, in the cases mentioned in Part

Two of that Schedule, accompanied by the accounts and reports specified in the Schedule.

(2) Subsection (1) does not apply to,

(a)

a company limited by guarantee, or

(b) a company which, within twenty-eight days after its incorporation or conversion from a private company delivers for registration a prospectus complying in all respects with the Seventh Schedule.

(3) Every existing company shall, within six months after the commencement of this Act, deliver to the Registrar for registration a like statement in lieu of prospectus signed by every director of the company or by the director's agent authorised in writing.

(4) Subsection (2) shall not apply to any existing company which, prior to the expiration of the six months,

(a)

alters its Regulations so as to convert the company into a private company by inserting in its Regulations the conditions specified in subsection (3) of section 9; or

(b)

is converted into a company limited by guarantee in accordance with section 11; or

(c)

registers and publishes a prospectus complying in all respects with the Seventh Schedule;

and for the purposes of subsection (4) of this section an existing company shall be deemed to be a company to which this subsection applies until it has complied with proviso (a), (b) or (c) of this subsection.22(23)

(5) A statement in lieu of prospectus delivered under subsection (1) and (3) shall, where the persons making the report that is specified in Part Two of the Sixth 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.

(6) A company to which subsection (1) or (3) applies, shall not, after the commencement of this Act, issue any of its shares or debentures until after the expiration of seven days after the statement in lieu of prospectus has been delivered to the Registrar.

(7) Subsection (5) does not prohibit the issue to the subscribers of the Regulations of the number of shares for which each has subscribed.

(8) If shares are issued in contravention of subsection (5), a person to whom they are allotted is entitled to rescind the allotment at any time within three months of the allotment although the company is in course of being wound up, and a director of the company who knowingly contravenes or permits the contravention is liable to compensate the company and the allottee respectively for the loss which the company or the allottee may have sustained by the contravention.

(9) If a company contravenes subsection (1), (3) or (5) the company and an officer of the company who is in default is liable to a fine not exceeding [five hundred penalty units].

(10) Where a statement in lieu of prospectus delivered to the Registrar under subsection (1) or (3) includes an untrue statement or omits truthfully to state any of the particulars required to be stated by virtue of the Sixth 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 is liable to a term of imprisonment not exceeding two years or to a fine not exceeding five

hundred penalty units or both, unless it is proved that the untrue or omitted statement was

immaterial or that there were reasonable grounds to believe and that person 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: but an allottee is not entitled to rescission under this subsection unless the allottee claims to rescind with reasonable promptitude after discovering that an untrue statement or omission was made, and, in any case, prior to the winding up of the company;

(c) 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.

275. Prospectus on invitations to the public to acquire or dispose of securities

(1) Despite section 265 an invitation to the public to acquire or dispose of shares or debentures of a public company may be made if,

(a) within six moths prior to the making of the invitation there has been delivered to the Registrar and registered by the Registrar in accordance with section 279 a prospectus relating to the shares or debentures complying in all respects with the relevant provisions of sections 276 to 278, and

(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

(c) a copy of the prospectus states on its face that it has been registered by the Registrar and the date of registration.

(2) Paragraph (b) of subsection (1) shall not apply to an invitation made by or through a member of an approved stock exchange to a client of that member or to an invitation made by or through an exempted dealer, or to an invitation made by a summary complying with subsection (3).23(24)

(3) A newspaper may publish an advertisement or otherwise a summary of the contents of a prospectus, duly registered in accordance with section 279, so long as the summary

(a) does not contain a form of application for shares or debentures which has not been approved by the Registrar or, in respect of shares or debentures dealt in or to be dealt in 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 registered and the date of registration;
(c) is in the terms previously approved by the Registrar, or, where the shares or debentures concerned are dealt in on an approved stock exchange or where the prospectus or summary states that application is to be made to an approved stock exchange for permission to deal on

that stock exchange in the shares or debentures, is in terms previously approved by that stock exchange.24(25)

276. General and restricted invitations to the public
(1) Except as provided in section 277, where the invitation invites the public to acquire shares or debentures of a public company, the prospectus referred to in section 275 shall state the matters specified in Part One of the Seventh 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 Seventh Schedule.
(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 application has been, or is being, made to a stock exchange for permission to deal in those shares or debentures the prospectus,
(a) shall state that the shares or debentures are dealt in on that stock exchange or that application has been or is to be made for permission to deal in those shares or debentures on that stock exchange, and
(b) shall state whether or not that stock exchange is an approved stock exchange within the meaning of this Act, and
(c) shall contain the particulars and information required by that stock exchange;
and in any other case shall state that the shares or debentures are not dealt in on a stock exchange.
(5) An invitation falling within subsection (1) is in this Act described as a general invitation; and an

invitation falling within subsection (3) is in this Act described as a restricted invitation.

277. Certificates of exemption

(1) Where it is proposed to make a general invitation to the public to acquire shares or debentures of a public company and application is made to an approved stock exchange for permission for those shares or debentures to be dealt in on that stock exchange there may, on the request of the applicant, be given by or on behalf of that stock exchange a certificate of exemption, that is to say, a certificate that, having regard to the proposals, as stated in the request, as to the size and other circumstances of the invitation, compliance with the requirements of the Seventh Schedule would be unduly burdensome.

(2) If a certificate of exemption is granted and if 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 is a prospectus complying with the Seventh Schedule.

278. Expert's consent

(1) If 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 registration unless,

(a) the expert has given a written consent, and has not, before delivery of the prospectus for registration in accordance with section 279, 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) If, after delivery of the prospectus for registration but prior to registration of the prospectus the expert withdraws the consent, the person who has delivered the prospectus for registration shall immediately notify the Registrar.

(3) In this section the expression "expert" includes engineer, valuer, accountant, assayer, and any other person whose profession or calling gives authority to a statement by that person.

279. Registration of prospectuses

(1) A prospectus delivered to the Registrar for registration pursuant to section 275 shall be delivered in triplicate.

(2) Where a general invitation is being made by or on behalf of a company in respect of its shares or debentures, one copy of the prospectus delivered to the Registrar shall be signed by every person who is named 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 shall be sufficient if the prospectus is signed by or on behalf of the firm or body corporate by not less than half the partners or by not less than two directors of the body corporate, and any 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 278, and

(b) in the case of a prospectus relating to a general invitation, a certified copy or translation of each of the documents required to be available for inspection in accordance with paragraph 45 of the Seventh Schedule, or, where a certificate of exemption has been granted pursuant to section 277 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 if, in the opinion of the Registrar, the copy originally delivered is readily identifiable and accessible.

(6) If the prospectus relates to shares or debentures dealt in on an approved stock exchange or states

that application has been or will be made to an approved stock exchange for permission to deal in the shares or debentures to which it relates, there shall be delivered to the Registrar with the prospectus a certificate signed by or on behalf of that approved stock exchange that,

(a) the prospectus has been scrutinised by the stock exchange, and

(b) its requirements relating to the contents of the document have been satisfied;

and the Registrar shall register the prospectus within forty-eight hours of the delivery of the prospectus to the Registrar unless it is incomplete or irregular on its face or unless, prior to registration, a consent of an expert required by section 278 has been withdrawn.

(7) If the prospectus relates to an invitation made by or through an exempted dealer there shall be delivered to the Registrar with the prospectus a certificate signed by or on behalf of that exempted dealer,

(a) that the exempted dealer accepts personal responsibility for the contents of the prospectus,

and

(b) that it complies in all respects with this Act;

and the Registrar shall register the prospectus within forty-eight hours of the delivery of the prospectus to the Registrar unless it is incomplete or irregular on its face or unless, prior to registration, a consent of an expert required by section 278 has been withdrawn.

(8) In a case not falling within subsection (6) or (7) of this section the Registrar shall register the prospectus and the documents required to be endorsed on the prospectus or attached to the prospectus at the expiration of twenty-one days from the delivery to the Registrar in accordance with subsection (1) of this section, or a shorter time that the Registrar may allow in a particular case, unless,

(a) a consent of an expert required by section 278 has been withdrawn, or

(b) in the opinion of the Registrar, the prospectus does not comply with this Act or contains an untrue statement or omits to state a material fact or is otherwise incomplete or misleading;

in which case the Registrar shall refuse to register the prospectus until the necessary consents are given or the prospectus is amended to the Registrar's satisfaction.

(9) Where the Registrar refuses to register a prospectus the company or any other person who has delivered the prospectus for registration may apply to the Court which may, after hearing the applicant and the Registrar, and the evidence that is called, order the Registrar to register the prospectus or may dismiss the application and prohibit a person before the Court from publishing the prospectus until it has been amended to the satisfaction of the Registrar.

(9A) In a case not falling within subsection (5) or (6), the Registrar may, for the purpose of reaching an opinion on whether a prospectus

(a) does not comply with this Act, or

(b) contains an untrue statement, or

(c) omits to state a material fact, or

(d) is otherwise incomplete or misleading,

refer the prospectus to the Securities Regulatory Commission for its opinion, and the Commission shall give its opinion within twenty-one days, in relation to the prospectus, referred to in subsection (8).25(26)

(10) Where the Court orders the prospectus to be registered, the Registrar shall register the prospectus on delivery to the Registrar of an office copy of the order.

(11) 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 Registrar of Companies, Ghana, for registration. The Registrar has not checked and will not check the accuracy of any statements made and accepts no responsibility therefore or for the financial soundness of the company or the value of the securities concerned."

(12) Until the contrary is shown the first publication of the prospectus occurred on the date of

registration of the prospectus.

280. Meaning of “approved stock exchange” and “exempted dealer”

(1) For the purpose of this Act, “approved stock exchange” means a body corporate approved as a stock exchange under section 25 of the Securities Industry Act, 1993.26(27)

(2) An approved stock exchange shall furnish to the Registrar as at the first day of January in each year, and at any other time if called on by the Registrar to do so, a list showing,

(a) the name and business address and the style under which a person carries on business who at the date of the list is a member of that stock exchange, and if a body corporate, the name of each of the directors of that body corporate, and

(b) the names of the persons who are for the time being authorised by that member to deal in securities on behalf of that member.

(3) The Minister may, by legislative instrument, declare a person, firm or body corporate carrying on business in Ghana to be an exempted dealer and unless the instrument is revoked, that person, firm or body corporate is an exempted dealer for the purposes of this Act.

281. Waiting period

(1) For the purposes of this Act, “waiting period” means a period of ten days after the first publication of a registered prospectus or a longer period that is stated in the prospectus as the period prior to 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 newspapers,

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 shares or debentures of a public company until after the expiration of the waiting period, and an application, offer or acceptance by a person in response to the invitation is revocable by that person at any time prior to the expiration of the waiting period.

(4) Subsection (2) does not invalidate a genuine underwriting agreement in respect of those shares or debentures.

282. Withdrawal of applications after the waiting period

Where a general invitation is made to the public in respect of 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 period unless, prior to the expiration of the period of seven days, a person responsible for the prospectus has, in accordance with section 286, given public notice having the effect under that section of excluding or limiting the responsibility of the person giving it.

283. Invitations in respect of securities to be dealt in on a stock exchange

(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 waiting period.

(2) If 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) If 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 rate of five percent 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.

(5) So long as the person making the invitation may become liable to repay the money in accordance with subsection (2), the moneys received from any persons 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 a fine not exceeding [seven hundred and fifty penalty units].

284. Minimum subscription

(1) Where a public company makes a general invitation to the public to subscribe for any of its shares or debentures, the amount payable on application for the shares or debentures shall not be less than twenty percent of the subscription price.

(2) Unless, within twenty-eight days of the expiration of the waiting period, the amount stated in the prospectus as the minimum amount which, in the opinion of the directors, must be raised in order to provide for the matters specified in subparagraph (b) of paragraph 24 of the Seventh 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) If 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 rate of five percent 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 from a person 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 company and an officer of the company who is in default is liable to a fine not exceeding [seven hundred and fifty penalty units].

285. Application of sections 275 to 279, and 281 to 284 to authorised mutual funds

In relation to an invitation to the public to acquire or dispose of any shares in a public company which, pursuant to section 319 has been declared to be an authorised mutual fund, sections 275 to 279 and 281 to 284 shall have effect subject to the terms of an instrument made by the Registrar under the section 319.27(28)

286. Civil remedy for mis-statements or omissions in a prospectus

(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, then, subject to this section, a person enumerated 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), namely,

(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 authorised to be personally 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;

(ii) a promoter of the company who was a party to the preparation of the prospectus; and

(d) a person who, pursuant to section 278 has consented to the publication of the prospectus containing a statement by that person as an expert.

(3) A person is not liable under the 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;

(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 278 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;

(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 enumerated in subparagraph (i) of paragraph (c) of subsection (2) is not liable under subsections (1) and (2) of this section, 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.

(5) A person enumerated in paragraph (d) of subsection (2) of this section 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 278 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 278 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 any without whose knowledge or consent the prospectus was published, is liable to indemnify 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 a legal proceeding brought against that person in respect of the prospectus.

287. Rescission for mis-statements in a prospectus

(1) If 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 referred to in subsection (1) 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 prior to the commencement of the winding up of the company.

288. Voting rights of shares offered to the public

(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, although they may have been issued before the commencement of this Act are required by sections 49 and 50 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 to a fine not exceeding [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 fine.

289. Public invitations to deposit money with public companies

(1) Despite section 265 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

(b) prior to the making of the invitation the written consent of the Registrar 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 Registrar may grant or withhold the consent referred to in paragraph (b) of subsection (1) of this section and, without prejudice to 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) of this section, 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) of this section 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 that person, and that on becoming aware of its publication, that person forthwith gave reasonable public notice that it was published without that 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 percent or a higher rate as may have been agreed to be paid on the deposit.

290. Prohibition of waiver and notice clauses

A condition purporting to require or bind a person to waive compliance with any of the sections 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.

291. Criminal liability for mis-statements

(1) Where a prospectus, an advertisement or a circular published in relation to an invitation to the public to acquire or dispose of shares of 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 any of the sections of this Part, it is required to state,

a person who authorised the publication of the prospectus, advertisement or circular is liable on conviction to a term of imprisonment not exceeding two years or to a fine not exceeding one thousand penalty units or both, or in the case of a body corporate to a fine not exceeding one thousand penalty units, unless that person proves, either that the untrue or omitted statement was immaterial or that there were reasonable grounds to believe and that person did believe, up to the time of publication of the prospectus, that the statement was true.

(2) For the purposes of this section, a person has not authorised the publication of a prospectus by reason only of that person having given the consent required by section 278 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 289.

291A. Discretion of Registrar to waive or modify the application of Part A of Chapter IV

(1) Despite any other provisions of this Act, the Registrar may waive or modify the requirements of

any of the provisions of Part A of Chapter IV 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.28(29)

PART B

Dividends and Transfers

292. Limitation on liability of shareholders in public companies to restore illegal dividends

Where a public company pays a dividend in contravention of subsection (1) of section 71 a shareholder in the company is 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.

293. Interim dividends

(1) The directors of a public company with shares may, unless the Regulations of the company otherwise provide, pay to the shareholders of the company interim dividends on account of dividends to be declared by the company in accordance with section 73.

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

(a) a dividend shall not be paid in contravention of subsection (1) of section 71, and

(b) if a payment is made in contravention of subsection (1) of section 71 the person specified in subsection (2) of the section 71 is liable to restore the money to the company with interest in accordance with the subsection as qualified by section 292.

294. Restrictions on the transferability of securities of public companies

(1) Despite subsection (2) of section 95, the Regulations of a public company shall not impose a restriction on the right to transfer any shares of the company and if the Regulations purport to impose that restriction it shall be ineffective.

(2) Subsection (1) shall not,

(a) prohibit a restriction on the right to transfer any 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 97, a public company shall not after the commencement of this Act 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.

PART C

Annual Returns and Auditors

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

The annual return of a public company required by section 122 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, profit and loss account, group accounts, directors' report and auditors' report sent to members and debenture holders of the company in accordance with section 124 during the period to which the return relates.

296. Qualification of auditors of a public company

(1) A person is not qualified for appointment as auditor of a public company whether or not that person may have been appointed auditor of the company while it was a private company, unless that person is, under the Chartered Accountants Act, 1963 (Act 170), a member of the Institute of Chartered Accountants; and is not disqualified under subsection (2) of this section.

(2) The following persons are disqualified for appointment as auditor of a public company, namely,

(a) an officer of the company, or of an associated company;

(b) a person who is a partner of or in the employment of an officer of the company, or of an associated company;

(c) an infant;

(d) a person found by a court of competent jurisdiction to be a person of unsound mind;

(e) a body corporate, except that members of an incorporated partnership may be appointed in the manner provided by subsection (2) of section 134;

(f) a person in respect of whom an order has been made under section 186 while 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 bankrupt has been granted leave to act as auditor of the company concerned by the court by which that person was adjudged bankrupt;

(h) a person who is disqualified from acting as auditor of a company by instrument of the Registrar under subsection (4) of this section.

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

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

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

(6) A person not qualified for appointment as auditor who acts as auditor of a public company is liable to a fine not exceeding [seven hundred and fifty penalty units] and the company by whom that person is appointed and an officer of the company who is in default is liable to a like fine.

PART D

General Meetings

297. Extra-ordinary general meetings of public companies

(1) The directors of a public company, despite anything in its Regulations, shall, on the requisition of members of the company holding not less than one-twentieth of the shares of the company, or, in the case of a company limited by guarantee, members of the company representing not less than one-twentieth of the total voting rights of all the members of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.

(2) The requisition shall state the nature of the business to be transacted at the meeting and shall be signed by the requisitionists and sent to or deposited at the registered office of the company, and may consist of several documents in the like form each signed by one or more requisitionists.

(3) If the directors do not, within twenty-eight days from the date of receipt of the requisition at the registered office of the company, proceed duly to convene a meeting for a date not later than twenty-eight days 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.

(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 repaid shall be retained by the company out of the fees or other remuneration of any of the directors as 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 twenty-eight days of the receipt of the requisition at the registered office, cause notices of the meeting to transact the business specified in the requisition to be given in accordance with sections 152 to 155.

PART E

Directors

298. Rotation of directors of a public company

Subject to sections 181 to 185 and section 300 and except as otherwise provided in the company's Regulations, the following rules shall apply to the retirement and appointment of directors of a public company;

(a) at the first annual general meeting of the company, all the directors shall retire from office, and at the annual general meeting in every subsequent year, one-third of the directors for the time being or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office;

(b) the directors to retire in every year shall be those who have been longest in office since their last election, but, as between persons who became directors on the same day those to retire shall, unless they otherwise agree among themselves, be determined by lot;

(c) 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, other than a director retiring at the meeting shall not, unless recommended by the directors, be eligible for election to the office of director at a general meeting unless not less than three nor more than twenty-eight days before the date appointed for the meeting, a notice in writing signed by a member entitled to attend and vote at the meeting of the intention to propose that person for election, and also notice in writing signed by that person of the willingness to be elected has been left at the registered office of the company;

(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.

299. Voting for directors of a public company

(1) At a general meeting of a public company, other than a company limited by guarantee, a resolution for the appointment of two or more persons as directors of the company by a single resolution shall not be moved unless a resolution that it shall be so moved has first been agreed to by the meeting

without a vote being given against it.

(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 the company's Regulations provide for cumulative voting in accordance with section 300.

300. Cumulative voting for directors of a public company

(1) The Regulations of a public company may provide that directors shall be elected by cumulative voting.

(2) Where the Regulations provide for cumulative voting, the following rules shall apply:

(a) despite a provision to the contrary in the company's Regulations, 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;

(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 185, 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) to (d).

301. Prohibition of loans by public companies to directors

(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) shall 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 percent of the net assets of the company; and for the purpose of this subsection “net assets” means the assets less the liabilities of the company as shown in the last audited balance sheet of the company.
(4) Where a company defaults in complying with this section the company and an officer of the company who is in default is liable to a fine not exceeding [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.

CHAPTER FIVE

Provisions Applicable to Non-Ghanaian Companies

302. Meaning of “external company”
(1) Sections 303 to 317, other than section 315 shall apply to all 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 Ghana.
(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;
(b) the fact that a body corporate has a subsidiary which is incorporated, resident, or carrying on business in the Republic, whether through an established place of business or otherwise,
shall not of itself constitute the place of business of that subsidiary an established place of business of that body corporate.

303.
Documents to be delivered to Registrar by external company

(1) External companies which, after the commencement of this Act establish a place of business in Ghana shall, within one month of the establishment of the place of business, deliver to the Registrar for registration

(a) a certified copy of the charter, statutes, regulations, memorandum and articles, or any other instrument constituting or defining the constitution of the company, in a language acceptable to the Registrar;

(b) a statement in duplicate in the prescribed form giving the following particulars regarding the company;

(i) its name;

(ii)

the nature of its business or businesses or other main objects;

(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 Ghana;

(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 Ghana and the number of its post office box;

(vii)

the name and address in Ghana of a person, in this Act referred to as a process agent, authorised by the company to accept service of process and other documents on its behalf;

(c) 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 310, or, if there are no charges, a statement in the prescribed form to that effect.

(2) External companies which at the commencement of this Act already have an established place of business in Ghana shall, within six months after the commencement of this Act, send to the Registrar for registration the documents referred to in subsection (1) of this section.29(30)

(3) 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 Gazette.

(4) For the purposes of subparagraph (iii) of paragraph (b) of subsection (1) and section 309

(a) in the case of a person usually known by a title different from the surname, the expression “surname” means that title;

(b) reference to a former name shall not include,

(i) in the case of a person usually known by a title, the name by which that person was known prior to 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;

(iii)

in the case of a married woman, the name by which she was known prior to the marriage.

304.

Returns required on alteration of registered particulars

(1) Where an alteration is made in the charter, statutes, regulations, memorandum and articles, or any other instrument referred to in paragraph (a) of subsection (1) of section 303, the company shall, within two months of the effective date of the alteration, deliver to the Registrar for registration notice in the prescribed form giving details of the alteration.

(2) Where an alteration is made in any of the particulars contained in the statement referred to in paragraph (b) of subsection (1) of section 303, the company shall, within the times prescribed by the subsection (3) or (4) of this section, deliver to the Registrar for registration notice in the prescribed form in duplicate giving details of the alteration.

(3) In the case of an alteration in any of the particulars referred to in subparagraph (i), (ii), (iv) or (v) of paragraph (b) of subsection (1) of section 303, the notice required by subsection (2) of this section shall be delivered to the Registrar within two months after the effective date of the alteration.

(4) In the case of an alteration in any of the particulars referred to in subparagraph (iii), (vi) or (vii) of paragraph (b) of subsection (1) of section 303, the notice required by subsection (2) of this section shall be delivered to the Registrar within twenty-eight days of the date of the alteration, and the Registrar shall publish the particulars in the notice in the Gazette.

305.

Local managers

(1) An external company shall not 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 unless that person is competent, in accordance with of section 182, to be appointed a director of a company formed in the Republic in under this Act.

(2) The acts of a person registered as the local manager of an external company while carrying on the business in Ghana of that company shall bind the company unless the local manager does not have authority so to act and the person with whom the local manager was dealing had actual knowledge of the

absence of authority, or, having regard to the local manager's position with or relationship to the company, ought to have known of the absence of authority.

306.

Service on external company

(1) A process of any other document shall be sufficiently served on an external company if delivered or sent by post to the person last registered as the company's process agent at 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 Ghana.

(2) Subsection (1) shall not apply to service of a document,

(a) if the company was struck off the register of external companies under section 312 more than six years previously; or

(b) if one person was last registered as process agent and that person is dead or, in the case of a body corporate, dissolved; or

(c) if two or more persons were last registered as process agents and each of those persons is dead, or in the case of a body corporate, dissolved.

(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 sub-section (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 Ghana or, if the company has ceased to have a place of business in Ghana, 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 in a time that will admit of its being delivered in due course of delivery within the time prescribed for the service of the document; and 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.

(5) Where it is proved that a document was in fact received by a local manager or a process agent or by the board of directors, 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 subsection (4).

(6) 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.

307. Accounts of external company

(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 a profit and loss account and balance sheet and, if the company is a holding company, group accounts, in the form and containing the same particulars as the accounts which, under paragraph (a) of subsection (1) of section 124 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 a profit and loss account, a balance sheet and group accounts prepared in the form required under the law of the place of the company's incorporation if, in the Registrar's opinion, the accounts give substantially the same, or greater, information as that required to be given in the accounts referred to in section 124.

(3) The accounts mentioned in subsection (1) shall be in a language acceptable to the Registrar.

(4) Although the profit and loss account, the balance sheet and the group accounts prepared in the form required under the law of the place of the company's incorporation do not give substantially as much information as that required in the accounts referred to in section 124, the Registrar may, nevertheless agree to accept the accounts for registration in compliance with subsection (1) of this section; but in that event, subject as provided by subsection (7) of this section, the company shall also deliver to the Registrar for registration, in a language acceptable to the Registrar

(a) a profit and loss account, made out as nearly as may be in the form and containing the particulars required by section 125 and giving a true and fair view of the profit or loss, during the period to which it relates, on the company's operations in Ghana as if the operations had been conducted by a separate company formed in Ghana under this Act;

(b) a statement as at the end of the company's financial year showing the company's assets locally situated in Ghana classified, distinguished and valued in accordance with section 126 and Part Two of the Fourth Schedule, and the nature and amount of any 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 296 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) shall not apply to a company which,

(a) has at any time made in Ghana 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 Ghana.

(6) In the profit and loss account 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 Ghana and for this purpose may debit a reasonable rate of interest on capital employed in Ghana.

(7) Although the Registrar agrees to accept a profit and loss account, a balance sheet and group accounts 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 Ghana.

(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 Fourth Schedule as the Registrar has in relation to companies formed in Ghana under this Act.

(9) This section does not apply to an external company carrying on banking business in Ghana under a licence granted pursuant to section 24 of the Companies Ordinance, (Cap. 193) or a statutory re-enactment of that section, unless that company,

(a) has at any time made in Ghana an invitation to the public to acquire any of its shares or debentures, or

(b) has issued shares or debentures which are for the time being dealt in officially on a stock exchange in Ghana.

(10) Where this section applies to a banking company referred to in subsection (9) the exemptions referred to in Part Four of the Fourth Schedule shall apply to the accounts and balance sheet of that company.

(11) Where it appears to the Minister that it is desirable in the public interest, the Minister may, by legislative instrument, direct that, in the case of an external company or class of external company, this section shall not apply or shall apply subject to the exceptions and modifications that are specified in the instrument.

308. Obligation to state name, etc., of external company

(1) An external company shall,

(a) conspicuously exhibit on every place where it carries on business in Ghana the name of the company, the country in which the company is incorporated, and, if the liability of the members is limited, the fact that it is so limited;

(b) cause the name of the company and of the country in which it is incorporated, and if the liability of the members is limited the fact that it is so limited, to be stated in legible letters at the head of the business letters of the company despatched in Ghana.

(2) Where the name of the company is in a foreign language, the requirements of this section relating to the name of the company 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 a sufficient compliance with the obligations imposed by this section relating to the exhibition and stating of the fact that the liability of the members is limited.

309. Publication of names of local managers

(1) An external company shall, in the trade circulars and business letters on or in which the company’s name appears and which are despatched in Ghana by or on behalf of the company, state in legible letters with respect to each local manager,

(a) the present forenames or initials and the present surname of the local manager, and

(b) a former forename or surname of the local manager.

(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 (4) of section 303 shall apply to this section.

310. Registration of particulars of charges

(1) Part L of Chapter Two shall extend to charges on property in Ghana which are, or have been, created, and to charges on property in Ghana which is acquired, by an external company.

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

(a) particulars of charges created prior to the date when the external company had an established place of business in Ghana, and

(b) particulars of charges created prior to the commencement of this Act,

are duly registered if particulars of those charges are duly delivered to the Registrar for registration in accordance with section 303 and the failure to register any of those charges as is referred to in paragraph

(a) or (b) of this subsection shall not affect the validity of the charge.

311. Notification of winding up of external company

(1) Where, in the case of an external company,

(a) a winding up order is made by a court of the country in which the company is incorporated, or

(b) a resolution is passed or any other appropriate proceedings are taken in that country to lead to the voluntary winding up of the company, or

(c) the company is dissolved or otherwise ceases to exist according to the law of the country in

which it was incorporated,
the local managers and process agents of the company shall, within twenty-eight days 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 Gazette.

(2) Where any of the events that are referred to in paragraph (a) or (b) of subsection (1) has occurred, the local managers of the company shall, on every invoice, order or business letter issued in Ghana by or on behalf of the company, which is a document on or in which the company's name appears, cause a statement to appear in legible letters to the effect that the company is being wound up in the country where it is incorporated.

(3) A person who in Ghana 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 a fine not exceeding [twenty-five penalty units] for each day during which that person continues so to do.

(4) This section does not derogate from the provisions of the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) enabling an external company, whether or not it has been dissolved or has otherwise ceased to exist according to the law of the country in which it was incorporated, to be wound up under that Act.

312. Cessation of business of external company

(1) Where an external company ceases to have an established place of business in Ghana, it shall within twenty-eight days after so ceasing, give notice of 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 Gazette.

(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 while the company does not have an established place of business in Ghana then, 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 302 to 311.

(4) Where the Registrar has reasonable cause to believe that an external company has ceased to have a place of business in Ghana, 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 Ghana.

(5) If the Registrar receives an answer to the effect that the company has ceased to have an established place of business in Ghana or does not, within three months, receive 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) of this section a person has the right to inspect the documents relating to that company; and during those six years the company shall, despite subsection (3), continue to be under the obligation imposed by section 304 to give notice of an alteration in the names of the company's process agent.

313. Penalties and disabilities

(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 302 to 312 the external company which, and a local manager or process agent who, is in default is liable to a fine not exceeding [two hundred and fifty penalty units] or, in the case of a continuing default [five penalty units] for every 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 302 to 312 the rights of the external company concerned under or arising out of a contract made in Ghana during that time that the default continues shall not be enforceable by action or any other legal proceedings.

(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 prejudice 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.

314. Control of public invitations relating to external companies

(1) Where a person makes in Ghana 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, then, subject to any other provisions of this Act the provisions of Part W of Chapter Two and of Part A of Chapter Four shall apply as if the external company were a public company within the meaning of this Act.

(2) The Registrar may waive or modify the requirements of any of the provisions of Part A of Chapter Four in relation to a public invitation that is referred to in subsection (1) of this section.

(2A) 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.30(31)

(3) Where the invitation to the public is a general invitation within the meaning of section 276 the prospectus, in addition to complying with the Seventh Schedule subject to the modifications made in accordance with subsection (2) and subject to section 277 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,

(c) an address in Ghana 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 Ghana.

(5) Unless this section is complied with the making of the invitation is a breach of section 265.

315. Control of public invitations relating to other non-Ghanaian companies

(1) For the purposes of this section and section 316, the expression “non-Ghanaian company” means an association incorporated or to be incorporated outside Ghana not being an external company as defined in section 302.

(2) Where a person makes in Ghana an invitation to the public which is either,

(a) a general invitation, as defined by section 276 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,

then, subject to any other provision of this Act, Part W 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 314 shall 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 265.

(5) Sections 286, 287, 290 and 291 shall apply in relation to an invitation to the public to acquire or dispose of shares or debentures of a non-Ghanaian company, whether or not an invitation of the types referred to in subsection (2) of this section, and sections 289, 290 and 291 shall apply in relation to 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.

316. Application of sections 266 and 267 to external and non-Ghanaian companies

(1) For the purposes of sections 302 to 315 the expression “invitation to the public” bears the meaning assigned to it in section 266; but an invitation made by or on behalf of an external or non-Ghanaian company exclusively to its existing shareholders and debenture holders, which is not greater in number than is prescribed by subsection (3) of section 9, 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) of section 266.

(2) Section 267 shall apply to an invitation to the public made in respect of shares or debentures of

external and non-Ghanaian companies.

317. Interpretation

For the purposes of sections 302 to 316,

“certified” means that the document concerned has endorsed on the document a certificate, 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;

“secretary” includes a person occupying the position of secretary by whatever name called.

CHAPTER SIX

Supplementary

PART A

Unit Trusts and Mutual Funds

318. Unit Trusts31(32)

(1) For the purposes of this Act, “unit trust” means an arrangement by which securities or any other property, other than a charge to secure the debentures of one body corporate, are vested in trustees and the beneficial interest in the securities or other property is divided into units, sub-units or other interests by whatever name called, in this Act referred to as units, with a view to an invitation being made to the public to acquire those units or any of them.

(2) The Registrar may and subject to the conditions and restrictions that the Registrar thinks fit, by

legislative instrument declare a unit trust, whether established in Ghana or elsewhere, to be an authorised unit trust for the purposes of this Act.

(3) An instrument under subsection (2) shall not be made unless the manager and the trustees have delivered to the Registrar particulars of an address in Ghana for service of notices and documents.

(4) Where the Registrar considers that,

(a) the instrument declaring a unit trust to be an authorised unit trust should be revoked, or

(b) the terms of the instrument should be varied,

the Registrar may serve on the manager and the trustee of the unit trust a written notice that the Registrar is considering the revocation of the instrument or, a specified variation of its conditions or restrictions and inviting the manager and the trustee to make, within a period of one month from the date of service of the notice, any representations they may desire to make with respect to the proposed revocation or variation of the instrument.

(5) The Registrar may revoke or vary the instrument after the expiration of the period specified in subsection (3) but, before deciding whether or not to revoke or vary the instrument, the Registrar shall take into consideration any representations so made by the manager or trustee and if either of them so requests, afford them an opportunity of being heard by the Registrar within that period.

(6) A person shall not make an invitation to the public to acquire any units in any unit trust unless,

(a)

the unit trust is for the time being an authorised unit trust; and

(b)

the restrictions and conditions imposed by the Registrar when declaring that unit trust to be an authorised unit trust, including any conditions regarding approval of the terms of any invitation, have been duly complied with.

(7) Where an invitation to the public is made in breach of subsection (6) the persons making the invitation and an officer who is in default or any body corporate making the invitation is liable on conviction in the case of a body corporate to a fine not exceeding [one thousand penalty units] and in any other case to a term of imprisonment not exceeding two years or to a fine not exceeding [five hundred penalty units] or to both that imprisonment and fine.

(8) Where as a result of an invitation to the public in breach of subsection (6) a person acquires any units in a unit trust that person is entitled to rescind the acquisition and, either in addition to or instead of rescinding, to recover compensation for the loss sustained by that person from any other person who is liable, whether convicted or not, in respect of the breach.

(9) On the application of the Registrar the Court may order the Registrar to appoint one or more competent inspectors to investigate and report on the administration of a unit trust if it appears to the

Court,

(a)

that it is in the interests of unit holders so to do, and

(b)

that the matter is one of public concern.

(10) Subsection (3) of section 220 shall apply to an application under subsection (9) and section 223 and, so far as appropriate, section 224 shall apply to an investigation under subsection (9) with the substitution for references to the company and its affairs of references to the manager of the unit trust and to the administration of the unit trust.

(11) The expenses of an investigation under subsections (9) and (10) shall be defrayed by the Registrar out of moneys provided by Parliament.

(12) A notice to be served on a manager or trustee of an authorised unit trust may be served by post in a letter addressed to the manager or trustee at the address for service delivered to the Registrar pursuant to subsection (3) and shall be deemed to be effected forty-eight hours after the letter containing the notice is posted.

319.

Mutual funds32(33)

(1) Where the Registrar is satisfied that a body corporate, being a public company within the meaning of this Act or an external company having an established place of business in Ghana within the meaning of section 302 has been incorporated for the purposes of holding and managing securities or other property, and that in the Regulations of the body corporate or in any other instrument binding the body corporate satisfactory arrangements are made for ensuring,

(a)

that if an invitation is made to the public to subscribe for its shares the price at which the shares are offered shall be based on the net value of its assets at the time of the offer without an addition except for a reasonable service charge, and

(b)

that the body corporate will at any time repurchase any of those shares from the holder of those shares at a price based on the net value of its assets at the time of the repurchase without a deduction except for a reasonable service charge,

the Registrar may and subject to the conditions and restrictions that the Registrar thinks fit, by legislative

instrument declare that body corporate to be an authorised mutual fund for the purposes of this Act and, by that instrument, may direct that so long as that body corporate remains an authorised mutual fund

(a)

any of the provisions of sections 59 to 63, 66 and 67, 275 to 279, 281 to 284 and 314 shall not have effect in relation to that body corporate or to invitations to the public to acquire or dispose of its shares, or

(b)

any of those provisions shall have effect with the modifications that are specified in the instrument.

(2) Where the Registrar considers that a legislative instrument made under subsection (1) should be revoked or that the terms of the instrument should be varied, the Registrar may serve on the body corporate a written notice that the Registrar is considering the revocation of the instrument or a specified variation of its conditions, restrictions or directions, and inviting the body corporate to make, within one month from the date of service of the notice, any representations it may desire to make with respect to the proposed revocation or variation.

(3) The Registrar may revoke or vary the instrument after the expiration of the one month, but, before deciding whether or not to revoke or vary the instrument, the Registrar shall take into consideration any representations so made by the body corporate and, if it so requests, afford it an opportunity of being heard by the Registrar within that period.

(4) Where an authorised mutual fund commits a breach or non-observance of any of the conditions or restrictions in the instrument declaring it to be an authorised mutual fund an officer of the body corporate who is in default is liable to a term of imprisonment not exceeding two years or to a fine not exceeding five hundred penalty units or to both the imprisonment and the fine.

PART B

Miscellaneous Offences

320.

Inducing persons to invest

(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 to a term of imprisonment not exceeding seven years unless it is proved that there were reasonable grounds to believe and that person 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 is subject to the punishment prescribed by subsection (1).

321.

Penalty for false statements

(1) A person who in a return, report, certificate, an account, or any 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 conviction to a term of imprisonment not exceeding two years, or to a fine not exceeding five hundred penalty units or to both the imprisonment and the fine.

(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.

322. Penalty for improper use of “incorporated” or “limited”

Where a person trades or carries on business in Ghana under a name or title

(a) of which the words “incorporated”, “corporation” or a contraction or an imitation of those words or any equivalent in any other language forms part, or

(b) of which the word “limited” or a contraction or an imitation of the word or any equivalent in any other language,

is the last word, that person is 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 a fine not exceeding [twenty-five penalty units] for every day during which that name or title has been used.

323. Publication of misleading statements regarding shares or capital

(1) A body corporate shall not state the number of the authorised or issued shares of that body corporate or the amount of its capital in a notice, an advertisement, a business letter or any 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 who is in default is liable to a fine not exceeding [seven hundred and fifty penalty units].

PART C

Legal Proceedings

324. Representative actions

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 that 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 in any way liable for the costs of the proceedings;

(b) a member of the class represented may at any time prior to 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 thinks 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 enure for the benefit of the member 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 210, this section shall be supplemented by the provisions of that section;

(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.

325. Costs in actions by limited companies

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.

326. Contribution between joint wrongdoers

(1) Where more than one officer of a body corporate or any 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.

327. Power to grant relief

(1) Where in proceedings against a member, an officer or auditor of a company for a default or a breach of duty under a section of 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 that person has acted honestly and reasonably and that, having regard to all 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 appropriate terms.

(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; and the Court on that 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.

(3) 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 the evidence and make the representations.

PART D

Administration

328. Registrar of Companies

(1) Subject to article 195 of the Constitution, the President may appoint a Registrar of Companies to perform the functions vested by or under this Act or any other enactment as the Registrar.

(2) Until any other appointment is made the Registrar-General is the Registrar.

(3) There may be appointed assistant and deputy registrars and any other officers as are required for the purposes of this Act.

(4) Anything in this Act appointed, authorised or required to be done to or by the Registrar or to be signed by the Registrar may be done to or by or signed by an assistant or a deputy registrar and shall be as valid and effectual as if done to or by or signed by the Registrar.

(5) The Registrar shall have a seal which shall bear the words “Registrar of Companies, Ghana”.

329. Fees

In respect of the matters set out in the first column of the Table in Part One of the Eighth Schedule there shall be paid to the Registrar the fees specified in the second column of that Table, but subject to the exemption referred to in Part Two of that Schedule.

330. Documents to be translated

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 a language acceptable to the Registrar.

331. Registration of documents

(1) Where, under a section of this Act, a document or any particulars require to be registered by the Registrar, registration shall be effected by inserting the document or making the appropriate entries of the particulars in the file maintained at the Companies' Registration Office in relation to the company concerned.

(2) For the purposes of a provision of this Act, a document or any particulars is, or are, not delivered to the Registrar for registration until the appropriate registration fee has been paid to the Registrar.

(3) If the Registrar is of opinion that any documents or particulars delivered to the Registrar for registration,

(a) contain matter contrary to law, or

(b) by reason of an error, omission or a misdescription have not been duly completed, or

(c) otherwise do not comply with the requirements of this Act, or

(d) contain an error,

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 or particulars have not been delivered for registration until re-submitted appropriately amended or completed.

332. Prescribed forms

(1) 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) The Registrar may, by legislative instrument, prescribe forms for the purposes of this Act.

(3) 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.

(4) Where the Registrar, in accordance with subsection (3) of this section, refuses to accept a

document for registration the document has not, for the purposes of a section of this Act, been duly delivered to the Registrar unless a duplicate of the document in a form acceptable to the Registrar is duly delivered within the time prescribed by that section or within the extended time that the Registrar may allow for the delivery of a duplicate.

(5) The Registrar shall not refuse to accept a document on the ground that the paper on which it is written is insufficiently durable if the document is written on the appropriate printed form issued by the Government Printer.

333. Inspection, copies and evidence of registered documents

(1) A person may,

(a) inspect the register of particulars of charges and a document registered by the Registrar on payment of two thousand five hundred cedis for each inspection of the register and documents relating to one company;33(34)

(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 certified and personally signed by the Registrar, on payment of the fees that the Registrar may prescribe, not exceeding [two hundred thousand cedis] for each page.

(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 to be a true copy and personally signed by the Registrar, whose official position it shall not be necessary to prove, shall be admissible in evidence in legal proceedings as of equal validity with the original document.

334. Authentication of documents issued by Registrar or Minister

(1) The documents purporting to be orders, certificates, licences, approvals or revocations of those documents made or issued by the Registrar or the Minister for the purposes of this Act and purporting to be sealed with the seal of the Registrar, or to be signed by the Registrar, or to be signed by the Minister or on the Minister’s behalf 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, a certificate issued, or an act done is the order, certificate, or act of the Registrar or the Minister is conclusive evidence of the fact so certified.

335. Enforcement of duty to make returns

Where a body corporate or any officer or liquidator of a body corporate, having defaulted in complying with a provision of this Act which requires it, to deliver a return, an account, or any other document, or to give notice of any matter, fails to end the default within twenty-eight days after the service of a notice on the body corporate or the officer or liquidator requiring it or the officer or liquidator

to do so, the Court may, on an application made to the Court by the Registrar or by a member or creditor of the body corporate, 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 may provide that the costs of and incidental to the application shall be borne by the body corporate or by an officer or the liquidator of the body corporate responsible for the default.

336. Regulations

(1) The Registrar 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) The Regulations shall not be invalid by reason of the fact that they purport to regulate the exercise by the Registrar of a power which, under a provision of this Act, is exercisable in the absolute discretion of the Registrar.

337. Registrar's power to obtain directions of the Court

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.

338. Periodical reports by Registrar

(1) The Registrar shall, at intervals of not more than three years 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, 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 functions under this Act and, in particular, shall refer to the cases in which the Registrar has, under the powers conferred by this Act, waived compliance or modified any of the normal provisions of this Act, and shall state in each case the reasons for so doing.

339. Extension to unregistered companies

(1) The Minister may, by legislative instrument, direct that any of the provisions of this Act shall apply to all bodies corporate formed in Ghana otherwise than under the Companies Ordinance, (Cap. 193), or this Act or to certain classes of those bodies or to certain named bodies corporate formed in Ghana, as specified in the instrument, as if they were companies registered under this Act.

(2) If the instrument is made the Minister may from time to time exempt a named body corporate from the application to it of any of those provisions.

(3) 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.34(35)

340. Repeals

The enactments mentioned in the first column of the Tenth Schedule are repealed to the extent specified in the second column of that Schedule.

SCHEDULES

First Schedule34a

(36)DEFINITIONS

[Section 2]

Subject Expression	Meaning
1. Types of companies	
“associated company”	the expression “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;
“body corporate”	means a corporation formed under this Act or otherwise and whether in Ghana or elsewhere but does not include a corporation sole in the nature of an incorporated;
“company”	means a body formed and registered under this Act or an existing company;

“company limited by have the meanings assigned to
shares” and them in section 9;
“company limited by
guarantee”

“existing company”
means a body corporate formed
and registered under the
Companies Ordinance (Cap. 193)
unless, prior to this Act, it has
been dissolved or re-registered
under any other Act;

“external company”
has the meaning assigned to it by
section 302;

“private company” have the meanings assigned to
and “public them in section 9;
company”

py

“subsidiary” and a body corporate is the subsidiary
“holding company” 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 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;

(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;

(b) it is a subsidiary of a body corporate which is that other's subsidiary;

"non-Ghanaian company" has the meaning assigned to it by section 315;

"unlimited company" has the meaning assigned to it in section 9;

;

"wholly owned subsidiary" 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.

2. Officers of bodies corporate

"alternate director" has the meaning assigned to it by section 188;

"director" in relation to a company, has the meaning assigned to it by section 179 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;

"officer" in relation to a body corporate, means 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, or a
receiver and manager appointed
by the Court, or a liquidator
appointed under the provisions of
the Companies (Liquidation) Act,
1962 (Act) or an auditor of a
company;
"secretary" in relation to a company, means
the person appointed secretary of
the company in accordance with
section 190 and in relation to any
other body corporate means a
person occupying the position of
secretary by whatever name
called;
"substitute director" has the meaning assigned to it by
section 187.

3. Securities and dealings "acquire" in relation to any securities
therein means that the 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, except
where the context otherwise
requires, includes and agreement
to acquire;

“approved stock has the meaning assigned to it by
exchange” section 280;
“buy”, “purchase” in relation to securities, mean an
and “sell” acquisition and disposal of these
securities for cash, and, except
where the context otherwise
requires, includes an agreement
to buy and sell;
“capitalisation issue” has the meaning assigned to it by
subsection (1) of section 74;
“debenture” and in relation to companies, has the
“debenture stock” meanings assigned to them in
section 80 and in relation to any
other body corporate mean a
debenture, debenture stock or
bond whether constituting a
charge on the assets of the body
corporate or not;
“dispose” in relation to any securities,
means that the securities are
parted with whether to the body
corporate whose securities they
are or to any other person and
whether for cash or for a
consideration other than cash or
for no consideration, and, except
where the context otherwise
requires, includes an agreement
to dispose;
“exempted dealer” has the meaning assigned to it by
section 280;
“securities” means,
(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 not being a body corporate licensed, under section 24 of the Companies Ordinance (Cap. 193) or a statutory re-enactment of that ordinance to carry on banking business;

“shares” means the interests of members of a body corporate who are entitled to share in the capital or income of the body corporate;

“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, means the purchase of those securities from the body corporate whose securities they are, and, except where the context otherwise requires, includes an agreement to subscribe;

“Treasury shares” has the meaning assigned to it in subsection (3) of section 59.

4. Miscellaneous “annual return” means the return required to be

made under section 122;

“arrangement” and have the meanings assigned to

“amalgamation” them in section 229;

“authorised mutual has the meaning assigned to it in

fund” section 319;35(37)

“authorised unit trust” has the meaning assigned to it in

section 318;

;

“calls”

means a sum which the company

has validly resolved to call up in

respect of any shares issued with

an unpaid liability and where by

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;

“charge”

includes a security on property or

a mortgage whether legal or

equitable;

“contributions”

in relation to a pension scheme

means a payment, including an

insurance premium, paid for the

purposes of the scheme by or in

respect of persons rendering

services in respect of which

pensions will or may become
payable under the scheme, 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 has the meaning assigned to it by
winding up” section 248;

“default”
for the purposes of a section in
this Act providing that a person
who is in default is liable to a fine
or penalty or to pay damages or
compensation or to discharge a
debt or obligation, “in default”
means that the person concerned
knowingly authorises or permits
the default, refusal or
contravention mentioned in the
section;

“equity share”
has the meaning assigned to it by
section 48;

“financial year”
means the period covered by the
company’s profit and loss
account in accordance with
section 125;

“floating charge”

has the meaning assigned to it by
section 87;

;

“income surplus”
has the meaning assigned to it by
section 70;

“infant”
means a natural person under the
age of twenty-one years or any
other age that is declared by an
enactment to be full age for legal
purposes;

“insolvent”
n relation to a body corporate
means that its liabilities exceed its
assets or that it is unable to pay
its debts as they fall due;

“invitation to the has the meaning assigned to it by
public” section 266;

“liquidator”
means the person appointed to
wind up a body corporate;

“local manager”
in relation to an external
company, has the meaning
assigned to it by section 303;

“manager”

means a person appointed to
exercise the functions referred to
in subsections (1) and (2) of
section 238;

“managing director”
means a director to whom has
been delegated some of the
powers of the board of directors,
to direct and administer the
business of the company;

“members’ voluntary has the meaning assigned to it by
winding up” section 249;

“Minister”
means the Minister to whom
functions under this Act are
assigned by the President;

“mutual fund”
has the meaning assigned to it by
section 319;36(38)

“ordinary resolution”
has the meaning assigned to it by
section 168;

“payment in cash”
has the meaning assigned to it by
section 45;

“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;

y;

“preference share”
has the meaning assigned to it by
section 48;

“prescribed form”
has the meaning assigned to it by
section 332;

“process agent”
in relation to external companies
has the meaning assigned to it by
section 303;

“receiver”
means a person appointed to
exercise the functions referred to
in subsection (1) of section 238;

“Registrar”
includes a Register maintained in
electronic format and saved on
any device including a disc, tape,
or other device in which sounds
or other data are embodied so as
to be capable (with or without the
aid of some other instrument) of

being reproduced from the disc,
tape or other device;36a(39)

“registration”
has the meaning assigned to it by
section 331;

“registration officer”
has the meaning assigned to it by
subsection (7) of section 32;

“resolution requiring has the meaning assigned to it by
confirmation” subsection (2) of section 75;

“seal”
means the common seal of the
company;

“solvent”
means having the ability to meet
all pecuniary liabilities;

“special resolution”
has the meaning assigned to it by
section 168;

“stated capital”
has the meaning assigned to it by
section 66;

“surplus”
has the meaning assigned to it by
section 69;

“Table A” and “Table means Tables A and B
B” respectively in the Second
Schedule;

“Treasury shares”
has the meaning assigned to it by
subsection (3) of section 59;

“unit trust”
has the meaning assigned to it by
section 318;37(40)

“unit”
means the rights and interests
whether described as units or
otherwise, under any unit trust;

y ; ;

“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; but for the
purpose of the Sixth and Seventh
Schedules where the vendors or
any of them are an
unincorporated firm the
members of the firm shall be

treated as one vendor and not as
separate vendors;

“waiting period”
has the meaning assigned to it by
section 281;

“winding up under an has the meaning assigned to it by
order of the court” section 247.

Second Schedule

TABLES A AND B
[Sections 16, 17, 19 and 20]

PART ONE
TABLE A—REGULATIONS FOR A PRIVATE COMPANY LIMITED BY SHARES

1. The name of the company is John Mensah & Co., Limited.
2. The nature of the business which the company is authorised to carry on are,
(a) to acquire and take over as a going concern the business of storekeeper now carried on at 1116 High Street, Accra, under the style of John Mensah & Co., and all or any of the assets and liabilities of the proprietor belonging to that business used in connection with that business or belonging to that business and with a view to enter into an agreement a draft of which has for the purposes of identification been signed by the subscriber of these Regulations, and to carry the Regulations into effect with or without modifications;
(b) to carry on the business of a storekeeper in all its branches at 1116 High Street, Accra or elsewhere and, in particular, to buy, sell and deal in goods, stores, consumable articles and effects of all kinds, both wholesale and retail.
3. Pursuant to section 24 of the Companies Act, 1963 (Act 179), the company has, for the furtherance of its authorised businesses, the powers of a natural person of full capacity except in so far as those powers

are expressly excluded by these Regulations.

4. The first directors of the company are John Mensah and Kwame Kofi.

5. The powers of the board of directors are limited in accordance with section 202 of the Act.

6. The liability of the members of the company is limited.

7. The company is to be registered with one thousand shares of no par value.

8. 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 regulation 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.

SHARES AND VARIATION OF RIGHTS

9. The company may, by a special resolution altering these Regulations,

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

(b) reduce the number of its shares by cancelling shares which have not been taken or agreed to be taken by a person, or by consolidating its existing shares, whether issued or not, into a smaller number or 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 31 and 50 of the Act and the voting rights of preference shares shall comply with sections 31 and 49 of the Act;

(d) in accordance with section 59 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 60 to 63 of the Act.

10. (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 202 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 regulation is not alterable except with the unanimous consent of the members of the company.

11. 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.

12. Subject to compliance with sections 60 to 63 of the Act the company may exercise the powers conferred by section 59 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 these Regulations any shares issued with an unpaid liability for non-payment of calls or other sums payable in respect of those shares.

13. 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 for each hundred of the price at which the shares are issued.

14. Share certificates shall be issued in accordance with section 53 of the Act.

CALLS ON SHARES

15. (1) Where shares are issued upon 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 on the shares of that person.

(2) A call may be revoked or postponed as the directors may determine.

16. 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.
17. The joint holders of a share are jointly and severally liable to pay all calls in respect of that share.
18. 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 percent 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.
19. 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 these Regulations, 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 these Regulations 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.

20. 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.
21. 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 meantime shall be deemed to be a loan to the company upon which the company may pay interest at the yearly rate not exceeding five percent as may be agreed between the board of directors and the shareholder.
FORFEITURE OF SHARES

22. Where a shareholder fails to pay any call or instalment of a call, including a sum which is a call under regulation 19, 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.
23. 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.
24. 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.
25. A forfeited share may be cancelled by alteration of these Regulations 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 think

fit.

26. 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, notwithstanding, 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.

27. 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

28. (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.

29. Where a sum in respect of which the company has a lien is presently payable the board of directors,

after serving the notice required by regulations 22 and 23, 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 regulation 24.

30. (1) To give effect to a sale under regulation 29 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.

31. 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

32. Subject to regulation 8 (a) shares shall be transferable and transfers shall be registered in the manner provided by sections 95 and 98 of the Act.

33. 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 99 of the Act shall apply.

DIVIDENDS

34. 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.

35. 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 prior to the making of the payment.

36. 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 think prudent not to distribute.

37. 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.

38. The board of directors may deduct from a dividend payable to a shareholder the sum of money presently payable by the shareholder to the company in respect of the shares of the shareholder.

39. (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.

40. A dividend shall not bear interest against the company.

CAPITALISATION ISSUES AND NON-CASH DIVIDENDS

41. The company, upon the recommendation of the directors, may exercise the powers conferred by section 74 of the Act,

(a) to make capitalisation issues of shares in accordance with subsection (1) of section 74,

(b) to resolve, in accordance with subsection (3) of section 74, 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 unpaid on shares,

(c) to direct, in accordance with subsection (4) of section 74, 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

42. The board of directors shall cause proper books of account to be kept and a profit and loss account and balance sheet to be prepared, audited and circulated in accordance with sections 123 to 133 of the Act.

43. Auditors, qualified in accordance with section 270 of the Act, shall be appointed and their duties regulated in accordance with sections 134 to 136 of the Act.

GENERAL MEETINGS AND RESOLUTIONS

44. The powers of the members in general meeting shall be as stated in section 137 of the Act.

45. Annual general meetings shall be held in accordance with section 149 of the Act.

46. Extraordinary general meetings may be convened by the directors whenever they think fit in accordance with section 150 of the Act and shall be convened by the directors on a requisition of members in accordance with section 271 of the Act.

47. Notice of general meetings shall be given in accordance with sections 152 to 159 of the Act and accompanied by any statements required to be circulated with the notice in accordance with sections 157 to 159 of the Act.

48. Meetings may be attended by the persons referred to in section 160 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.

49. The quorum required for a general meeting shall be as stated in section 161 of the Act.

50. (1) In accordance with section 163 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

[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."

51. A body corporate which is a member of the company may attend and vote by proxy or by a representative appointed in accordance with section 165 of the Act.

52. (1) Meetings shall be conducted in accordance with sections 166 to 173 of the Act.

(2) On a poll being demanded the chairman of the meeting shall not be required to direct a postal ballot in accordance with subsections (6), (7) and (8) of section 170 of the Act unless the chairman thinks fit or an ordinary resolution to that effect is moved at the meeting and passed on a show of hands.

53. In accordance with section 174 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 entitled to attend and vote by that member shall be as valid and effective for all purposes, except as provided by section 174 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.

54. Minutes of general meetings shall be kept in accordance with section 177 of the Act.

55. If at any time the shares of the company are divided into different classes these Regulations 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 175 of the Act.

VOTES OF MEMBERS

56. Subject to any rights or restrictions for the time being attached to a class of preference shares and which may be validly attached to that class pursuant to section 49 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;

(b) in the event of a postal ballot being directed pursuant to subsections (6), (7) and (8) of section 170 of the Act, each member entitled to attend and vote at the meeting shall have one vote for each share held by that member.

DIRECTORS

57. 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.

58. The continuing directors may act notwithstanding 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.

59. The appointment of directors shall be regulated by sections 181 and 272 of the Act.

60. The persons referred to in section 182 of the Act shall not be competent to be appointed directors of the company.

61. A director need not be a member of the company or hold any shares in the company.

62. The office of director shall be vacated in accordance with section 184 of the Act and a director may be removed from office in accordance with section 185 of the Act.

63. (1) The company may appoint substitute directors in accordance with section 187 of the Act and a director may appoint an alternate director in accordance with section 188 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.

64. At least one director of the company shall at all times be present in Ghana.
65. The remuneration payable to a director in whatever capacity shall be determined or approved by the members in general meeting in accordance with section 194 of the Act.
66. The proceedings of the director shall be regulated by section 200 of the Act and the board of directors may delegate any of their powers to committees of the directors in accordance with that section.

67. Minutes of meetings of the board of directors and of a committee of directors shall be kept in accordance with section 201 of the Act.

POWERS AND DUTIES OF DIRECTORS

68. (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 202 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 these Regulations required to be exercised by the member in general meeting.
69. 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 203 to 205 of the Act.
70. Subject to compliance with section 207 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 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.
71. 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

72. The board of directors may exercise the powers conferred by section 192 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.
73. (1) The board of directors may exercise the power conferred by section 193 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 upon a managing director any of the powers exercisable by them upon 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.

74. Remuneration shall not be payable to a director in respect of any office or place of profit to which the director is appointed under these Regulations unless and until the terms of the appointment have been approved by ordinary resolution of the company in general meeting in accordance with section 194 of the Act.

SECRETARY AND OFFICERS AND AGENTS

75. The Secretary shall be appointed by the board of directors for the time, at the remuneration, and upon the conditions that they think 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.

76. A provision in the Act or these Regulations 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.

77. (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 under these Regulations, and for the period and subject to the conditions that they may think 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 think fit and may also authorise that attorney to delegate all or any of the powers, authorities and discretions vested in that attorney.

THE SEAL

78. The directors shall 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 secretary or by a second director or by some other person appointed by the directors for the purpose.

79. The company may exercise the powers conferred by section 148 of the Act with regard to having an official seal for use abroad, and those powers shall be vested in the board of directors.

SERVICE OF DOCUMENTS

80. A document may be served by the company on a member, debenture holder or director of the company in the manner provided by section 262 of the Act.

WINDING-UP

81. (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 Liquidation) Act, 1963 (Act 180), divide amongst the members in specie or 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 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) Notwithstanding subregulations (1) and (2), a member shall not be compelled to accept any securities on which there is a liability.

INTERPRETATION

82. In these Regulations, unless the context otherwise requires,

(a) “Act” means the Companies Act, 1963 (Act 179) or a statutory modification or re-enactment

of the Act;

(b) words or expressions have the meanings assigned to them in the Act;

(c) references to sections of the Act mean the sections as modified or re-enacted.

I the undersigned am desirous of forming an incorporated company in pursuance of these Regulations and I agree to take the number of shares in the company set opposite my name and to pay for the shares in cash the consideration stated.

Name, Address and Description or Occupation of Subscriber	Number of Shares	Consideration Payable in Cash
George Frimpong of 1116, High Street Accra, Storekeeper	100,000,000	[¢100,000,000]

Dated the 22nd day of November, 1961.

Witness to the above signature:

Name ..... Charles Robinson

Address ..... Nkrumah Circle, Accra

Description or Occupation ..... Legal Practitioner

NOTES ON PART ONE

Regulations in the form of regulations 1 to 7 must be expressly stated in the Regulations lodged for registration. The remaining regulations may be adopted by reference by stating,

“8. The company is a private company and accordingly regulations 8 to 82 in Part One of Table A in the Second Schedule to the Companies Act, 1963 (Act 179) shall apply.”

If it is desired to exclude any of those regulations insert after “Companies Act, 1963 (Act 179), “the words “(except regulations)”.

If it is desired to exclude Table A completely, insert instead of the above,

“8. The regulations contained in Table A in the Second Schedule to the Companies Act, 1963 (Act 179), shall not apply to the company except in so far as they are repeated or contained in these Regulations.”

In that event care must be taken to include a regulation equivalent to regulation 8 of the Table: otherwise the company will not be a private company.

1. Regulations 8 and 32. If in addition, or instead, of the unfettered power to refuse transfers it is desired to give the other shareholders rights of pre-emption or first refusal appropriate provisions should be inserted after regulation 32. In that event regulation 8 (a) need merely state “the right to transfer shares is restricted in manner hereinafter appearing”.

2. Regulation 52. If the shares are equally divided between two interests it may be desirable to delete this regulation and to substitute another beginning,

“(1) Meetings shall be conducted in accordance with sections 166 to 173 of the Act but the chairman of the meeting shall not have a casting vote either on a show of hands or a poll.”

This will prevent one side from out-voting the other but may, of course, lead to a deadlock.

3. Regulation 52. If it is desired that the chairman should be required to direct a postal ballot if a poll is demanded, this regulation should be deleted and another substituted in which sub-regulation (2) should read,

“On a poll being validly demanded the chairman of the meeting shall direct a postal ballot in accordance with subsections (6), (7) and (8) of section 170 of the Act.”

4. Regulation 59. If it is desired that a class of security-holders or the employees shall have the right to appoint one or more directors, this regulation should be deleted and another substituted making the appropriate provisions.

5. Regulation 63. If it is desired that the alternate director shall be entitled to the remuneration of the director who appointed the alternate director, this regulation should be deleted and another substituted in which sub regulation (2) should read,

“An alternate director shall be entitled to receive from the company during the period of the appointment the remuneration to which the director who appointed the alternate director, but for that appointment, would have been entitled, and that director shall not be entitled to the remuneration for that period.”

6. Regulation 66. As pointed out in Note 2 it may sometimes be desirable to deprive the chairman of a casting vote. In that event this regulation should be deleted and the following substituted:

“The proceedings of the directors shall be regulated by section 200 of the Act but on an equality of votes the chairman shall not have a second or casting vote.”

7. Subscription of Regulations. If there is to be more than one member it may be convenient for the members to subscribe, in which case this provision should be amended to read as in the corresponding provision in Part Two. It will normally be convenient for the subscribers to sign for the amount of the minimum cash consideration required under section 28 and not merely for one share each.

8. Provision has not been made for the keeping of branch registers as these will rarely be needed in the case of private companies. Should it nevertheless be desired to maintain these registers a regulation similar to [regulation 43 of Part Two] should be included.

PART TWO

TABLE A — REGULATIONS FOR A PUBLIC COMPANY LIMITED BY SHARES

1. The name of the company is Gower Mining Corporation Limited.

2. The nature of the businesses which the company is authorised to carry on are,

(a) to purchase, take concessions of lease, or otherwise acquire any mines, mining rights and metalliferous land in Ghana or elsewhere and any interest in those businesses, and to explore,

work, exercise, develop, and turn those businesses to account;

(b) to crush, win, get, quarry, smelt, calcine, refine, dress, amalgamate, manipulate, and prepare for market, ore, metal and mineral substances of all kinds.

3. Pursuant to section 24 of the Companies Act, 1963 (Act 179) the company has, for the furtherance of its authorised businesses the powers of a natural person of full capacity except in so far as those powers are expressly excluded by these Regulations.

4. The first directors of the company are,

Sabina Amamoo

John Henry Smith

Herbert Harold Brown

Kwame Kwasi

Patience Pettison

Estelle Forster

Peter Azuma

Linda Kwao

John Logan.

5. The powers of the board of directors are limited in accordance with section 202 of the Act.

6. The liability of the members of the company is limited.

7. The company is to be registered with 500,000 shares of no par value.

SHARES AND VARIATION OF RIGHTS

8. The company may, by special resolution altering these Regulations,

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

(b) reduce the number of its shares by cancelling shares which have not been taken or agreed to be taken by 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 31 and 50] of the Act and the voting rights of preference shares shall comply with sections 31 and 49 of the Act;

(d) in accordance with section 59 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 60 to 63 of the Act.

9. On the issue of any new or unissued shares in the company the directors shall comply with section 202 of the Act.

10. 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.

11. Subject to compliance with sections 60 to 63 of the Act the company may exercise the powers conferred by section 59 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;

(c) forfeit in the manner appearing in these Regulations any shares issued with an unpaid

liability for non-payment of calls or other sums payable in respect of the shares.

12. 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.

13. Share certificates shall be issued in accordance with section 53 of the Act.

14. (1) Where shares are issued upon 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 shareholder.

(2) A call may be revoked or postponed as the directors may determine.

15. 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.

16. The joint holders of a share are jointly and severally liable to pay all calls in respect of that share.

17. 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.

18. 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 these Regulations 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 these Regulations 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.

19. 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.

20. 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 for each hundred as may by agreed between the board of directors and the shareholder.

FORFEITURE OF SHARES

21. If a shareholder fails to pay any call or instalment of a call, including a sum treated as a call under regulation 18 of these Regulation, 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.

22. 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.

23. 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.

24. A forfeited share may either be cancelled by alteration of these regulations 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 think fit.

25. 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.

26. 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.

LIEN

27. (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 lien.

28. 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 regulations 21 and 22 of these Regulations 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 regulation 23 of these Regulations.

29. (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.

30. 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

31. (1) The board of directors may decline to register,

(a) the transfer of a share on which there is an unpaid liability to a person of whom they do not approve;

(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 lunatic or of unsound mind.

(2) Subject to subregulation (1) there shall be no restriction on the right to transfer any shares in the company.

32. Shares shall be transferable and transfers shall be registered in the manner provided by sections 95 and 98 of the Act.

33. 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 99 of the Act shall apply.

DIVIDENDS

34. 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.

35. The board of directors may exercise the power conferred by section 293 of the Act to pay interim dividends.

36. 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 prior to the making of the payment.

37. 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 think prudent not to distribute.

38. 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.

39. 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.

40. (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 that 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) 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.

41. A dividend shall not bear interest against the company.

CAPITALISATION ISSUES AND NON-CASH DIVIDENDS

42. The company, upon the recommendation of the directors, may exercise the powers conferred by section 74 of the Act,

(a) to make capitalisation issues of shares in accordance with subsection (1) of section 74;

(b) to resolve, in accordance with subsection (3) of section 74 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 74 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

43. The company may exercise the powers conferred by sections 103 and 104 of the Act with respect to the keeping of branch registers 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

44. The board of directors shall cause proper books of account to be kept and a profit and loss account and balance sheet to be prepared, audited and circulated in accordance with sections 123 to 133 of the Act.

45. Auditors, qualified in accordance with section 296 of the Act, shall be appointed and their duties regulated in accordance with sections 134 to 136 of the Act.

GENERAL MEETINGS AND RESOLUTIONS

46. The powers of the members in general meeting shall be as stated in section 137 of the Act.

47. Annual general meetings shall be held in accordance with section 149 of the Act.

48. Extraordinary general meetings may be convened by the directors whenever they think fit in accordance with section 150 of the Act and shall be convened by the directors on a requisition of members in accordance with section 297 of the Act.

49. Notice of general meetings shall be given in accordance with sections 152 to 159 of the Act and accompanied by any statements required to be circulated with the notice in accordance with sections 157 to 159 of the Act.

50. Meetings may be attended by the persons referred to in section 160 of the Act but a member is not entitled to attend unless the calls or other sums presently payable by that member in respect of shares in the company have been paid.

51. The quorum required for a general meeting shall be as stated in section 161 of the Act.

52. (1) In accordance with section 163 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:

“Gower Mining Corporation 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 ..... 20.... 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”.

53. 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 section 165 of the Act.

54. (1) Meetings shall be conducted in accordance with sections 166 to 173 of the Act.

(2) On a poll being demanded the chairman of the meeting shall not be required to direct a postal ballot in accordance with subsections (6), (7) and (8) of section 170 of the Act unless the chairman thinks fit or an ordinary resolution to that effect is moved at the meeting and passed on a show of hands.

55. In accordance with section 174 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 174 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.

56. Minutes of general meetings shall be kept in accordance with section 177 of the Act.

57. If at any time the shares of the company are divided into different classes these Regulations 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 175 of the Act.

VOTES OF MEMBERS

58. 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 49 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;

(b) in the event of a postal ballot being directed pursuant to subsections (6), (7) and (8) of section 170 of the Act, each member entitled to attend and vote at the meeting shall have one vote for each share held by that member.

DIRECTORS

59. 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.

60. The continuing directors may act notwithstanding 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.

61. The appointment of directors shall be regulated by sections 181, 298 and 299 of the Act.

62. The persons referred to in section 182 of the Act shall not be competent to be appointed directors of the company.

63. A director need not be a member of the company or hold any shares in the company.

64. The office of director shall be vacated in accordance with section 184 of the Act and a director may be removed from office in accordance with section 185 of the Act.

65. (1) The company may appoint substitute directors in accordance with section 187 of the Act and a director may appoint an alternate director in accordance with section 188 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.

66. At least one director of the company shall at all times be present in Ghana.

67. The remuneration payable to a director in whatever capacity shall be determined or approved by the members in general meeting in accordance with section 194 of the Act.

68. The proceedings of the directors shall be regulated by section 200 of the Act and the board of directors may delegate any of their powers to committees of the directors in accordance with that section.

69. Minutes of meetings of the board of directors and of a committee of directors shall be kept in accordance with section 201 of the Act.

POWERS AND DUTIES OF DIRECTORS

70. (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 202 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 these Regulations required to be exercised by the members in general meeting.

71. 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 203 to 205 of the Act.

72. Subject to compliance with section 207 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.

73. 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

74. The board of directors may exercise the powers conferred by section 192 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.

75. (1) The board of directors may exercise the power conferred by section 193 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 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 upon a managing director any of the powers exercisable by them upon 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.

76. Remuneration shall not be payable to a director in respect of any office or place of profit to which the director is appointed under these Regulations unless and until the terms of the appointment have been approved by ordinary resolution of the company in general meeting in accordance with section 194 of the Act.

77. The secretary shall be appointed by the board of directors for the time, at the remuneration, and upon the conditions that they think 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.

78. A provision in the Act or these Regulations 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.

79. (1) The board of directors may appoint officers and agents of the company and may appoint a body corporate, firm or body or 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 under these Regulations, and for the period and subject to the conditions that they may think fit.

(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.

THE SEAL

80. The directors shall 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 second director or by any other person appointed by the directors for the purpose.

81. The company may exercise the powers conferred by section 148 of the Act with regard to having an official seal for use abroad, and those powers shall be vested in the board of directors.

SERVICE OF DOCUMENTS

82. A document may be served by the company on a member, debentureholder or director of the company in the manner provided by section 262 of the Act.

WINDING UP

83. (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) Notwithstanding any other provisions of the regulation, a member shall not be compelled to accept any securities on which there is a liability.

INTERPRETATION

84. In these Regulations unless the context other wise requires,

(a) “Act” means the Companies Act, 1963 (Act 179) or a statutory modification or re-enactment of that Act;

(b) words or expressions have the meaning assigned to them in the Act;

(c) references to sections of the Act mean the sections as modified or re-enacted.

We the undersigned are desirous of forming an incorporated company in pursuance of these Regulations and we respectively agree to take the number of shares in the company set opposite our respective names

and to pay for those shares in cash the consideration respectively stated.

Name, Address and Description or Occupation of Subscriber

Number of Shares

Helen Jehu-Appiah of 301 Ring Road, Obuasi, Mining Engineer .....

1,000

John Henry Smith of 421 Ghana House, Kumasi, Chartered Accountant

1,000

1,000

Consideration

Payable in Cash

[¢50,000,000]

[¢50,000,000]

Dated the 22nd day of November, 1961.

Witness to the above signature:

Name - Charles Robinson

Address - Nkrumah Circle, Accra

Description or Occupation - Legal Practitioner

NOTES ON PART TWO

Regulations in the form of regulations 1 to 7 must be expressly stated in the Regulations lodged for registration. The remaining regulations may be adopted by reference by stating,

“8. The company is a public company and accordingly regulations 8 to 84 of Part Two of Table A in the Second Schedule to the Companies Act, 1963 (Act 179) shall apply.”

“If it is desired to exclude any of these regulations, insert after “Companies Act. 1963 (Act 179)” the words “(except regulations)”.

If it is desired to exclude Table A completely, insert instead of the above,

“8. The regulations contained in Table A in the Second Schedule to the Companies Act, 1963 (Act 179) shall not apply to the company except in so far as they are repeated or contained in these Regulations.”

1. Regulation 54. If it is desired that the chairman should be required to direct a postal ballot if a poll is demanded, this regulation should be deleted and another substituted in which the last sentence should read,

“On a poll being validly demanded the chairman of the meeting shall direct a postal ballot in accordance with [subsection (6) of section 170] of the Act.”

2. Regulation 61. If it is desired that a class of security-holders or the employees shall have the right to appoint one or more directors, this regulation should be deleted and another substituted making the appropriate provisions.

If it is desired to provide for cumulative voting, this regulation should be deleted and the following substituted,

“Directors shall be elected by cumulative voting, and accordingly the provisions

contained in sections 181 and 300 of the Act shall regulate the appointment of directors."

3. Regulation 64. If cumulative voting for directors has been prescribed (see note 2) this regulation

should be deleted and the following substituted:
"The office of director shall be vacated in accordance with section 184 of the Act and, subject to section 300 of the Act, a director may be removed from office in accordance with section 185 of the Act."

4. Regulation 65. If it is desired that the alternate director shall be entitled to the remuneration of the appointor this regulation should be deleted and another substituted in which the second sentence should read,
"An alternate director shall be entitled to receive from the company during the period of appointment the remuneration to which the appointor, but for that appointment, would have been entitled, and the appointor shall not be entitled to that remuneration for that period."

5. Subscription of Regulations. There is no need for the Regulations to be subscribed by more than one member and if only one is to subscribe, this provision should be amended to read as in the corresponding provision in Part One.
It will normally be convenient for the subscribers to sign for the amount of the minimum cash consideration required under section 28 and not, as is the present practice, merely for one share each.

TABLE B—REGULATIONS OF A COMPANY LIMITED BY GUARANTEE

1. The name of the company is the Historical Society (hereinafter called the "Society").
2. The objects for which the Society is formed are,
(a) to promote the study of history and in particular the history of Ghana and of the African continent;
(b) to provide a central organisation in Ghana for teachers, students and research workers in historical studies;
(c) to provide opportunities for the reading of papers, the delivering of lectures, and for the acquisition and dissemination of historical information;
(d) to sponsor historical research and to provide fellowships, grants scholarships and bursaries for students of history;
(e) to publish to assist in the publication of the proceedings of the Society and of books, articles

and papers on historical subjects.

3. The income and property of the Society shall be applied solely towards the promotion of the objects of the Society as set forth in regulation 2 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) regulation 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 six percent 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 a salaried office of the Society or office of the Society paid by fees;

(c) a remuneration or other benefit in 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.

4. Pursuant to section 24 of the Companies Act, 1963 (Act 179) the Society has, for the furtherance of its authorised objects, the powers of a natural person of full capacity except in so far as those powers are expressly excluded by these Regulations.

5. (1) The board of directors of the Society shall be known as the Council.

(2)

The first members of the Council are,

Sabina Amamoo

Estelle Forster

Patience Pettison

Henry Tackey

Laurence Gower

Charles Crabbe

Owusu Appiah

George Frimpong

Herbert Henry Smith.

6. The powers of the Council are limited in accordance with section 202 of the Act.

7. The liability of the members is limited.

8. Each member of the Society undertakes to contribute to the assets of the Society in the event of its 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 [one million cedis].

9. 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 prior to the dissolution of the Society.

ORDINARY MEMBERS

10. (1) The subscribers of these Regulations 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.

ASSOCIATE MEMBERS

11. (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 thinks 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

12. (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 signal 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

13. Subject in the case of ordinary members of the Society, to compliance with section 10 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

(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

14. (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

15. The Council shall cause proper books of account to be kept and an income and expenditure account and balance sheet to be prepared, audited and circulated in accordance with sections 123 to 133 of the Act.

16. Auditors, qualified in accordance with section 296 of the Act, shall be appointed and their duties regulated in accordance with sections 134 to 136 of the Act.

GENERAL MEETINGS AND RESOLUTIONS

17. Annual general meetings shall be held in accordance with section 149 of the Act.

18. Extraordinary general meetings may be convened by the Council whenever they think fit in accordance with section 150 of the Act, and shall be convened on the requisition of ordinary members in accordance with section 297 of the Act.

19. Notice of general meetings shall be given in accordance with sections 152 to 159 of the Act and accompanied by any statements required to be circulated with the notice in accordance with sections 157 to 159 of the Act.

20. General meeting may be attended by the persons referred to in section 160 of the Act and the quorum required shall be as stated in section 161 of the Act.

21. A member is not entitled to attend or vote at a general meeting by proxy.

22. 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 section 165 of the Act.

23. (1) General meetings shall be conducted in accordance with sections 166 to 173 of the Act.

(2) The President, or in the absence of the President, the Vice-President of the Society, shall preside as chairman 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 chairman of the meeting.

(3) On a poll being demanded on a resolution at a general meeting the chairman of the meeting may direct a postal ballot of the ordinary members in accordance with subsections (6), (7) and (8) of section 170 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 regulation 9, 10, 11, 12 or 14 of these Regulations.

24. In accordance with section 174 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 174, as if the same had 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 shall be deemed to be a special resolution within the meaning of the Act and these Regulations.

25. Minutes of general meetings shall be kept in accordance with section 177 of the Act.

VOTES OF MEMBERS

26. 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 regulations 23 and subsections (6), (7) and (8) of section 170 of the Act, each ordinary member, whether or not present at the meeting, shall have one vote.

THE COUNCIL

27. 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.

28. The continuing members of the Council may act notwithstanding 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.

29. Members of the Council shall be appointed from among the ordinary members of the Society in manner set out in this regulation:

(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;

(c) election to the Council shall be by secret ballot at which

(i) an ordinary member wishing to nominate another ordinary members 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 clear days before the date of the annual general meeting of the Society. A retiring member is eligible for re-election without nomination and shall be deemed to stand for re-election unless the 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;

(ii) 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 members votes. Each member may vote for one or more person not exceeding in number the number of vacancies to be filled;

(iii) 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 chairman of the meeting of the votes obtained by each candidate. The chairman shall then announce the names of the successful candidates to the meeting. 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 the decision of the chairman of the meeting shall subject to paragraph (c) of article 218 of the Constitution be final and conclusive;

(iv) if the number of competent nominees and retiring members offering themselves for re-election does not exceed the number of vacancies, the chairman of the meeting shall

declare the candidates duly elected. If the number so elected is less than the number of vacancies, the remaining vacancies may be filled as casual vacancies;

(d) 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 181 of the Act.

30. The persons referred to in section 182 of the Act are not competent to be appointed members of the Council.

31. Membership of the Council shall be vacated in accordance with section 184 of the Act and a member may be removed from the council in accordance with section 185 of the Act.

32. (1) The proceedings of the Council shall be regulated by section 200 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 chairman.

33. Minutes of meetings of the Council and of a committee of the Council shall be kept in accordance with section 201 of the Act.

POWERS AND DUTIES OF THE COUNCIL

34. (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 202 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 these Regulations required to be exercised by the members in general meeting.

35. 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 203 to 205 of the Act.

36. To the extent permitted by regulation 3 of these Regulations and subject to compliance with section 207 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

37. (1) The Council at their first meeting and at their first meeting held after each annual general meeting shall elect from their 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

38. (1) The Council may appoint committees from among their 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 shall be deemed to be committees of the Council for the purposes of the Act.

SECRETARY AND TREASURER AND OFFICERS

39. (1) The Council shall appoint a secretary and a treasurer or a secretary/treasurer who may be one of their own members or a member of the Society or neither.

(2) If one of their own number is appointed the office shall be an honorary one without remuneration.

(3) The Council may also appoint any other officers and agents as may be necessary or expedient.

THE SEAL

40. (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.

41. 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 262 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

42. In these Regulations, unless the context otherwise requires,

(a) “Act” means the Companies Act, 1963 (Act 179) or a statutory modification or re-enactment of the Act;

(b) words or expressions have the meaning assigned to them in the Act;

(c) references to sections of the Act mean the sections as modified or re-enacted.

We the undersigned are desirous of forming an incorporated company in pursuance of these

Regulations and we agree to become members thereof and to accept liability in accordance with regulation 8 of these Regulations.

Names, Addresses and Descriptions or Occupation of Subscribers

Sabina Amamoo of the University of Ghana, Legon, Accra, University Teacher

Estelle Forster of the University of Ghana, Legon, Accra, University Teacher

Patience Pettison of the University of Ghana, Legon, Accra, University Teacher

Henry Tackey of the University of Ghana, Legon, Accra, University Teacher

Lawrence Gower of Achimota School, Achimota, Accra, School Teacher

Charles Crabbe of Mfantsipim School, Cape Coast, School Teacher

Owusu Appiah of St. Augustine's School, Cape Coast, School Teacher

George Frimpong of Adisadel School, Cape Coast, School Teacher

Mavis Odoi-Sykes of Avenor Mansions, Accra, Writer

Florence Sackey of Aburi Girls' School, Aburi, School Teacher

Dated the 22nd day of November, 1961.

Witness to the above signatures:

Name: Rowena Ayayee

Address: Nkrumah Circle, Accra

Description or Occupation: Legal Practitioner

NOTES ON TABLE B

Regulations in the form of regulations 1 to 9 must be expressly stated in the Regulations lodged for registration. The remaining regulations may be adopted by reference by stating,

"10. Regulations 10 to 42 in Table B in the Second Schedule to the Companies Act, 1963 (Act 179), shall apply."

If it is desired to exclude any of these regulations insert after “Companies Act, 1963 (Act 179)” the words “(except regulations)”

If it is desired to exclude Table B completely insert instead of the above,

“10. The regulations contained in Table B in the Second Schedule to the Companies Act, 1963 (Act 179) shall not apply except in so far as they are repeated or contained in these Regulations.”

1. Regulation 1.—“Association”, “Club”, “College”, “School” or the like should be substituted for “Society” as appropriate. If Table B is adopted there should then be added to the adopting clause given above “but so that a reference in Table B to “the Society” shall be read and construed as a reference to “the Association” (or “the Club”, etc.).”

2. Regulation 3.—In accordance with section 16 (5) of the Act the Registrar may permit modifications to the form of this regulation where appropriate. In some circumstances it might be appropriate to allow some of the following additions to the paragraphs (a), (b) or (c) as appropriate,

“nor shall prevent the gratuitous distribution among, or sale at a discount to, members of the Society of any books or other publications, whether published by the Society or otherwise, relating to any of its objects.”

“nor shall prevent the genuine relieving or assisting of persons, or the wives, widows, families or relations of persons who, having been members of the Society, have ceased to be so and have become poor and necessitous, or are dead.”

“nor be deemed to exclude a member of the Society from the benefit of a fellowship, grant, scholarship or bursary made in furtherance of an object of the Society.”

“nor shall prevent a member who may be a successful exhibitor at any exhibition or show held or promoted by the Society from receiving as an exhibitor any prize, medal or other recognitions which may be awarded to the members.”

“nor shall prevent the payment of reasonable fees for acting as an examiner appointed by (the College).”

3. Regulation 5.—In some cases, for example, if the company is to run a school or college, it may be

appropriate to substitute “Board of Governors” for “Council.” In that event, if Table B is adopted there should be added to the adopting clause given above “but so that a reference in Table B to “the Council” or “the member of the Council” shall be read and construed as a reference to “the Board of Governors” or “the Governors”.”

4. Regulation 8. — Provided the total amount guaranteed by the subscribers is at least [ten million cedis] the amount of the individual guarantee may be smaller or larger than [one million cedis].

5.

After Regulation 9 — If the company is to be a private company insert here:

“9A. The Society is a private company and accordingly,

(a) the number of members and debenture holders of the Society, exclusive of persons who are genuinely in the employment of the Society and of persons who having been formerly genuine employees of the Society were while in the employment and have continued after the determination of that employment to be members or debenture holders of the Society, is limited to fifty, but where two or more persons hold one or more debentures jointly they shall for the purpose of this regulation be treated as a single debenture holder;

(b) the Society is prohibited from making an invitation to the public to acquire any of its debentures;

(c) the Society 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.”

6. Regulation 16.—If the company is a private company, this regulation should be deleted and the following substituted:

“16. Auditors, qualified in accordance with section 270 of the Act, shall be appointed and their duties regulated in accordance with sections 134 to 136 of the Act.”

7. Regulation 18.—If the company is a private company, this regulation should be deleted and another substituted in similar terms except that the final words should read “in accordance with section 271 of the Act.”

8. Regulation 20. — If it is desired to increase the size of the quorum this regulation should be deleted and another substituted stating the larger quorum required. If, however, the provisions in regulation 23 regarding a postal ballot are retained, a small quorum is unlikely to matter.

9. Regulation 21. — Proxy voting is not compulsory in the case of guarantee companies (section 163) and is usually regarded as inappropriate. If it is desired to provide for it this regulation should be deleted and another substituted based on regulation 50 of Table A, Part One and regulation 52 of Table A, Part Two.

10. Regulation 22. — If proxy voting is allowed, this regulation should be deleted and another substituted based on regulation 51 of Table A, Part One and Regulation 53 of Table A, Part Two.

11. Regulation 29. — It will often be desirable to delete this regulation and to substitute an alternative

method of election. The method provided in the regulation provides a suitable procedure for clubs, societies and associations but will rarely be appropriate for schools or colleges, which may prefer to rely

on sections 181 and 272 or 298 and 299 of the Act.

12. Regulations 37 and 38. — These regulations may be inappropriate (without amendment) in the case of clubs, schools and colleges.

13. Subscription of Regulations. — There is no minimum or maximum number of subscribers but the total guaranteed by the subscribers must not be less than [ten million cedis]. Since the amount of the guarantee has been fixed by Regulation 8 at [one million cedis] in this model there are ten subscribers.

Third Schedule

CONTENTS OF ANNUAL RETURN

[Section 122]

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 and the number of the post office box of the registered office.

4. The address of the company's principal place of business in Ghana.

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 196] of this Act to be contained in the register of directors and secretary.

6. The present forenames and surnames and a former forename and surname of every member of the company, the nationality, residential and postal addresses and the business occupation of that member of the company, the number of shares held by that member at the date of the return, 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; 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.

7. 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.

8. 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.

9. 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.

10. 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 percent 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 (7) of section 132 of the Act.

11. If the company has shares,

(a) the amount of its stated capital, distinguishing between the amounts attributable to each of the items specified in subsection (1) of section 66 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 55 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.

Fourth Schedule

ACCOUNTS

[Sections 125, 126 and 127]

PART ONE

PROVISIONS AS TO PROFIT AND LOSS ACCOUNT

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 distinguishing between,

(i) income from associated companies,

(ii) income from other trade investments,

(iii) income from other 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 fixed 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 128] 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;

(l) the amounts of charges and credits in respect of discount or premiums on debentures;

(m) a profit or loss arising on the sale, realisation or disposal of fixed assets;

(n) 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;

(o) 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;

(p) any other expenses, distinguishing between each significant class of expense.

2. If any of the items shown in the profit and loss account are stated net of income tax relating to the account 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 profit and loss account 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;

(d) an adjustment arising from the over or under statement of revenue or expenses in the profit and loss account of an earlier financial year;

and a statement made under this paragraph shall indicate the amount by which the profit and loss account 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 profit and loss account includes an amount in respect of money provided under paragraph (c) of section 58 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 128 of the Act the amount so included shall also be indicated.

5. The balance of the profit and loss account after the inclusion of the items required by paragraphs 1 to 4 so far as these are relevant to the figures in the account, shall be transferred to an account to be called the income surplus account.

6. An amount shall not be credited to the profit and loss account that cannot properly enter into the composition of the income surplus in accordance with section 70 of the Act.

7. An amount shall not be debited to the profit and loss account in respect of an addition to a reserve other than by way of transfer of the balance of the profit and loss account for the financial year to the income surplus account, clearly indicated and in particular an amount shall not be debited to the profit and loss account 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 in order to provide for known future expenditure or for a known liability, which term includes a disputed or contingent liability, or for a known or estimated loss in value of current assets, or as a depreciation or replacement provision.

8. An amount shall not be credited to the profit and loss account in respect of a withdrawal from a reserve other than by way of transfer of the balance of the profit and loss account 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 upon the balance sheet

in accordance with paragraph 34 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 profit and loss 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 profit and loss account 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 profit and loss account 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 fixed assets, and between current and other 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.

ASSETS

14. Without prejudice to the generality of 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) trade investments;

(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;

(iv) other stocks;

(f) trade debtors;

(g) bills of exchange and promissory notes;

(h) payments-in-advance;

(i) marketable securities;

(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,

(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. (1) Assets shall be shown at a value after deduction of the aggregate depreciation or replacement provision relating to those assets or at a value before this deduction, in the Schedule described as the gross value.

(2) If shown at the gross value the aggregate depreciation or replacement provision relating to that value shall be shown as a separate item and shall be so described as to identify it with the class of assets to which it refers.

17. (1) There shall be included in or attached to the balance sheet in respect of each class of fixed 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 calculated, and as at what date;

(e) whether the depreciation or replacement provision has been calculated on the basis of,

(i) the original cost of the assets;

(ii) the replacement value of the assets;

(iii) some other basis;

and when the depreciation or replacement provision is not based on original cost, the general principle used in calculating the replacement cost or other valuation on which it is based shall be stated;

(f) a statement reconciling both the gross value and the aggregate depreciation or replacement provision with the equivalent figures at the end of the immediately preceding financial year,

and in particular showing,

(i) the amount of an addition to the gross value and to a depreciation or replacement provision relating the addition indicating the nature of the addition; and

(ii) the amount of a deduction from the gross value and from the aggregate depreciation or replacement provision relating to that amount arising from sale or otherwise, indicating the reason for the deduction and showing any profit or loss arising from the transaction.

(2) So far as information required to be shown by this paragraph relating to matters arising before the commencement of the Act cannot be ascertained without unreasonable delay or expense, the paragraph may be modified with respect to that information as the directors consider appropriate, and in that case the statement in or attached to the balance sheet in accordance with this paragraph shall indicate in what respects the information shown has been modified as the result of the operation of this paragraph.

18. There shall be included in or attached to the balance sheet statements reconciling respectively the amounts stated in accordance with paragraph 17 (1) (f) of this Schedule in respect of additions to and deductions from the depreciation or replacement provision with the amount stated in the profit and loss account for depreciation or replacement provision in accordance with paragraph 1 (f) of Part One of this Schedule, and reconciling a profit or loss on the sale, realisation or disposal of any fixed assets stated in accordance with paragraph 17 with the amount stated in the profit and loss account in accordance with paragraph 1 (m) of Part One of this Schedule.

19. For each class of current assets there shall be provided, by way of note or otherwise, information sufficient to indicate the basis of valuation and in particular the nature of the valuation procedure followed in arriving at the balance sheet value.

20. Assets in respect of which different methods or bases of valuation or of provision for depreciation or replacement are used shall for the purposes of this Schedule be regarded as assets of different classes.

21. There shall be shown the aggregated of the amounts due to the company at the end of the financial year which are included in the sums disclosed in accordance with section 129 of the Act together with a statement, by way of note, of the other information required to be disclosed by that section.

22. 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 58 of the Act.

23. 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 profit and loss account and shall not be treated as an asset.

LIABILITIES

24. 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.

25. Without prejudice to the generality of 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 creditors;

(d) the net amount payable to members in respect of dividends declared or recommended;

(e) any amounts due to directors and other officers of the company others 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 subparagraph (a) stating in respect of each class of debentures the date of dates on or after which 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;

(i) other accrued liabilities.

26. 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 less, where appropriate, a reasonable deduction for discount until that date.

27. 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.

28. 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 profit and loss account as if it were a premium or discount on debentures.

29. 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.

30. 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 25 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.

SURPLUS

31. There shall be recorded in an account, to be called the capital surplus account, the amount, by which the surplus, as defined in section 69 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 that balance if a debit.

32. (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 items; 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.

33. There shall be shown in the balance sheet, or in a schedule attached to the balance sheet,

(a) the amount of stated capital attributable to each of the items specified in [subsection (1) of section 66] 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 55 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;

(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;

(ii) the price or prices during each period to be paid for shares subscribed for under the option.

34. 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.

SUPPLEMENTARY

35. 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;

(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.

36. 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.

37. 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.

38. 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

39. This Part of this Schedule shall apply where the company is a holding company as defined in the First Schedule.

40. 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.

41. Where it is reasonably practicable the amount included under each head of revenue or expense shown in the profit and loss account that is received or receivable from, or paid or payable to, an associated company shall be distinguished.

42. The amount included in each class of assets shown in the balance sheet in respect of financial interests in associated companies shall be distinguished.

43. The amount included in each class of liabilities shown in the balance sheet in respect of indebtedness to associated companies shall be distinguished.

44. Where group accounts are not prepared, there shall be attached to the balance sheet a statement showing,

(a) the reasons why subsidiaries are not dealt with in group accounts;

(b) the net aggregate amount, so far as it concerns the interests of the holding company, of the balances transferred from the profit and loss accounts 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 profit and loss account;

(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;

(d) any qualifications contained in the report of the auditors of the subsidiaries on their accounts for their respective financial years ending as stated in subparagraph (1) of paragraph (b), and any note or saving contained in those accounts to call attention to a matter which, apart from the note or saving, would properly have been referred to in 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 accounts 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.

45. Items (b) and (c) of paragraph 44 shall apply only to the amounts that could properly enter into the composition of the holding company's income surplus.

46. There shall be stated by way of note, in accordance with subsection (10) of section 127 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.

47. The group accounts, if prepared as consolidated accounts, shall combine the information contained in the separate balance sheets and profit and loss accounts of the holding company and of the subsidiaries dealt with by the consolidated accounts with the adjustments, that the directors consider appropriate, and the consolidated accounts shall, in giving the information comply, so far as is practicable, with the requirements of the Act as if they were the accounts of a single company.

48. Where group accounts are prepared and the accounts of some subsidiaries are not incorporated in the group accounts, the group accounts shall incorporate with respect to those subsidiaries information equivalent to that required to be given in the holding company's accounts when group accounts are not prepared.

49. Where group accounts are prepared other than in the form of consolidated accounts they shall provide the same information, so far as is relevant and material, as would have been provided by consolidated accounts.

PART FOUR

EXEMPTIONS FOR SPECIAL CLASSES OF COMPANIES

50. Paragraphs, 4, 5, 6, 9, 22, 31, 32, 33 and 34 of this Schedule shall not apply to a company limited by guarantee.

51. (1) A company licensed under section 24 of the Companies Ordinance (Cap. 193) or a statutory re-enactment of that Code 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), 4, 5, 9, 10, 11, 12, 13, 15, 16, 21, 22, 23, 26, 28, 29, 33, 34, 36, 37 and 38.

(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 profit and loss account shall indicate by appropriate words the manner in which

the amount stated for the company's profit or loss has been arrived at.

52. (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 accounts or by way of note to the accounts 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.

53. Notwithstanding an exemption conferred by or under this Part of this Schedule, the accounts of a company shall give the true and fair view required by the Act, but the accounts 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.

54. Where the company entitled to an exemption under this Part of this Schedule is a holding company, the group accounts, if prepared as consolidated accounts, shall be regarded as complying with the requirements of the Act if they comply with the requirements applying to the separate accounts of the company.

Fifth Schedule

MATTERS TO BE EXPRESSLY STATED IN AUDITORS REPORT

[Section 133]

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 from branches not visited by them.

3. Whether the company's balance sheet and, unless it is framed as a consolidated profit and loss account, profit and loss account dealt with by the report are in agreement with the books of account and returns.

4. Whether, in their opinion and to the best of their information and according to the explanations given them, the accounts 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 profit and loss account, of the profit or loss for its financial year;

or, give a true and fair view of the balance sheet or the profit and loss account subject to the non-disclosure of any matters, to be indicated in the report, which by virtue of Part Four of the Fourth Schedule to the Act are not required to be disclosed.

5. In the case of a holding company submitting group accounts, whether, in their opinion, the group accounts 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 Fourth schedule to the Act are not required to be disclosed.

Sixth Schedule

FORM OF STATEMENT IN LIEU OF PROSPECTUS AND ACCOUNT AND REPORT TO ACCOMPANY THE STATEMENT

[Sections 273 and 274]

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 1. Registration of the company,

(a) the amount of estimated amount of the expenses (a) incidental or preliminary to the promotion and registration of the company;

(b) by whom these expenses have been paid or are payable; (b)

(c) the names of the promoters; (c)

(d) the amount paid or intended to be paid to any (d) Name of
promoter; promoter .....
Amount ¢ .....
(e) the consideration for the payment; (e)
(f) any other benefit given or intended to be given to any (f) Name of
Promoter; Promoter .....
Nature and value of
benefit .....
(g) the consideration for the giving of that benefit; (g)
(h) full particulars of the nature and extent of the interest (h)
of every director and proposed director of the company
in the promotion of the company.
2. The name, address and professional qualification of the 2.
company's auditors, and if auditors have not been
appointed a statement to that effect.
3. The names and address of the company's bankers and legal 3.
practitioners.

p
4. The names, countries of incorporation, and nature of the 4.
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 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.
5. Where the company is proposing to acquire securities in a 5.

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 the acquisition will become a subsidiary of the company, the name, country of incorporation and nature of the business of that proposed subsidiary.

6. Where the company is proposing to acquire at 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 66] of the Act and, in the case of items (a) and (b) between different classes of shares. 8.

(a) ¢

(b) ¢

(c) ¢

Total ¢

9. The number and description of the company's 9.

(a) authorised shares of each class (a)

(b) issued shares of each class (b)

(c) treasury shares of each class (c)

10. The amount paid on the issued shares of each class 10.

(a) in cash (a)

(b) otherwise than in cash (b)

11. The amount remaining payable on the issued shares of each class 11.

(a) presently due for payment (a)

()

py py ()

(b) not yet due for payment

(b)

(c) which the company has resolved shall not be capable of (c)

being called up except in the event and for the purposes

of the company being wound up.

12. The amounts of the dividends per share paid by the

12.

company in respect of each class of share in each of the five

completed financial years of the company immediately

preceding the date of the statement, and particulars of any

cases in which dividends have not been paid in respect of a

class in any of those years.

13. (1) The number of unissued shares of each class agreed to

13. (1)

be issued and the amount payable therefor

(2) in cash,

(2)¢

(3) otherwise than in cash.

(3)¢

14. (1) The name of every holder and, if known, beneficial

14. (1)

owner of more than twenty-five for each hundred of the

company's shares of a class of share and

(2) the number and description of the shares held or

(2)

owned.

15. The amount of the outstanding debentures issued or agreed

15.

to be issued by

(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
17.
company's shares or debentures issued or agreed to be
issued otherwise than for cash.

18. Particulars of the shares or debentures of any of the
18.
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.

19. (1) Particulars of the shares or debentures of the company
19. (1)
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
(a) the price, and
(a)
(b) if not already fully paid, the dates when any instalments (b)
are payable.

20. Where the shares or debentures of the company or any of
20.
its subsidiaries and proposed subsidiaries are under option,
or agreed conditionally or unconditionally to be put under
option,

p ,
(a) the number and description of the shares,
(b) the amount and description of the debentures,
(c) the period during which the option is exercisable,
(d) the price to be paid for the shares or debentures,

(e) the consideration for the grant of the option,

(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.

(a) the number and description of the shares,

(b) the amount and description of the debentures,

(c) the period during which the option is exercisable,

(d) the price to be paid for the shares or debentures,

(e) the consideration for the grant of the option,

(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.

(a)

(b)

(c)

(d)

(e)

(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,

21.

(a) the names and addresses of the vendors;

(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,

(a)

(b)

(i)

Name of

Vendor .....

¢ .....

(ii) the amount paid or to be paid in cash, (ii) ¢ .....

(iii) the amount paid or to be paid in shares and the

number

(iii) Amount ¢

(iv)

and description of such shares,

the amount paid or to be paid in debentures and

the

Shares .....

(iv) Amount ¢

number and denomination of such debentures, Debentures

(v) the nature of, and value attributed to, other

consideration;

(v) Nature .....

Value .....

Name of

vendor .....

(i) ¢

(ii) ¢

(iii) Amount ¢

Shares .....

(iv) Amount ¢

Debentures .....

(v) Nature .....

Value ¢ .....

(c) the total amount paid or to be paid in, (c)

(i) Cash, (i) ¢

(ii) Shares, (ii) ¢

(iii) Debentures, (iii) ¢

(iv) other consideration; (iv) ¢

Total .....

Specifying (v) the amount paid or to be paid for (v) ¢
goodwill;
(d) full particulars of the nature and extent of the interest, (d)
direct or indirect, of every director or proposed
director of the company or any of its subsidiaries and
proposed subsidiaries in that property;
(e) short particulars of all transactions relating to that (e)
property which were entered into or completed within
the two years immediately preceding the date of the
statement.
22. (1) The dates of, parties to, and general nature of every 22. (1)
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 (2) Address
days at which such contracts or copies thereof or, in the
case hours of any contract not reduced into writing, a
memorandum giving full particulars thereof in a
language acceptable to the Registrar, may be inspected.
Between .....the
of and
from
until
(Saturdays,
Sundays and public
holidays excepted)

23. Names, and the former names, addresses and business occupations of the company's directors or 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 196] of the Act.

[]]

Directors and Proposed Directors

Name Former

Names

Address Business

Occupation

Other Directorships Whether

yet

appointed

or not

Secretary or Proposed Secretary

Name Former

Names

Address Business

Occupation

Other Directorships Whether

yet

appointed

or not

24. Names and addresses of accountants making the reports, if

24.

any, delivered for registration with this statement.

(Signatures of the persons above-named

.....

as directors or proposed directors or of their

.....

agents authorised in writing)

.....

Date

PART TWO

ACCOUNTS AND REPORTS TO ACCOMPANY STATEMENT

25. Where the company has been incorporated for more than fifteen months,

(a) copies of the profit and loss account, balance sheet, group accounts and reports required to be circulated to the members and debenture holders of the company in accordance with section 124 of the Act 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 269 of the Act.

(b) Unless the auditors' reports on the accounts for those financial years have been made by auditors duly qualified under section 296 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 296 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.

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 profit and loss account and balance sheet 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 a profit and loss account and balance sheet 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 group accounts of the company for the financial year;

(b) a report by accountants duly qualified under section 296 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 a profit and loss account have been delivered for registration pursuant to subparagraph (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 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 profit or losses of that business or the appropriate part of the profits or losses of that subsidiary are dealt with in the accounts or group accounts of the company;

(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 274 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.

Seventh Schedule

CONTENTS OF PROSPECTUS ON GENERAL INVITATIONS

[Sections 273, 274, 275, 276, 278 and 279]

Pursuant to subsection (11) of section 279 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 Registrar of Companies, Ghana,

for registration. The Registrar has not checked and will not check the accuracy of any statements made and does not accept responsibilities for the statements or for the financial soundness of the company or the value of the securities concerned."

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 within the meaning of [section 280] of the Act.

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 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.

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.

24. Where the company is inviting or, under [section 267] 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, namely,

(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 267 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 of debenture which it represents;

(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;

(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 66 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.

(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.

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 percent 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 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;

(d) short 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;

(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;

(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 Regulations;

(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 profit and loss account, balance sheet, group accounts and reports required to be circulated to the members and debenture holders of the company in accordance with section 124 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 the section 124, have circulated the accounts and reports;

(e) the profit and loss account and balance sheet 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 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; but this sub-paragraph shall not apply to the profit and loss accounts and balance sheets 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 group 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;

(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 296 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 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;

(f) 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.

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 296 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;

(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;

(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 interest of the company;

(c) with respect to any other matters which appear to the accounts to be relevant having regard to the purpose of the report.

(2) In making the report the accountants shall make the adjustment, that are in their opinion appropriate for the purpose of the prospectus.

Eighth Schedule38(41)

FEES

[Section 329]

PART ONE

TABLE OF FEES

Rate

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1. For registration of a company limited by shares 500,000.00

2. For registration of a company limited by guarantee 500,000.00

3. On conversion of a company limited by shares to a company limited by guarantee–for registration of the conversion, including any change of name and the issue of a certificate to that effect 400,000.00

4. (1) 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 issue of a

certificate to that effect 250,000.00

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(2) For reservation of a name under subsection (12) of section
15 of this Code 100,000.00
5. For registration of notice of any rise of stated capital to an
amount exceeding five thousand cedis and for each five thousand
cedis or part of it, of stated capital in excess of five thousand
cedis 25.00
6. For registering any annual return under section 122 of this Act .. 150,000.00
7. For registering any statement in lieu of prospectus under section
274 of this Act 500,000.00
8. For registration of any prospectus under section 279 of this Act .. 5000,000.00
9. To obtain the consent of the Registrar to make the invitation for
deposits under section 289 of this Act including the registration
of any advertisement or circular in connection with it 1,000,000.00
10. For registration of documents delivered by an external company Cedi equivalent
under section 303 of this Act ..... of US $ 500
11. For registration of accounts of an external company under
Cedi equivalent
section 307 of this Act ..... of US $200.00
12. For
registration of any document other than a document
registered in connection with any of the above ..... 50,000.00”
PART TWO
EXEMPTION

Where it is shown to the satisfaction of the Registrar that the stated capital of a company has been increased by reason of the issues of shares in consideration of the acquisition of the undertaking, assets or shares of another company or companies,

(a) under an arrangement or amalgamation as is referred to in section 230 or 231 of the Act,
(b) under a sale as is referred to in subsection (7) of section 230 of the Act, or

(c) as a result of an offer as is referred to in [subsection (2) of section 234] of the Act,

the fees payable under paragraph 5 of Part One of this Schedule shall not be payable in respect of that increase.

Ninth Schedule

TRANSITIONAL AND OTHER PROVISIONS WHICH MAY REQUIRE IMMEDIATE ACTION BY

EXISTING COMPANIES

[Section 3]

Section Subject Matter

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

yg

15 (1) Names of companies; cessation of licences to dispense with "limited"

19 Adoption of Regulations in lieu of Memorandum and

15 (1) Names of companies; cessation of licences to dispense with "limited"

19 Adoption of Regulations in lieu of Memorandum and

Articles

28 (2)

Minimum Capital

32 (5)

Notice of Situation of register of members

40

Conversion to no par shares

65 (2)

Shares of holding company held by a subsidiary

110 (1)

Registration of particulars of existing charges

(2) Statutory declaration regarding charges

120 (4) Notice of number of Post Office Box

125 (1) Provision (a) Period to be covered by profit and loss account

134 (3) Appointment of auditors

(7) Notice of names of auditors

180 (2) Number of directors

194 Remuneration of directors

196 Register of directors and secretary

197 Registration of particulars of directors and secretary

215 Register of directors' holdings

274 Publication of statement in lieu of prospectus

Tenth Schedule

REPEALS

[Section 340]

Enactment

Extent of Repeal

The Companies Ordinance (Cap 193) .....

The whole of Ordinance except Sections

23 to 29, and 57 and Schedule 4.

The Companies (Preferential Creditors)

Ordinance (Cap. 194) ..... The whole Ordinance

The Companies and Registration of

Business Names (Amendment) Act. 1959 ..... Part One

Endnotes

1 (Popup - Footnote)

The long title to the 1963 Code refers to it as an Act and that term is now used. It was assented to on 28th May 1963.

2 (Popup - Footnote)

2.

The section provides for the first day of July, 1963 as the day for the coming into operation of the Act.

3 (Popup - Footnote)

3.

The section reads,

(1)

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

(2)

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

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

4 (Popup - Footnote)

4.

The provision provided that,

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

5 (Popup - Footnote)

5. The provision, subsection (6) provided that the decision of the Court “shall be final and conclusive”. This is unconstitutional by virtue of article 137 of the Constitution.

6 (Popup - Footnote)

6. Amended by paragraph (a) of section 1 of the Companies Code (Amendment) Act, 1980 (Act 421) and substituted by section 1 of the Companies Code (Amendment) Act, 1997 (Act 131). That Act provided that the substitution shall apply to a company after the coming into operation of the Act.

7 (Popup - Footnote)

6a.

Repealed by section 62 (2) of the Central Securities Depository Act, 2007 (Act 733).

8 (Popup - Footnote)

7.

Inserted by section 1 of the Companies Code (Amendment) Act, 1994 (Act 474).

9 (Popup - Footnote)

8.

Not applicable in view of the repeal of section 319.

10 (Popup - Footnote)

9.

Not applicable in view of the repeal of section 319.

11 (Popup - Footnote)

10.

Spent.

12 (Popup - Footnote)

11.

Spent.

13 (Popup - Footnote)

12.

Spent.

14 (Popup - Footnote)

13.

Spent.

15 (Popup - Footnote)

14.

Spent.

16 (Popup - Footnote)

15.

Spent.

17 (Popup - Footnote)

16.

Spent.

18 (Popup - Footnote)

17. Inserted by paragraph (a) of section 2 of the Companies Code (Amendment) Act, 1994 (Act 474), as subsection (1a).

19 (Popup - Footnote)

18. Inserted by paragraph (b) of section 2 of the Companies Code (Amendment) Act, 1994 (Act 474), as subsection (2a).

20 (Popup - Footnote)

19.

Amended by section 3 of the Companies Code (Amendment) Act 1994 (Act 474).

21 (Popup - Footnote)

20.

Spent.

22 (Popup - Footnote)

21.

Spent.

23 (Popup - Footnote)

22.

Spent.

24 (Popup - Footnote)

23.

Added by paragraph (a) of section 4 of the Companies Code (Amendment) Act, 1994 (Act 474).

25 (Popup - Footnote)

24.

Substituted by paragraph (b) of section 4 of the Companies Code (Amendment) Act, 1994 (Act 474).

The provision reads

“(3) A newspapers advertisement summarising the contents of a prospectus, duly registered in

accordance with [section 279] may be published so long as the summary,

(a)

does not contain a form of application for any shares or debentures;

(b) states with reasonable prominence where copies of the full prospectus may be obtained and the

fact that it has been registered and the date of registration;

(c) is in terms previously approved by the Registrar, or, where the shares or debentures concerned are

dealt in upon an approved stock exchange or where the prospectus or summary states that application is to be made

to an approved stock exchange for permission to deal on that stock exchange in those shares or debentures, is in

terms previously approved by the stock exchange.”

26 (Popup - Footnote)

25.

Inserted by subsection (1) of section 145 of the Securities Industry Act, 1993 (P.N.D.C.L. 333).

27 (Popup - Footnote)

26.

P.N.D.C.L. 333. Substituted by subsection (2) of section 145 of the Securities Industry Act, 1993

(P.N.D.C.L. 333).

28 (Popup - Footnote)

27.

Spent in view of the repeal of section 319.

29 (Popup - Footnote)

28.

Inserted by section 5 of the Companies Code (Amendment) Act, 1994 (Act 474).

30 (Popup - Footnote)

29.

Spent.

31 (Popup - Footnote)

30.

Inserted by section 6 of the Companies Code (Amendment) Act, 1994 (Act 474).

32 (Popup - Footnote)

31.

Repealed by section 146 of the Securities Industries Act, 1993 (P.N.D.C.L. 333).

33 (Popup - Footnote)

32.

Repealed by section 14 of the Securities Industrial (Amendment) Act, 2000 (Act 590).

34 (Popup - Footnote)

33. Amended by paragraph (b) of section 1 of the Companies Code (Amendment) Act, 1980 (Act 421) and further amended by section 3A of the Companies Code (Amendment) Act, 1997 (Act 531).

35 (Popup - Footnote)

34. The operation of this subsection is subject to clause (7) of article 11 of the Constitution.

36 (Popup - Footnote)

34a. Amended by section 62 (4) of the Central Securities Depository Act, 2007 (Act 733).

37 (Popup - Footnote)

35. Sections 318 and 319 have been repealed.

38 (Popup - Footnote)

36. Section 319 has been repealed.

39 (Popup - Footnote)

36a. Substituted by section 62 (4) of the Central Securities Depository Act, 2007 (Act 733).

40 (Popup - Footnote)

37. Section 318 has been repealed.

41 (Popup - Footnote)

38. Substituted by the Companies Code (Amendment) Decree, 1974 made on the 13th day of September, 1974

and notified in the Gazette on 20th September, 1974; and further amended by Section 4 of the Companies Code

(Amendment) Act, 1997 (Act 531), and amended again by section 1 of the Companies Code (Amendment) Act,

2001 (Act 609) and the Companies Code (Amendment) Act, 2002 (Act 627).