LAWS OF KENYA

THE COMPANIES ACT

CHAPTER 486

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CHAPTER 486

THE COMPANIES ACT

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CHAPTER 486

THE COMPANIES ACT

50 of 1959,
46 of 1960,
28 of 1961,
25 of 1963,
L.N. 649/1963,
28 of 1965,
9 of 1967,
38 of 1968,
4 of 1974,
L.N. 14/1983,
1 of 1985,
19 of 1985,
L.N. 247/1988,
12 of 1988,
9 of 1989,
11 of 1992,
L.N. 26/ 1994,
6 of 1994,
8 of 2003,
15 of 2003,
8 of 2008.

Commencement: 1st January, 1962

An Act of Parliament to amend and consolidate the law relating to the incorporation, regulation and winding up of companies and other associations, and to make provision for other matters relating thereto and connected therewith

PART I – PRELIMINARY

Short title.

1. This Act may be cited as the Companies Act.

Interpretation.

2. (1) In this Act, except where the context otherwise requires-

"accounts" includes a company's group accounts, whether prepared in the form of accounts or not;

"annual return" means the return required to be made, in the case of a company having a share capital, under section 125, and in the case of a company not having a share capital, under section 126;

"appointed day" means the commencement of this Act;

"articles" means the articles of association of a company, as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained in Table A in the First Schedule to any of the repealed Ordinances or in Table A in the First Schedule;

"book and paper" and "book or paper" include accounts, deeds, writings and documents;

"certified" means certified in the prescribed manner to be a true copy or to be a correct translation into the English language;

"company" means a company formed and registered under this Act or an existing company;

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"company limited by guarantee" and "company limited by shares" have the meanings assigned to them respectively by subsection (2) of section 4;

"contributory" has the meaning assigned to it by section 214,

"the court" means the High Court;

"creditors' voluntary winding up" has the meaning assigned to it by subsection (4) of section 276;

"debenture" includes debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of the company or not;

"director" includes any person occupying the position of director by whatever name called;

"document" includes summons, notice, order and other legal process, and registers;

"existing company" means a company formed and registered under any of the repealed Ordinances;

"financial year" means, in relation to any body corporate, the period in respect of which any profit and loss account of the body corporate laid before it in general meeting is made up, whether that period is a year or not;

"group accounts" has the meaning assigned to it by subsection (1) of section 150;

"holding company" means a holding company as defined by section 154;

"insurance company" means a company which carries on the business of insurance either solely or in conjunction with any other business or businesses;

"issued generally" means, in relation to a prospectus, issued to persons who are not existing members or debenture holders of the company;

"limited company" means a company limited by shares or a company limited by guarantee;

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"members' voluntary winding up" has the meaning assigned to it by subsection (4) of section 276;

"memorandum" means the memorandum of association of a company, as originally framed or as altered from time to time;

"the minimum subscription" has the meaning assigned to it by subsection (2) of section 49;

"officer", in relation to an association or a body corporate, includes a director, manager or secretary;

"personal representative" means-

(*a*) in the case of a deceased person to whom the Indian Succession Act, 1865, or the Probate and Administration Act, 1881, of India, applies either wholly or in part, his executor or administrator; 10 of 1865. 5 of 1881.

(*b*) in the case of any other deceased person, any person who, under law or custom, is responsible for administering the estate of such deceased person;

"printed" means reproduced by original letterpress or by such other means as may be prescribed;

"private company" has the meaning assigned to it by subsection (1) of section 30;

"prospectus" means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of a company;

"registrar" means the registrar of companies, the deputy registrar or any assistant registrar or other officer performing under this Act the duty of registration of companies;

"the repealed Ordinances" means the Indian Companies Act, 1882, of India (as formerly applied to Kenya), the Companies Ordinance, 1921, and the repealed Companies Ordinance; 6 of 1882. Cap. 93 (1926).

"the repealed Companies Ordinance" means the Companies Ordinance repealed by this Act; Cap. 288 (1948).

"resolution for reducing share capital" has the meaning assigned to it by subsection (2) of section 68;

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"resolution for voluntary winding up" has the meaning assigned to it by subsection (2) of section 271;

"share" means share in the share capital of a company, and includes stock except where a distinction between stock and shares is expressed or implied;

"share warrant" has the meaning assigned to it by subsection (2) of section 85;

"statutory meeting" means the meeting required to be held by subsection (1) of section 130;

"statutory report" has the meaning assigned to it by subsection (2) of section 130;

"subsidiary" means a subsidiary as defined by section 154;

"Table A" means Table A in the First Schedule;

"the time of the opening of the subscription lists" has the meaning assigned to it by subsection (1) of section 52;

"unlimited company" has the meaning assigned to it by subsection (2) of section 4;

(2) A person shall not be deemed to be within the meaning of any provision of this Act a person in accordance with whose directions or instructions the directors of a company are accustomed to act, by reason only that the directors of the company act on advice given by him in a professional capacity.

(3) References in this Act to a body corporate or to a corporation shall be construed as not including a corporation sole but as including a company incorporated outside Kenya.

(4) Any provision of this Act overriding or interpreting a company's articles shall, except as provided by this Act, apply in relation to articles in force at the commencement of this Act, as well as to articles coming into force thereafter, and shall apply also in relation to a company's memorandum as it applies in relation to its articles.

Register of Companies.

3. There shall be kept by the registrar a record called "the Register of Companies" wherein shall be entered all the matters prescribed by this Act.

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PART II – INCORPORATION OF COMPANIES AND MATTERS INCIDENTAL THERETO

Memorandum of association

Mode of forming incorporated company.

4. (1) Any seven or more persons, or, where the company to be formed will be a private company, any two or more persons, associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability.

(2) Such a company may be either-

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

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

(c) a company not having any limit on the liability of its members (in this Act termed an unlimited company).

Requirements with respect to memorandum.

5. (1) The memorandum of every company shall be in the English language, shall be printed and 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 or by guarantee; and

(b) that the registered office of the company is to be situate in Kenya; and

(c) the objects of the company.

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

(3) The memorandum of a company limited by guarantee shall also state that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the

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debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(4) In the case of a company having a share capital -

(a) the memorandum shall also, unless the company is an unlimited company, state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount; and

(b) no subscriber of the memorandum shall take less than one share; and

(c) each subscriber shall write opposite to his name the number of shares he takes.

Signature of memorandum.

6. (1) The memorandum shall be dated and shall be signed by each subscriber in the presence of at least one attesting witness who shall state his occupation and postal address.

(2) Opposite the signature of every subscriber there shall be written in legible roman characters his full name, his occupation and postal address.

Restriction on alteration of memorandum.

7. A company shall not alter the conditions contained in its memorandum except in the cases, in the mode and to the extent for which express provision is made in this Act.

Mode in which and extent to which objects of company may be altered.

8. (1) A company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it-

(a) to carry on its business more economically or more efficiently; or

(b) to attain its main purpose by new or improved means; or

(c) to enlarge or change the local area of its operations; or

(d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or

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(e) to restrict or abandon any of the objects specified in the memorandum; or

(f) to sell or dispose of the whole or any part of the undertaking of the company; or

(g) to amalgamate with any other company or body of persons:

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

(2) An application under this section may be made-

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

(b) by the holders of not less than fifteen per cent of the company's debentures entitling the holders to object to alterations of its objects:

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

(3) An application under this section shall be made within thirty days after the date on which the resolution altering the company's objects was passed and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(4) On an application under this section the court may make an order cancelling the alteration or confirming the alteration either wholly or in part and on such terms and conditions as it thinks fit, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members, and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement:

Provided that no part of the capital of the company shall be expended in any such purchase.

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(5) (*a*) The debentures entitling the holders to object to alterations of a company's objects shall be any debentures secured by a floating charge which were issued or first issued before the appointed day, or form part of the same series as any debentures so issued, and a special resolution altering a company's objects shall require the same notice to the holders of any such debentures as to members of the company.

(b) In default of any provisions regulating the giving of notice to any such debenture holders, the provisions of the company's articles regulating the giving of notice to members shall apply.

(6) In the case of a company which is, by virtue of a licence from the Minister, exempt from the obligation to use the word "limited" as part of its name, a resolution altering the company's objects shall also require the same notice to the Minister as to members of the company.

(7) Where a company passes a resolution altering its objects -

(a) if no application is made with respect thereto under this section, it shall within fourteen days from the end of the period for making such an application deliver to the registrar a printed copy of its memorandum as altered; and

(b) if such an application is made it shall -

(i) forthwith give notice of that fact to the registrar; and

(ii) within fourteen days from the date of any order cancelling or confirming the alteration wholly or in part, deliver to the registrar a certified copy of the order and, in the case of an order confirming the alteration wholly or in part, a printed copy of the memorandum as altered;

but the court may by order at any time extend the time for the delivery of documents to the registrar under paragraph *(b)* for such period as the court may think proper.

(8) If a company makes default in giving notice or delivering any document to the registrar as required by subsection (7), the company and every officer of the company who is in default shall be liable to a default fine of two hundred shillings.

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

(10) In relation to a resolution for altering the provisions of a company's memorandum with respect to the objects of the company passed before the appointed day, this section shall have effect as if, in lieu of the proviso to subsection (1) and subsections (2) to (9) thereof, there had been enacted herein the provisions of subsections (2) to (7) of section 7 of the repealed Companies Ordinance.

Articles of Association

Articles prescribing regulations for companies.

9. There may, in the case of a company limited by shares, and there shall, in the case of a company limited by guarantee or unlimited, be registered with the memorandum articles of association prescribing regulations for the company.

Regulations required in case of unlimited company or company limited by guarantee.

10. (1) In the case of an unlimited company the articles shall state the number of members with which the company proposes to be registered and, if the company has a share capital, the amount of share capital with which the company proposes to be registered.

(2) In the case of a company limited by guarantee, the articles shall state the number of members with which the company proposes to be registered.

(3) (*a*) Where an unlimited company or a company limited by guarantee has increased the number of its members beyond the registered number, it shall, within fourteen days after the increase was resolved on or took place, give to the registrar notice of the increase, and the registrar shall record the increase.

(*b*) If default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

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Adoption and application of Table A.

11. (1) Articles of association may adopt all or any of the regulations contained in Table A.

(2) In the case of a company limited by shares and registered after the commencement of this Act, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations contained in Table A, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

Printing and signature of articles.

12. Articles shall be–

(a) in the English language; and

(b) printed; and

(c) divided into paragraphs numbered consecutively; and

(d) dated; and

(e) signed by each subscriber to the memorandum of association in the presence of at least one witness, who shall attest the signature and add his occupation and postal address.

Alteration of articles by special resolution.

13. (1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles.

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

Form of Memorandum and articles

Statutory forms of memorandum and articles.

14. The form of–

(a) the memorandum of association of a company limited by shares;

(b) the memorandum and articles of association of a company limited by guarantee and not having a share capital;

(c) the memorandum and articles of association of a company limited by guarantee and having a share capital;

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(d) the memorandum and articles of association of an unlimited company having a share capital,

shall be respectively in accordance with the forms set out in Tables B, C, D and E in the First Schedule, or as near thereto as circumstances admit.

Registration

Registration of memorandum and articles.

15. The memorandum and the articles, if any, shall be delivered to the registrar for registration.

Effect of registration.

16. (1) On the registration of the memorandum of a company the registrar shall certify under his hand that the company is incorporated and, in the case of a limited company, that the company is limited.

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

17. (1) A certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorized to be registered and duly registered under this Act.

(2) A statutory declaration by an advocate engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company, of compliance with all or any of the said requirements shall be delivered to the registrar, and the registrar may accept such a declaration as sufficient evidence of compliance.

Registration of unlimited company as limited.

18. (1) Subject to the provisions of this section, a company registered as unlimited may register under this Act as limited, or a company already registered as a limited company may re-register under this Act, but the registration of an unlimited company as a limited company shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of the company before the registration.

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(2) On registration in pursuance of this section the registrar shall close the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company, but, save as aforesaid, the registration shall take place in the same manner and shall have effect as if it were the first registration of the company under this Act.

Provisions with Respect to Names of Companies

Reservation of name and prohibition of undesirable name. 11 of 1992.

19. (1) (*a*) The registrar may, on written application, reserve a name pending registration of a company or a change of name by a company.

(*b*) Any such reservation shall remain in force for a period of thirty days or such longer period, not exceeding sixty days, as the registrar may, for special reasons, allow, and during such period no other company shall be entitled to be registered with that name.

(2) No name shall be reserved, and no company shall be registered by a name which consists of abbreviations, initials or by a name, which, in the opinion of the registrar, is undesirable.

Change of name.

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

(2) (*a*) 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 too like the name by which a company in existence is previously registered, the first-mentioned company may change its name with the sanction of the registrar and, if he 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 such longer period as the registrar may think fit to allow.

(*b*) If a company makes default in complying with a direction under this subsection, the company and every officer of the company who is in default shall be liable to a fine not exceeding one hundred shillings for every day during which the default continues.

(3) Where a company changes its name under this section, it shall within fourteen days give to the registrar notice thereof and the registrar shall enter the new name on the register in place of the former name, and shall issue to the company a certificate of change of name, and shall notify such change of name in the Gazette.

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

Power to dispense with "limited" in name of charitable and other companies.

21. (1) Where it is proved to the satisfaction of the Minister that an association about to be formed as a limited company is to be formed for promoting commerce, art, science, religion, charity or any other useful object, and intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Minister may by licence direct that the association may be registered as a company with limited liability, without the addition of the word "limited" to its name, and the association may be registered accordingly and shall, on registration, enjoy all the privileges and (subject to the provisions of this section) be subject to all the obligations of limited companies.

(2) Where it is proved to the satisfaction of the Minister–

(a) that the objects of a company registered under this Act as a limited company are restricted to those specified in subsection (1) and to objects incidental or conducive thereto; and

(b) that by its constitution the company is required to apply its profits, if any, or other income in promoting its objects and is prohibited from paying any dividend to its members,

the Minister may by licence authorize the company to make by special resolution a change in its name including or consisting of the omission of the word "limited", and subsections (3) and (4) of section 20 shall apply to a change of name under this subsection as they apply to a change of name under that section.

(3) A licence by the Minister under this section may be granted on such conditions and subject to such regulations as the Minister thinks fit, and those conditions and regulations shall be binding on the body to which the licence is granted, and (where the grant is under subsection (1)) shall, if the Minister so directs, be inserted in the memorandum and articles, or in one of those documents.

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(4) An association or company to which a licence is granted under this section shall be excepted from the provisions of this Act relating to the use of the word "limited" as any part of its name, the publishing of its name and the sending of lists of members to the registrar.

(5) The Minister may upon the recommendation of the registrar revoke a licence under this section and upon revocation the registrar shall enter in the register the word "limited" at the end of the name of the association or company to which it was granted, and the association or company shall cease to enjoy the exemptions and privileges or, as the case may be, the exemptions granted by this section:

Provided that, before recommendation is made to the Minister, the registrar shall give to the association or company notice in writing of his intention, and shall afford it an opportunity of being heard in opposition to the revocation.

(6) Where an association or company in respect of which a licence under this section is in force alters the provisions of its memorandum with respect to its objects, the registrar may (unless he sees fit to recommend the revocation of the licence) recommend to the Minister the variation of the licence by making it subject to such conditions and regulations as the Minister may think fit, in lieu of or in addition to the conditions and regulations, if any, to which the licence was formerly subject.

(7) Where a licence granted under this section to an association or company the name of which contains the words "Chamber of Commerce" is revoked, the association or company shall, within a period of six weeks from the date of revocation or such longer period as the registrar may think fit to allow, change its name to a name which does not contain those words, and -

(a) the notice to be given under the proviso to subsection (5) to that association or company shall include a statement of the effect of the foregoing provisions of this subsection; and

(b) subsections (3) and (4) of section 20 shall apply to a change of name under this subsection as they apply to a change of name under that section.

(8) If any association or company makes default in complying with the requirements of subsection (7), the association or company and every officer of the association or company who is in default shall be liable to a fine not exceeding one thousand shillings for every day during which the default continues.

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General Provisions with Respect to Memorandum and Articles

Effect of memorandum and articles.

22. (1) Subject to the provisions of this Act the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member to observe all the provisions of the memorandum and of the articles.

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

Provision as to memorandum and articles of companies limited by guarantee.

23. (1) In the case of a company limited by guarantee and not having a share capital, and registered after 1st April, 1922, every provision in the memorandum or articles or any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

(2) For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of a company limited by guarantee and registered on or after the date aforesaid, purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

Alterations in memorandum or articles increasing liability to contribute to share capital not to bind existing members without consent.

24. Notwithstanding anything in the memorandum or articles of a company, no member of the company shall be bound by an alteration made in the memorandum or articles after the date on which he became a member, if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise to pay money to, the company:

Provided that this section shall not apply in any case where the member agrees in writing, either before or after the alteration is made, to be bound thereby.

Power to alter conditions in memorandum which could have been contained in articles.

25. (1) Subject to the provisions of sections 24 and 211, any condition contained in a company's memorandum which could lawfully have been contained in articles of association instead of in the memorandum may, subject to the provisions of this section, be altered by the company by special resolution:

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Provided that if an application is made to the court for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.

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

(3) Subsections (2), (3), (4), (7) and (8) of section 8 (except paragraph *(b)* of the said subsection (2)) shall apply in relation to any alteration and to any application made under this section as they apply in relation to alterations and to applications made under that section.

(4) This section shall apply to a company's memorandum whether registered before or after the commencement of this Act.

Copies of memorandum and articles to be given to members.

26. (1) A company shall, on being so required by any member, send to him a copy of the memorandum and of the articles, if any, and a copy of any written law which alters the memorandum, subject to payment, in the case of a copy of the memorandum and of the articles, of twenty shillings or such less sum as the company may prescribe, and, in the case of a copy of a written law, of such sum not exceeding the published price thereof as the company may require.

(2) If a company makes default in complying with this section, the company and every officer of the company who is in default shall be liable for each offence to a fine not exceeding two hundred shillings.

Issued copies of memorandum to embody alterations.

27. (1) Where an alteration is made in the memorandum of a company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration.

(2) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum which are not in accordance with the alteration, it shall be liable to a fine not exceeding fifty shillings for each copy so issued, and every officer of the company who is in default shall be liable to the like penalty.

Membership of Company

Definition of member.

28. (1) The subscribers to the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.

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

Membership of holding company.

29. (1) Except in the cases hereafter in this section mentioned, a body corporate cannot be a member of a company which is its holding company, and any allotment or transfer of shares in a company to its subsidiary shall be void.

(2) Nothing in this section shall apply where the subsidiary is concerned as personal representative, or where it is concerned as trustee, unless the holding company or a subsidiary thereof is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of business which includes the lending of money.

(3) This section shall not prevent a subsidiary which is, at the commencement of this Act, a member of its holding company, from continuing to be a member but, subject to subsection (2), the subsidiary shall have no right to vote at meetings of the holding company or any class of members thereof.

(4) Subject to subsection (2), subsections (1) and (3) shall apply in relation to a nominee for a body corporate which is a subsidiary, as if references in the said subsections (1) and (3) to such a body corporate included references to a nominee for it.

(5) In relation to a company limited by guarantee or unlimited which is a holding company, the reference in this section to shares, whether or not the company has a share capital, shall be construed as including a reference to the interest of its members as such, whatever the form of that interest.

Private Companies

Meaning of "private company".

30. (1) For the purposes of this Act, "private company" means a company which by its articles–

(a) restricts the right to transfer its shares; and

(b) limits the number of its members to fifty, not including persons who are in the employment of the company and 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 of the company; and

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(c) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

(2) Where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this section, be treated as a single member.

Consequences of default in complying with conditions constituting a company a private company.

31. Where the articles of a company include the provisions which, under section 30, are required to be included in the articles of a company in order to constitute it a private company but default is made in complying with any of those provisions, the company shall cease to be entitled to any privilege or exemption conferred on private companies under any of the provisions of this Act, and thereupon the provisions of this Act shall apply to the company as if it were not a private company:

Provided that the court, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any other person interested and on such terms and conditions as seem to the court just and expedient, order that the company be relieved from such consequences as aforesaid.

Statement in lieu of prospectus to be delivered to registrar by company on ceasing to be private company.

32. (1) If a company, being a private company, alters its articles in such a manner that they no longer include the provisions which, under section 30, are required to be included in the articles of a company in order to constitute it a private company, the company shall, on and from the date of the alteration, cease to be a private company and shall, within a period of fourteen days after the said date, deliver to the registrar for registration a statement in lieu of prospectus in the form and containing the particulars set out in Part I of the Second Schedule and, in the cases mentioned in Part II of that Schedule, setting out the reports specified therein, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule:

Provided that a statement in lieu of prospectus need not be delivered under this subsection if within the said period of fourteen days a prospectus relating to the company which complies with the Third Schedule, is issued and is delivered to the registrar as required by section 43.

(2) Every statement in lieu of prospectus delivered under subsection (1) shall, where the persons making any such report as aforesaid have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 5 of the Second Schedule, have endorsed thereon or attached thereto a

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written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(3) If default is made in complying with subsection (1) or (2), the company and every officer of the company who is in default shall be liable to a default fine of one thousand shillings.

(4) Where a statement in lieu of prospectus delivered to the registrar under subsection (1) includes any untrue statement, any person who authorized the delivery of the statement in lieu of prospectus for registration shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine not exceeding ten thousand shillings, or to both such fine and such imprisonment, unless he proves either that the untrue statement was immaterial or that he had reasonable ground to believe and did, up to the time of the delivery for registration of the statement in lieu of prospectus, believe that the untrue statement was true.

(5) For the purposes of this section–

(a) a statement included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and

(b) a statement shall be deemed to be included in a statement in lieu of prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein.

Reduction of Number of Members Below Legal Minimum

Members severally liable for debts where business carried on with fewer than seven, or in case of private company two, members.

33. If at any time the number of members of a company is reduced, in the case of a private company, below two, or, in the case of any other company, below seven, and it carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognizant of the fact that it is carrying on business with fewer than two members, or seven members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.

Contracts, Etc.

Form of contracts.

34. (1) Contracts on behalf of a company may be made as follows–

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(a) a contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied;

(b) a contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied.

(2) A contract made according to this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto.

(3) A contract made according to this section may be varied or discharged in the same manner in which it is authorized by this section to be made.

Bills of exchange and promissory notes.

35. 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, or by or on behalf of, or on account of, the company by any person acting under its authority, express or implied.

Execution of deeds abroad.

36. (1) A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in Kenya.

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

Power for company to have official seal for use abroad.

37. (1) A company whose objects require or comprise the transaction of business outside Kenya may, if authorized by its articles, have for use in any place outside Kenya, an official seal which shall take the form of an embossed metal die, which shall be a facsimile of the common seal of the company, with the addition on its face of the name of the place where it is to be used.

(2) A deed or other 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.

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(3) A company having an official seal for use in any place outside Kenya may, by writing under its common seal, authorize any person appointed for the purpose in that place to affix the official seal to any deed or other document to which the company is party in that place.

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

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

Authentication of documents.

38. A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorized officer of the company, and need not be under its common seal.

PART III – SHARE CAPITAL AND DEBENTURES

Prospectus

Dating of prospectus.

39. A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

Matters to be stated and reports to be set out in prospectus.

40. (1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, shall state the matters specified in Part I of the Third Schedule and set out the reports specified in Part II of that Schedule and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) It shall not be lawful to issue any form of application for shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of this section:

Provided that this subsection shall not apply if it is shown that the form of application was issued either–

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(i) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or

(ii) in relation to shares or debentures which were not offered to the public.

(4) If any person acts in contravention of the provisions of subsection (3), he shall be liable to a fine not exceeding ten thousand shillings.

(5) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if–

(a) as regards any matter not disclosed, he proves that he was not cognizant thereof; or

(b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or

(c) the non-compliance or contravention was in respect of matters which in the opinion of the court dealing with the case were immaterial or was otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 16 of the Third Schedule, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(6) This section shall not apply–

(a) to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons; or

(b) to the issue of a prospectus or form of application relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued,

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but, subject as aforesaid, this section shall apply to a prospectus or a form of application whether issued on or with reference to the formation of a company or subsequently.

Provisions of section 40 not to limit any other liability.

41. Nothing in section 40 shall limit or diminish any liability which any person may incur under the general law or this Act apart from that section.

Expert's consent to issue of prospectus containing statement by him.

42. (1) A prospectus inviting persons to subscribe for shares in or debentures of a company and including a statement purporting to be made by an expert shall not be issued unless -

(a) he has given and has not, before delivery of a copy of the prospectus for registration, withdrawn his written consent to the issue thereof with the statement included in the form and context in which it is included; and

(b) a statement that he has given and has not withdrawn his consent as aforesaid appears in the prospectus.

(2) If any prospectus is issued in contravention of this section the company and every person who is knowingly a party to the issue thereof shall be liable to a fine not exceeding ten thousand shillings.

(3) In this section, "expert" includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him.

Registration of prospectus.

43. (1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the registrar for registration a copy thereof signed by every person who is named therein as a director or proposed director of the company, or by his agent authorized in writing, and having endorsed thereon or attached thereto -

(*a*) any consent to the issue of the prospectus required by section 42 from any person as an expert; and

(b) in the case of a prospectus issued generally, also–

(i) a copy of any contract required by paragraph 14 of the Third Schedule to be stated in the prospectus, or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof; and

(ii) where the persons making any report required by Part II of that Schedule have made therein, or have,

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without giving the reasons, indicated therein, any such adjustments as are mentioned in paragraph 29 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(2) The references in subparagraph (i) of paragraph *(b)* of subsection (1) to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a language other than English, be taken as references to a copy of a translation of the contract in English, or a copy embodying a translation in English, of the parts in a language other than English, as the case may be, being a translation certified in the prescribed manner to be a correct translation.

(3) Every prospectus shall, on the face of it–

(a) state that a copy has been delivered for registration as required by this section; and

(b) specify, or refer to statements included in the prospectus which specify, any documents required by this section to be endorsed on or attached to the copy so delivered.

(4) The registrar shall not register a prospectus unless it is dated and the copy thereof signed in manner required by this section and unless it has endorsed thereon or attached thereto the documents (if any) specified as aforesaid.

(5) If a prospectus is issued without a copy thereof being delivered under this section to the registrar or without the copy so delivered having endorsed thereon or attached thereto the required documents, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine not exceeding one hundred shillings for everyday from the date of the issue of the prospectus until a copy thereof is so delivered with the required documents endorsed thereon or attached thereto.

Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospectus.

44. (1) A company limited by shares or a company limited by guarantee and having a share capital shall not previously to the statutory meeting vary the terms of a contract referred to in the prospectus, or statement in lieu of prospectus, except subject to the approval of the statutory meeting.

(2) This section shall not apply to a private company.

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Civil liability for mis-statements in prospectus.

45. (1) Subject to the provisions of this section, where a prospectus invites persons to subscribe for shares in or debentures of a company, the following persons shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement included therein, that is to say -

(a) every person who is a director of the company at the time of the issue of the prospectus;

(b) every person who has authorized himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;

(c) every person being a promoter of the company; and

(d) every person who has authorized the issue of the prospectus:

Provided that, where under section 42 the consent of a person is required to the issue of a prospectus and he has given that consent, he shall not by reason of his having given it be liable under this subsection as a person who has authorized the issue of the prospectus except in respect of an untrue statement purporting to be made by him as an expert.

(2) No person shall be liable under subsection (1) if he proves–

(a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

(b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or

(c) that, after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor; or

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(d) that–

(i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the al lotment of the shares or debentures, as the case may be, believe, that the statement was true; and

(ii) as regards every untrue statement purporting to be a statement by an expert or contained in what pur ports 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 ex tract from the report or valuation, and he had rea sonable ground to believe and did up to the time of the issue of the prospectus believe that the person making the statement was competent to make it and that person had given the consent required by section 42 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder; and

(iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document:

Provided that this subsection shall not apply in the case of a person liable, by reason of his having given a consent required of him by section 42 as a person who has authorized the issue of the prospectus in respect of an untrue statement purporting to be made by him as an expert.

(3) A person who, apart from this subsection would under subsection (1) be liable, by reason of his having given a consent required of him by section 42, as a person who has authorized the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert shall not be so liable if he proves–

(a) that, having given his consent under section 42 to the issue of the prospectus, he withdrew it in writing before delivery of a copy of the prospectus for registration; or

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(b) that, after delivery of a copy of the prospectus for registration and before allotment thereunder, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal, and of the reason therefor; or

(c) that he was competent to make the statement and that he had reasonable ground to believe and did up to the time of the allotment of the shares or debentures, as the case may be, believe that the statement was true.

(4) Where–

(a) the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorized or consented to the issue thereof; or

(b) the consent of a person is required under section 42 to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus,

the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorized the issue thereof shall be liable to indemnify the person named as aforesaid or whose consent was required as aforesaid, as the case may be, against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him as an expert as the case may be, or in defending himself against any action or legal proceeding brought against him in respect thereof:

Provided that a person shall not be deemed for the purposes of this subsection to have authorized the issue of a prospectus by reason only of his having given the consent required by section 42 to the inclusion therein of a statement purporting to be made by him as an expert.

(5) For the purposes of this section–

(a) "promoter" means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company; and

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(b) "expert" has the same meaning as in section 42.

Criminal liability for mis-statements in prospectus.

46. (1) where a prospectus issued after the commencement of this Act includes any untrue statement, any person who authorized the issue of the prospectus shall be guilty of an offence and liable to imprisonment for a term not exceeding two years, or to a fine not exceeding ten thousand shillings, or to both such fine and such imprisonment, unless he proves either that the statement was immaterial or that he had reasonable ground to believe and did, up to the time of the issue of the prospectus, believe that the statement was true.

(2) A person shall not be deemed for the purpose of this section to have authorized the issue of a prospectus by reason only of his having given the consent required by section 42 to the inclusion therein of a statement purporting to be made by him as an expert.

Document containing offer of shares or debentures for sale to be deemed prospectus.

47. (1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company, and any written law as to the contents of prospectuses and to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of mis-statements contained in the document or otherwise in respect thereof.

(2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown–

(a) that an offer of the shares or debentures or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or

(b) that at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(3) Section 40, as applied by this section, shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus–

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(a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates; and

(b) the place and time at which the contract under which the said shares or debentures have been or are to be allotted may be inspected,

and section 43, as applied by this section, shall have effect as though the persons making the offer were persons named in a prospectus as directors of a company.

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document aforesaid is signed on behalf of the company or firm by two directors of the company or not less than half of the partners, as the case may be, and any such director or partner may sign by his agent authorized in writing.

Interpretation of provisions relating to prospectuses.

48. For the purpose of the foregoing provisions of this Part–

(a) a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and

(b) a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

Allotment

Prohibition of allotment unless minimum subscription received.

49. (1) *(a)* No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which, in the opinion of the directors, must be raised by the issue of share capital in order to provide for the matters specified in paragraph 4 of the Third Schedule has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company.

(b) For the purposes of this subsection, a sum shall be deemed to have been paid to and received by the company if a cheque for that sum has been received in good faith by the company and the directors of the company have no reason for suspecting that the cheque will not be paid.

(2) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Act referred to as the minimum subscription.

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(3) The amount payable on application on each share shall not be less than five per cent of the nominal amount of the share.

(4) If the conditions aforesaid have not been complied with on the expiration of sixty days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within seventy-five days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per cent per annum from the expiration of the seventy-fifth day:

Provided that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(5) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(6) This section, except subsection (3), shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to registrar.

50. (1) A company having a share capital which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless at least three days before the first allotment of either shares or debentures there has been delivered to the registrar for registration a statement in lieu of prospectus signed by every person who is named therein as a director or a proposed director of the company or by his agent authorized in writing, in the form and containing the particulars set out in Part I of the Fourth Schedule and, in the cases mentioned in Part II of that Schedule, setting out the reports specified therein, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(2) Every statement in lieu of prospectus delivered under subsection (1) shall, where the persons making any such report as aforesaid have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 5 of the Fourth Schedule, have endorsed thereon or attached thereto a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(3) This section shall not apply to a private company.

(4) If a company acts in contravention of subsection (1) or subsection (2), the company and every director of the company who

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knowingly and wilfully authorizes or permits the contravention shall be liable to a fine not exceeding two thousand shillings.

(5) Where a statement in lieu of prospectus delivered to the registrar under subsection (1) includes any untrue statement, any person who authorized the delivery of the statement in lieu of prospectus for registration shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine not exceeding ten thousand shillings, or to both such fine and such imprisonment, unless he proves either that the untrue statement was immaterial or that he had reasonable grounds to believe and did, up to the time of the delivery for registration of the statement in lieu of prospectus, believe that the untrue statement was true.

(6) For the purposes of this section–

(a) a statement included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and

(b) a statement shall be deemed to be included in a statement in lieu of prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein.

50A. (*Deleted by 6 of 1994, s. 75*).

Effect of irregular allotment.

51. (1) An allotment made by a company to an applicant in contravention of the provisions of section 49 or section 50 shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, or, in any case where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment, and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2) If any director of a company knowingly contravenes, or permits or authorizes the contravention of, any of the provisions of the said sections with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby:

Provided that proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of two years from the date of the allotment.

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Applications for, and allotment of, shares and debentures.

52. (1) (*a*) No allotment shall be made of any shares in or debentures of a company in pursuance of a prospectus issued generally and no proceedings shall be taken on applications made in pursuance of a prospectus so issued, until the beginning of the third day after that on which the prospectus is first so issued, or such later time (if any) as may be specified in the prospectus.

(b) The beginning of the said third day or such later time as aforesaid is hereafter in this Act referred to as the time of the opening of the subscription lists.

(2) In subsection (1), the reference to the day on which the prospectus is first issued generally shall be construed as referring to the day on which it is first so issued as a newspaper advertisement:

Provided that, if it is not so issued as a newspaper advertisement before the third day after that on which it is first so issued in any other manner, the said reference shall be construed as referring to the day on which it is first so issued in any manner.

(3) The validity of an allotment shall not be affected by any contravention of the foregoing provisions of this section but, in the event of any such contravention, the company and every officer of the company who is in default shall be liable to a fine not exceeding ten thousand shillings.

(4) In the application of this section to a prospectus offering shares or debentures for sale, subsections (1), (2) and (3) shall have effect with the substitution of references to sale for references to allotment, and with the substitution for the reference to the company and every officer of the company who is in default of a reference to any person by or through whom the offer is made and who knowingly and willfully authorizes or permits the contravention.

(5) An application for shares in or debentures of a company which is made in pursuance of a prospectus issued generally shall not be revocable until after the expiration of the third day after the time of the opening of the subscription lists, or the giving before the expiration of the said third day, by some person responsible under section 45 for the prospectus, of a public notice having the effect under that section of excluding or limiting the responsibility of the person giving it.

(6) In reckoning, for the purposes of this section and of section 53, the third day after another day, any intervening day which is a Saturday or Sunday or which is a public holiday shall be disregarded, and if the third day (as so reckoned) is itself a Saturday or Sunday or

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such a public holiday there shall for the said purposes be substituted the first day thereafter which is none of them.

Allotment of shares and debentures to be dealt in on stock exchange.

53. (1) Where a prospectus, whether issued generally or not, states that application has been or will be made for permission for the shares or debentures offered thereby to be dealt in on any stock exchange, any allotment made on an application in pursuance of the prospectus shall, whenever made, be void if the permission has not been applied for before the third day after the first issue of the prospectus or if the permission has been refused before the expiration of three weeks from the date of the closing of the subscription lists or such longer period not exceeding six weeks as may within the said three weeks, be notified to the applicant for permission by or on behalf of the stock exchange.

(2) Where the permission has not been applied for as aforesaid, or has been refused as aforesaid, the company shall forthwith repay without interest all money received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five percent per annum from the expiration of the eighth day:

Provided that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(3) All money received as aforesaid shall be kept in a separate bank account so long as the company may become liable to repay it under subsection (2); and, if default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a fine not exceeding ten thousand shillings.

(4) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section shall be void.

(5) For the purposes of this section, permission shall not be deemed to be refused if it is intimated that the application for it, though not at present granted, will be given further consideration.

(6) This section shall have effect–

(a) in relation to any shares or debentures agreed to be taken by a person underwriting an offer thereof by a prospectus as if he had applied therefor in pursuance of the prospectus; and

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(b) in relation to a prospectus offering shares for sale with the following modifications, that is to say–

(i) references to sale shall be substituted for references to allotment;

(ii) the persons by whom the offer is made, and not the company, shall be liable under subsection (2) to repay money received from applicants, and references to the company's liability under that subsection shall be construed accordingly; and

(iii) for the reference in subsection (3) to the company and every officer of the company who is in default there shall be substituted a reference to any person by or through whom the offer is made and who knowingly and wilfully authorizes or permits the default.

Return as to allotments.

54. (1) Whenever a company limited by shares or a company limited by guarantee and having a share capital makes any allotment of its shares, the company shall within sixty days thereafter deliver to the registrar for registration-

(a) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses and descriptions of the allottees, and the amount, if any, paid or due and payable on each share; and

(b) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(2) Where such a contract as above-mentioned is not reduced to writing, the company shall within sixty days after the allotment deliver to the registrar for registration the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and those particulars shall be deemed to be an instrument within the meaning of the Stamp Duty Act, and the registrar may as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section 17 of that Act.

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

Commissions and Discounts, Etc.

Power to pay certain commissions, and prohibition of payment of all other commissions, discounts, etc.

55. (1) It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company if–

(a) the payment of the commission is authorized by the articles; and

(b) the commission paid or agreed to be paid does not exceed ten per cent of the price at which the shares are issued or the amount or rate authorized by the articles, whichever is the less; and

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

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

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

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

(2) Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money

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of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay.

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

(5) If default is made in complying with the provisions of this section relating to the delivery to the registrar of the statement in the prescribed form, the company and every officer of the company who is in default shall be liable to a fine not exceeding five hundred shillings.

Prohibition of provision of financial assistance by company for purchase of or subscription for its own, or its holding company's shares.

56. (1) Subject as provided in this section, it shall not be lawful for a company to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company, or, where the company is a subsidiary company, in its holding company:

Provided that nothing in this section shall be taken to prohibit–

(i) where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business;

(ii) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of, or subscription for, fully-paid shares in the company or its holding company, being a purchase or subscription by trustees of or for shares to be held by or for the benefit of employees of the company, including any director holding a salaried employment or office in the company;

(c) the making by a company of loans to persons, other than directors, bona fide in the employment of the company with a view to enabling those persons to purchase or subscribe for fully-paid shares in the company or its

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holding company to be held by themselves by way of beneficial ownership.

(2) If a company acts in contravention of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding twenty thousand shillings.

Construction of References to Offering Shares or Debentures to the Public

Construction of references to offering shares or debentures to the public.

57. (1) Any reference in this Act to offering shares or debentures to the public shall, subject to any provision to the contrary contained therein, be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner, and references in this Act or in a company's articles to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be similarly construed.

(2) Subsection (1) shall not be taken as requiring any offer or invitation to be treated as made to the public if it can properly be regarded, in all the circumstances, as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or otherwise as being a domestic concern of the persons making and receiving it, and in particular-

(a) a provision in a company's articles prohibiting invitations to the public to subscribe for shares or debentures shall not be taken as prohibiting the making to members or debenture holders of an invitation which can properly be regarded as aforesaid; and

(b) the provisions of this Act relating to private companies shall be construed accordingly.

Issue of Shares at Premium and Discount and Redeemable Preference Shares

Application of premiums received on issue of shares.

58. (1) Where a company issues shares at a premium whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account, to be called the share premium account and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the share premium account were paid-up share capital of the company.

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(2) The share premium account may, notwithstanding anything in the foregoing subsection, be applied by the company in paying up unissued shares of the company to be issued to members of the company as fully-paid bonus shares, in writing off-

(a) the preliminary expenses of the company; or

(b) the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company,

or in providing for the premium payable on redemption of any redeemable preference shares or of any debentures of the company.

(3) Where a company has before the commencement of this Act issued any shares at a premium, this section shall apply as if the shares had been issued after the commencement of this Act:

Provided that any part of the premiums which has been so applied that it does not at the commencement of this Act from an identifiable part of the company's reserves within the meaning of the Sixth Schedule shall be disregarded in determining the sum to be included in the share premium account.

Power to issue shares at a discount.

59. (1) Subject as provided in this section, it shall be lawful for a company to issue at a discount shares in the company of a class already issued:

Provided that–

(i) the issue of the shares at a discount shall be authorized by resolution passed in general meeting of the company, and shall be sanctioned by the court; and

(ii) the resolution shall specify the maximum rate of discount at which the shares are to be issued; and

(iii) not less than one year shall, at the date of the issue, have elapsed since the date on which the company was entitled to commence business; and

(iv) the shares to be issued at a discount shall be issued within one month after the date on which the issue is sanctioned by the court or within such extended time as the court may allow.

(2) Where a company has passed a resolution authorizing the issue of shares at a discount, it may apply to the court for an order

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sanctioning the issue, and on any such application the court, if, having regard to all the circumstances of the case, it thinks proper so to do, may make an order sanctioning the issue on such terms and conditions as it thinks fit.

(3) (*a*) Every prospectus relating to the issue of the shares must contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the prospectus.

(b) If default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

Power to issue redeemable preference shares.

60. (1) Subject to the provisions of this section, a company limited by shares may, if so authorized by its articles, issue preference shares which are, or at the option of the company are to be liable, to be redeemed:

Provided that–

(i) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption;

(ii) no such shares shall be redeemed unless they are fully paid;

(iii) the premium, if any, payable on redemption, must have been provided for out of the profits of the company or out of the company's share premium account before the shares are redeemed;

(iv) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall out of profits which would otherwise have been available for dividend be transferred to a reserve fund, to be called the capital redemption reserve fund, a sum equal to the nominal amount of the shares redeemed, and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company.

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(2) Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles of the company.

(3) The redemption of preference shares under this section by a company shall not be taken as reducing the amount of the company's authorized share capital.

(4) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purpose of any enactments relating to stamp duty be deemed to be increased by the issue of shares in pursuance of this subsection:

Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this subsection unless the old shares are redeemed within one month after the issue of the new shares.

(5) The capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

Miscellaneous Provisions as to Share Capital

Power of company to arrange for different amounts being paid on shares.

61. A company, if so authorized by its articles, may do any one or more of the following things–

(a) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;

(b) accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up;

(c) pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

Reserve liability of limited company.

62. A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up except in the event and for the purposes of the company being wound up, and thereupon that portion

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of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

Power of company limited by shares to alter its share capital.

63. (1) A company limited by shares or a company limited by guarantee and having a share capital, if so authorized by its articles, may alter the conditions of its memorandum as follows, that is to say, it may–

(a) increase its share capital by new shares of such amount as it thinks expedient;

(b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

(c) convert all or any of its paid-up shares into stock, and reconvert that stock into paid-up shares of any denomination;

(d) subdivide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

(e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The powers conferred by this section shall be exercised by the company in general meeting.

(3) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

Notice to registrar of consolidation of share capital, conversion of shares into stock, etc.

64. (1) If a company having a share capital has–

(a) consolidated and divided its share capital into shares of larger amount than its existing shares; or

(b) converted any shares into stock; or

(c) reconverted stock into shares; or

(d) subdivided its share or any of them; or

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(e) redeemed any redeemable preference shares; or

(f) cancelled any shares, otherwise than in connection with a reduction of share capital under section 68,

it shall, within thirty days after so doing, give notice thereof to the registrar specifying, as the case may be, the shares consolidated, divided, converted, subdivided, redeemed or cancelled, or the stock reconverted.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

Notice of increase of share capital.

65. (1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, it shall, within thirty days after the passing of the resolution authorizing the increase, give to the registrar notice of the increase, and the registrar shall record the increase.

(2) The notice to be given as aforesaid shall include such particulars as may be prescribed with respect to the classes of shares affected and the conditions subject to which the new shares have been or are to be issued, and there shall be forwarded to the registrar, together with the notice, a printed copy of the resolution authorizing the increase.

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

Power of unlimited company to provide for reserve share capital on re-registration.

66. An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of this Act, do either or both of the following things, namely-

(a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up;

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

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Power of company to pay interest out of capital in certain cases.

67. Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the sum so paid by way of interest to capital, as part of the cost of construction of the work or building, or the provision of plant:

Provided that–

(i) no such payment shall be made unless it is authorized by the articles or by special resolution;

(ii) no such payment, whether authorized by the articles or by special resolution, shall be made without the previous sanction of the registrar;

(iii) before sanctioning any such payment the registrar may, at the expense of the company, appoint a person to inquire and report to him as to the circumstances of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry;

(iv) the payment shall be made only for such period as may be determined by the registrar, and that period shall in no case extend beyond the close of the half-year next after the half-year during which the works or buildings have been actually completed or the plant provided;

(v) the rate of interest shall in no case exceed five per cent per annum or such other rate as the Minister may for the time being by notice in the Gazette prescribe;

(vi) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid.

Reduction of Share Capital

Special resolution for reduction of share capital.

68. (1) Subject to confirmation by the court, a company limited by shares or a company limited by guarantee and having a share capital may, if so authorized by its articles, by special resolution reduce its share capital in any way, and in particular, without prejudice to the generality of the foregoing power, may–

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(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or

(b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or

(c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company,

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

(2) A special resolution under this section is in this Act referred to as a resolution for reducing share capital.

Application to court for confirming order, objections by creditors, and settlement of list of objecting creditors.

69. (1) Where a company has passed a resolution for reducing share capital, it shall apply by petition to the court for an order confirming the reduction.

(2) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the court so directs, the following provisions shall have effect, subject nevertheless to subsection (3)–

(a) every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction;

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

(c) where a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the court may direct, the following amount–

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(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 by the court.

(3) Where a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the court may, if having regard to any special circumstances of the case it thinks proper so to do, direct that subsection (2) shall not apply as regards any class or classes of creditors.

Order confirming reduction and powers of court on making such order.

70. (1) The court, if satisfied, with respect to every creditor of the company who under section 69 is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

(2) Where the court makes any such order, it may–

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

(b) make an order requiring the company to publish as the the court directs the reason for reduction or such other information in regard thereto as the court may think expedient with a view to giving proper information to the public, and, if the court thinks fit, the causes which led to the reduction.

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

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Registration of order and minute of reduction.

71. (1) The registrar, on production to him of an order of the court confirming the reduction of the share capital of a company, and the delivery to him of a copy of the order and of a minute approved by the court, showing with respect to the share capital of the company, as altered by the order, the amount of the share capital, the number of shares into which it is to be divided, the amount of each share, and the amount, if any, at the date of the registration deemed to be paid up on each share, shall register the order and minute.

(2) On the registration of the order and minute, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

(3) Notice of the registration shall be published in such manner as the court may direct.

(4) The registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

(5) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum, and shall be valid and may be altered as if it had been originally contained therein.

(6) The substitution of any such minute as aforesaid for part of the memorandum of the company shall be deemed to be an alteration of the memorandum within the meaning of section 27.

Liability of members in respect of reduced shares.

72. (1) In the case of a reduction of share capital, a member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount of the share as fixed by the minute and the amount paid, or the reduced amount, if any, which is to be deemed to have been paid, on the share, as the case may be:

Provided that, if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of this Act with respect to winding up by the court, to pay the amount of his debt or claim, then-

(i) every person who was a member of the company at the dale of the registration of the order for reduction

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and minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before the said date; and

(ii) if the company is wound up, the court, on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

(2) Nothing in this section shall affect the rights of the contributories among themselves.

Penalty for concealing name of creditor, etc.

73. If any officer of the company–

(a) wilfully conceals the name of any creditor entitled to object to the reduction; or

(b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or

(c) aids, abets or is privy to any such concealment or misrepresentation as aforesaid,

he shall be liable to imprisonment for a term not exceeding one year or to a fine not exceeding two thousand shillings, or to both such imprisonment and such fine.

Variation of Shareholders' Rights

Rights of holders of special classes of shares.

74. (1) If in the case of a company, the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorizing the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than fifteen per cent of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the court to have the variation cancelled, and, where any such application is made, the variation shall not have effect unless and until it is confirmed by the court.

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(2) An application under this section shall be made by petition within thirty days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(3) On any such application, 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, may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation, and shall, if not so satisfied, confirm the variation.

(4) The decision of the court on any such application shall be final.

(5) The company shall within thirty days after the making of an order by the court on any such application forward a certified copy of the order to the registrar, and, if default is made in complying with this provision, the company and every officer of the company who is in default shall be liable to a default fine.

(6) In this section, "variation" includes abrogation, and "varied" shall be construed accordingly.

Transfer of Shares and Debentures, Evidence of Title, Etc.

Nature of shares.

75. The shares or other interest of any member in a company shall be movable property transferable in manner provided by the articles of the company.

Numbering of shares.

76. Each share in a company having a share capital shall be distinguished by its appropriate number:

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

76A. *(Deleted by 6 of 1994, s. 75 (a)).*

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Transfer not to be registered except on production of instrument of transfer. 4 of 1974, Sch., 6 of 1994, s.75 *(b)*.

77. Notwithstanding anything in the articles of a company, it shall not be lawful for the company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company:

Provided that nothing in this section shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

Transfer by personal representative.

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

Registration of transfer at request of transferor.

79. On the application of the transferor of any share or interest of a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

Notice of refusal to register transfer.

80. (1) If a company refuses to register a transfer of any shares or debentures, the company shall, within sixty days after the date on which the transfer was lodged with the company, send to the transferee notice of the refusal.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

Certification of transfer.

81. (1) The certification by a company of any instrument of transfer of shares in or debentures of the company shall be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show a prima facie title to the shares or debentures in the transferor named in the instrument of transfer, but not as a representation that the transferor has any title to the shares or debentures.

(2) Where any person acts on the faith of a false certification by a company made negligently, the company shall be under the same liability to him as if the certification had been made fraudulently.

(3) For the purposes of this section–

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(a) an instrument of transfer shall be deemed to be certificated if it bears the words "certificate lodged" or words to the like effect;

(b) the certification of an instrument of transfer shall be deemed to be made by a company if–

(i) the person issuing the instrument is a person authorized to issue certificated instruments of transfer on the company's behalf; and

(ii) the certification is signed by a person authorized to certificate transfers on the company's behalf or by any officer or servant either of the company or of a body corporate so authorized;

(c) a certification shall be deemed to be signed by any person if–

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

(ii) it is not shown that the signature or initials was or were placed there neither by himself nor by any person authorized to use the signature or initials for the purpose of certificating transfers on the company's behalf.

Duties of company with respect to issue of certificates.

82. (1) *(a)* Every company shall, within sixty days after the allotment of any of its shares, debentures or debenture stock and within sixty days after the date on which a transfer of any such shares, debentures or debenture stock is lodged with the company, complete and have ready for delivery the certificates of all shares, the debentures and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

(*b*) For the purposes of this subsection, "transfer" means a transfer duly stamped and otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

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(3) If any company on whom a notice has been served requiring the company to make good any default in complying with the provisions of subsection (1) fails to make good the default within fourteen days after the service of the notice, the court may, on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order, and any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company responsible for the default.

Certificate to be evidence of title.

83. A certificate, under the common seal of the company, specifying any shares held by any member shall be prima facie evidence of the title of the member to the shares.

Evidence of grant of probate.

84. The production to a company of any document which is by law sufficient evidence of–

(a) probate of the will, or letters or certificate of administration of the estate, of a deceased person having been granted to some person; or

(b) the Public Trustee having undertaken administration of an estate under the Public Trustee Act, shall be accepted by the company, notwithstanding anything in its articles, as sufficient evidence of such grant or undertaking.

Cap.168.

Issue and effect of share warrants to bearer.

85. (1) A company limited by shares, if so authorized by its articles, may, with respect to any fully paid-up shares, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the shares included in the warrant.

(2) Such a warrant as aforesaid is in this Act termed a share warrant.

(3) A share warrant shall entitle the bearer thereof to the shares therein specified, and the shares may be transferred by delivery of the warrant.

Penalty for personation of shareholder.

86. If any person falsely and deceitfully personates any owner of any share or interest in any company, or of any share warrant or coupon, issued in pursuance of this Act, and thereby obtains or endeavours to obtain any such share or interest or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if the offender were the true and lawful owner, he shall be liable to imprisonment for a term not exceeding seven years.

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Offences in connection with share warrants.

87. (1) If any person–

(a) with intent to defraud, forges or alters, or offers, utters, disposes of or puts off, knowing the same to be forged or altered, any share warrant or coupon, or any document purporting to be a share warrant or coupon, issued in pursuance of this Act; or

(b) by means of any such forged or altered share warrant, coupon or document, purporting as aforesaid, demands or endeavours to obtain or receive any share or interest in any company under this Act, or to receive any dividend or money payable in respect thereof, knowing the warrant, coupon or document to be forged or altered,

he shall be liable to imprisonment for life.

(2) If any person without lawful authority or excuse, proof whereof shall lie on him–

(a) engraves or makes on any plate, wood, stone or other material any share warrant or coupon purporting to be-

(i) a share warrant or coupon issued or made by any particular company in pursuance of this Act; or

(ii) a blank share warrant or coupon so issued or made; or

(iii) a part of such a share warrant or coupon; or

(b) uses any such plate, wood, stone or other material for the making or printing of any such share warrant or coupon, or of any such blank share warrant or coupon, or any part thereof respectively; or

(c) knowingly has in his custody or possession any such plate, wood, stone or other material,

he shall be guilty of an offence and liable to imprisonment for a term not exceeding fourteen years.

Special Provisions as to Debentures

Provisions as to registers of debenture holders.

88. (1) Every company which, after the appointed day, issues a series of debentures shall keep at the registered office of the company a register of holders of such debentures:

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Provided that–

(i) where the work of making up such register is done at some office of the company other than the registered office such register may be kept at such office; and

(ii) where the work of making up such register is by arrangement by the company undertaken by some person on behalf of the company such register may be kept at the office of that person at which the work is done.

(2) Every company shall give notice to the registrar of the place where the register is kept and of any change in that place:

Provided that a company shall not be bound to give notice under this subsection if the register has been kept at the registered office of the company.

Rights of debenture-holders and shareholders to inspect register of debenture-holders and to have copies of trust deed.

89. (1) Every register of holders of debentures of a company shall, except when duly closed (but subject to such reasonable restrictions as the company may in general meeting impose so that not less than two hours in each day shall be allowed for inspection), be open to the inspection of the registered holder of any such debentures or any holder of shares in the company without fee, and of any other person on payment of a fee of two shillings or such less sum as may be prescribed by the company.

(2) Every registered holder of debentures and every holder of shares in a company may require a copy of the register of the holders of debentures of the company or any part thereof on payment of one shilling for every hundred words required to be copied.

(3) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed of the sum of one shilling or such less sum as may be prescribed by the company, or, where the trust deed has not been printed, on payment of one shilling for every hundred words required to be copied.

(4) If inspection is refused, or a copy is refused or not forwarded, the company and every officer of the company who is in default shall be liable to a fine not exceeding one hundred shillings, and further shall be liable to a default fine of forty shillings.

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(5) Where a company is in default as aforesaid, the court may by order compel an immediate inspection of the register or direct that the copies required shall be sent to the person requiring them.

(6) For the purposes of this section, a register shall be deemed to be duly closed if closed in accordance with provisions contained in the articles or in the debentures or, in the case of debenture stock, in the stock certificates, or in the trust deed or other document securing the debentures or debenture stock, during such period or periods, not exceeding in the whole thirty days in any year, as may be therein specified.

Liability of trustees for debenture-holders.

90. (1) Subject to the following provisions of this section, any provision contained in a trust deed for securing an issue of debentures, or in any contract with the holders of debentures secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from or indemnifying him against liability for breach of trust where he fails to show the degree of care and diligence required of him as trustee, having regard to the provisions of the trust deed conferring on him any powers, authorities or discretions.

(2) Subsection (1) shall not invalidate–

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

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

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

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

(3) Subsection (1) shall not operate -

(a) to invalidate any provision in force at the commencement of this Act so long as any person then entitled to the benefit of that provision or afterwards given the benefit thereof under subsection (4) remains a trustee of the deed in question; or

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

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

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

(b) to any named trustees or proposed trustees thereof,

by a resolution passed by 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 in accordance with the provisions of the deed or, if the deed makes no provision for summoning meetings, a meeting summoned for the purpose in any manner approved by the court.

Perpetual debentures.

91. A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the commencement of this Act, shall not be invalid by reason only that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.

Power to reissue redeemed debentures in certain cases.

92. (1) Where either before or after the commencement of this Act a company has redeemed any debentures previously issued, then-

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

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

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

(2) Subject to the provisions of section 93, on a reissue of redeemed debentures the person entitled to the debentures shall have, and shall be deemed always to have had, the same priorities as if the debentures had never been redeemed.

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(3) Where a company has either before or after the commencement of this Act deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(4) The reissue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the reissue or issue was made before or after the commencement of this Act, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued:

Provided that any person lending money on the security of a debenture reissued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty.

Saving, in case of reissued debentures, of rights of certain mortgagees.

93. Where any debentures which were redeemed before 1st January, 1934, have been reissued after that day and before the commencement of this Act or are reissued after the commencement of this Act, the reissue of the debentures shall not prejudice and shall be deemed never to have prejudiced any right or priority which any person would have had under or by virtue of any mortgage or charge created before such date.

Specific performance of contracts to subscribe for debentures.

94. 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.

Payment of certain debts out of assets subject to floating charge in priority to claims under the charge.

95. (1) Where, either a receiver is appointed on behalf of the holders of any debentures of a company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding up are under the provisions of Part VI relating to preferential payments to be paid in priority to all other debts, shall be paid out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

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(2) The periods of time mentioned in the provisions of Part VI shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.

(3) Where the date referred to in subsection (2) occurred before the commencement of this Act, subsections (1) and (2) shall have effect with the substitution, for references to the provisions of Part VI, of references to the provisions which, by virtue of subsection (9) of section 311, are deemed to remain in force in the case therein mentioned.

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

PART IV – REGISTRATION OF CHARGES

Registration of Charges with Registrar

Registration of charges.
25 of 1963, Sch,
19 of 1985, Sch.

96. (1) Subject to the provisions of this Part, every charge created after the fixed date by a company registered in Kenya and being a charge to which this section applies shall, so far as any security on the company's property or undertaking is conferred thereby, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge, together with the instrument, if any, by which the charge is created or evidenced are delivered to or received by the registrar for registration within forty-two days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a charge becomes void under this section the money secured thereby shall immediately become payable.

(2) This section applies to the following charges-

(a) a charge for the purpose of securing any issue of debentures;

(b) a charge on uncalled share capital of the company;

(c) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as an instrument under the Chattels Transfer Act; Cap. 28.

(d) a charge on immovable property, wherever situate, or any interest therein;

(e) a charge on book debts of the company;

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(f) a floating charge on the undertaking or property of the company;

(g) a charge on calls made but not paid;

(h) a charge on a ship or any share in a ship;

(i) a charge on goodwill, on a patent or a licence under a patent, on a trade mark or on a copyright or a licence under a copyright.

(3) In the case of a charge created out of Kenya comprising property situate outside Kenya, the delivery to and the receipt by the registrar of a copy verified in the prescribed manner of the instrument by which the charge is created or evidenced, shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself, and forty-two days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in Kenya, shall be substituted for forty-two days after the date of the creation of the charge, as the time within which the particulars and instrument or copy are to be delivered to the registrar.

(4) The instrument creating or purporting to create a charge may be sent for registration under this section notwithstanding that further proceedings may be necessary to make the charge valid or effectual.

(5) Where a negotiable instrument has been given to secure the payment of any book debts of a company the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a charge on those book debts.

(6) The holding of debentures entitling the holder to a charge on immovable property shall not, for the purposes of this section, be deemed to be an interest in immovable property.

(7) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it shall for the purposes of this section be sufficient if there are delivered to or received by the registrar within forty-two days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars-

(a) the total amount secured by the whole series; and

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

(c) a general description of the property charged; and

(d) the names of the trustees, if any, for the debenture holders, together with the deed containing the charge or a copy thereof verified in the prescribed manner, or, if there is no such deed, one of the debentures of the series:

Provided that, where more than one issue is made of debentures in the series, there shall be delivered to the registrar for registration within forty-two days after the date of its issue particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

(8) Where any commission, allowance or discount has been paid or made either directly or indirectly by a company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be sent for registration under this section shall include particulars as to the amount or rate per cent of the commission, discount or allowance so paid or made, but omission to do this shall not affect the validity of the debentures issued:

Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this subsection be treated as the issue of the debentures at a discount.

(9) In this Part–

(a) "charge" includes mortgage;

(b) "the fixed date" means, in relation to the charges specified in paragraphs *(a)* to *(f)*, both inclusive, of subsection (2), the 1st April, 1922, and in relation to the charges specified in paragraphs *(g)* to *(i)*, both inclusive, of that subsection, 1st January, 1934;

(c) a charge shall be deemed to be created in the case of an instrument creating a charge on the date of the execution thereof by or on behalf of the company, and in the case of a charge created by deposit of title deeds on the date of the deposit thereof.

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Duty of company to register charges created by company.

97. (1) It shall be the duty of a company to deliver to the registrar for registration the particulars of every charge created by the company and of the issues of debentures of a series, requiring registration under section 96, but registration of any such charge may be effected on the application of any person interested therein.

(2) Where registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the registrar on registration.

(3) If any company fails for a period of forty-two days or such extended period as the court may have ordered to deliver to the registrar for registration the particulars of any charge created by the company, or of the issues of debentures of a series, requiring registration as aforesaid, then, unless the registration has been effected on the application of some other person, the company and every officer or other person who is a party to the default shall be liable to a default fine of one thousand shillings.

Duty of company to register charges existing on property acquired.

98. (1) Where after the commencement of this Act a company acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Part, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or evidenced, to be delivered to the registrar for registration within forty-two days after the date on which the acquisition is completed:

Provided that, if the property is situate and the charge was created outside Kenya, forty-two days after the date on which the copy of the instrument could in due course of post, and if despatched with due diligence, have been received in Kenya shall be substituted for forty-two days after the completion of the acquisition as the time within which the particulars and the copy of the instrument are to be delivered to the registrar.

(2) If default is made in complying with this section the company and every officer of the company who is in default shall be liable to a default fine of one thousand shillings.

Certificate of registration of charge.

99. The registrar shall give a certificate under his hand of the registration of any charge registered in pursuance of and within any period allowed under this Part, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this Part as to registration have been complied with.

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Endorsement of certificate of registration on debentures.

100. (1) The company shall cause a copy of every certificate of registration given under section 99 to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the charge so registered:

Provided that nothing in this subsection shall be construed as requiring a company to cause a certificate of registration of any charge so given to be endorsed on any debenture or certificate of debenture stock issued by the company before the charge was created.

(2) If any person knowingly and wilfully authorizes or permits the delivery of any debenture or certificate of debenture stock which under the provisions of this section is required to have endorsed on it a copy of a certificate of registration without the copy being so endorsed upon it, he shall, without prejudice to any other liability, be liable to a fine not exceeding two thousand shillings.

Registration of satisfaction and release of property from charge.

101. The registrar on evidence being given to his satisfaction with respect to any registered charge-

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

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

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

Extension of time to register charges.

102. The court, on being satisfied that the omission to register a charge within the time required by this Act or that the omission or mis-statement of any particular with respect to any such 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 shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the court just and expedient, order that the time for registration shall be extended, or, as the case may be, that the omission or mis-statement shall be rectified.

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Registration of enforcement of security.

103. (1) If any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall, within seven days from the date of the order or of the appointment under the said powers, give notice of the fact to the registrar.

(2) Where any person appointed receiver or manager of the property of a company under the powers contained in any instrument ceases to act as such receiver or manager, he shall, within seven days of so ceasing, give the registrar notice to that effect.

(3) If any person makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding one hundred shillings for every day during which the default continues.

Provisions as to Company's Register of Charges and as to copies of Instruments Creating Charges

Copies of instruments creating charges to be kept by company.

104. Every company shall cause a copy of every instrument creating any charge requiring registration under this Part to be kept at the registered office of the company:

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

Company's register of charges.

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

(2) If any director, manager, or other officer of the company knowingly and willfully authorizes or permits the omission of any entry required to be made in pursuance of this section, he shall be liable to a fine not exceeding one thousand shillings.

Right to inspect copies of instruments creating charges and company's register of charges.

106. (1) The copies of instruments creating any charge requiring registration under this Part with the registrar, and the register of charges kept in pursuance of section 105, shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day shall be allowed for inspection) to the inspection of any creditor or member of the company without fee, and the register of charges shall also be open to the inspection of any other person on payment of such fee, not exceeding two shillings for each inspection, as the company may prescribe.

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(2) If inspection of the said copies or register is refused, any officer of the company refusing inspection, and every director and manager of the company authorizing or knowingly and wilfully permitting the refusal, shall be liable to a fine not exceeding one hundred shillings, and a further fine not exceeding forty shillings for every day during which the refusal continues, and the court may by order compel an immediate inspection of the copies or register.

PART V– MANAGEMENT AND ADMINISTRATION

Registered Office and Name

Registered office of company.

107. (1) A company shall, as from the day on which it begins to carry on business or as from the fourteenth day after the date of its incorporation, whichever is the earlier, have a registered office and a registered postal address to which all communications and notices may be addressed.

(2) If default is made in complying with this section the company and every officer of the company who is in default shall be liable to a default fine.

Notification of situation of registered office and of change therein.

108. (1) Notice of the situation of the registered office and the registered postal address, and of any change therein, shall be given within fourteen days after the date of incorporation of the company or of the change, as the case may be, to the registrar for registration.

(2) The inclusion in the annual return of a company of a statement as to the situation of its registered office or as to its registered postal address shall not be taken to satisfy the obligations imposed by this section.

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

Publication of name by company, and form of seal.

109. (1) Every company–

(a) shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in easily legible roman letters; and

(b) shall have its name engraven in legible roman letters on its seal which shall take the form of an embossed metal die; and

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(c) shall have its name mentioned in legible roman letters in all business letters of the company and in all notices and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts and letters of credit of the company.

(2) If a company does not paint or affix its name in manner directed by this Act, the company and every officer of the company who is in default shall be liable to a fine not exceeding one hundred shillings and if a company does not keep its name painted or affixed in manner so directed, the company and every officer of the company who is in default shall be liable to a default fine.

(3) If a company fails to comply with paragraph (b) or (c) of subsection (1), the company shall be liable to a fine not exceeding one thousand shillings.

(4) If an officer of a company or any person on its behalf-

(a) uses or authorizes the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid or which is not in the form of an embossed metal die; or

(b) issues or authorizes the issue of any business letter of the company or any notice or other official publication of the company, or signs or authorizes to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque or order for money or goods wherein its name is not mentioned in manner aforesaid; or

(c) issues or authorizes the issue of any bill of parcels, invoice, receipt or letter of credit of the company wherein its name is not mentioned in manner aforesaid,

he shall be liable to a fine not exceeding one thousand shillings, and shall further be personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods for the amount thereof unless it is duly paid by the company.

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Statement of Amount of Paid-up Capital

Statement of amount of capital subscribed and amount paid up.

110. (1) Where any notice, advertisement or other official publication of a company contains a statement of the amount of the authorized capital of the company, such notice, advertisement, or other official publication shall also contain a statement in an equally prominent position and in equally conspicuous characters of the amount of the capital which has been subscribed and the amount paid up.

(2) Any company which makes default in complying with the requirements of this section and every officer who is in default shall be liable to a fine not exceeding one thousand shillings.

Restrictions on Commencement of Business

Restrictions on commencement of business.

111. (1) Where a company having a share capital has issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers unless-

(a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; and

(b) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and

(c) no money is or may become liable to be repaid to applicants for any shares or debentures which have been offered for public subscription by reason of any failure to apply for or to obtain permission for the shares or debentures to be dealt in on any stock exchange; and

(d) there has been delivered to the registrar for registration a statutory declaration by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with.

(2) Where a company having a share capital has not issued a prospectus inviting the public to subscribe for its shares, or has issued a prospectus but has failed to raise the minimum subscription, the company shall not commence any business or exercise any borrowing powers unless–

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(a) there has been delivered to the registrar for registration a statement in lieu of prospectus; and

(b) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash; and

(c) there has been delivered to the registrar for registration a statutory declaration by the secretary or one of the directors, in the prescribed form, that paragraph *(b)* of this subsection has been complied with.

(3) The registrar shall, on the delivery to him of the said statutory declaration, and, in the case of a company which is required by this section to deliver a statement in lieu of prospectus, of such a statement, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled.

(4) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date and on that date it shall become binding.

(5) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(6) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding one thousand shillings for every day during which the contravention continues.

(7) This section shall not apply to a private company.

Register of Members

Register of members.

112. (1) Every company shall keep a register of its members and enter therein the following particulars-

(a) the names and postal addresses of the members, and in the case of a company having a share capital a statement of the shares held by each member, distinguishing each share by its number so long as the share has a number,

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and of the amount paid or agreed to be considered as paid on the shares of each member;

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

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

Provided that where the company has converted any of its shares into stock the register shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares specified in paragraph *(a)*.

(2) The register of members shall be kept at the registered office of the company:

Provided that–

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

(ii) if the company arranges with some other person for the making up of the register to be undertaken on behalf of the company by that other person, it may be kept at the office of that other person at which the work is done,

so, however, that it shall not be kept at a place outside Kenya.

(3) Every company shall send notice to the registrar of the place where its register of members is kept and of any change in that place:

Provided that a company shall not be bound to send notice under this subsection where the register has, at all times since it came into existence or, in the case of a register in existence at the commencement of this Act, at all times since then been kept at the registered office of the company.

(4) Where a company makes default in complying with subsection (1) or makes default for fourteen days in complying with subsection (3), the company and every officer of the company who is in default shall be liable to a default fine.

Index of members.

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

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and shall, within fourteen days after the date on which any alteration is made in the register of members, make any necessary alteration in the index.

(2) The index, which may be in the form of a card index, shall in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.

(3) The index shall be at all times kept at the same place as the register of members.

(4) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

Provisions as to entries in register in relation to share warrants.

114. (1) On the issue of a share warrant the company shall strike out of its register of members the name of the member then entered therein as holding the shares specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely–

(a) the fact of the issue of the warrant;

(b) a statement of the shares included in the warrant, distinguishing each share by its number; and

(c) the date of the issue of the warrant.

(2) The bearer of a share warrant shall, subject to the articles of the company, be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members.

(3) The company shall be responsible for any loss incurred by any person by reason of the company entering in the register the name of a bearer of a share warrant in respect of the shares therein specified without the warrant being surrendered and cancelled.

(4) Until the warrant is surrendered, the particulars specified in subsection (1) shall be deemed to be the particulars required by this Act to be entered in the register of members, and, on the surrender, the date of the surrender shall be entered.

(5) Subject to the provisions of this Act, the bearer of a share warrant may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Act, either to the full extent or for any purposes defined in the articles.

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Inspection of register and index.

115. (1) Except when the register of members is closed under the provisions of this Act, the register, and index of the names, of the members of a company shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge and of any other person on payment of two shillings, or such less sum as the company may prescribe, for each inspection.

(2) (*a*) Any member or other person may require a copy of the register, or of any part thereof, on payment of one shilling or such less sum as the company may prescribe, for every hundred words or fractional part thereof required to be copied.

(b) The company shall cause any copy so required by any person to be sent to that person within a period of fourteen days commencing on the day next after the day on which the requirement is received by the company.

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

(4) In the case of any such refusal or default, the court may by order compel an immediate inspection of the register and index or direct that the copies required shall be sent to the person requiring them.

Consequences of failure to comply with requirements as to register owing to agent's default.

116. Where, by virtue of paragraph (ii) of the proviso to subsection (2) of section 112, the register of members is kept at the office of some person other than the company, and by reason of any default of his the company fails to comply with subsection (3) of that section, subsection (3) of section 113, or section 115 or with any requirements of this Act as to the production of the register, that other person shall be liable to the same penalties as if he were an officer of the company who was in default, and the power of the court under Subsection (4) of section 115 shall extend to the making of orders against that other person and his officers and servants.

Power to close register.

117. A company may, on giving notice by advertisement in some newspaper circulating in Kenya or in that area of Kenya in which the registered office of the company is situate, close the register of members for any time or times not exceeding in the whole thirty days in each year.

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Power of court to rectify register.

118. (1) If–

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

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

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

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

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

(4) In the case of a company required by this Act to send a list of its members to the registrar, the court, when making an order for rectification of the register shall by its order direct notice of the rectification to be given to the registrar.

Trusts not to be entered on register.

119. No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the registrar.

Register to be evidence.

120. The register of members shall be prima facie evidence of any matters by this Act directed or authorized to be inserted therein.

Branch Register

Power for company to keep branch register.

121. (1) A company having a share capital may, if so authorized by its articles, cause to be kept in any part of the Commonwealth outside Kenya a branch register of members resident in that part of the Commonwealth (in this Act called a branch register).

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

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notice shall be given within one month of the opening of the office or of the change or discontinuance, as the case may be.

(3) If default is made in complying with subsection (2), the company and every officer of the company who is in default shall be liable to a default fine.

Regulations as to branch register.

122. (1) A branch register shall be deemed to be part of the company's register of members (in this section called the principal register).

(2) A branch register shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement required by section 117 to be given before closing the register shall be inserted in some newspaper circulating in the area where the branch register is kept.

(3) The company shall–

(a) transmit to its registered office a copy of every entry in its branch register as soon as may be after the entry is made; and

(b) cause to be kept at the place where the company's principal register is kept a duplicate of its branch register duly entered up from time to time;

and every such duplicate shall for all the purposes of this Ordinance be deemed to be part of the principal register.

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

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

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

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(7) If default is made in complying with subsection (3), the company and every officer of the company who is in default shall be liable to a default fine; and where, by virtue of paragraph (ii) of the proviso to subsection (2) of section 112, the principal register is kept at the office of some person other than the company and by reason of any default of his the company fails to comply with paragraph *(b)* of subsection(3) of this section, he shall be liable to the same penalty as if he were an officer of the company who was in default.

Stamp duty in case of transfer of shares registered in branch registers.

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

Provisions as to branch registers of Commonwealth companies kept in Kenya.

124. If by virtue of the law in force in any part of the Commonwealth companies incorporated under that law have power to keep in Kenya branch registers of their members resident in Kenya, the Minister may, by notice in the Gazette, direct that subsection (2) of section 112, except the proviso thereto, and sections 115 and 118, shall, subject to any modifications and adaptations specified in the notice, apply to and in relation to any such branch registers kept in Kenya as they apply to and in relation to the registers of companies within the meaning of this Act.

Annual Return

Annual return to be made by company having a share capital.

125. (1) Every company having a share capital shall, once at least in every year, make a return containing, with respect to the registered office of the company, registers of members and debenture holders, shares and debentures, indebtedness, past and present members and directors and secretary, the matters specified in Part I of the Fifth Schedule, and the said return shall be in the form and shall be made up to the date set out in Part II of that Schedule or as near thereto as circumstances admit:

Provided that–

(i) a company need not make a return under this subsection either in the year of its incorporation or, if it is not required by section 131 to hold an annual general meeting during the following year in that year;

(ii) where the company has converted any of its shares into stock the list referred to in paragraph 5 of Part I of the Fifth Schedule shall state the amount of stock held by each of the existing members instead of the amount of shares and the particulars relating to shares required by that paragraph;

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(iii) the return may, in any year, if the return for either of the two immediately preceding years has given as at the date of that return the full particulars required by the said paragraph 5, give only such of the particulars required by that paragraph as relate to persons ceasing to be or becoming members since the date of the last return and to shares transferred since that date or to changes as compared with that date in the amount of stock held by a member.

(2) In the case of a company keeping a branch register -

(a) references in paragraph (iii) of the proviso to subsection (1) to the particulars required by paragraph 5 of Part I of the Fifth Schedule shall be taken as not including any such particulars contained in the branch register, in so far as copies of the entries containing those particulars are not received at the registered office of the company before the date when the return in question is made; and

(b) where an annual return is made between the date when any entries are made in the branch register and the date when copies of those entries are received at the registered office of the company the particulars contained in those entries, so far as relevant to an annual return, shall be included in the next or a subsequent annual return as may be appropriate having regard to the particulars included in that return with respect to the company's register of members.

(3) If a company fails to comply with this section, the company and every officer of the company who is in default shall be liable to a default fine.

(4) For the purposes of this section and of Part I of the Fifth Schedule, "director" and "officer" include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

Annual return to be made by company not having a share capital.

126. (1) Every company not having a share capital shall once at least in every calendar year make a return stating -

(a) the situation of the registered office of the company and the registered postal address thereof;

(b) in a case in which the register of members is, under the provisions of this Act, kept elsewhere than at the registered office, the address of the place where it is kept;

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(c) in a case in which any register of holders of debentures of a company or part of any such register is, under the provisions of this Act, kept, in Kenya, elsewhere than at the registered office of the company, the address of the place where it is kept; and

(d) all such particulars with respect to the persons who at the date of the return are the directors of the company and any person who at that date is secretary of the company as are by this Act required to be contained with respect to directors and the secretary respectively in the register of directors and secretaries of a company:

Provided that a company need not make a return under this subsection either in the year of its incorporation or, if it is not required by section 131 to hold an annual general meeting during the following year, in that year.

(2) There shall be annexed to the return a statement containing particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the registrar under this Act, or which would have been required so to be registered if created after the 1st April, 1922.

(3) If a company fails to comply with this section, the company and every officer of the company who is in default shall be liable to a default fine.

(4) For the purposes of this section, "officer" and "director" include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

Time for completion of annual return.

127. (1) The annual return shall be completed within forty-two days after the annual general meeting for the year, whether or not that meeting is the first or only ordinary general meeting, or the first or only general meeting, of the company in the year, and the company shall within such period deliver to the registrar a copy signed both by a director and by the secretary of the company.

(2) *(a)* If a company fails to comply with this section, the company and every officer of the company who is in default shall be liable to a default fine.

(*b*) For the purposes of this subsection, "officer" includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

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Documents to be annexed to annual return.

128. (1) There shall be annexed to the annual return–

(a) a copy, certified both by a director and by the secretary of the company to be a true copy, of every balance sheet laid before the company in general meeting during the period to which the return relates (including every document required by law to be annexed to the balance sheet); and

(b) a copy, certified as aforesaid, of the report of the auditors on, and of the report of the directors accompanying, each such balance sheet,

and, where any such balance sheet or document required by law to be annexed thereto is in a foreign language, there shall be annexed to that balance sheet a translation in the English language of the balance sheet or document certified in the prescribed manner to be a correct translation.

(2) If any such balance sheet as aforesaid or document required by law to be annexed thereto did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets or documents aforesaid, as the case may be, there shall be made such additions to and corrections in the copy as would have been required to be made in the balance sheet or document in order to make it comply with the said requirements, and the fact that the copy has been so amended shall be stated thereon.

(3) *(a)* If a company fails to comply with this section, the company and every officer of the company who is in default shall be liable to a default fine.

(b) For the purposes of this subsection, "officer" includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

(4) The provisions of subsection (1) shall not apply to a private company unless at least one shareholder is a company which is not a private company.

Certificates to be sent by private company with annual return.

129. The annual return required by section 125 shall, in the case of a private company, be endorsed with or accompanied by a certificate signed both by a director and by the secretary of the company that the company has not, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company, and, where the annual return discloses the fact that the number of members of the company exceeds fifty, also a

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certificate so signed that the excess consists wholly of persons who under paragraph *(b)* of subsection (1) of section 30 are not to be included in reckoning the number of fifty.

Meetings and Proceedings

Statutory meeting and statutory report.

130. (1) Every company limited by shares and every company limited by guarantee and having a share capital shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called the statutory meeting.

(2) The directors shall, at least fourteen days before the day on which the meeting is held, forward a report (in this Act referred to as the statutory report) to every member of the company:

Provided that if the statutory report is forwarded later than is required by this subsection, it shall, notwithstanding that fact, be deemed to have been duly forwarded if it is so agreed by all the members entitled to attend and vote at the meeting.

(3) The statutory report shall be certified by not less than two directors of the company and shall state-

(a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;

(b) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid;

(c) an abstract of the receipts of the company and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company;

(d) the names, postal addresses and descriptions of the directors, auditors, if any, managers, if any, and secretary of the company; and

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(e) the particulars of any contract the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

(4) the statutory report shall, so far as it relates to shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors, if any, of the company.

(5) The directors shall cause a copy of the statutory report, certified as required by this section, to be delivered to the registrar for registration forthwith after the sending thereof to the members of the company.

(6) The directors shall cause a list showing the names and postal addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting and to remain open and accessible to any member of the company during the continuance of the meeting.

(7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(8) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(9) In the event of any default in complying with the provisions of this section, every director of the company who is knowingly and wilfully guilty of the default, or, in the case of default by the company, every officer of the company who is in default, shall be liable to a fine not exceeding one thousand shillings.

(10) This section shall not apply to a private company.

Annual general meeting.

131. (1) Every company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

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

(2) If default is made in holding a meeting of the company in accordance with subsection (1), the registrar may, on the application of any member of the company, call or direct the calling of a general meeting of the company and give such ancillary or consequential directions as the registrar thinks expedient, including directions modifying or supplementing, in relation to the calling, holding and conducting of the meeting, the operation of the company's articles; and it is hereby declared that the directions that may be given under this subsection include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(3) A general meeting held in pursuance of subsection (2) shall, subject to any directions of the registrar, be deemed to be an annual general meeting of the company; but, where a meeting so held is not held in the year in which the default in holding the company's annual general meeting occurred, the meeting so held shall not be treated as the annual general meeting for the year in which it is held unless at that meeting the company resolves that it shall be so treated.

(4) Where a company resolves that a meeting shall be so treated, a copy of the resolution shall, within fourteen days after the passing thereof, be forwarded to the registrar for registration.

(5) If default is made in holding a meeting of the company in accordance with subsection (1), or in complying with any directions of the registrar under subsection (2), the company and every officer of the company who is in default shall be liable to a fine not exceeding two thousand shillings, and if default is made in complying with subsection (4), the company and every officer of the company who is in default shall be liable to a default fine of forty shillings.

Convening of extraordinary general meeting on requisition.

132. (1) The directors of a company, notwithstanding anything in its articles, shall, on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as at the date of the deposit carries the right of voting at general meetings of the company, or, in the case of a company not having a share capital, members of the company representing not less than one-tenth of the total voting rights of all the members having at the said date a right to vote at general meetings of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.

(2) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of

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the company, and may consist of several documents in like form each signed by one or more requisitionists.

(3) If the directors do not within twenty-one days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists, or any of them representing more than one-half of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of three months from the said date.

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

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

(6) For the purposes of this section the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required by section 141.

Length of notice for calling meetings.

133. (1) (*a*) Any Provision of a company's articles shall be void in so far as it provides for the calling of a meeting of the company (other than an adjourned meeting) by a shorter notice than twenty-one days.

(b) Every such notice shall be in writing.

(2) Save in so far as the articles of a company make other provision in that behalf (not being a provision avoided by subsection (1)) a meeting of the company (other than an adjourned meeting) may be called by twenty-one days notice in writing.

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

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

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(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 together holding not less than ninety-five per cent in nominal value of the shares giving a right to attend and vote at the meeting, or, in the case of a company not having a share capital, together representing not less than ninety-five per cent of the total voting rights at that meeting of all the members.

General provisions as to meetings and votes.

134. The following provisions shall have effect in so far as the articles of the company do not make other provision in that behalf–

(a) notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by Table A, and, for the purpose of this paragraph, "Table A" means that Table as for the time being in force;

(b) two or more members holding not less than one-tenth of the issued share capital or, if the company has not a share capital, not less than five per cent in number of the members of the company may call a meeting;

(c) in the case of a private company two members, and in the case of any other company three members, personally present shall be a quorum;

(d) any member elected by the members present at a meeting may be chairman thereof;

(e) in the case of a company originally having a share capital, every member shall have one vote in respect of each share or each two hundred shillings of stock held by him, and in any other case every member shall have one vote.

Power of court to order meeting.

135. (1) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in manner prescribed by the articles or this Act, the court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the court thinks fit, and where any such order is made may give such ancillary or consequential directions as it thinks expedient; and it is hereby declared that the directions that may be given under this subsection include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

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(2) Any 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.

Proxies.

136. (1) Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of him, and a proxy appointed to attend and vote instead of a member of a private company shall also have the same right as the member to speak at the meeting:

Provided that, unless the articles otherwise provide–

(i) this subsection shall not apply in the case of a company not having a share capital; and

(ii) a member of a private company shall not be entitled to appoint more than one proxy to attend on the same occasion; and

(iii) a proxy shall not be entitled to vote except on a poll.

(2) In every notice calling a meeting of a company having a share capital there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy or, where that is allowed, one or more proxies to attend and vote instead of him, and that a proxy need not also be a member; and if default is made in complying with this subsection as respects any meeting, every officer of the company who is in default shall be liable to a fine not exceeding one thousand shillings.

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

(4) If for the purpose of any meeting of a company invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to some only of the members entitled to be sent a notice of the meeting and to vote thereat by proxy, every officer of the company who knowingly and willfully authorizes or permits their issue as aforesaid shall be liable to a fine not exceeding two thousand shillings:

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

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

Rights to demand a poll.

137. (1) Any provision contained in a company's articles shall be void in so far as it would have the effect either -

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

(b) of making ineffective a demand for a poll on any such question which is made either–

(i) by not less than five members having the right to vote at the meeting; or

(ii) by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or

(iii) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all shares conferring that right.

(2) The instrument appointing a proxy to vote at a meeting of a company shall be deemed also to confer authority to demand or join in demanding a poll, and for the purposes of subsection (1) a demand by a person as proxy for a member shall be the same as a demand by the member.

Voting on a poll.

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

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Representation of corporations at meetings of companies and of creditors.

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

(a) if it is a member of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company;

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

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

Circulation of members' resolutions, etc.

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

(a) to give to members of the company entitled to receive notice of the next annual general meeting notice of any resolution which may properly be moved and is intended to be moved at that meeting;

(b) to circulate to members entitled to have notice of any general meeting sent to them any statement of not more than one thousand words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

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

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(a) any number of members representing not less than one-twentieth of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or

(b) not less than one hundred members holding shares in the company on which there has been paid up an average sum, per member, of not less than two thousand shillings.

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

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

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

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

(i) in the case of a requisition requiring notice of a resolution, not less than six weeks before the meeting; and

(ii) in the case of any other requisition, not less than one week before the meeting; and

(b) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect thereto:

Provided that if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date six weeks or less after

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the copy has been deposited, the copy though not deposited within the time required by this subsection shall be deemed to have been properly deposited for the purposes thereof.

(5) The company shall also not be bound under this section to circulate any statement if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on an application under this section to be paid in whole or in part by the requistionists, notwithstanding that they are not parties to the application.

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

(7) In the event of any default in complying with the provisions of this section, every officer of the company who is in default shall be liable to a fine not exceeding ten thousand shillings.

Special resolutions.

141. (1) A resolution shall be a special resolution when it has been passed by a majority of not less than three-fourths of such members as, being entitled so to do, vote in person or, where proxies are allowed, by proxy, at a general meeting of which notice specifying the intention to propose the resolution as a special resolution has been duly given:

Provided that, if it is so agreed by a majority in number of the members having the right to attend and vote at any such meeting, being a majority together holding not less than ninety-five per cent in nominal value of the shares giving that right, or, in the case of a company not having a share capital, together representing not less than ninety-five per cent of the total voting rights at that meeting of all the members, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.

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

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(3) In computing the majority on a poll demanded on the question that a special resolution be passed, reference shall be had to the number of votes cast for and against the resolution.

(4) For the purposes of this section, notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by this Act or the articles.

Resolutions requiring special notice.

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

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

Registration and copies of certain resolutions and agreements.

143. (1) A printed copy of every resolution or agreement to which this section applies shall, within thirty days after the passing or making thereof, be delivered to the registrar for registration.

(2) Where articles have been registered, a printed copy of every such resolution or agreement for the time being in force shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement.

(3) Where articles have not been registered, a printed copy of every such resolution or agreement shall be forwarded to any member at his request on payment of one shilling or such less sum as the company may direct.

(4) This section shall apply to–

(a) special resolutions;

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(b) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;

(c) resolutions or agreements which have been agreed to by all the members of some class of shareholders but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members;

(d) resolutions requiring a company to be wound up voluntarily, passed under paragraph *(a)* of subsection (1) of section 276.

(5) If a company fails to comply with subsection (1), the company and every officer of the company who is in default shall be liable to a default fine of forty shillings.

(6) If a company fails to comply with subsection (2) or subsection (3), the company and every officer of the company who is in default shall be liable to a fine not exceeding twenty shillings for each copy in respect of which default is made.

(7) For the purposes of subsections (5) and (6), a liquidator of the company shall be deemed to be an officer of the company.

Resolutions passed at adjourned meetings.

144. Where a resolution is passed at an adjourned meeting of–

(a) a company;

(b) the holders of any class of shares in a company;

(c) the directors of a company,

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

Minutes of proceedings of meetings of company and of directors.

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

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

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

(4) If a company fails to comply with subsection (1), the company and every officer of the company who is in default shall be liable to a default fine.

Inspection of minute books.

146. (1) The books containing the minutes of proceedings of any general meeting of a company shall be kept at the registered office of the company, and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge.

(2) Any member shall be entitled to be furnished within fourteen days after he has made a request in that behalf to the company with a copy of any such minutes as aforesaid at a charge not exceeding one shilling for every hundred words.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper time, the company and every officer of the company who is in default shall be liable in respect of each offence to a fine not exceeding forty shillings and further to a default fine of forty shillings.

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

Accounts and Audit

Keeping of books of account.

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

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

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

(c) the assets and liabilities of the company:

Provided that in respect of an existing company the requirement that such books of account shall be kept in the English language shall not have effect until after the expiration of a period of two years from the date of the commencement of this Act.

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

(3) (*a*) The books of account shall be kept at the registered office of the company or, subject to the provisions of paragraph *(b)*, at such other place as the directors think fit, and shall at all times be open to inspection by the directors.

(*b*) The books of account shall only be kept at a place outside Kenya with the consent of the registrar and subject to such conditions as he may impose; and if the books of account are kept at a place outside Kenya there shall be sent to, and kept at a place in, Kenya, and be at all times open to inspection by the directors, such accounts and returns with respect to the business dealt with in the books of account so kept as will disclose with reasonable accuracy the financial position of that business at intervals not exceeding six months.

(4) If any person being a director of a company fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own wilful act been the cause of any default by the company thereunder, he shall, in respect of each offence, be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding ten thousand shillings or to both:

Provided that–

(i) in any proceedings against a person in respect of an offence under this section consisting of a failure to take reasonable steps to secure compliance by the company with the requirements of this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that those requirements were complied with and was in a position to discharge that duty; and

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(ii) a person shall not be sentenced to imprisonment for such an offence unless, in the opinion of the court, the offence was committed wilfully.

Profit and Loss Account and Balance Sheet.

148. (1) The directors of every company shall, at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year, lay before the company in general meeting a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the period, in the case of the first account, since the incorporation of the company, and, in any other case, since the preceding account, made up to a date not earlier than the date of the meeting by more than nine months or, in the case of a company carrying on business or having interests abroad, by more than twelve months:

Provided that, if the registrar for any special reason thinks fit to do so, he may–

(i) in the case of any company, extend the period of eighteen months aforesaid, and in the case of any company and with respect to any year, extend the periods of nine and twelve months aforesaid; and

(ii) in the case of any company, permit the account to be laid before the company after the end of the calendar year.

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

(3) If any person being a director of a company fails to take all reasonable steps to comply with the provisions of this section, he shall, in respect of each offence, be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding ten thousand shillings or to both:

Provided that–

(i) in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the provisions of this section were complied with and was in a position to discharge that duty; and

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(ii) a person shall not be sentenced to imprisonment for such an offence unless, in the opinion of the court, the offence was committed wilfully.

General provisions as to contents and form of accounts.

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

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

(3) Save as expressly provided in the following provisions of this section or in Part III of the Sixth Schedule, the requirements of subsection (2) and the said Schedule shall be without prejudice either to the general requirements of subsection (1) or to any other requirements of this Act.

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

(5) Subsections (1) and (2) shall not apply to a company's profit and loss account if–

(a) the company has subsidiaries; and

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

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

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

(6) If any person being a director of a company fails to take all reasonable steps to secure compliance as respects any accounts laid before the company in general meeting with the provisions of this section and with the other requirements of this Act as to the matters to be stated in accounts, he shall, in respect of each offence, be liable to

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imprisonment for a term not exceeding twelve months or to a fine not exceeding ten thousand shillings or to both:

Provided that–

(i) in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the said provisions or the said other requirements, as the case may be, were complied with and was in a position to discharge that duty; and

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

(7) For the purposes of this section and the following provisions of this Act, except where the context otherwise requires -

(a) any reference to a balance sheet or profit and loss account shall include any notes thereon or document annexed thereto giving information which is required by this Act and is thereby allowed to be so given; and

(b) any reference to a profit and loss account shall be taken, in the case of a company not trading for profit, as referring to its income and expenditure account, and references to profit or to loss and, if the company has subsidiaries, references to a consolidated profit and loss account shall be construed accordingly.

Obligation to lay group accounts before holding company.

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

(2) Notwithstanding anything in subsection (1)–

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

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(b) 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 members of the company, in view of the insignificant amounts involved, or would involve expense or delay out of proportion to the value to members of the company; or

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

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

if the directors are of such an opinion about each of the company's subsidiaries, group accounts shall not be required:

Provided that the approval of the registrar shall be required for not dealing in group accounts with a subsidiary on the ground that the result would be harmful or on the ground of the difference between the business of the holding company and that of the subsidiary.

(3) If any person being a director of a company fails to take all reasonable steps to secure compliance as respects the company with the provisions of this section, he shall, in respect of each offence, be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding ten thousand shillings or to both:

Provided that–

(i) in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the requirements of this section were complied with and was in a position to discharge that duty; and

(ii) a person shall not be sentenced to imprisonment for an offence under this section unless, in the opinion of the court, the offence was committed wilfully.

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(4) For the purposes of this section a body corporate shall be deemed to be the wholly owned subsidiary of another if it has no members except that other and that other's wholly owned subsidiaries and its or their nominees.

Form of group accounts.

151. (1) Subject to subsection (2), the group accounts laid before a holding company shall be consolidated accounts comprising -

(a) a consolidated balance sheet dealing with the state of affairs of the company and all the subsidiaries to be dealt with in group accounts;

(b) a consolidated profit and loss account dealing with the profit or loss of the company and those subsidiaries.

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

(a) of presenting the same or equivalent information about the state of affairs and profit and loss of the company and those subsidiaries; and

(b) of so presenting it that it may be readily appreciated by the company's members,

the group accounts may be prepared in a form other than that required by subsection (1), and in particular may consist of more than one set of consolidated accounts dealing respectively with the company and one group of subsidiaries and with other groups of subsidiaries or of separate accounts dealing with each of the subsidiaries, or of statements expanding the information about the subsidiaries in the company's own accounts, or any combination of those forms.

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

Contents of group accounts.

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

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

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(3) Without prejudice to subsection (1), the group accounts, if prepared as consolidated accounts shall comply with the requirements of the Sixth Schedule, so far as applicable thereto, and if not so prepared shall give the same or equivalent information:

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

Financial year of holding company and subsidiary.

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

(2) Where it appears to the registrar desirable for a holding company or a holding company's subsidiary 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 submission of the relevant accounts to a general meeting from one calendar year to the next, the registrar may on the application or with the consent of the directors of the company whose financial year is to be extended direct that, in the case of that company, the submission of accounts to a general meeting, the holding of an annual general meeting or the making of an annual return shall not be required in the earlier of the said calendar years.

Meaning of "holding company" and "subsidiary".

154. (1) For the purposes of this Act, a company shall, subject to the provisions of subsection (3), be deemed to be a subsidiary of another if, but only if–

(a) that other either–

(i) is a member of it and controls the composition of its board of directors; or

(ii) holds more than half in nominal value of its equity share capital; or

(b) the first-mentioned company is a subsidiary of any company which is that other's subsidiary.

(2) For the purposes of subsection (1) the composition of a company's board of directors shall be deemed to be controlled by another company if, but only if, that other company by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove the holders of all or a majority of the directorships; but for the purposes of this provision that other company

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shall be deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied, that is to say -

(a) that a person cannot be appointed thereto without the exercise in his favour by that other company of such a power as aforesaid; or

(b) that a person's appointment thereto follows necessarily from his appointment as director of that other company; or

(c) that the directorship is held by that other company itself or by a subsidiary of it.

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

(a) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it;

(b) subject to paragraphs *(c)* and *(d)*, any shares held or power exercisable -

(i) by any person as a nominee for that other (except where that other is concerned only in a fiduciary capacity); or

(ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other;

(c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded;

(d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary (not being held or exercisable as mentioned in paragraph *(c)*) shall be treated as not held or exercisable by that other if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

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(4) For the purposes of this Act, a company shall be deemed to be another's holding company if, but only if, that other is its subsidiary.

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

Signing of balance sheet.

155. (1) Every balance sheet of a company shall be signed on behalf of the board by two of the directors of the company, or, if there is only one director, by that director.

(2) In the case of a banking company the balance sheet must be signed by the secretary or manager, if any, and, where there are more than three directors of the company, by at least three of those directors, and, where there are not more than three directors, by all the directors.

(3) When the total number of the directors of the company for the time being in Kenya is less than the number of directors whose signatures are required by this section, the balance sheet shall be signed by all the directors for the time being in Kenya or, if there is only one director for the time being in Kenya, by such director, but in any such case there shall be subjoined to the balance sheet a statement signed by such directors or director explaining the reason for non-compliance with the provisions of this section.

(4) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated or published, the company and every officer of the company who is in default shall be liable to a fine not exceeding one thousand shillings.

Accounts and auditors' report to be annexed to balance sheet.

156. (1) The profit and loss account, and, so far as not incorporated in the balance sheet or profit and loss account, any group accounts laid before the company in general meeting, shall be annexed to the balance sheet, and the auditors' report shall be attached thereto.

(2) Any accounts so annexed shall be approved by the board of directors before the balance sheet is signed on their behalf.

(3) If any copy of a balance sheet is issued, circulated or published without having annexed thereto a copy of the profit and loss account or any group accounts required by this section to be so annexed, or without having attached thereto a copy of the auditors' report, the company and every officer of the company who is in default shall be liable to a fine not exceeding one thousand shillings.

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Directors' report to be attached to balance sheet.

157. (1) There shall be attached to every balance sheet laid before a company in general meeting a report by the directors with respect to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend, and the amount, if any, which they propose to carry to reserves within the meaning of the Sixth Schedule.

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

(3) If any person being a director of a company fails to take all reasonable steps to comply with the Provisions of subsection (1), he shall, in respect of each offence, be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding ten thousand shillings or to both:

Provided that–

(i) in any proceedings against a person in respect of an offence under subsection (1), it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the provisions of that subsection were complied with and was in a position to discharge that duty; and

(ii) a person shall not be liable to be sentenced to imprisonment for such an offence unless, in the opinion of the court, the offence was committed wilfully.

Right to receive copies of balance sheets and auditors' report.

158. (1) A copy of every balance sheet, including every document required by law to be annexed thereto, which is to be laid before a company in general meeting, together with a copy of the auditors' report, shall, not less than twenty-one days before the date of the meeting, be sent to every member of the company (whether he is or is not entitled to receive notices of general meetings of the company), every holder of debentures of the company (whether he is or is not so entitled) and all persons other than members or holders of debentures of the company, being persons so entitled:

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Provided that–

(i) in the case of a company not having a share capital, this subsection shall not require the sending of a copy of the documents aforesaid to a member of the company who is not entitled to receive notices of general meetings of the company or to a holder of debentures of the company who is not so entitled;

(ii) this subsection shall not require a copy of those documents to be sent–

(a) to a member of the company or a holder of debentures of the company, being in either case a person who is not entitled to receive notices of general meetings of the company and of whose address the company is unaware;

(b) to more than one of the joint holders of any shares or debentures none of whom are entitled to receive such notices; or

(c) in the case of joint holders of any shares or debentures some of whom are and some of whom are not entitled to receive such notices, to those who are not so entitled; and

(iii) if the copies of the documents aforesaid are sent less than twenty-one days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by all the members entitled to attend and vote at the meeting.

(2) Any member of a company, whether he is or is not entitled to have sent to him copies of the company's balance sheets, and any holder of debentures of the company, whether he is or is not so entitled, shall be entitled to be furnished on demand without charge with a copy of the last balance sheet of the company, including every document required by law to be annexed thereto, together with a copy of the auditors' report on the balance sheet.

(3) If default is made in complying with subsection (1), the company and every officer of the company who is in default shall be liable to a fine not exceeding four hundred shillings, and if, when any person makes a demand for any document with which he is by virtue of

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subsection (2) entitled to be furnished, default is made in complying with the demand within seven days after the making thereof, the company and every officer of the company who is in default shall be liable to a default fine, unless it is proved that that person has already made a demand for and been furnished with a copy of the document.

(4) The foregoing provisions of this section shall not have effect in relation to a balance sheet of a private company laid before it before the commencement of this Act, and the right of any person to be furnished with a copy of any such balance sheet and the liability of the company in respect of a failure to satisfy that right shall be the same as they would have been if this Act had not passed.

Appointment and remuneration of auditors.

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

(2) Notwithstanding the provisions of subsection (1), at any annual general meeting a retiring auditor, however appointed, shall be deemed to be reappointed without any resolution being passed unless -

(a) he is not qualified for reappointment; or

(b) a resolution has been passed at that meeting appointing somebody instead of him or providing expressly that he shall not be reappointed; or

(c) he has given the company notice in writing of his unwillingness to be reappointed:

Provided that where notice is given of an intended resolution to appoint some person or persons in place of a retiring auditor, and by reason of the death, incapacity or disqualification of that person or of all those persons, as the case may be, the resolution cannot be proceeded with, the retiring auditor shall not be deemed to be automatically reappointed by virtue of this subsection.

(3) Where at an annual general meeting no auditors are appointed or are deemed to be reappointed, the registrar may appoint a person to fill the vacancy.

(4) The company shall, within seven days of the registrar's power under subsection (3) becoming exercisable, give him notice of that fact, and, if a company fails to give notice as required by this subsection, the company and every officer of the company who is in defaul shall be liable to a default fine.

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(5) Subject as hereinafter provided, the first auditors of a company may be appointed by the directors at any time before the first annual general meeting, and auditors so appointed shall hold office until the conclusion of that meeting:

Provided that–

(i) the company may at a general meeting remove any such auditors and appoint in their place any other persons who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than fourteen days before the date of the meeting; and

(ii) if the directors fail to exercise their powers under this subsection, the company in general meeting may appoint the first auditors, and thereupon the said powers of the directors shall cease.

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

(7) (*a*) The remuneration of the auditors of a company–

(i) in the case of an auditor appointed by the directors or by the registrar may be fixed by the directors or by the registrar as the case may be;

(ii) subject to subparagraph (i), shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

(b) For the purposes of this subsection, any sums paid by the company in respect of the auditors' expenses shall be deemed to be included in the expression "remuneration".

Provisions as to resolution relating to appointment and removal of auditors.

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

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

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(3) Where notice is given of such an intended resolution as aforesaid and the retiring auditor makes with respect to the intended resolution representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so–

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

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

(4) Subsection (3) shall apply to a resolution to remove the first auditors by virtue of subsection (5) of section 159 as it applies in relation to a resolution that a retiring auditor shall not be reappointed.

Disqualifications for appointment as auditor.
2 of 1997, s. 46.
Cap. 531.

161. (1)* A person or firm shall not be qualified for appointment as auditor of a company unless he, or in the case of a firm, every partner in the firm is the holder of a practising certificate issued pursuant to section 21 of the Accountants Act, 2008.

(2) (*a*) None of the following persons shall be qualified for appointment as auditor of a company–

(i) an officer or servant of the company;

(ii) a person who is a partner of or in the employment of an officer or servant of the company;

(iii) a body corporate:

Provided that subparagraph (ii) shall not apply in the case of a private company.

(*b*) References in this subsection to an officer or servant shall be construed as not including references to an auditor.

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(3) A person shall also not be qualified for appointment as auditor of a company if he is, by virtue of subsection (2), disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company.

(4) If any person who is not qualified so to act is appointed as auditor of a company such person and the company and every officer in default shall each be liable to a fine not exceeding four thousand shillings.

Auditors' report and right of access to books and to attend and be heard at general meetings.

162. (1) The auditors shall make a report to the members on the accounts examined by them, and on every balance sheet, every profit and loss account and all group accounts laid before the company in general meeting during their tenure of office, and the report shall contain statements as to the matters mentioned in the Seventh Schedule.

(2) The auditors' report shall be read before the company in general meeting and shall be open to inspection by any member.

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

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

Construction of references to documents annexed to accounts.

163. References in this Act to a document annexed or required to be annexed to a company's accounts or any of them do not include the directors' report or the auditors' report:

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

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Investigation by the Registrar

Investigation by registrar.

164. (1) (*a*) Where the registrar has reasonable cause to believe that the provisions of this Act are not being complied with, or where, on perusal of any document which a company is required to submit to him under the provisions of this Act, he is of opinion that the document does not disclose a full and fair statement of the matters to which it purports to relate, he may, by a written order, call on the company concerned to produce all or any of the books of the company or to furnish in writing such information or explanation as he may specify in his order.

(*b*) Such books shall be produced and such information or explanation shall be furnished within such time as may be specified in the order.

(2) On receipt of an order under subsection (1) it shall be the duty of all persons who are or have been officers of the company to produce such books or to furnish such information or explanation so far as lies within their power.

(3) If any such person refuses or neglects to produce such books or to furnish any such information or explanation he shall be liable to a fine not exceeding two hundred shillings in respect of each offence.

(4) If after examination of such books or consideration of such information or explanation the registrar is of the opinion that an unsatisfactory state of affairs is disclosed or that a full and fair statement has not been disclosed the registrar shall report the circumstances of the case in writing to the court.

Inspection

Investigation of company's affairs on application of members.

165. (1) The court may appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as the court directs-

(a) in the case of a company having a share capital, on the application either of not less than two hundred members or of members holding not less than one-tenth of the shares issued;

(b) in the case of a company not having a share capital on the application of not less than one-fifth in number of the persons on the company's register of members.

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

Investigation of company's affairs in other cases.

166. Without prejudice to its powers under section 165 the court–

(a) shall appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as the court directs, if the company by special resolution declares that its affairs ought to be investigated by an inspector appointed by the court; and

(b) may do so, if it appears to the court upon a report from the registrar that there are circumstances suggesting-

(i) that the company's business is being conducted with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose or in a manner oppressive of any part of its members or that it was formed for any fraudulent or unlawful purpose; or

(ii) that persons concerned with its formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members; or

(iii) that its members have not been given all the information with respect to its affairs which they might reasonably expect; or

(iv) that it is desirable so to do.

Power of inspectors to carry investigation into affairs of related companies.

167. If an inspector appointed under either section 165 or section 166 to investigate the affairs of a company thinks it necessary for the purposes of his investigation to investigate also the affairs of any other body corporate which is or has at any relevant time been the company's subsidiary or holding company or a subsidiary of its holding company or a holding company of its subsidiary, he shall have power so to do, and shall report on the affairs of the other body corporate so far as he thinks the results of his investigation thereof are relevant to the investigation of the affairs of the first-mentioned company.

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Production of documents, and evidence on investigation.

168. (1) It shall be the duty of all officers and agents of the company and of all officers and agents of any other body corporate whose affairs are investigated by virtue of section 167 to produce to any inspector all books and documents of or relating to the company or, as the case may be, the other body corporate which are in their custody or power and otherwise to give to the inspectors all assistance in connection with the investigation which they are reasonably able to give.

(2) An inspector may examine on oath the officers and agents of the company or other body corporate in relation to its business, and may administer an oath accordingly.

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

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

(a) the inspector may take part therein either personally or by advocate;

(b) the court may put such questions to the person examined as the court thinks fit;

(c) the person examined shall answer all such questions as the court may put or allow to be put to him, but may at his own cost employ an advocate, who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him,

and notes of the examination shall be taken down in writing and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him:

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Provided that, notwithstanding anything in paragraph *(c)*, the court may allow the person examined such costs as in its discretion it may think fit, and any costs so allowed shall be paid as part of the expenses of the investigation.

(5) In this section any reference to officers or to agents includes past, as well as present, officers or agents, as the case may be, and for the purposes of this section "agents", in relation to a company or other body corporate includes the bankers and advocates of the company or other body corporate, and any persons employed by the company or other body corporate as auditors, whether those persons are or are not officers of the company or other body corporate.

Inspector's report.

169. (1) (*a*) An inspector may, and, if so directed by the court, shall, make interim reports to the court, and on the conclusion of the investigation shall make a final report to the court.

(b) Any such report shall be written or, if the court so directs, printed.

(2) The court shall–

(a) forward a copy of any report made by an inspector to the company and to the registrar;

(b) if the court thinks fit, forward a copy thereof on request and on payment of the prescribed fee 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 167, or whose interests as a creditor of the company or any such other body corporate as aforesaid appear to the court to be affected;

(c) where any inspector is appointed under section 165, furnish, at the request of the applicants for the investigation a copy to them,

and may also cause the report to be printed and published.

Proceedings on inspector's reports.

170. (1) (*a*) If, from any report made under section 169, it appears to the court that any person has, in relation to the company or to any other body corporate whose affairs have been investigated by virtue of section 167 been guilty of any offence for which he is criminally liable, the court shall forward a copy of the report to the Attorney-General, and, if the Attorney-General considers that the case is one in which a prosecution ought to be instituted, he shall institute proceedings accordingly, and it shall be the duty of all officers and agents of the

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company, past and present (other than the defendant in the proceedings), to give to him all assistance in connection with the prosecution which they are reasonably able to give.

(b) Subsection (5) of section 168 shall apply for the purposes of this subsection as it applies for the purposes of that section.

(2) If, in the case of any body corporate liable to be wound up under this Act, it appears to the Attorney-General, from any such report as aforesaid that it is expedient so to do by reason of any such circumstances as are referred to in subparagraph (i) or subparagraph (ii) of paragraph *(b)* of section 166, the Attorney-General may, unless the body corporate is already being wound up by the court, present a petition for it to be so wound up if the court thinks it just and equitable that it should be wound up or a petition for an order under section 211 or both.

(3) If from any such report as aforesaid it appear to the Attorney-General that proceedings ought in the public interest to be brought by any body corporate dealt with by the report for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation of that body corporate or the management of its affairs, or for the recovery of any property of the body corporate which has been misapplied or wrongfully retained, he may himself bring proceedings for that purpose in the name of the body corporate.

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

Expenses of investigation of company's affairs.

171. (1) The expenses of and incidental to an investigation by an inspector appointed by the court under the foregoing provisions of this Act shall be defrayed in the first instance by the registrar, but the following persons shall, to the extent mentioned, be liable to repay the registrar–

(a) any person who is convicted on a prosecution instituted by the Attorney-General as a result of the investigation, or who is ordered to pay damages or restore any property in proceedings brought by virtue of subsection (3) of section 170, may in the same proceedings be ordered to pay the said expenses to such extent as may be specified in the order;

(b) any body corporate in whose name proceedings are brought as aforesaid shall be liable to the amount or value of any sums or property recovered by it as a result of those proceedings;

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(c) unless as a result of the investigation a prosecution is instituted by the Attorney-General–

(i) any body corporate dealt with by the report, where the inspector was appointed otherwise than under paragraph *(b)* of section 166, shall be liable, except so far as the court otherwise directs; and

(ii) the applicants for the investigation, where the inspector was appointed under section 165, shall be liable to such extent (if any) as the court directs,

and any amount for which a body corporate is liable by virtue of paragraph *(b)* of this subsection shall be a first charge on the sums or property mentioned in that paragraph.

(2) The report of an inspector appointed otherwise than under paragraph *(b)* of section 166 may, if he thinks fit, and shall, if the court so directs, include a recommendation as to the directions (if any) which he thinks appropriate, in the light of his investigation, to be given under paragraph *(c)* of subsection (1) of this section.

(3) For the purposes of this section, any costs or expenses incurred by the registrar in or in connection with proceedings brought by virtue of subsection (3) of section 170 (including expenses incurred by virtue of subsection (4) of that section) shall be treated as expenses of the investigation giving rise to the proceedings.

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

Inspector's report to be evidence.

172. A copy of any report of any inspector appointed under the foregoing provisions of this Act, authenticated by the seal of the company whose affairs have been investigated, shall be admissible in any legal proceedings as evidence of the opinion of the inspector in relation to any matter contained in the report.

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Appointment and powers of inspectors to investigate ownership of company.

173. (1) Where it appears to the registrar that there is good reason so to do, he may appoint one or more competent inspectors to investigate and report on the membership of any company and otherwise with respect to the company for the purpose of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the company or able to control or materially to influence the policy of the company.

(2) The appointment of an inspector under this section may define the scope of his investigation, whether as respects the matter or the period to which it is to extend or otherwise and in particular may limit the investigation to matters connected with particular shares or debentures.

(3) Where an application for an investigation under this section with respect to particular shares or debentures of a company is made to the registrar by members of the company, and the number of applicants or the amount of shares held by them is not less than that required for an application for the appointment of an inspector under section 165, the registrar shall appoint an inspector to conduct the investigation unless he is satisfied that the application is vexatious, and the inspector's appointment shall not exclude from the scope of his investigation any matter which the application seeks to have included therein, except in so far as the registrar is satisfied that it is unreasonable for that matter to be investigated:

Provided that the registrar may refuse to appoint an inspector under this subsection unless, in any case in which he considers it reasonable so to require, the applicants give sufficient security for the payment of the costs of the investigation.

(4) Subject to the terms of an inspector's appointment, his powers shall extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of his investigation.

(5) For the purposes of any investigation under this section, sections167 to 169 shall apply with the necessary modifications of references to the affairs of the company or to those of any other body corporate, so, however, that-

(a) the said sections shall apply in relation to all persons who are or have been, or whom the inspector has reasonable cause to believe to be or have been, financially interested in the success or failure, or the apparent success or failure, of the company or any other body corporate whose

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membership is investigated with that of the company, or able to control or materially to influence the policy thereof, including persons concerned only on behalf of others, as they apply in relation to officers and agents of the company or of the other body corporate, as the case may be; and

(b) the registrar shall not be bound to furnish the company or any other person with a copy of any report by an inspector appointed under this section or with a complete copy thereof if he is of opinion that there is good reason for not divulging the contents of the report or of parts thereof, but shall keep a copy of any such report or, as the case may be, the parts of any such report, as respects which he is not of that opinion.

(6) *(a)* The expenses of any investigation under subsection (1) shall be defrayed by the registrar.

(*b*) The expenses of any investigation under subsection (3) shall be defrayed by the applicants unless the registrar certifies that it is a case in which he might properly have acted under subsection (1).

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

174. (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 and that it is unnecessary to appoint an inspector for the purpose, he may require any person whom he has reasonable cause to believe-

(a) to be or to have been interested in those shares or debentures; or

(b) to act or to have acted in relation to those shares or debentures as the advocate or agent of someone interested therein,

to give him any information which he has or can reasonably be expected to obtain as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures.

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

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(3) Any person who fails to give any information required of him under this section, or who in giving any such information makes any statement which he knows to be false in a material particular, shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding ten thousand shillings or to both.

Power to impose restrictions on shares or debentures.

175. (1) Where, in connection with an investigation under either section 173 or section 174, it appears to the registrar that there is difficulty in finding out the relevant facts about any shares (whether issued or to be issued), and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned or any of them to assist the investigation as required by this Act, the registrar may by order direct that the shares shall until further order be subject to the restrictions imposed by this section.

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

(a) any transfer of those shares, or in the case of unissued shares any transfer of the right to be issued therewith and any issue thereof, shall be void; and

(b) no voting rights shall be exercisable in respect of those shares; and

(c) no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder thereof; and

(d) except in a liquidation, no payment shall be made of any sums due from the company on those shares, whether in respect of capital or otherwise.

(3) Where the registrar makes an order directing that shares shall be subject to the said restrictions, or refuses to make an order directing that shares shall cease to be subject thereto, any person aggrieved thereby may apply to the court, and the court may, if it sees fit, direct that the shares shall cease to be subject to the said restrictions.

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

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(5) Any person who–

(a) exercises or purports to exercise any right to dispose of any shares which, to his knowledge, are for the time being subject to the said restrictions or of any right to be issued with any such shares; or

(b) votes in respect of any such shares, whether as holder or proxy, or appoints a proxy to vote in respect thereof; or

(c) being the holder of any such shares, fails to notify of their being subject to the said restrictions any person but does know to be entitled, apart from the said whom he does not know to be aware of that fact restrictions, to vote in respect of those shares whether as holder or proxy,

shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding ten thousand shillings or to both.

(6) Where shares in any company are issued in contravention of the said restrictions, the company and every officer of the company who is in default shall be liable to a fine not exceeding ten thousand shillings.

(7) A prosecution shall not be instituted under this section except by or with the consent of the Attorney-General.

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

Saving for advocates and bankers.

176. Nothing in the foregoing provisions of this Part shall require disclosure to the court or to the registrar or to an inspector appointed by the court or the registrar-

(a) by an advocate of any privileged communication made to him in that capacity, except as respects the name and address of his client; or

(b) by a company's bankers as such of any information as to the affairs of any of their customers other than the company.

Directors and Other Officers

Number of directors.

177. Every company (other than a private company) registered after the appointed day shall have at least two directors, and every

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company registered before the appointed day and every private company shall have at least one director.

Secretary.

178. (1) Every company shall have a secretary.

(2) Anything required or authorized to be done by or to the secretary may, if the office is vacant or there is for any other reason no secretary capable of acting, be done by or to any assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by or to any officer of the company authorized generally or specially in that behalf by a resolution of the board of directors.

Qualifications of a secretary to a company.
12 of 1988, s.41.

178 A. (1) Every secretary to the company shall hold a qualification prescribed by section 20 of Certified Public Secretaries Act, 1988.

(2) Notwithstanding the provisions of subsection (1) the Minister may, on the advice of the Council and the Registration Board, exempt certain classes of companies, non-profit making organizations and charitable organizations from the provisions of that subsection.

Prohibition of certain persons being sole director or secretary.

179. No company shall–

(a) have as secretary the sole director of the company; or

(b) have as secretary to the company a corporation the sole director of which is a sole director of the company; or

(c) have as sole director of the company a corporation the sole director of which is secretary to the company.

Avoidance of acts done by person in dual capacity as director and secretary.

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

Validity of acts of directors.

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

Restrictions on appointment or advertisement of director.

182. (1) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in a prospectus issued by or on behalf of the company, or as proposed director of an intended company in a prospectus issued in relation to that intended company, or in a statement in lieu of prospectus delivered to the registrar by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus or the delivery of the statement in lieu of prospectus,

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as the case may be, he has by himself or by his agent authorized in writing–

(a) signed and delivered to the registrar for registration a consent in writing to act as such director; and

(b) either–

(i) signed the memorandum for a number of shares not less than his qualification, if any; or

(ii) taken from the company and paid or agreed to pay for his qualification shares, if any; or

(iii) signed and delivered to the registrar for registration an undertaking in writing to take from the company and pay for his qualification shares, if any; or

(iv) made and delivered to the registrar for registration a statutory declaration to the effect that a number of shares, not less than his qualification, if any, are registered in his name.

(2) Where a person has signed and delivered as aforesaid an undertaking to take and pay for his qualification shares, he shall, as regards those shares, be in the same position as if he had signed the memorandum for that number of shares.

(3) References in this section to the share qualification of a director or proposed director shall be construed as including only a share qualification required on appointment or within a period determined by reference to the time of appointment and references therein to qualification shares shall be construed accordingly.

(4) On the application for registration of the memorandum and articles of a company, the applicant shall deliver to the registrar a list of the persons who have consented to be directors of the company, and, if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding one thousand shillings.

(5) This section shall not apply to–

(a) a company not having a share capital; or

(b) a private company; or

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(c) a company which was a private company before becoming a public company; or

(d) a prospectus issued by or on behalf of a company after the expiration of one year from the date on which the company was entitled to commence business.

Share qualifications of directors.

183. (1) Without prejudice to the restrictions imposed by section 182, it shall be the duty of every director who is by the articles of the company required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the articles.

(2) For the purpose of any provision in the articles requiring a director or manager to hold a specified share qualification, the bearer of a share warrant shall not be deemed to be the holder of the shares specified in the warrant.

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

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

(5) If after the expiration of the said period or shorter time any unqualified person acts as a director of the company, he shall be liable to a fine not exceeding one hundred shillings for every day between the expiration of the said period or shorter time or the day on which he ceased to be qualified, as the case may be, and the last day on which it is proved that he acted as a director.

Appointment of directors to be voted on individually.

184. (1) At a general meeting of a company other than a private company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be made, unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.

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

Provided that–

(i) this subsection shall not be taken as excluding the operation of section 181; and

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(ii) where a resolution so moved is passed, no provision for the automatic reappointment of retiring directors in default of another appointment shall apply.

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

(4) Nothing in this section shall apply to a resolution altering the company's articles.

Removal of directors.

185. (1) A company may by ordinary resolution remove a director before the expiration of his period of office, notwithstanding anything in its articles or in any agreement between it and him:

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

(2) Special notice shall be required of any resolution to remove a director under this section or to appoint somebody instead of a director so removed at the meeting at which he is removed, and on receipt of notice of an intended resolution to remove a director under this section the company shall forthwith send a copy thereof to the director concerned, and the director (whether or not he is a member of the company) shall be entitled to be heard on the resolution at the meeting.

(3) Where notice is given of an intended resolution to remove a director under this section and the director concerned makes with respect thereto representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so-

(a) in any notice of the resolution given to members of the company state the fact of the representations having been made; and

(b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company),

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

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

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

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

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

Minimum age for appointment of directors; and retirement of directors over age limit.

186. (1) Subject to the provisions of this section, no person shall be capable of being appointed a director of a company which is subject to this section if at the time of his appointment he has not attained the age of twenty-one, or he has attained the age of seventy.

(2) Subject as aforesaid, a director of a company which is subject to this section shall vacate his office at the conclusion of the annual general meeting commencing next after he attains the age of seventy:

Provided that acts done by a person as director shall be valid notwithstanding that it is afterwards discovered that his appointment had terminated by virtue of this subsection.

(3) Where a person retires by virtue of subsection (2), no provision for the automatic reappointment of retiring directors in default of another appointment shall apply; and if at the meeting at which he retires the vacancy is not filled it may be filled as a casual vacancy.

(4) Subsection (2) shall not apply to a director who is in office at the commencement of this Act so as to terminate his then appointment before the conclusion of the third annual general meeting commencing

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after the commencement of this Act, but shall apply so as to terminate it at the conclusion of that meeting if he has attained the age of seventy before the commencement of the meeting.

(5) Nothing in the foregoing provisions of this section shall prevent the appointment of a director at any age, or require a director to retire at any time, if his appointment is or was made or approved by the company in general meeting, but special notice shall be required of any resolution appointing or approving the appointment of a director for it to have effect for the purposes of this subsection and the notice thereof given to the company and by the company to its members must state or must have stated the age of the person to whom it relates.

(6) A person reappointed director on retiring by virtue of subsection (2), or appointed in place of a director so retiring, shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become director on the day on which the retiring director was last appointed before his retirement; but except as provided by this subsection, the retirement of a director out of turn by virtue of subsection (2) shall be disregarded in determining when any other directors are to retire.

(7) Inthe case of a company first registered after the commencement of this Act, this section shall have effect subject to the provisions of the company's articles; and in the case of a company first registered before the commencement of this Act-

(a) this section shall have effect subject to any alterations of the company's articles made after the commencement of this Act; and

(b) if at the commencement of this Act the company's articles contained provision for retirement of directors under an age limit or for preventing or restricting appointments of directors over a given age this section shall not apply to directors to whom that provision applies.

(8) A company shall be subject to this section if it is not a private company or if, being a private company, it is the subsidiary of a body corporate incorporated in Kenya which is not a private company; and for the purposes of any other section of this Act which refers to a company subject to this section, a company shall be deemed to be subject to this section notwithstanding that all or any of the provisions thereof are excluded or modified by the company's articles.

Duty of directors to disclose age to company.

187. (1) Any person who is appointed or to his knowledge proposed to be appointed director of a company subject to section 186 at a time before he has attained the age of twenty-one or after he has

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attained any retiring age applicable to him as director either under this Act or under the company's articles shall give notice of his age to the company:

Provided that this subsection shall not apply in relation to a person's reappointment on the termination of a previous appointment as director of the company.

(2) Any person who–

(a) fails to give notice of his age as required by this section; or

(b) acts as director under any appointment which is invalid or has terminated by reason of his age,

shall be liable to a fine not exceeding one hundred shillings for every day during which the failure continues or during which he continues to act as aforesaid.

(3) For the purposes of subsection (2), a person who has acted as director under an appointment which is invalid or has terminated shall be deemed to have continued so to act throughout the period from the invalid appointment or the date on which the appointment terminated, as the case may be, until the last day on which he is proved to have acted thereunder.

Provisions as to undischarged bankrupts acting as directors.

188. (1) If any person who has been declared bankrupt or insolvent by a competent court in Kenya or elsewhere and has not received his discharge acts as director of, or directly or indirectly takes part in or is concerned in the management of, any company except with the leave of the court, he shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding ten thousand shillings or to both.

(2) The leave of the court for the purposes of this section shall not be given unless notice of intention to apply therefor has been served on the official receiver, and it shall be the duty of the official receiver, if he is of opinion that it is contrary to the public interest that any such application should be granted, to attend on the hearing of and oppose the granting of the application.

(3) In this section, "company" includes an unregistered company and a company incorporated outside Kenya which has an established place of business within Kenya, and "official receiver" means the official receiver in bankruptcy,

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Power to restrain fraudulent persons from managing companies.

189. (1) Where–

(a) a person is convicted of any offence in connection with the promotion, formation or management of a company; or

(b) in the course of winding up a company it appears that a person–

(i) has been guilty of any offence for which he is liable (whether he has been convicted or not) under section 323; or

(ii) has otherwise been guilty, while an officer of the company, of any fraud in relation to the company or of any breach of his duty to the company,

the court may make an 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 the company for such period not exceeding five years as may be specified in the order.

(2) In subsection (1) "the court", in relation to the making of an order against any person by virtue of paragraph *(a)* thereof, includes the court before which he is convicted, as well as any court having jurisdiction to wind up the company, and in relation to the granting of leave means any court having jurisdiction to wind up the company as respects which leave is sought.

(3) A person intending to apply for the making of an order under this section by the court having jurisdiction to wind up a company shall give not less than ten days' notice of his intention to the person against whom the order is sought, and on the hearing of the application the last-mentioned person may appear and himself give evidence or call witnesses.

(4) An application for the making of an order under this section by the court having jurisdiction to wind up a company may be made by the official receiver, or by the liquidator of the company or by a person who is or has been a member or creditor of the company; and on the hearing of any application for an order under this section by the official receiver or the liquidator, or of any application for leave under this section by a person against whom an order has been made on the application of the official receiver or the liquidator, the official receiver or liquidator shall appear and call the attention of the court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses.

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(5) An order may be made by virtue of subparagraph (ii) of paragraph *(b)* of subsection (1) notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made, and for the purposes of that subparagraph "officer" includes any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

(6) If any person acts in contravention of an order made under this section, he shall, in respect of each offence, be liable to imprisonment for a term not exceeding two years or to a fine not exceeding ten thousand shillings or to both.

Prohibition of tax-free payments to directors.

190. (1) It shall not be lawful for a company to pay a director remuneration (whether as a director or otherwise) free of income tax or surtax, or otherwise calculated by reference to or varying with the amount of his income tax or surtax, or to or with the rate of income tax, except under a contract which was in force two years before the appointed day and provides expressly, and not by reference to the articles, for payment of remuneration as aforesaid.

(2) Any provision contained in a company's articles, or in any contract other than such a contract as aforesaid, or in any resolution of a company or a company's directors, for payment to a director of remuneration as aforesaid shall have effect as if it provided for payment, as a gross sum subject to income tax and surtax, of the net sum for which it actually provides.

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

Prohibition of loans to directors.

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

Provided that nothing in this section shall apply either-

(i) to anything done by a company which is for the time being a private company; or

(ii) to anything done by a subsidiary, where the director is its holding company; or

(iii) subject to subsection (2), to anything done to provide any such person as aforesaid with funds to meet expenditure incurred or to be incurred by him for the

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purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company; or

(iv) in the case of a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, to anything done by the company in the ordinary course of that business.

(2) Paragraph (iii) of the proviso to subsection (1) shall not authorize the making of any loan, or the entering into any guarantee, or the provision of any security, except either-

(a) with the prior approval of the company given at a general meeting at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed: or

(b) on condition that, if the approval of the company is not given as aforesaid at or before the next following annual general meeting, the loan shall be repaid or the liability under the guarantee or security shall be discharged, as the case may be, within six months from the conclusion of that meeting.

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

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

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

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

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

193. (1) It shall not be lawful in connection with the transfer of the whole or any part of the undertaking or property of a company for any payment to be made to any director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, unless particulars with respect to the proposed payment (including the amount thereof) have been disclosed to the members of the company and the proposal approved by the company in general meeting.

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

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

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

(a) an offer made to the general body of shareholders;

(b) an offer made by or on behalf of some other body corporate with a view to the company becoming its subsidiary or a subsidiary of its holding company;

(c) an offer made by or on behalf of an individual with a view to his obtaining the right to exercise or control the exercise of not less than one-third of the voting power at any general meeting of the company; or

(d) any other offer which is conditional on acceptance to a given extent,

a payment is to be made to a director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, it shall be the duty of that director to take all reasonable steps to secure that particulars with respect to the proposed payment (including the amount thereof) shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(2) If–

(a) any such director fails to take reasonable steps as aforesaid; or

(b) any person who has been properly required by any such director to include the said particulars in or send them with any such notice as aforesaid fails so to do, he shall be liable to a fine not exceeding five hundred shillings.

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(3) If–

(a) the requirements of subsection (1) are not complied with in relation to any such payment as is herein mentioned; or

(b) the making of the proposed payment is not, before the transfer of any shares in pursuance of the offer, approved by a meeting summoned for the purpose of the holders of the shares to which the offer relates and of other holders of shares of the same class as any of the said shares,

any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any persons who have sold their shares as a result of the offer made, and the expenses incurred by him in distributing that sum amongst those persons shall be borne by him and not retained out of that sum.

(4) Where the shareholders referred to in paragraph *(b)* of subsection (3) are not all the members of the company and no provision is made by the articles for summoning or regulating such a meeting as is mentioned in that paragraph, the provisions of this Act and of the company's articles relating to general meetings of the company shall, for that purpose, apply to the meeting either without modification or with such modifications as the registrar on the application of any person concerned may direct for the purpose of adapting them to the circumstances of the meeting.

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

Provisions supplementary to sections 192, 193 and 194.

195. (1) Where in proceedings for the recovery of any payment as having, by virtue of subsections (1) and (2) of section 193 or subsections (1) and (3) of section 194, been received by any person in trust, it is shown that-

(a) the payment was made in pursuance of any arrangement entered into as part of the agreement for the transfer in question, or within one year before or two years after that agreement or the offer leading thereto; and

(b) the company or any person to whom the transfer was made was privy to that arrangement,

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the payment shall be deemed, except in so far as the contrary is shown, to be one to which the subsections apply.

(2) If in connection with any such transfer as is mentioned in either section 193 or section 194–

(a) the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares; or

(b) any valuable consideration is given to any such director,

the excess or the money value of the consideration, as the case may be, shall, for the purposes of that section, be deemed to have been a payment made to him by way of compensation for loss of office or as consideration for or in connection with his retirement from office.

(3) References in sections 192, 193 and 194 to payments made to any director of a company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, do not include any bona fide payment by way of damages for breach of contract or by way of pension in respect of past services, and for the purposes of this subsection "pension" includes any superannuation allowance, superannuation gratuity or similar payment.

(4) Nothing in sections 193 and 194 shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any such payments as are therein mentioned or with respect to any other like payments made to or be made to the directors of a company.

Register of directors' shareholdings, etc.

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

Provided that the register need not include shares in any body corporate which is the wholly-owned subsidiary of another body corporate, and for this purpose a body corporate shall be deemed to be the wholly-owned subsidiary of another if it has no members but that other and that other's wholly-owned subsidiaries and its or their nominees.

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

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

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

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

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

(a) during the period beginning fourteen days before the date of the company's annual general meeting and ending three days after the date of its conclusion, it shall be open to the inspection of any member or holder of debentures of the company; and

(b) during that or any other period, it shall be open to the inspection of any person acting on behalf of the registrar;

and, in computing the fourteen days and the three days mentioned in this subsection, any day which is a Saturday or a Sunday or a public holiday shall be disregarded.

(6) Without prejudice to the rights conferred by subsection (5), the registrar may at any time require a copy of the said register, or any part thereof.

(7) The said register shall also be produced at the commencement of the company's annual general meeting and remain open and accessible during the continuance of the meeting to any person attending the meeting.

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(8) If default is made in complying with subsection (7), the company and every officer of the company who is in default shall be liable to a fine not exceeding one thousand shillings; and if default is made in complying with subsection (1) or subsection (2), or if any inspection required under this section is refused or any copy required thereunder is not sent within a reasonable time, the company and every officer of the company who is in default shall be liable to a fine not exceeding ten thousand shillings and further to a default fine of one hundred shillings.

(9) In the case of any such refusal, the court may by order compel an immediate inspection of the register.

(10) For the purposes of this section -

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

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

(i) that body corporate or its directors are accustomed to act in accordance with his directions or instructions; or

(ii) he is entitled to exercise or control the exercise of one-third or more of the voting power at any general meeting of that body corporate.

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

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

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

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

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

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(2) The amount to be shown under paragraph *(a)* of subsection (1)–

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

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

and, for the purposes of this section, "emoluments", in relation to a director, includes fees and percentages, any sums paid by way of expenses allowance in so far as those sums are charged to income tax, any contribution paid in respect of him under any pension scheme and the estimated money value of any other benefits received by him otherwise than in cash.

(3) The amount to be shown under paragraph *(b)* of subsection (1)–

(a) shall not include any pension paid or receivable under a pension scheme if the scheme is such that the contributions thereunder are substantially adequate for the maintenance of the scheme, but save as aforesaid shall include any pension paid or receivable in respect of any such services of a director or past director of the company as are mentioned in subsection (2), whether to or by him or, on his nomination or by virtue of dependence on or other connection with him, to or by any other person; and

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

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

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two or more persons if the amount paid in respect of each of them is not ascertainable.

(4) The amount to be shown under paragraph *(c)* of subsection (1)–

(a) shall include any sums paid to or receivable by a director or past director by way of compensation for the loss of office as director of the company or for the loss, while director of the company or on or in connection with his ceasing to be a director of the company, of any other office in connection with the management of the company's affairs or of any office as director or otherwise in connection with the management of the affairs of any subsidiary thereof; and

(b) shall distinguish between compensation in respect of the office of director, whether of the company or its subsidiary, and compensation in respect of other offices,

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

(5) The amounts to be shown under each paragraph of subsection (1)–

(a) shall include all relevant sums paid by or receivable from–

(i) the company; and

(ii) the company's subsidiaries; and

(iii) any other person,

except sums to be accounted for to the company or any of its subsidiaries or, by virtue of section 194, to past or present members of the company or any of its subsidiaries or any class of those members; and

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

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

(a) any sums are not shown in the accounts for the relevant financial year on the ground that the person receiving them is liable to account therefore as mentioned in paragraph *(a)* of subsection (5), but the liability is thereafter wholly or partly released or is not enforced within a period of two years; or

(b) any sums paid by way of expenses allowance are charged to income tax after the end of the relevant financial year,

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

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

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

(9) In this section any reference to a company's subsidiary -

(a) in relation to a person who is or was, while a director of the company, a director also, by virtue of the company's nomination, direct or indirect, of any other body corporate, shall, subject to paragraph *(b)*, include that body corporate, whether or not it is or was in fact the company's subsidiary; and

(b) shall, for the purposes of subsections (2) and (3), be taken as referring to a subsidiary at the time the services were rendered, and, for the purposes of subsection (4), be taken as referring to a subsidiary immediately before the loss of office as director of the company.

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Particulars in accounts of loans to officers, etc.

198. (1) The accounts which, in pursuance of this Act, are to be laid before every company in general meeting shall, subject to the provisions of this section, contain particulars showing–

(a) the amount of any loans made during the company's financial year to–

(i) any officer of the company; or

(ii) any person who, after the making of the loan, became during that year an officer of the company,

by the company or a subsidiary thereof or by any other person under a guarantee from or on a security provided by the company or a subsidiary thereof (including any such loans which were repaid during that year); and

*(b) t*he amount of any loans made in manner aforesaid to any such officer or person as aforesaid at any time before the company's financial year and outstanding at the expiration thereof.

(2) Subsection (1) shall not require the inclusion in accounts of particulars of–

(a) a loan made in the ordinary course of its business by the company or a subsidiary thereof, where the ordinary business of the company or, as the case may be, the subsidiary, includes the lending of money; or

(b) a loan made by the company or a subsidiary thereof to an employee of the company or subsidiary, as the case may be, if the loan does not exceed forty thousand shillings and is certified by the directors of the company or subsidiary, as the case may be, to have been made in accordance with any practice adopted or about to be adopted by the company or subsidiary with respect to loans to its employees,

not being, in either case, a loan made by the company under a guarantee from or on a security provided by a subsidiary thereof or a loan made by a subsidiary of the company under a guarantee from or on a security provided by the company or any other subsidiary thereof.

(3) If in the case of any such accounts as aforesaid the requirements of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their

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report on the balance sheet of the company, so far as they are reasonably able to do so, a statement giving the required particulars.

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

General duty to make disclosure for purposes of sections 196, 197 and 198.

199. (1) It shall be the duty of any director of a company to give notice to the company of such matters relating to himself as may be necessary for the purposes of sections 196 and 197, and of section 198 except so far as it relates to loans made, by the company or by any other person under a guarantee from or on a security provided by the company, to an officer thereof.

(2) Any such notice given for the purposes of section 196 shall be in writing and, if it is not given at a meeting of the directors, the director giving it shall take reasonable steps to secure that it is brought up and read at the next meeting of directors after it is given.

(3) Subsection (1) shall apply–

(a) for the purposes of section 198, in relation to officers other than directors; and

(b) for the purposes of sections 197 and 198, in relation to persons who are or have at any time during the preceding five years been officers,

as it applies in relation to directors.

(4) Any person who makes default in complying with the foregoing provisions of this section shall be liable to a fine not exceeding one thousand shillings.

Disclosure by directors of interests in contracts.

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

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

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declaration shall be made at the first meeting of the directors held after the director becomes so interested.

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

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

(4) Any director who fails to comply with the provisions of this section shall be liable to a fine not exceeding two thousand shillings.

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

Register of directors and secretaries.

201. (1) Every company shall keep at its registered office a register of its directors and secretaries.

(2) The said register shall contain the following particulars with respect to each director, that is to say-

(a) in the case of an individual, his present Christian name and surname, any former Christian name or surname, his postal address, his nationality and, if that nationality is not his nationality of origin, his nationality of origin, his business occupation, if any, particulars of all other directorships held by him and, in the case of a company subject to section 186, the date of his birth; and

(b) in the case of a corporation, its corporate name and registered or principal office and postal address:

Provided that it shall not be necessary for the register to contain particulars of directorships held by a director in companies of which the company is the wholly-owned subsidiary, or which are the wholly-owned subsidiaries either of the company or of another company of which the company is the wholly-owned subsidiary; and for the purposes of this proviso–

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(i) "company" includes any body corporate incorporated in Kenya; and

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

(3) The said register shall contain the following particulars with respect to the secretary or, where there are joint secretaries, with respect to each of them, that is to say–

(a) in the case of an individual, his present Christian name and surname, any former Christian name and surname and his postal address; and

(b) in the case of a corporation, its corporate name and registered or principal office and postal address:

Provided that where all the partners in a firm are joint secretaries, the name and postal address of the principal office of the firm may be stated instead of the said particulars.

(4) The company shall, within the periods respectively mentioned in subsection (5), deliver to the registrar for registration a return in the prescribed form containing the particulars specified in the said register and a notification in the prescribed form of any change among its directors or in its secretary or in any of the particulars contained in the register, specifying the date of the change.

(5) The periods referred to in subsection (4) are the following, namely–

(a) the periods within which the said return is to be sent shall be a period of fourteen days from the appointment of the first directors of the company; and

(b) the period within which the said notification of a change is to be sent shall be fourteen days from the happening thereof:

Provided that, in the case of a return containing particulars with respect to any person who is the company's secretary on the appointed day the period shall be fourteen days from the appointed day.

(6) The register to be kept under this section shall during business hours (subject to such reasonable restrictions as the company may by

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its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member of the company without charge and of any other person on payment of two shillings, or such less sum as the company may prescribe, for each inspection.

(7) If any inspection required under this section is refused or if default is made in complying with subsection (1), subsection (2), subsection (3) or subsection (4), the company and every officer of the company who is in default shall be liable to a default fine.

(8) In the case of any such refusal, the court may by order compel an immediate inspection of the register.

(9) For the purposes of this section -

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

(b) "Christian name" includes a forename;

(c) in the case of a peer or person usually known by a title different from his surname, "surname" means that title;

(*d*) references to a former Christian name or surname do not include–

(i) in the case of a peer or a person usually known by a British title different from his surname, the name by which he was known previous to the adoption of or succession to the title; or

(ii) in the case of any person, a former Christian name or surname where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years or has been changed or disused for a period of not less than twenty years; or

(iii) in the case of a married woman, the name or surname by which she was known previous to the marriage.

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Particulars with respect to directors in trade catalogues, circulars, etc.
9 of 1967, Sch.

202. (1) Every company shall, in all trade catalogues, trade circulars, showcards and business letters on or in which the company's name appears and which are issued or sent by the company to any person in the Commonwealth, state in legible roman letters with respect to every director being a corporation, the corporate name, and with respect to every director being an individual, the following particulars -

(a) his present Christian name, or the initials thereof, and present surname;

(b) any former Christian names and surnames;

(c) his nationality, if he is not a Kenya citizen:

Provided that, if special circumstances exist which render it in the opinion of the registrar expedient that such an exemption should be granted, the registrar may by order grant, subject to such conditions as may be specified in the order, exemption from all or any of the obligations imposed by this subsection.

(2) If a company makes default in complying with this section every officer of the company who is in default shall be liable on conviction for each offence to a fine not exceeding one hundred shillings, and, for the purposes of this subsection, where a corporation is an officer of the company, any officer of the corporation shall be deemed to be an officer of the company.

(3) For the purposes of this section -

(a) "director" includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act, and "officer" shall be construed accordingly;

(b) "initials" includes a recognized abbreviation of a Christian name; and

(c) "showcards" means cards containing or exhibiting articles dealt with, or samples or representations thereof,

and paragraphs *(b)*, *(c)* and *(d)* of subsection (9) of section 201 shall apply as they apply for the purposes of that section.

Limited company may have directors with unlimited liability.

203. (1) In a limited company the liability of the directors or managers, or of the managing director, may, if so provided by the memorandum, be unlimited.

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(2) In a limited company in which the liability of a director or manager is unlimited, the directors and any managers of the company and the member who proposes a person for election or appointment to the office of director or manager, shall add to that proposal a statement that the liability of the person holding that office will be unlimited, and before the person accepts the office or acts therein, notice in writing that his liability will be unlimited shall be given to him by the following or one of the following persons, namely, the promoters of the company, the directors of the company, any managers of the company and the secretary of the company.

(3) If any director, manager or proposer makes default in adding such a statement, or if any promoter, director, manager or secretary makes default in giving such a notice, he shall be liable to a fine not exceeding two thousand shillings, and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

Special resolution of limited company making liability of directors unlimited.

204. (1) A limited company, if so authorized by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors, managers, or of any managing director.

(2) Upon the passing of any such special resolution the provisions thereof shall be as valid as if they had been originally contained in the memorandum.

Provisions as to assignment of office by directors.

205. If in the case of any company provision is made by the articles or by any agreement entered into between any person and the company for empowering a director or manager of the company to assign his office as such to another person, any assignment of office made in pursuance of the said provision shall, notwithstanding anything to the contrary contained in the said provision, be of no effect unless and until it is approved by a special resolution of the company.

Avoidance of Provisions in Articles or Contracts Relieving Officers from Liability

Provisions as to liability of officers and auditors.

206. Subject as hereinafter provided, any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any officer of the company or any person (whether an officer of the company or not) employed by the company as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company, shall be void:

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Provided that–

(i) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force; and

(ii) notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid, indemnify any such officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal in which judgment is given in his favour or in which he is acquitted or in connection with any application under section 402 in which relief is granted to him by the court.

Arrangements and Reconstructions

Power to compromise with creditors and members.

207. (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them or between the company and its members or any class of them, the court may, on the application of the company or of any creditor or member of the company, or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the court directs.

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

(3) An order made under subsection (2) shall have no effect until a certified copy of the order has been delivered to the registrar for registration, and a copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made, or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

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(4) If a company makes default in complying with subsection (3), the company and every officer of the company who is in default shall be liable to a fine not exceeding one hundred shillings for each copy in respect of which default is made.

(5) In this section and in section 208, "company" means any company liable to be wound up under this Act, and "arrangement" includes a reorganization of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods.

Information as to compromises with creditors and members.

208. (1) Where a meeting of creditors or any class of creditors or of members or any class of members is summoned under the last foregoing section there shall -

(a) with every notice summoning the meeting which is sent to a creditor or member, be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors of the company, whether as directors or as members or as creditors of the company or otherwise, and the effect thereon of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons; and

(b) in every notice summoning the meeting which is given by advertisement, be included either such a statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement as aforesaid.

(2) Where the compromise or arrangement affects the rights of debenture holders of the company, the said statement shall give the like explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company's directors.

(3) Where a notice given by advertisement includes a notification that copies of a statement explaining the effect of the compromise or arrangement proposed can be obtained by creditors or members entitled to attend the meeting, every such creditor or member shall, on making application in the manner indicated by the notice, be furnished by the company free of charge with a copy of the statement.

(4) Where a company makes default in complying with any requirement of this section, the company and every officer of the

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company who is in default shall be liable to a fine not exceeding ten thousand shillings, and for the purpose of this subsection any liquidator of the company and any trustee of a deed for securing the issue of debentures of the company shall be deemed to be an officer of the company:

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

(5) It shall be the duty of any director of the company and of any trustee for debenture holders of the company to give notice to the company of such matters relating to himself as may be necessary for the purposes of this section, and any person who makes default in complying with this subsection shall be liable to a fine not exceeding one thousand shillings.

Provisions for facilitating reconstruction and amalgamation of companies.

209. (1) Where an application is made to the court under section 207 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as a transferor company) is to be transferred to another company (in this section referred to as the transferee company) the court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters-

(a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;

(b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company, which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;

(d) the dissolution, without winding up, of any transferor company;

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(e) the provision to be made for any persons who, within such time and in such manner as the court directs, dissent from the compromise or arrangement;

(f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

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

(3) Where an order is made under this section, every company in relation to which the order is made shall cause a certified copy thereof to be delivered to the registrar for registration within fourteen days after the making of the order, and if default is made in complying with this subsection the company and every officer of the company who is in default shall be liable to a default fine.

(4) In this section, "property" includes property, rights and powers of every description, and "liabilities" includes duties.

(5) Notwithstanding the provisions of subsection (5) of section 207, "company" in this section does not include any company other than a company within the meaning of this Act.

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

210. (1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as the transferor company) to another company, whether a company within the meaning of this Act or not, (in this section referred to as the transferee company) has, within four months after the making of the offer in that behalf by the transferee company been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary), the transferee company may, at any time within two months after the expiration of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and when such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms

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on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company:

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

(a) the transferee company offers the same terms to all holders of the shares (other than those already held as aforesaid) whose transfer is involved, or, where those shares include shares of different classes, of each class of them; and

(b) the holders who approve the scheme or contract, besides holding not less than nine-tenths in value of the shares (other than those already held as aforesaid) whose transfer is involved, are not less than three-fourths in number of the holders of those shares.

(2) Where, in pursuance of any such scheme or contract as aforesaid, shares in a company are transferred to another company or its nominee, and those shares together with any other shares in the first-mentioned company held by, or by a nominee for, the transferee company or its subsidiary at the date of the transfer comprise or include nine-tenths in value of the shares in the first-mentioned company or of any class of those shares, then–

(a) the transferee company shall within one month from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement) give notice of that fact in the prescribed manner to the holder of the remaining shares or of the remaining shares of that class, as the case may be, who have not assented to the scheme or contract; and

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

and where a shareholder gives notice under paragraph *(b)* with respect to any shares, the transferee company shall be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to it, or on

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such other terms as may be agreed or as the court on the application of either the transferee company or the shareholder thinks fit to order.

(3) Where a notice has been given by the transferee company under subsection (1) and the court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given, or, if an application to the court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company, and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares:

Provided that an instrument of transfer shall not be required for any share for which a share warrant is for the time being outstanding.

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

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

(6) In relation to an offer made by the transferee company to shareholders of the transferor company before the commencement of this Act, this section shall have effect-

(a) with the substitution, in subsection (1), for the words "the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary)", of the words "the shares affected" and with the omission of the proviso to that subsection;

(b) with the omission of subsection (2); and

(c) with the omission, in subsection (3), of the words "together with an instrument of transfer executed on behalf

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of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company" and of the proviso to that subsection.

Minorities

Alternative remedy to winding up in cases of oppression.

211. (1) Any member of a company who complains that the affairs of the company are being conducted in a manner oppressive to some part of the members (including himself) or, in a case falling within subsection (2) of section 170, the Attorney-General, may make an application to the court by petition for an order under this section.

(2) If on any such petition the court is of opinion-

(a) that the company's affairs are being conducted as aforesaid; and

(b) that to wind up the company would unfairly prejudice that part of the members, but otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up,

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

(3) Where an order under this section makes any alteration in or addition to any company's memorandum or articles, then notwithstanding anything in any other provision of this Act but subject to the provisions of the order, the company concerned shall not have power without the leave of the court to make any further alteration in or addition to the memorandum or articles inconsistent with the provisions of the order; but, subject to the foregoing provisions of this subsection, the alterations or additions made by the order shall be of the same effect as if duly made by resolution of the company and the provisions of this Act shall apply to the memorandum or articles as so altered or added to accordingly.

(4) A certified copy of any order under this section altering or adding to, or giving leave to alter or add to, a company's memorandum or articles shall, within fourteen days after the making thereof, be delivered by the company to the registrar for registration; and if a company makes default in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

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(5) In relation to a petition under this section, section 344 shall apply as it applies in relation to a winding-up petition.

PART VI–WINDING UP

(i) Preliminary

Modes of Winding up

Modes of winding up.

212. (1) The winding up of a company may be either -

(a) by the court; or

(b) voluntary; or

(c) subject to the supervision of the court.

(2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.

Contributories

Liability as contributories of present and past members.

213. (1) In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities, and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to the provisions of subsection (2) and the following qualifications-

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

(b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;

(c) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;

(d) in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;

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(e) in the case of a company limited by guarantee, no contribution shall, subject to the provisions of subsection (3), be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;

(f) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;

(g) a sum due to any member of a company, in his character of a member, by way of dividends, profits or otherwise shall not be deemed to be a debt of the company payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(2) In the winding up of a limited company, any director or manager, whether past or present, whose liability is, under the provisions of this Act, unlimited, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company:

Provided that–

(i) a past director or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up;

(ii) a past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;

(iii) subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company and the costs, charges and expenses of the winding up.

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(3) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

Definition of contributory.

214. The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

Nature of liability of contributory.

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

Contributories in case of death of member.

216. (1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

(2) If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory and for compelling payment thereout of the money due.

Contributories in case of bankruptcy of member.

217. If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories -

(a) his trustee in bankruptcy shall represent him for all the purposes of the winding up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the assets of the company; and

(b) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

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(ii) Winding Up by the Court

Jurisdiction

218. The High Court shall have jurisdiction to wind up any company registered in Kenya. Jurisdiction to wind up companies registered in Kenya.

Cases in which Company may be Wound Up by Court

219. A company may be wound up by the court if– Circumstances in which company may be wound up by the court.

(a) the company has by special resolution resolved that the company be wound up by the court;

(b) default is made in delivering the statutory report to the registrar or in holding the statutory meeting;

(c) the company does not commence its business within a year from its incorporation or suspends its business for a whole year;

(d) the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven;

(e) the company is unable to pay its debts;

(f) the court is of opinion that it is just and equitable that the company should be wound up,

(g) in the case of a company incorporated outside Kenya and carrying on business in Kenya, winding-up proceedings have been commenced in respect of it in the country or territory of its incorporation or in any other country or territory in which it has established a place of business.

220. A company shall be deemed to be unable to pay its debts– Definition of inability to pay debts.

(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding one thousand shillings then due has served on the company, by leaving it at the registered office of the company, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor; or

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(b) if execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(c) if it is proved to the satisfaction of the court that the company is unable to pay its debts, and in determining whether a company is unable to pay its debts the court shall take into account the contingent and prospective liabilities of the company.

Petition for Winding Up and Effects Thereof

Provisions as to applications for winding up.

221. (1) An application to the court for the winding up of a company shall be by petition presented, subject to the provisions of this section, either by the company or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately:

Provided that–

(i) a contributory shall not be entitled to present a winding-up petition unless–

(*a*) either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven; or

(b) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder; and

(ii) a winding-up petition shall not, if the ground of the petition is default in delivering the statutory report to the registrar or in holding the statutory meeting, be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held; and

(iii) the court shall not give a hearing to a winding-up petition presented by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable and until a prima facie case for winding up has been established to the satisfaction of the court; and

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(iv) in a case falling within subsection (2) of section 170, a winding-up petition may be presented by the Attorney-General; and

(v) a petition for the winding up of a company on the ground mentioned in paragraph *(g)* of section 219 may be presented by the official receiver as well as by any other person authorized to do so under the provisions of this subsection, but the court shall not make a winding-up order on a petition presented by the official receiver unless it is satisfied that the liquidator or provisional liquidator of the company in the country or territory where winding-up proceedings have been commenced in respect of it has in the manner prescribed required the official receiver to present the petition.

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

Power of court on hearing petition.

222. (1) On hearing a winding-up petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it thinks fit, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets.

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

(a) that the petitioners are entitled to relief either by winding up the company or by some other means; and

(b) that in the absence of any other remedy it would be just and equitable that the company should be wound up,

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

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

(a) instead of making a winding-up order, direct that the statutory report shall be delivered or that a meeting shall be held; and

(b) order the costs to be paid by any persons who, in the opinion of the court, are responsible for the default.

Power to stay or restrain proceedings against company.

223. At any time after the presentation of a winding-up petition, and before a winding-up order has been made, the company, or any creditor or contributory, may -

(a) where any suit or proceeding against the company is pending in the High Court or the Court of Appeal, apply to the court in which the suit or proceedings is pending for a stay of proceedings therein; and

(b) where any other suit or proceeding is pending against the company, apply to the court having jurisdiction to wind up the company to restrain further proceedings in the suit or proceeding;

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

Avoidance of dispositions of property, etc., after commencement of winding up.

224. In a winding up by the court, any disposition of the property of the company, including things in action, and any transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding up, shall, unless the court otherwise orders, be void.

Avoidance of attachments, etc.

225. Where any company is being wound up by the court, any attachment, distress or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void.

Commencement of Winding Up

Commencement of winding up by the court.

226. (1) Where, before the presentation of a petition for the winding up of a company by the court, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the court, on proof of fraud or mistake, thinks fit

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otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

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

Consequences of Winding-Up Order

Copy of order to be forwarded to registrar.

227. On the making of a winding-up order, a copy of the order shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar for registration.

Actions stayed on winding-up order.

228. When a winding-up order has been made or an interim liquidator has been appointed under section 235, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court and subject to such terms as the court may impose.

Effect of winding-up order.

229. An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

Official Receiver in Winding Up

Official receiver in bankruptcy to be official receiver for winding-up purposes.

230. (1) For the purposes of this Act so far as it relates to the winding up of companies by the court, "official receiver" means the official receiver attached to the court for bankruptcy purposes.

(2) Any such officer shall, for the purpose of his duties under this Act, be styled the official receiver.

Appointment of official receiver by court in certain cases.

231. If, in the case of the winding up of any company by the court it appears to the court desirable, with a view to securing the more convenient and economical conduct of the winding up, that some officer other than the person who would by virtue of section 230 be the official receiver should be the official receiver for the purposes of that winding up, the court may appoint that other officer to act as official receiver in that winding up, and the person so appointed shall be deemed to be the official receiver in that winding up for all the purposes of this Act.

Statement of company's affairs to be submitted to official receiver. 38 of 1968, Sch.

232. (1) When the court has made a winding-up order or appointed an interim liquidator under section 235, there shall, unless the court thinks fit to order otherwise and so orders, be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts and liabilities, the names, postal addresses and

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occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.

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

(a) who are or have been officers of the company;

(b) who have taken part in the formation of the company at any time within one year before the relevant date;

(c) who are in the employment of the company, or have been in the employment of the company within the said year, and are in the opinion of the official receiver capable of giving the information required;

(d) who are or have been within the said year officers of or in the employment of a company which is, or within the said year was, an officer of the company to which the statement relates;

(*e*) who are at the relevant date the receivers or managers of the whole or substantially the whole of the company's property.

(3) The statement shall be submitted within fourteen days from the relevant date or within such extended time as the official receiver or the court may for special reasons appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section may be allowed, and if so allowed shall be paid by the official receiver or provisional liquidator, as the case may be, out of the assets of the company such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official receiver may consider reasonable, subject to an appeal to the court.

(5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding two hundred shillings for every day during which the default continues.

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

(7) Any person untruthfully so stating himself to be a creditor or contributory shall be liable to a fine not exceeding four hundred shillings.

(8) In this section, "the relevant date" means, in a case where an interim liquidator is appointed, the date of his appointment, and in a case where no such appointment is made, the date of the winding-up order.

Report by official receiver.

233. (1) In a case where a winding-up order is made, the official receiver shall, as soon as practicable after receipt of the statement to be submitted under section 232, or, in a case where the court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the court-

(a) as to the amount of capital issued, subscribed and paid up, and the estimated amount of assets and liabilities; and

(b) if the company has failed, as to the causes of the failure; and

(c) whether in his opinion further inquiry is desirable to any matter relating to the promotion, formation or failure of the company or the conduct of the business thereof.

(2) The official receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation or by any officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.

(3) If the official receiver states in any such further report as aforesaid that in his opinion a fraud has been committed as aforesaid, the court shall have the further powers provided in section 265.

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Liquidators

Power of court to appoint liquidators.

234. For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the court may impose, the court may appoint a liquidator or liquidators.

Appointment and powers of interim liquidator.

235. (1) The court may appoint the official receiver to be the liquidator provisionally at any time after the presentation of a winding-up petition and before the making of a winding-up order.

(2) Where a liquidator (in this Act referred to as an interim liquidator) is so appointed by the court, the court may limit and restrict his powers by the order appointing him.

Appointment, style, etc., of liquidators.

236. The following provisions with respect to liquidators shall have effect on a winding-up order being made-

(a) the official receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such;

(b) the official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the court for appointing a liquidator in the place of the official receiver:

Provided that where the court has dispensed with the settlement of a list of contributories it shall not be necessary for the official receiver to summon a meeting of contributories;

(c) the court may make any appointment and order required to give effect to any such determination and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matter aforesaid, the court shall decide the difference and make such order thereon as the court may think fit;

(d) in a case where a liquidator is not appointed by the court, the official receiver shall be the liquidator of the company;

(e) the official receiver shall by virtue of his office be the liquidator during any vacancy;

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(f) a liquidator shall be described, where a person other than the official receiver is liquidator, by the style of "the liquidator", and, where the official receiver is liquidator, by the style of "the official receiver and liquidator", of the particular company in respect of which he is appointed and not by his individual name.

Provisions where person other than official receiver is appointed liquidator.

237. Where, in the winding up of a company by the court, a person other than the official receiver is appointed liquidator, that person-

(a) shall not be capable of acting as liquidator until he has notified his appointment to the registrar and given security in the prescribed manner to the satisfaction of the official receiver;

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

General provisions as to liquidator.

238. (1) A liquidator appointed by the court may resign or, on cause shown, be removed by the court.

(2) Where a person other than the official receiver is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the court may direct, and, if more such persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportions as the court directs.

(3) A vacancy in the office of a liquidator appointed by the court shall be filled by the court.

(4) If more than one liquidator is appointed by the court, the court shall declare whether any act by this Act required or authorized to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(5) Subject to the provisions of section 326, the acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

Custody of company's property.

239. Where a winding-up order has been made or where an interim liquidator has been appointed, the liquidator or the interim liquidator, as the case may be, shall take into his custody or under his control all the property and things in action to which the company is or appears to be entitled.

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Vesting of property of company in liquidator.

240. Where a company is being wound up by the court, the court may on the application of the liquidator by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name, and thereupon the property to which the order relates shall vest accordingly, and the liquidator may, after giving such indemnity, if any, as the court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

Powers of liquidator. 9 of 1967, Sch.

241. (1) The liquidator in a winding up by the court shall have power, with the sanction either of the court or of the committee of inspection–

(a) to bring or defend any action or other legal proceeding in the name and on behalf of the company;

(b) to carry on the business of the company so far as may be necessary for the beneficial winding up thereof;

(c) to appoint an advocate to assist him in the performance of his duties;

(d) to pay any classes of creditors in full;

(e) to make any compromise, or arrangement with creditors, or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;

(f) to compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect thereof.

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(2) The liquidator in a winding up by the court shall have power–

(a) to sell the movable and immovable property and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company or to sell the same in parcels;

(b) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the company's seal;

(c) to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors;

(d) to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;

(e) to raise on the security of the assets of the company any money requisite;

(f) to take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself:

Provided that nothing in this paragraph shall be deemed to affect the rights, duties and privileges of the Public Trustee;

(g) to appoint an agent to do any business which the liquidator is unable to do himself;

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(h) where winding-up proceedings have been commenced in respect of the company in one or more of the prescribed territories as well as in Kenya, to make such payments to a liquidator or provisional liquidator of the company in any of the prescribed territories as may be necessary for the distribution of the company's assets;

(i) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(3) The exercise by a liquidator in a winding up by the court of the powers conferred by this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

(4) For the purpose of this section, "prescribed territories" means Uganda, Tanzania and such other territories as may be prescribed.

Exercise and control of liquidator's powers.

242. (1) Subject to the provisions of this Act, the liquidator of a company which is being wound up by the court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories as the case may be.

(3) The liquidator may apply to the court in manner prescribed for directions in relation to any particular matter arising under the winding up.

(4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court, and the court may confirm,

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reverse or modify the act or decision complained of, and make such order in the premises as it thinks just.

Books to be kept by liquidator.

243. Every liquidator of a company which is being wound up by the court shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the court, personally or by his agent inspect any such books.

Payments by liquidator to official receiver or into bank.

244. (1) Every liquidator of a company which is being wound up by the court shall, in such manner and at such times as the official receiver shall direct, pay the money, received by him to the official receiver for the credit of the Companies Liquidation Account, and the official receiver shall furnish him with a receipt for the money so paid:

Provided that, if the committee of inspection satisfy the court that, for the purpose of carrying on the business of the company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any bank, the court shall, on the application of the committee of inspection, authorize the liquidator to make his payments into and out of such bank as the committee may select, and thereupon those payments shall be made in the prescribed manner.

(2) If any such liquidator at any time retains for more than ten days a sum exceeding one thousand shillings, or such other amount as the court in any particular case authorizes him to retain, then, unless he explains the retention to the satisfaction of the court, he shall pay interest on the amount so retained in excess at the rate of twenty per cent per annum, and shall be liable to disallowance of all or such part of his remuneration as the court may think just, and to be removed from his office by the court, and shall be liable to pay any expenses occasioned by reason of his default.

(3) A liquidator of a company which is being wound up by the court shall not pay any sums received by him as liquidator into his private banking account.

Audit of liquidator's accounts.

245. (1) Every liquidator other than the official receiver of a company which is being wound up by the court shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the official receiver, or as he directs, an account of his receipts and payments as liquidator.

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(2) The account shall be in the prescribed form, shall be made in duplicate and shall be verified by a statutory declaration in the prescribed form.

(3) The official receiver shall cause the account to be audited, and for the purpose of the audit the liquidator shall furnish the official receiver with such vouchers and information as the official receiver may require, and the official receiver may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4) When the account has been audited, one copy thereof shall be filed by the official receiver and the other copy shall be delivered to the court for filing, and each copy shall be open to the inspection of any person on payment of the prescribed fee.

(5) The liquidator shall cause a copy of the account when audited, or a summary thereof, to be sent by post to each creditor and contributory within thirty days of the completion of the audit:

Provided that the official receiver may in any case dispense with compliance with this subsection.

Control over liquidators.

246. (1) The official receiver shall take cognizance of the conduct of liquidators of companies which are being wound up by the court, and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules or otherwise with respect to the performance of his duties or if any complaint is made to the official receiver by any creditor or contributory in regard thereto, the official receiver shall inquire into the matter and take such action thereon as he may think expedient.

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

Release of liquidators.

247. (1) When the liquidator of a company which is being wound up by the court has realized all the property of the company, or so much thereof as can, in his opinion, be realized without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the court shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the court, shall take into consideration the report and any objection which may be urged by any

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creditor or contributory or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly.

(2) Where the release of a liquidator is withheld, the court may, on the application of any creditor or contributory or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

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

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

Committees of Inspection

Meetings of creditors and contributories to determine whether committee of inspection shall be appointed.

248. (1) When a winding-up order has been made by the court it shall be the business of the separate meetings of creditors and contributories summoned for the purpose of determining whether or not an application should be made to the court for appointing a liquidator in place of the official receiver, to determine further whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator and who are to be members of the committee if appointed.

(2) The court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matters aforesaid the court shall decide the difference and make such order thereon as the court may think fit.

Constitution and proceedings of committee of inspection.

249. (1) A committee of inspection appointed in pursuance of this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories or as, in case of difference, may be determined by the court.

(2) The committee shall meet at such times as they from time to time appoint, and, failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

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(3) The committee may act by a majority of their members present at a meeting but shall not act unless a majority of the committee are present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt or compounds or arranges with his creditors or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories, of which twenty-one days notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, reappoint the same or appoint another creditor or contributory to fill the vacancy:

Provided that if the liquidator, having regard to the position in the winding up, is of the opinion that it is unnecessary for the vacancy to be filled he may apply to the court and the court may make an order that the vacancy shall not be filled, or shall not be filled except in such circumstances as may be specified in the order.

(8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

Powers of court where no committee of inspection.

250. Where in the case of a winding up there is no committee of inspection, the court may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Act authorized or required to be done or given by the committee:

Provided that where the official receiver is the liquidator he may do any such act or thing and give any such direction or permission without application to the court.

General Powers of Court in Case of Winding Up by Court

Power to stay winding up.

251. (1) The court may at any time after an order for winding up, on the application either of the liquidator or the official receiver or any creditor or contributory, and on proof to the satisfaction of the court that

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all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

(2) On any application under this section the court may, before making an order, require the official receiver to furnish to the court a report with respect to any facts or matters which are in his opinion relevant to the application.

(3) A copy of every order made under this section shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar for registration.

Settlement of list of contributories and application of assets.

252. (1) As soon as may be after making a winding-up order, the court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities:

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

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

Delivery of property to liquidator.

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

Payment of debts due by contributory to company and extent to which set-off allowed.

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

(2) The court in making such an order may–

(a) in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but

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not any money due to him as a member of the company in respect of any dividend or profit; and

(b) in the case of a limited company, make to any director or manager whose liability is unlimited or to his estate the like allowance.

(3) In the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

Power of court to make calls.

255. (1) The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on all or any of the contributories for the time being on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.

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

Payment into bank of moneys due to company.

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

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

Order on contributory conclusive evidence.

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

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings whatsoever.

Appointment of special manager.

258. (1) Where the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that

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the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court, and the court may on such application appoint a special manager of the said estate or business to act during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court.

(2) The special manager shall give such security and account in such manner as the official receiver shall direct.

(3) The special manager shall receive such remuneration as may be fixed by the court.

Power to exclude creditors not proving in time.

259. The court may fix a time or times within which creditors are to prove their debts or claims or to be excluded from the benefit of any distribution made before those debts are proved.

Adjustment of rights of contributories.

260. The court shall adjust the rights of the contributories among themselves and make an order for the distribution of any surplus among the persons entitled thereto.

Inspection of books by creditors and contributories.

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

(2) Nothing in this section shall be taken as excluding or restricting any statutory rights of any department of the Government or of any officer thereof or of any person acting under the authority of any such department or officer.

Power to order costs of winding up to be paid out of assets.

262. The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding up in such order of priority as the court thinks just.

Power to summon persons suspected of having property of company, etc.

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

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(2) The court may examine him on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

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

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having a lawful impediment (made known to the court at the time of its sitting and allowed by it), the court may cause him to be arrested and brought before the court for examination.

Attendance of officers of company at meetings of creditors, etc.

264. In the winding up by the court of a company the court shall have power to require the attendance of any officer of the company at any meeting of creditors or of contributories or of a committee of inspection for the purpose of giving information as to the trade, dealings, affairs or property of the company.

Power to order public examination of promoters and officers.

265. (1) Where an order has been made for winding up a company by the court, and the official receiver has made a further report under this Act stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since its formation, the court may, after consideration of the report, direct that that person or officer shall attend before the court on a day appointed by the court for that purpose and be publicly examined as to the promotion or formation or the conduct of the business of the company or as to his conduct and dealings as an officer thereof.

(2) The official receiver shall take part in the examination, and for that purpose may, if specially authorized by the court in that behalf, employ an advocate.

(3) The liquidator, where the official receiver is not the liquidator, and any creditor or contributory may also take part in the examination either personally or by advocate.

(4) The court may put such questions to the person examined as the court thinks fit.

(5) The person examined shall be examined on oath and shall answer all such questions as the court may put or allow to be put to him.

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

Provided that, if any such person applies to the court to be exculpated from any charges made or suggested against him, it shall be the duty of the official receiver to appear on the hearing of the application and call the attention of the court to any matters which appear to the official receiver to be relevant, and if the Court, after hearing any evidence given or witnesses called by the official receiver, grants the application, the court may allow the applicant such costs as in its discretion it may think fit.

(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(8) The court may, if it thinks fit, adjourn the examination from time to time.

Power to arrest absconding promoters, officers and contributories.

266. The court, at any time either before or after making a winding-up order, on proof of probable cause for believing that any person or officer of the company mentioned in subsection (1) of section 265 or a contributory is about to quit Kenya or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may cause him to be arrested and his books and papers and movable personal property to be seized and him and them to be safely kept until such time as the court may order.

Powers of court cumulative.

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

Delegation to liquidator of certain powers of court.

268. Provision may be made by rules for enabling or requiring all or any of the powers and duties conferred and imposed on the court by this Act in respect of the following matters–

(a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;

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(b) the settling of lists of contributories and the rectifying of the register of members where required, and the collecting and applying of the assets;

(c) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;

(d) the making of calls;

(e) the fixing of a time within which debts and claims must be proved,

to be exercised or performed by the liquidator as an officer of the court, and subject to the control of the court:

Provided that the liquidator shall not, without the special leave of the court, rectify the register of members, and shall not make any call without either the special leave of the court or the sanction of the committee of inspection.

Dissolution of company.

269. (1) When the affairs of a company have been completely wound up, the court, if the liquidator makes an application in that behalf, shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) A copy of the order shall within fourteen days from the date thereof be delivered by the liquidator to the registrar for registration.

(3) If the liquidator makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding one hundred shillings for every day during which he is in default.

Appeals

Appeals.

270. Subject to such conditions and limitations as may be prescribed by rules, an appeal shall lie to the Court of Appeal from any decision or order given or made by the High Court in the exercise of the jurisdiction conferred upon it by section 218.

(iii) Voluntary Winding Up

Resolutions for, and Commencement of, Voluntary Winding Up

Circumstances in which company may be wound up voluntarily.
38 of 1968, Sch.

271. (1) A company may be wound up voluntarily -

(a) when the period, if any, fixed for the duration of the company by the articles expires, or the event, if any,

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occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;

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

(c) (*Deleted by* 38 *of* 1968*, Sch.).*

(2) In this Act, "a resolution for voluntary winding up" means a resolution passed under any of the provisions of subsection (1).

Notice of resolution to wind up voluntarily.

272. (1) When a company has passed a resolution for voluntary winding up, it shall, within fourteen days after the passing of the resolution, give notice of the resolution by advertisement in the Gazette, and also in some newspaper circulating in Kenya.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine, and for the purposes of this subsection the liquidator of the company shall be deemed to be an officer of the company.

Commencement of voluntary winding up.

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

Consequences of Voluntary Winding Up

Effect of voluntary winding up on business and status of company.

274. In case of a voluntary winding up, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof:

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

Avoidance of transfers, etc., after commencement of voluntary winding up.

275. Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding up, shall be void.

Declaration of Solvency

Statutory declaration of solvency in case of proposal to wind up voluntarily.

276. (1) Where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors, may, at a meeting of the directors make a declaration in the prescribed form to the effect

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that they have made a full inquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within such period not exceeding twelve months from the commencement of the winding up as may be specified in the declaration.

(2) A declaration made as aforesaid shall have no effect for the purposes of this Act unless–

(a) it is made within the thirty days immediately preceding the date of the passing of the resolution for winding up the company and is delivered to the registrar for registration before that date; and

(b) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.

(3) Any director of a company making a declaration under this section, without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration, shall be liable to imprisonment for a period not exceeding twelve months or to a fine not exceeding twenty thousand shillings or to both, and if the company is wound up in pursuance of a resolution passed within the period of thirty days after the making of the declaration, but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion.

(4) A winding up in the case of which a declaration has been made and delivered in accordance with this section or section 226 of the repealed Companies Ordinance is in this Ordinance referred to as a members' voluntary winding up, and a winding up in the case of which a declaration has not been made and delivered as aforesaid is in this Act referred to as a creditors' voluntary winding up.

(5) Subsections (1) to (3) shall not apply to a winding up commenced before the appointed day.

Provisions Applicable to a Members' Voluntary Winding Up

Provisions applicable to a members' winding up.

277. The provisions of sections 278 to 284 shall, subject to the provisions of section 284, apply in relation to a members' voluntary winding up.

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Power of company to appoint and fix remuneration of liquidators.

278. (1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.

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

Power to fill vacancy in office of liquidator.

279. (1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by any continuing liquidator.

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

Power of liquidator to accept shares, etc., as consideration for sale of property of company.

280. (1) Where a company is proposed to be, or is in course of being, wound up voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Act or not (in this section called the transferee company), the liquidator of the first-mentioned company (in this section called the transferor company) may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive, in compensation or part compensation for the transfer or sale, shares, policies or other like interests in the transferee company for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

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

(3) If any member of the transferor company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into

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effect or to purchase his interest at a price to be determined by agreement or by arbitration in accordance with the law relating to arbitration for the time being in force in Kenya.

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

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

Duty of liquidator to call creditors' meeting in case of insolvency.

281. (1) If, in the case of a winding up commenced after the appointed day, the liquidator is at any time of opinion that the company will not be able to pay its debts in full within the period stated in the declaration under section 276 he shall forthwith notify the registrar accordingly and summon a meeting of the creditors, and shall lay before the meeting a statement of the assets and liabilities of the company.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding one thousand shillings.

Duty of liquidator to call general meeting at end of each year.

282. (1) Subject to the provisions of section 284, in the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within three months from the end of the year or such longer period as the registrar may allow, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding two hundred shillings.

Final meeting and dissolution.

283. (1) Subject to the provisions of section 284, as soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

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(2) The meeting shall be called by advertisement in the Gazette, and in a newspaper circulating in Kenya, specifying the time, place and object thereof, and published thirty days at least before the meeting.

(3) Within fourteen days after the meeting, the liquidator shall deliver to the registrar a copy of the account, and shall make a return to him of the holding of the meeting and of its date, and if the copy is not delivered or the return is not made in accordance with this subsection the liquidator shall be liable to a fine not exceeding one hundred shillings for every day during which the default continues:

Provided that, if a quorum is not present at the meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this subsection as to the making of the return shall be deemed to have been complied with.

(4) The registrar on receiving the account and either of the returns hereinbefore mentioned shall forthwith register them, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved:

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made within seven days after the making of the order, to deliver to the registrar a certified copy of the order for registration, and if that person fails so to do he shall be liable to a fine not exceeding one hundred shillings for every day during which the default continues.

(6) If the liquidator fails to call a general meeting of the company as required by this section, he shall be liable to a fine not exceeding one thousand shillings.

Alternative provisions as to annual and final meetings in case of insolvency.

284. Where section 281 has effect, sections 293 and 294 shall apply to the winding up to the exclusion of sections 282 and 283, as if the winding up were a creditors' voluntary winding up and not a members' voluntary winding up:

Provided that the liquidator shall not be required to summon a meeting of creditors under section 293 at the end of the first year from the commencement of the winding up, unless the meeting held under section

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281 is held more than three months before the end of that year.

Provisions Applicable to a Creditors' Voluntary Winding Up

Provisions applicable to a creditors' winding up.

285. The provisions of sections 286 to 294 shall apply in relation to a creditors' voluntary winding up.

Meeting of creditors.

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

(2) The company shall cause notice of the meeting of the creditors to be advertised once in the Gazette and once at least in a newspaper circulating in Kenya.

(3) The directors of the company shall–

(a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of the creditors to be held as aforesaid; and

(b) appoint one of their number to preside at the said meeting.

(4) It shall be the duty of the director appointed to preside at the meeting of the creditors to attend the meeting and preside thereat.

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

(6) If default is made-

(a) by the company in complying with subsections (1) and (2);

(b) by the directors of the company in complying with subsection (3);

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(c) by any director of the company in complying with subsection (4),

the company, directors or director, as the case may be, shall be liable to a fine not exceeding two thousand shillings, and, in the case of default by the company, every officer of the company who is in default shall be liable to the like penalty.

Appointment of liquidator.

287. The creditors and the company at their respective meetings mentioned in section 286 may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator:

Provided that, in the case of different persons being nominated, any director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors or appointing some other person to be liquidator instead of the person appointed by the creditors.

Appointment of committee of inspection.

288. (1) The creditors at the meeting to be held in pursuance of section 286 or at any subsequent meeting may, if they think fit, appoint not more than five persons to be members of a committee of inspection, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to be members of the committee so, however, that the majority of the members of the committee shall be persons appointed by the creditors:

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection, and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the court otherwise directs, be qualified to act as members of the committee, and on any application to the court under this provision the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(2) Subject to the provisions of this section and to any rules made in this behalf, the provisions of section 249, except subsection (1) thereof, shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the court.

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Fixing of liquidators' remuneration.

289. The committee of inspection, or if there is no such committee the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

Cesser of directors' powers on appointment of liquidator.

290. On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee the creditors sanction the continuance thereof.

Power to fill vacancy in office of liquidator.

291. If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by, or by the direction of, the court, the creditors may fill the vacancy.

Application of section 280 to a creditors' voluntary winding up.

292. The provisions of section 280 shall apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up, with the modification that the powers of the liquidator under the said section shall not be exercised except with the sanction either of the court or of the committee of inspection in substitution for the sanction of a special resolution.

Duty of liquidator to call meetings of company and of creditors at end of each year.

293. (1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of the creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within three months from the end of the year or such longer period as the registrar may allow, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this section he shall be liable to a fine not exceeding two hundred shillings.

Final meeting and dissolution.

294. (1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving any explanation thereof.

(2) Each such meeting shall be called by advertisement in the Gazette and in a newspaper circulating in Kenya, specifying the time, place and object thereof, and published, thirty days at least before the meeting.

(3) Within fourteen days after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall deliver to the registrar a copy of the account,

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and shall make a return to him of the holding of the meetings and of their dates, and if the copy is not delivered or the return is not made in accordance with this subsection the liquidator shall be liable to a fine not exceeding one hundred shillings for every day during which the default continues:

Provided that, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat and upon such a return being made the provisions of this subsection as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.

(4) The registrar on receiving the account and, in respect of each such meeting, either of the returns hereinbefore mentioned, shall forthwith register them, and on the expiration of three months from the registration thereof the company shall be deemed to be dissolved:

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to deliver to the registrar a certified copy of the order for registration, and if that person fails so to do he shall be liable to a fine not exceeding one hundred shillings for every day during which the default continues.

(6) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this section, he shall be liable to a fine not exceeding one thousand shillings.

Provisions Applicable to every Voluntary Winding Up

Provisions applicable to every voluntary winding up.

295. The provisions of sections 296 to 303 shall apply to every voluntary winding up whether a members' or a creditors' winding up.

Distribution of property of company.

296. Subject to the provisions of this Act as to preferential payments, the assets of a company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu*, and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

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Powers and duties of liquidator in voluntary winding up.

297. (1) The liquidator may–

(a) in the case of a members' voluntary winding up, with the sanction of a special resolution of the company, and, in the case of a creditors' voluntary winding up, with the sanction of the court or the committee of inspection or (if there is no such committee) a meeting of the creditors, exercise any of the powers given by paragraphs *(d)*, *(e)* and *(f)* of subsection (1) of section 241 to a liquidator in a winding up by the court;

(b) without sanction, exercise any of the other powers by this Act given to the liquidator in a winding up by the court;

(c) exercise the power of the court under this Act of settling a list of contributories, and the list of contributories shall be prima facie evidence of the liability of the persons named therein to be contributories;

(d) exercise the power of the court of making calls;

(e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or for any other purpose he may think fit.

(2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(3) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two.

Power of court to appoint and remove liquidator in voluntary winding up.

298. (1) If from any cause whatever there is no liquidator acting, the court may appoint a liquidator.

(2) The court may, on cause shown, remove a liquidator and appoint another liquidator.

Notice by liquidator of his appointment.

299. (1) The liquidator shall, within fourteen days after his appointment, publish in the Gazette and deliver to the registrar for registration notice of his appointment in the form prescribed.

(2) If the liquidator fails to comply with the requirements of this section he shall be liable to a fine not exceeding one hundred shillings for every day during which the default continues.

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Arrangement when binding on creditors.

300. (1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by a special resolution and on the creditors if acceded to by three-fourths in number and value of the creditors.

(2) Any creditor or contributory may, within thirty days from the completion of the arrangement, appeal to the court against it, and the court may thereupon, as it thinks just, amend, vary or confirm the arrangement.

Power to apply to court to have questions determined or powers exercised.

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

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

(3) A copy of an order made by virtue of this section staying the proceedings in the winding up shall forthwith be delivered by the company, or otherwise as may be prescribed to the registrar for registration.

Costs of voluntary winding up.

302. All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

Saving for rights of creditors and contributories.

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

(iv) Winding Up Subject to Supervision of Court

Power to order winding up subject to supervision.

304. When a company has passed a resolution for voluntary winding up, the court may make an order that the voluntary winding up shall continue but subject to such supervision of the court, and with such liberty for creditors, contributories, or others to apply to the court, and generally on such terms and conditions, as the court thinks just.

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Effect of petition for winding up subject to supervision.

305. A petition for the continuance of a voluntary winding up subject to the supervision of the court shall, for the purpose of giving jurisdiction to the court over actions, be deemed to be a petition for winding up by the court.

Application of sections 224 and 225 to winding up subject to supervision.

306. A winding up subject to the supervision of the court shall, for the purposes of sections 224 and 225 be deemed to be a winding up by the court.

Power of court to appoint or remove liquidators.

307. (1) Where an order is made for a winding up subject to supervision, the court may by that or any subsequent order appoint an additional liquidator.

(2) A liquidator appointed by the court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position, as if he had been duly appointed in accordance with the provisions of this Act with respect to the appointment of liquidators in a voluntary winding up.

(3) The court may remove any liquidator so appointed by the court or any liquidator continued under the supervision order and fill any vacancy occasioned by the removal, or by death or resignation.

Effect of supervision order.

308. (1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the court, exercise all his powers, without the sanction or intervention of the court, in the same manner as if the company were being wound up voluntarily:

Provided that none of the powers specified in paragraphs *(d)*, *(e)* and *(f)* of subsection (1) of section 241 shall be exercised by the liquidator except with the sanction of the court or, in a case where before the order the winding up was a creditors' voluntary winding up, with the sanction of the court or the committee of inspection, or (if there is no such committee) a meeting of the creditors.

(2) A winding up subject to the supervision of the court is not a winding up by the court for the purpose of the provisions of this Act specified in the Eighth Schedule, but, subject as aforesaid, an order for a winding up subject to supervision shall for all purposes be deemed to be an order for winding up by the court:

Provided that, where the order for winding up subject to supervision was made in relation to a creditors' voluntary winding up in which a committee of inspection had been appointed, the order shall be deemed to be an order for winding up by the court for the purpose of section 249, except subsection (1) thereof, except in so far

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as the operation of that section is excluded in a voluntary winding up by general rules.

(v) Provisions Applicable to Every Mode of Winding Up
Proof and Ranking of Claims

Debts of all descriptions may be proved.

309. In every winding up (subject, in the case of insolvent companies, to the application in accordance with the provisions of this Act of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

Application of bankruptcy rules in winding up of insolvent companies.

310. In the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up and make such claims against the company as they respectively are entitled to by virtue of this section.

Preferential payments.
28 of 1965, s. 48,
9 of 1967, Sch.,
38 of 1968, Sch.,
8 of 2003, s.7,
15 of 2003, s. 61.

311. (1) In the winding up of a company there shall be paid in priority to all other debts–

(a) all taxes and local rates due from the company at the relevant date and having become due and payable within twelve months next before that date not exceeding in the whole one year's assessment;

(b) all Government rents not more than one year in arrear;

(*c*) all wages or salary (whether or not earned wholly or in part by way of commission) of any clerk or servant (not being a director) in respect of services rendered to the company during four months next before the relevant date and all wages (whether payable for time or for piece work) of any workman or labourer in respect of services so rendered;

(cA) all retirement benefits contributions and vested benefits of any clerk or servant of the Company;

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(d) unless the company is being wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company, or unless the company has, at the commencement of the winding up, under any contract with insurers, rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the Workmen's Compensation Act, being amounts which have accrued before the relevant dates;

Cap. 236.

(e) unless the company is being wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company, all amounts due in respect of contributions payable during the period of twelve months immediately preceding the relevant date by the company as the employer of any person under the National Social Security Fund Act or the Retirement Benefits Act.

Cap.258.

(2) Notwithstanding anything in paragraph *(c)* or *(cA)* of subsection (1), the sum to which priority is to be given under these paragraphs shall not, in the case of any one claimant, exceed twenty thousand shillings:

Provided that, where a claimant under the said paragraph *(c)* is a labourer in husbandry who has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the court may decide to be due under the contract, proportionate to the time of service up to the relevant date.

(3) Where any compensation under the Workmen's Compensation Act is a weekly payment, the amount due in respect thereof shall, for the purposes of paragraph *(d)* of subsection (1), be taken to be amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the said Act.

(4) Where any payment has been made to any clerk, or servant (not being a director) or to any workman or labourer in the employment of a company, on account of wages or salary out of money advanced by some person for that purpose, the person by whom the money was advanced shall in a winding up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which the clerk, servant, workman or labourer would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

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(5) The foregoing debts shall–

(a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and

(b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(6) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.

(7) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within six months next before the date of a winding-up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof:

Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(8) For the purposes of this section–

(a) any remuneration in respect of a period of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period;

(b) "the relevant date" means–

(i) in the case of a company ordered to be wound up compulsorily, the date of the appointment (or first appointment) of an interim liquidator, or, if no such appointment was made, the date of the winding-up order, unless in either case the company had commenced to be wound up voluntarily before that date; and

(ii) in any case where subparagraph (i) does not apply, the date of the passing of the resolution for the winding up of the company.

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(9) This section shall not apply in the case of a winding up where the relevant date as defined in subsection (6) of section 259 of the repealed Companies Ordinance occurred before the commencement of this Act, and in such a case the provisions relating to preferential payments which would have applied if this Act had not been enacted shall be deemed to remain in full force.

Effect of Winding Up on Antecedent and other Transactions

Fraudulent preference.

312. (1) Any transfer, conveyance, mortgage, charge, delivery of goods, payment, execution or other act relating to property made or done by or against a company within six months before the commencement of its winding up which, had it been made or done by or against an individual within six months before the presentation of a bankruptcy petition on which he is adjudged bankrupt, would be deemed in his bankruptcy a fraudulent preference shall in the event of the company being wound up be deemed a fraudulent preference of its creditors and be void accordingly.

(2) Any transfer, conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

Liabilities and rights of certain fraudulently preferred persons.

313. (1) Where anything made or done after the appointed day is void under section 312 as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then (without prejudice to any rights or liabilities arising apart from this provision) the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as surety for the debt to the extent of the mortgage or charge on the property or the value of his interest, whichever is the less.

(2) The value of the said person's interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all encumbrances other than those to which the mortgage or charge for the company's debt was then subject.

(3) (*a*) On any application made to the court with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the court shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up, and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of an action for the recovery of the sum paid.

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(*b*) This subsection shall apply, with the necessary modifications, in relation to transactions other than the payment of money as it applies in relation to such payments.

Effect of floating charge.

314. Where a company is being wound up, a floating charge on the undertaking or property of the company created within twelve months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of six per cent per annum or such other rate as may for the time being be prescribed:

Provided that, in relation to a charge created more than six months before the appointed day, this section shall have effect with the substitution, for the words "twelve months", of the words "six months".

Disclaimer of onerous property in case of company wound up.

315. (1) Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto, may, with the leave of the court and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the court, disclaim the property:

Provided that, where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power under this section of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the court.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as

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a condition of granting leave, and make such other order, in the matter as the court thinks just.

(4) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any persons interested in the property requiring him to decide whether he will or will not disclaim and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such further period as may be allowed by the court, given notice to the applicant that he intends to apply to the court for leave to disclaim, and, in the case of a contract, if the liquidator, after such an application as aforesaid, does not within the said period or further period disclaim the contract, the company shall be deemed to have adopted it.

(5) The court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the court thinks just, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) The court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any persons entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the court thinks just, and on any such vesting order being made the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose:

Provided that, where the property disclaimed is of a leasehold nature, the court shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as chargee, except upon the terms of making that prerson–

(i) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or

(ii) if the court thinks fit, subject only to the same liabilities and obligations as if the lease had beeen assigned to that person at that date,

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and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the court shall have power to vest the estate and interest of the company in the property in any person liable either personally or in a representative character, and either alone or jointly with the company, to perform the lessee's covenants in the lease, freed and discharged from all estates, encumbrances and interests created therein by the company.

(7) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.

Restriction of rights of creditor as to execution or attachment in case of company being wound up.

316. (1) Where a creditor has issued execution against the movable or immovable property of a company or has attached any debt due to the company, and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the company unless he has completed the execution or attachment before the commencement of the winding up:

Provided that–

(i) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice shall, for the purposes of the foregoing provision, be substituted for the date of the commencement of the winding up;

(ii) a person who purchases in good faith under a sale by order of the court any movable property of a company on which an execution has been levied shall in all cases acquire a good title thereto against the liquidator; and

(iii) the rights conferred by this subsection on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court may think fit.

(2) For the purposes of this section, an execution against movable property shall be taken to be completed by seizure and sale, and an attachment of a debt shall be deemed to be completed by receipt of the

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debt, and an execution against immovable property shall be deemed to be completed by seizure and, in the case of an equitable interest, by the appointment of a receiver.

(3) In this section and in section 317, "movable property" includes all chattels personal.

Duties of court as to goods taken in execution.

317. (1) Subject to the provisions of subsection (3), where any movable property of a company is taken in execution, and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the court that an interim liquidator has been appointed or that a winding-up order has been made or that a resolution for voluntary winding up has been passed, the court shall, on being so required, deliver the movable property including any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the movable property so delivered, and the liquidator may sell the same, or a sufficient part thereof, for the purpose of satisfying that charge.

(2) Subject to the provisions of subsection (3), where under an execution in respect of a decree for a sum exceeding four hundred shillings the movable property of a company is sold or money is paid in order to avoid sale, the court shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for fourteen days, and, if within that time notice is served on the court of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up of the company and an order is made or a resolution is passed, as the case may be, for the winding up of the company, the court shall pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor.

(3) The rights conferred by this section on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit.

Offences Antecedent to or in Course of Winding Up

Offences by officers of companies in liquidation.

318. (1) If any person, being a past or present officer of a company which at the time of the commission of the alleged offence is being wound up, whether by or under the supervision of the court or voluntarily, or is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up-

(a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property, movable and immovable of the company, and how and to whom

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and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the *company; or*

(b) does not deliver up to the liquidator, or as he directs, all such part of the movable and immovable property of the company as is in his custody or under his control, and which he is required by law to deliver up; or

(c) does not deliver up to the liquidator, or as he directs, all books and papers belonging to the company and which he is required by law to deliver up; or

(d) within twelve months next before the commencement of the winding up or at any time thereafter conceals any part of the property of the company to the value of two hundred shillings or upwards, or conceals any debt due to or from the company; or

(e) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently removes any part of the property of the company to the value of two hundred shillings or upwards; or

(f) makes any material omission in any statement relating to the affairs of the company; or

(g) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of a month to inform the liquidator thereof; or

(h) after the commencement of the winding up prevents the production of any book or paper affecting or relating to the property or affairs of the company; or

(i) within twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the company; or

(j) within twelve months next before the commencement of the winding up or at any time thereafter makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company; or

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(k) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company; or

(l) after the commencement of the winding up or at any meeting of the creditors of the company within twelve months next before the commencement of the winding up attempts to account for any part of the property of the company by fictitious losses or expenses; or

(m) has within twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for; or

(n) within twelve months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for; or

(*o*) within twelve months next before the commencement of the winding up or at any time thereafter pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing is in the ordinary way of the business of the company; or

(*p*) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up; or

(*q*) has within twelve months next before the commencement of the winding up been privy to the carrying on of the business of the company knowing that the company was unable to pay its debts; or

(*r*) has been privy to the contracting by the company of any debt provable in the liquidation without having at the time when the debt was contracted any reasonable or probable ground of expectation (proof whereof shall

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lie on him) that the company would be able to pay that debt,

he shall, in the case of the offences mentioned respectively in paragraphs *(m)*, *(n)* and *(o)*, be liable to imprisonment for a term not exceeding five years and in the case of any other offence shall be liable to imprisonment for a term not exceeding three years:

Provided that it shall be a good defence to a charge under any of paragraphs *(a)*, *(b)*, *(c)*, *(d)*, *(f)*, *(n)*, *(o)*, *(q)* and *(r)* if the accused proves that he had no intent to defraud, and to a charge under any of paragraphs *(h)*, *(i)* and *(j)* if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under paragraph *(o)* of subsection (1), every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid shall be liable to be punished in the same way as if he had been convicted of an offence under subsection (1) of section 322 of the Penal Code. Cap. 63.

(3) For the purposes of this section, "officer" includes any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

Penalty for falsification of books.

319. If any officer or contributory of any company being wound up destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the company, with intent to defraud or deceive any person, he shall be liable to imprisonment for a term not exceeding seven years, and shall also be liable to a fine.

Fraud by officers of companies which have gone into liquidation.

320. (1) If any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up-

(a) has by false pretences or by means of any other fraud induced any person to give credit to the company;

(b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company;

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(c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against the company,

he shall be liable to imprisonment for a term not exceeding two years.

(2) For the purposes of this section, "officer" includes any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

Officers of company failing to account for loss of part of company's property.

321. (1) If any person being a past or present officer of a company which is being wound up under the provisions of this Act, on being required by the official receiver at any time or in the course of his examination by the court under the provisions of section 265 to account for the loss of any substantial part of the company's property incurred within a period of a year next preceding the commencement of the winding up, fails to give a satisfactory explanation of the manner in which such loss occurred, he shall be liable to imprisonment for a term not exceeding three years.

(2) A prosecution shall not be instituted against any person under this section except by or with the consent of the Attorney-General.

Liability where proper accounts not kept.

322. (1) If in the course of the winding up of a company it is shown that proper books of account were not kept by the company at any time during the period of two years immediately preceding the commencement of the winding up, or the period between the incorporation of the company and the commencement of the winding up, whichever is the shorter, every officer of the company who is in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on the default was excusable, be liable on conviction to imprisonment for a term not exceeding three years.

(2) For the purpose of this section a company shall be deemed not to have kept proper books of account, if it has not kept such books or accounts as are required to be kept by subsection (2) of section 147.

Responsibility for fraudulent trading of persons concerned.

323. (1) (*a*) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the court, on the application of the official receiver, or the liquidator or any creditor or contributory of the company, may, if it thinks proper so to do, declare that any persons

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who were knowingly parties to the carrying on of the business in manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the court may direct.

(*b*) On the hearing of an application under this subsection the official receiver or the liquidator, as the case may be, may himself give evidence or call witnesses.

(2) (*a*) Where the court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any company or person on his behalf, or any person claiming as assignee from or through the person liable or any company or person acting on his behalf, and may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under this subsection.

(*b*) For the purpose of this subsection, "assignee" includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in subsection (1) of this section, every person who was knowingly a party to the carrying on of the business in manner aforesaid shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding ten thousand shillings or to both.

(4) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made, and where the declaration under subsection (1) is made the declaration shall be deemed to be a final decree within the meaning of paragraph *(g)* of subsection (1) of section 3 of the Bankruptcy Act. Cap. 53.

Power of court to assess damages against delinquent directors, etc.

324. (1) If in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager or liquidator, or any officer of the company, has misapplied or retained or become liable or

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accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of the official receiver, or of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the court thinks just.

(2) The provisions of this section shall have effect notwithstanding that the offence is one for which the offender may be criminally liable.

(3) Where an order for payment of money is made under this section, the order shall be deemed to be a final decree within the meaning of paragraph *(g)* of subsection (1) of section 3 of the Bankruptcy Act.

Cap. 53.

Prosecution of delinquent officers and members of company.

325. (1) If it appears to the court in the course of a winding up by, or subject to the supervision of, the court that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator to refer the matter to the Attorney-General.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the Attorney-General and shall furnish to the Attorney-General such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as the Attorney-General may require.

(3) Where any report is made under subsection (2) to the Attorney-General, he may, if he thinks fit, refer the matter to the official receiver for further inquiry, and the official receiver shall thereupon investigate the matter and may, if he thinks it expedient, apply to the court for an order conferring on him for the purpose with respect to the company concerned all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the court.

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(4) If it appears to the court in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the Attorney-General under subsection (2), the court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of subsection (2).

(5) (*a*) If, where any matter is reported or referred to the Attorney-General under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall institute proceedings accordingly, and it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give him all assistance in connection with the prosecution which he is reasonably able to give.

(b) For the purposes of this subsection, "agent" in relation to a company shall be deemed to include any banker or advocate of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(6) If any person fails or neglects to give assistance in manner required by subsection (5), the court may, on the application of the Attorney-General, direct that person to comply with the requirements of the said subsection, and where any such application is made with respect to a liquidator the court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

Supplementary Provisions as to Winding Up

Disqualification for appointment as liquidator.

326. A body corporate shall not be qualified for appointment as liquidator of a company, whether in a winding up by or under the supervision of the court or in a voluntary winding up, and -

(a) any appointment made in contravention of this provision shall be void; and

(b) any body corporate which acts as liquidator of a company shall be liable to a fine not exceeding two thousand shillings.

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Corrupt inducement affecting appointment as liquidator.

327. Any person who gives or agrees or offers to give to any member or creditor of a company any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator shall be liable to a fine not exceeding two thousand shillings.

Enforcement of duty of liquidator to make returns, etc.

328. (1) If any liquidator who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the court may, on an application made to the court by any contributory or creditor of the company or by the registrar, make an order directing the liquidator to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the liquidator

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a liquidator in respect of any such default as aforesaid.

Notification that a company is in liquidation.

329. (1) Where a company is being wound up, whether by or under the supervision of the court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is in liquidation.

(2) If default is made in complying with this section, the company and any of the following persons who knowingly and wilfully authorizes or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be liable to a fine of four hundred shillings.

Exemption of certain documents from stamp duty on winding up of companies.

330. (1) In the case of a winding up by the court, or of a creditors' voluntary winding up of a company-

(a) every assurance relating to solely to freehold or lease hold property or to any mortgage, charge or other encumbrance on, or to any estate, right or interest in, any movable or immovable property, which forms part of the assets of the company and which, after the execution of the assurance, either at law or in equity, is or remains part of the assets of the company; and

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(b) every power of attorney, proxy paper, writ, order, certificate, affidavit, statutory declaration, bond or other instrument of writing relating solely to the property of any company which is being so wound up, or to any proceeding under any such winding up,

shall be exempt from stamp duty.

(2) In subsection (1), "assurance" includes deed, conveyance, grant, transfer, assignment and surrender.

Books of company to be evidence.

331. Where a company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be prima facie evidence of the truth of all matters purporting to be therein recorded.

Disposal of books and papers of company.

332. (1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows, that is to say-

(a) in the case of a winding up by or subject to the supervision of the court, in such way as the court directs; or

(b) in the case of a members' voluntary winding up, in such way as the company by special resolution directs; or

(c) in the case of a creditors' voluntary winding up, in such way as the committee of inspection or, if there is no such committee, as the creditors of the company may direct.

(2) Subject to the other provisions of this section, after five years from the dissolution of the company no responsibility shall rest on the company, the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

(3) Provision may be made by rules to prevent, for any period not exceeding five years from the dissolution of the company, the destruction of the books and papers of a company which has been wound up, and for enabling any creditor or contributory of the company to appeal from any direction so given.

(4) If any person acts in contravention of any rules made for the purposes of this section he shall be liable to a fine not exceeding two thousand shillings.

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Information as to pending liquidations.

333. (1) If where a company is being wound up the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, deliver to the registrar a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

(2) If a liquidator fails to comply with this section, he shall be liable to a fine not exceeding one thousand shillings for each day during which the default continues.

Unclaimed assets to be paid to Companies Liquidation Account.

334. (1) If, where a company is being wound up, it appears either from any statement delivered to the registrar under section 333 or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt or any money held by the company in trust in respect of dividends or other sums due to any person as a member of the company, the liquidator shall forthwith pay the said money to the official receiver for the credit of the Companies Liquidation Account, and shall be entitled to a receipt for the money so paid, and that receipt shall be an effectual discharge to him in respect thereof.

(2) For the purpose of ascertaining and getting in any money payable in pursuance of this section, the like powers may be exercised, and by the like authority, as are exercisable under section 137 of the Bankruptcy Act, for the purposes of ascertaining and getting in the sums, funds and dividends referred to in that section.

(3) Any person claiming to be entitled to any money paid in pursuance of this section may apply to the official receiver for payment thereof and the official receiver may, on a certificate by the liquidator that the person claiming is entitled, pay to that person the sum due.

(4) Any person dissatisfied with the decision of the official receiver in respect of a claim made in pursuance of this section may appeal to the court.

Resolutions passed at adjourned meetings of creditors and contributories.

335. Where a resolution is passed at an adjourned meeting of any creditors or contributories of a company the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

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Supplementary Powers of Court

Meetings to ascertain wishes of creditors or contributories.

336. (1) The court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any sufficient evidence, and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or the articles.

Swearing of affidavits and declarations. 28 of 1961, Sch., 9 of 1967, Sch.

337. (1) Any affidavit or declaration required to be sworn or made under the provisions or for the purposes of this Part of this Act may be sworn or made in Kenya, or elsewhere within the Commonwealth, before any court, judge or person lawfully authorized to take and receive affidavits or statutory declarations, or before a Kenya consular officer in any place outside the Commonwealth.

(2) All courts and all persons acting judicially in Kenya shall take judicial notice of the seal or stamp or signature, as the case may be, of any such court, judge, person, consul, vice-consul or pro-consul, attached, appended or subscribed to any such affidavit or declaration, or to any other document to be used for the purposes of this Part.

Provisions as to Dissolution

Power of court to declare dissolution of company void.

338. (1) Where a company has been dissolved, the court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within seven days after the making of the order or such further time as the court may allow, to deliver to the registrar for registration a certified copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding one hundred shillings for every day during which the default continues.

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Registrar may strike defunct company off register.

339. (1) Where the registrar has reasonable cause to believe that a company is not carrying on business or in operation, he may send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the registrar does not within thirty days of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the said period of thirty days send to the company by registered post a letter referring to the first letter, and stating that no answer thereto has been received, and that if an answer is not received to the second letter within thirty days from the date thereof, a notice will be published in the Gazette with a view to striking the name of the company off the register.

(3) If the registrar either receives an answer to the effect that the company is not carrying on business or in operation, or does not within thirty days after sending the second letter receive any answer, he may publish in the Gazette, and send to the company by post, a notice that at the expiration of three months from the date of the notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved:

Provided that the registrar shall not be required to send the letters referred to in subsections (1) and (2) in any case where the company itself or any director or the secretary of the company has requested him to strike the company off the register or has notified him that the company is not carrying on business.

(4) If, in any case where a company is being wound up, the registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months, the registrar shall publish in the Gazette and send to the company or the liquidator, if any, a like notice as is provided in subsection (3).

(5) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the company, or the liquidator, as the case may be, strike the name of the company off the register, and shall publish notice thereof in the Gazette, and on the publication in the Gazette of this notice the company shall be dissolved:

Provided that–

(i) the liability, if any, of every director, officer and member of the company shall continue and may be

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enforced as if the company had not been dissolved; and

(ii) nothing in this subsection shall affect the power of the court to wind up a company the name of which has been struck off the register.

(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register the court on an application made by the company or member or creditor before the expiration of ten years from the publication in the Gazette of the notice aforesaid may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and upon a certified copy of the order being delivered to the registrar for registration the company shall be deemed to have continued in existence as if its name had not been struck off; and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered postal address or, if no postal address has been registered, to the care of some officer of the company, or, if there is no officer of the company whose name and address are known to the registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

Property of dissolved company to be *bona vacantia*. 9 of 1967, Sch.

340. Where a company is dissolved, all property and rights whatsoever vested in or held in trust for the company immediately before its dissolution (including leasehold property but not including property held by the company in trust for any other person) shall, subject and without prejudice to any order which may at any time be made by the court under section 338 or section 339, be deemed to be *bona vacantia*, and shall accordingly belong to the Government.

Power of Government to disclaim title to property vesting under section 340. 9 of 1967, Sch.

341. (1) Where any property vests in the Government under section 340, the Government's title thereto under that section may be disclaimed by a notice signed by the Attorney-General.

(2) Where a notice of disclaimer under this section is executed as respects any property, that property shall be deemed not to have vested in the Government under section 340, and subsections (2) and

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(6) of section 315 shall apply in relation to the property as if it had been disclaimed under subsection (1) of section 315 immediately before the dissolution of the company.

(3) The right to execute a notice of disclaimer under this section may be waived by or on behalf of the Government either expressly or by taking possession or other act evincing that intention.

(4) A notice of disclaimer under this section shall be of no effect unless it is executed within twelve months of the date on which the vesting of the property as aforesaid came to the notice of the Attorney-General, or, if an application in writing is made to the Attorney-General by any person interested in the property requiring him to decide whether he will or will not disclaim, within a period of three months after the receipt of the application or such further period as may be allowed by the court which would have had jurisdication to wind up the company if it had not been dissolved.

(5) A statement in a notice of disclaimer of any property under this section but the vesting of the property came to the notice of the Attorney-General on a specified date or that no such application as aforesaid was received by him with respect to the property before a specified date shall, until the contrary is proved, be sufficient evidence of the fact stated.

(6) A notice of disclaimer under this section shall be delivered to the registrar for registration by him, and copies thereof shall be published in the Gazette and sent to any persons who have given the Attorney-General notice that they claim to be interested in the property.

Companies Liquidation Account

Companies Liquidation Account.

342. An account, to be called the Companies Liquidation Account, shall be kept by the official receiver with the National Bank of Kenya Ltd., or such other bank as may be prescribed, and all moneys received by the official receiver in respect of proceedings under this Act in connection with the winding up of companies shall be paid to that account.

Investment of surplus funds; Companies Contingency Fund.

343. (1) Whenever the cash balance standing to the credit of the Companies Liquidation Account is in excess of the amount which, in the opinion of the official receiver, is required for the time being to answer demands in respect of companies' estates, the official receiver may invest the amount not so required, or any part thereof, in any investment authorized by law for the investment of trust funds or may place the same, or any part thereof, on fixed deposit with the National Bank of Kenya Ltd., or such other bank as may be prescribed, or on deposit in the Kenya Post Office Savings Bank.

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(2) Whenever any part of the money so invested or placed on deposit is, in the opinion of the official receiver, required to answer any demand in respect of companies' estates, the official receiver shall raise such sums as may be required by the sale of such part of the said securities or by withdrawing such amount from deposit as may be necessary and shall repay such sums to the Companies Liquidation Account.

(3) The dividends and interest accruing from any money so invested or placed on deposit shall be paid by the official receiver to the credit of a separate account, to be called the Companies Contingency Fund, to be kept by him at the National Bank of Kenya Ltd., or such other bank as may be prescribed.

(4) Where it appears that it is in the public interest so to do, and that other funds are not available or properly chargeable, the Minister may, on the application of the registrar or of the official receiver, authorize the registrar or the official receiver to use money from the Companies Contingency Fund to meet expenditure which the Minister considers to be necessary or advisable to incur for the purpose of enabling the registrar or the official receiver, as the case may be, to carry out more efficiently the provisions of, and his duties under, this Act, and, without prejudice to the generality of the foregoing, for the purpose of enabling the registrar to meet any indemnity or to pay any expenses which he is required, by this Act, to meet or to pay.

(5) Where an application is made by the registrar under subsection (4), the Minister shall consult the official receiver before granting the application; and, if the application is granted, then the official receiver shall pay to the registrar, out of the Companies Contingency Fund, the amount authorized by the Minister.

Rules and Fees

Rules and fees for winding up.

344. (l) The Minister may make rules for carrying into effect the objects of this Act so far as relates to the winding up of companies, and, without prejudice to the generality of the foregoing power, for providing for any matter or thing which by this Act is to be or may be provided for by rules.

(2) There shall be paid in respect of proceedings under this Act in relation to the winding up of companies such fees as the Minister may prescribe by rules made under subsection (1).

(3) No rules which are in the nature of rules of court shall be made under this section except after obtaining the advice of the Chief Justice.

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Disqualification of body corporate for appointment as receiver.

345. A body corporate shall not be qualified for appointment as receiver of the property of a company, and any body corporate which acts as such a receiver shall be liable to a fine not exceeding two thousand shillings.

Disqualification of undischarged bankrupt from acting as receiver or manager.

346. (1) If any person being undischarged bankrupt acts as receiver or manager of the property of a company on behalf of debenture holders, he shall, subject to subsection (2), be liable to imprisonment for a term not exceeding two years or a fine not exceeding ten thousand shillings or to both.

(2) Subsection (1) shall not apply to a receiver or manager where–

(a) the appointment under which he acts and the bankruptcy were both before the appointed day; or

(b) he acts under an appointment made by order of a court.

Power to appoint official receiver as receiver for debenture holders or creditors.

347. Where an application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the court the official receiver may be so appointed.

Receivers and managers appointed out of court.

348. (1) A receiver or manager of the property of a company appointed under the powers contained in any instrument may apply to the court for directions in relation to any particular matter arising in connection with the performance of his functions, and on any such application the court may give such directions, or may make such order declaring the rights of persons before the court or otherwise, as the court thinks just.

(2) A receiver or manager of the property of a company appointed as aforesaid shall, to the same extent as if he had been appointed by order of a court, be personally liable on any contract entered into by him in the performance of his functions except in so far as the contract otherwise provides, and entitled in respect of that liability to indemnity out of the assets; but nothing in this subsection shall be taken as limiting any right to indemnity which he would have apart from this subsection, or as limiting his liability on contracts entered into without authority or as conferring any right to indemnity in respect of that liability.

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(3) This section shall apply whether the receiver or manager was appointed before or after the appointed day but subsection (2) shall not apply to contracts entered into before the appointed day.

Notification that receiver or manager appointed.

349. (1) Where a receiver or manager of the property of a company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company or the receiver or manager or the liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver or manager has been appointed.

(2) If default is made in complying with the requirements of this section, the company and any of the following persons who knowingly and willfully authorizes or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be liable to a fine of four hundred shillings.

Power of court to fix remuneration on application of liquidator.

350. (1) The court may, on an application by the liquidator of a company, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the company.

(2) The power of the court under subsection (1) shall, where no previous order has been made with respect thereto under that subsection–

(a) extend to fixing the remuneration for any period before the making of the order or the application therefor; and

(b) be exercisable notwithstanding that the receiver or manager has died or ceased to act before the making of the order or the application therefor; and

(c) where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that so fixed for that period, extend to requiring him or his legal representatives to account for the excess or such part thereof as may be specified in the order:

Provided that the power conferred by paragraph *(c)* shall not be exercised as respects any period before the making of the application for the order unless in the opinion of the court there are special circumstances making it proper for the power to be so exercised.

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(3) The court may from time to time on an application made either by the liquidator or by the receiver or manager vary or amend an order made under subsection (1).

(4) This section shall apply whether the receiver or manager was appointed before or after the appointed day, and to periods before, as well as to periods after, the appointed day.

Provisions as to information where receiver or manager appointed.

351. (1) Where a receiver or manager of the whole or substantially the whole of the property of the company (hereafter in this section and in section 352 referred to as the receiver) is appointed on behalf of the holders of any debentures of the company secured by a floating charge, then subject to the provisions of this section and of section 352-

(a) the receiver shall forthwith send notice to the company of his appointment; and

(b) there shall, within fourteen days after receipt of the notice, or such longer period as may be allowed by the court or by the receiver, be made out and submitted to the receiver in accordance with section 352 a statement in the prescribed form as to the affairs of the company; and

(c) the receiver shall within two months after receipt of the said statement send–

(i) to the registrar and to the court, a copy of the statement and of any comments he sees fit to make thereon and in the case of the registrar also a summary of the statement and of his comments (if any) thereon; and

(ii) to the company, a copy of any such comments as aforesaid or, if he does not see fit to make any comment, a notice to that effect; and

(iii) to any trustees for the debenture holders on whose behalf he was appointed and, so far as he is aware of their addresses, to all such debenture holders, a copy of the said summary.

(2) The receiver shall within two months, or such longer period as the court may allow after the expiration of the period of twelve months from the date of his appointment and of every subsequent period of twelve months, and within two months or such longer period as the court may allow after he ceases to act as receiver or manager of the

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property of the company, send to the registrar, to any trustees for the debenture holders of the company on whose behalf he was appointed, to the company and (so far as he is aware of their addresses) to all such debenture holders an abstract in the prescribed form showing his receipts and payments during that period of twelve months or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and the aggregate amounts of his receipts and of his payments during all preceding periods since his appointment.

(3) Where the receiver is appointed under the powers contained in any instrument, this section shall have effect-

(a) with the omission of the references to the court in sub-section (1); and

(b) with the substitution for the references to the court in subsection (2) of references to the registrar,

and in any other case references to the court shall be construed as referring to the court by which the receiver was appointed.

(4) (*a*) Subsection (1) shall not apply in relation to the appointment of a receiver or manager to act with an existing receiver or manager or in place of a receiver or manager dying or ceasing to act, except that, where that subsection applies to a receiver or manager who dies or ceases to act before it has been fully complied with, the references in paragraphs *(b)* and *(c)* thereof to the receiver shall (subject to subsection (5)) include references to his successor and to any continuing receiver or manager.

(b) Nothing in this subsection shall be taken as limiting the meaning of the expression "the receiver" where used in, or in relation to, subsection (2).

(5) This section and section 352 shall apply where the company is being wound up, notwithstanding that the receiver or manager and the liquidator are the same person, but with any necessary modifications arising from that fact.

(6) Nothing in subsection (2) shall be taken to prejudice the duty of the receiver to render proper accounts of his receipts and payments to the persons to whom, and at the times at which, he may be required to do so apart from that subsection.

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(7) If the receiver makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding one hundred shillings for every day during which the default continues.

Special provisions as to statement submitted to receiver.

352. (1) The statement as to the affairs of a company required by section 351 to be submitted to the receiver (or his successor) shall show as at the date of the receiver's appointment the particulars of the company's assets, debts and liabilities, the names, postal addresses and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be prescribed.

(2) The said statement shall be submitted by, and be verified by affidavit, of one or more of the persons who are at the date of the receiver's appointment the directors and by the person who is at that date the secretary of the company, or by such of the persons hereafter in this subsection mentioned as the receiver (or his successor), subject to the direction of the court, may require to submit and verify the statement, that is to say, persons–

(a) who are or have been officers of the company;

(b) who have taken part in the formation of the company at any time within one year before the date of the receiver's appointment;

(c) who are in the employment of the company, or have been in the employment of the company within the said year, and are in the opinion of the receiver capable of giving the information required;

(d) who are or have been within the said year officers of or in the employment of a company which is, or within the said year was, an officer of the company to which the statement relates.

(3) Any person making the statement and affidavit shall be allowed, and shall be paid by the receiver (or his successor) out of his receipts, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the receiver (or his successor) may consider reasonable, subject to an appeal to the court.

(4) Where the receiver is appointed under the powers contained in any instrument, this section shall have effect with the substitution for references to the court of references to the registrar or official receiver and for references to an affidavit of references to a statutory declaration; and in any other case references to the court shall be construed as referring to the court by which the receiver was appointed.

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(5) If any person without reasonable excuse makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding two hundred shillings for every day during which the default continues.

(6) References in this section to the receiver's successor shall include a continuing receiver or manager.

Delivery to registrar of accounts of receivers and managers.

353. (1) Except where subsection (2) of section 351 applies, every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument shall, within one month, or such longer period as the registrar may allow, after the expiration of the period of six months from the date of his appointment and of every subsequent period of six months, and within one month after he ceases to act as receiver or manager, deliver to the registrar for registration an abstract in the prescribed form showing his receipts and his payments during that period of six months or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and the aggregate amount of his receipts and of his payments during all preceding periods since his appointment.

(2) Every receiver or manager who makes default in complying with the provisions of this section shall be liable to a fine not exceeding one hundred shillings for every day during which the default continues.

Enforcement of duty of receivers and managers to make returns, etc.

354. (1) If any receiver or manager of the property of a company–

(a) having made default in filing, delivering or making any return, account or other document, or in giving any notice, which a receiver or manager is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so; or

(b) having been appointed under the powers contained in any instrument, has, after being required at any time by the liquidator of the company so to do, failed to render proper accounts of his receipts and payments and to vouch the same and to pay over to the liquidator the amount properly payable to him,

the court may, on an application made for the purpose, make an order directing the receiver or manager, as the case may be, to make good the default within such time as may be specified in the order

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(2) In the case of any such default as is mentioned in paragraph *(a)* of subsection (1) an application for the purposes of this section may be made by any member or creditor of the company or by the registrar, and in the case of any such default as is mentioned in paragraph *(b)* of that subsection, the application shall be made by the liquidator, and in either case the order may provide that all costs of and incidental to the application shall be borne by the receiver or manager, as the case may be.

(3) Nothing in this section shall be taken to prejudice the operation of any provision of this Act imposing penalties on receivers in respect of any such default as is mentioned in subsection (1).

Construction of references to receivers and managers.

355. It is hereby declared that except where the context otherwise requires-

(a) any reference in this Act to a receiver or manager of the property of a company, or to a receiver thereof, includes a reference to a receiver or manager, or (as the case may be) to a receiver, of part only of that property and to a receiver only of the income arising from that property or from part thereof; and

(b) any reference in this Act to the appointment of a receiver or manager under powers contained in any instrument includes a reference to an appointment made under powers which, by virtue of any written law, are implied in and have effect as if contained in an instrument.

PART VIII–APPLICATION OF ACT TO COMPANIES FORMED OR REGISTERED UNDER THE REPEALED ORDINANCES

Application of Act to companies formed and registered under the repealed Ordinances.

356. This Act shall apply to existing companies -

(a) in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by shares;

(b) in the case of a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by guarantee; and

(c) in the case of a company other than a limited company, as if the company had been formed and registered under this Act as an unlimited company:

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Provided that any reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under that one of the repealed Ordinances under which such company was registered.

PART IX – WINDING UP OF UNREGISTERED COMPANIES

Meaning of unregistered company.

357. For the purposes of this Part, "unregistered company" includes any partnership, whether limited or not, any association and any company with the following exceptions–

(a) a company registered under any of the repealed Ordinances or under this Act;

(b) a partnership, association or company which consists of less than eight members and is not a partnership, association or company, formed outside Kenya;

(c) limited partnership registered in Kenya;

(d) a building society registered under the Building Societies Act, and a co-operative society registered under the Co-operative Societies Act.

Cap 489.
Cap. 490.

Winding up of unregistered companies.

358. (1) Subject to the provisions of this Part, any unregistered company may be wound up under this Act and all the provisions of this Act with respect to winding up shall apply to an unregistered company with the exceptions and additions mentioned in the following provisions of this section.

(2) No unregistered company shall be wound up under this Act voluntarily or subject to the supervision of the court.

(3) The circumstances in which an unregistered company may be wound up are as follows–

(a) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;

(b) if the company is unable to pay its debts;

(c) if the court is of opinion that it is just and equitable that the company should be wound up.

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(4) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts–

(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding one thousand shillings then due, has served on the company, by leaving at its principal place of business or by delivering to the secretary or some director, partner, manager or officer of the company, or by otherwise serving in such manner as the registrar may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for thirty days after the service of the demand neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor;

(b) if any action or other proceeding has been instituted against any member or partner for any debt or demand due, or claimed to be due, from the company, or from him in his character of member or partner, and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business, or by delivering it to the secretary, or some director, partner, manager or officer of the company, or by otherwise serving the same in such manner as the court may approve or direct, the company has not within fourteen days after service of the notice paid, secured or compounded for the debt or demand, or procured the action or proceeding to be stayed or indemnified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same;

(c) if execution or other process issued on a judgment, decree or order obtained in any court in favour of a creditor against the company, or any ember or partner thereof as such, or any person authorized to be sued as nominal defendant on behalf of the company, is returned unsatisfied; or

(d) if it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts.

(5) In the case of a limited partnership the provisions of this Act with respect to winding up shall apply with such modifications, if any, as may be provided by rules and with the substitution of general partners for directors.

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Foreign companies may be wound-up although dissolved.

359. Where a company incorporated outside Kenya which has been carrying on business in Kenya ceases to carry on business in Kenya, it may be wound up as an unregistered company under this Part, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country in which it was incorporated.

Contributories in winding up of unregistered company.

360. (1) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members or partners among themselves, or to pay or contribute to the payment of the costs and expenses of winding up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid.

(2) In the event of the death, bankruptcy or insolvency of any contributory, the provisions of this Act with respect to the legal representatives and heirs of deceased contributories and to the trustees of bankrupt or insolvent contributories shall apply.

Power of court to stay or restrain proceedings.

361. The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

Actions stayed on winding-up order.

362. Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

Provisions of Part IX cumulative.

363. The provisions of this Part with respect to unregistered companies shall be in addition to and not in restriction of any provisions hereinbefore in this Act contained with respect to winding up companies by the court, and the court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Act:

Provided that an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act and then only to the extent provided by this Part.

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Saving for winding up under the repealed Ordinances.

364. Nothing in this Part shall affect the operation of any written law which provides for any partnership, association or company being wound up, or being wound up as a company or as an unregistered company, under any of the repealed Ordinances.

PART X – COMPANIES INCORPORATED OUTSIDE KENYA

Provisions as to Establishment of Place of Business in Kenya

Application of sections 366 to 375.

365. (1) Sections 366 to 375 shall apply to all foreign companies, that is to say, companies incorporated outside Kenya which, after the appointed day, establish a place of business within Kenya and companies incorporated outside Kenya which have, before the appointed day, established a place of business within Kenya and continue to have a place of business within Kenya on and after the appointed day:

Provided that the said sections shall not apply to any such company which is registered, under the Building Societies Act.

Cap. 489.

(2) A foreign company shall not be deemed to have a place of business in Kenya solely on account of its doing business through an agent in Kenya at the place of business of the agent.

Documents, etc., to be delivered to registrar by foreign companies carrying on business in Kenya.

366. (1) Foreign companies which, after the appointed day, establish a place of business within Kenya shall, within thirty days of the establishment of the place of business, deliver to the registrar for registration -

(a) a certified copy of the charter, statutes or memorandum and articles of the company or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the English language, a certified translation thereof;

(b) a list of the directors and secretary of the company containing the particulars mentioned in subsection (2);

(c) a statement of all subsisting charges created by the company, being charges of the kinds set out in subsection (2) of section 96 and not being charges comprising solely property situate outside Kenya;

(d) the names and postal addresses of some one or more persons resident in Kenya authorized to accept on behalf of the company service of process and any notices required to be served on the company; and

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(e) the full address of the registered or principal office of the company.

(2) The list referred to in paragraph *(b)* of subsection (1) shall contain the following particulars with respect to each director and secretary–

(a) in the case of an individual, his present Christian name and surname and any former Christian name or surname, his usual postal address, his nationality and his business occupation, if any; and

(b) in the case of a corporation, its corporate name and registered or principal office, and its postal address:

Provided that, where all the partners in a firm are joint secretaries of the company, the name and principal office of the firm may be stated instead of the particulars mentioned in this subsection.

(3) Paragraphs *(b)*, *(c)* and *(d)* of subsection *(9)* of section 201 shall apply for the purpose of the construction of references in subsection (2) to present and former Christian names and surnames as they apply for the purpose of the construction of such references in that section.

(4) If any charge, being a charge which ought to have been included in the statement required by paragraph *(c)* of subsection (1), is not so included, it shall be void as regards property in Kenya against the liquidator and any creditor of the company.

Certificate of registration and power to hold land.

367. (1) Where a foreign company has delivered to the registrar the documents and particulars mentioned in section 366, the registrar shall, if such documents and particulars are so delivered after the appointed day, certify under his hand that the company has complied with the provisions of the said section; and such certificate, and any certificate given by the registrar of companies before the appointed day that a foreign company has delivered to him the documents and particulars required by any provision of any of the repealed Ordinances corresponding to the said section and to the like effect, shall be conclusive evidence that the company is registered as a foreign company for the purposes of this Act.

(2) Where a foreign company has, after the appointed day, delivered to the registrar the documents and particulars mentioned in section 366, it shall have the same power to hold land in Kenya as if it were a company incorporated under this Act.

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(3) Where a foreign company has, before the appointed day, delivered to the registrar of companies the documents and particulars required by any provision of any of the repealed Ordinances corresponding to section 366 of this Act and to the like effect, it shall, subject to the provisions of that one of the repealed Ordinances in accordance with which such documents and particulars were so delivered and of this Act, have the same power to hold land in Kenya as if it were a company incorporated under this Act.

Returns to be delivered to registrar by foreign company.

368. (1) If any alteration is made in–

(a) the charter, statutes or memorandum and articles of a foreign company or any such instrument as aforesaid; or

(b) the directors or secretary of a foreign company or the particulars contained in the list of the directors and secretary; or

(c) the names or postal addresses of the persons authorized to accept service on behalf of a foreign company; or

(d) the address of the registered or principal office of a foreign company,

the company shall, within sixty days, deliver to the registrar for registration a return containing the prescribed particulars of the alteration.

(2) Where in the case of a company to which this Part applies -

(a) a winding-up order is made by; or

(b) proceedings substantially similar to a voluntary winding up of the company under this Act are commenced in,

a court of the country in which such company was incorporated, the company shall within thirty days of the date or the making of such order or the commencement of such proceedings, as the case may be, deliver to the registrar a return containing the prescribed particulars relating to the making of such order or the commencement of such proceedings and shall cause the prescribed advertisements in relation thereto to be published.

Registration of charges created by foreign companies.

369. The provisions of Part IV shall extend to charges on property in Kenya which are created, and to charges on property in Kenya which is acquired, after the commencement of this Act, by a foreign company which has an established place of business in Kenya:

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Provided that in the case of a charge executed by a foreign company out of Kenya comprising property situate both within and outside Kenya–

(i) it shall not be necessary to produce to the registrar the instrument creating the charge if the prescribed particulars of it and a copy of it, verified in the prescribed manner, are delivered to the registrar for registration; and

(ii) the time within which such particulars and copy are to be delivered to the registrar shall be sixty days after the date of execution of the charge by the company or, in the case of a deposit of title deeds, the date of the deposit.

Accounts of foreign company.

370. (1) Every foreign company shall, in every calendar year, make out a balance sheet and profit and loss account and, if the company is a holding company, group accounts, in such form, and containing such particulars and including such documents, as under the provisions of this Act (subject, however, to any prescribed exceptions) it would, if it had been a company within the meaning of this Act, have been required to make out and lay before the company in general meeting, and deliver copies of those documents to the registrar for registration:

Provided that a foreign company shall not be obliged to comply with the provisions of this section if–

(i) it was incorporated in the Commonwealth; and

(ii) it would, had it been incorporated in Kenya, have been exempt from the provisions of section 128 by virtue of subsection (4) of that section; and

(iii) in every calendar year there is delivered to the registrar for registration a certificate signed by a director and the secretary of the company verifying the conditions requisite for such exemption.

(2) If any such document as is mentioned under subsection (1) is not written in the English language there shall be annexed to it a certified translation thereof.

Obligation to state name of foreign company, whether limited and country where incorporated. 9 of 1967, Sch.

371. (1) Every foreign company shall–

(a) in every prospectus inviting subscriptions for its shares or debentures in Kenya state the country in which the company is incorporated; and

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(b) conspicuously exhibit in easily legible roman letters on every place where it carries on business in Kenya the name of the company and the country in which the company is incorporated; and

(c) cause the name of the company and of the country in which the company is incorporated to be stated in legible roman letters in all bill-heads and letter paper, and in all notices and other official publications of the company; and

(d) if the liability of the members of the company is limited, cause notice of that fact to be stated in the English language in legible roman letters in every such prospectus as aforesaid and in all bill-heads, letter paper, notices and other official publications of the company in Kenya and to be affixed on every place where it carries on its business.

(2) Every foreign company shall, in all trade catalogues, trade circulars, showcards and business letters on or in which the company's name appears and which are issued or sent by the company to any person in Kenya, state in legible roman letters, with respect to every director being a corporation, the corporate name, and with respect to every director, being an individual, the following particulars -

(a) his present Christian name, or the initials thereof, and present surname;

(b) any former Christian names and surnames;

(c) his nationality, if he is not a Kenya citizen:

Provided that, if special circumstances exist which render it in the opinion of the registrar expedient that such an exemption should be granted, the registrar may grant, subject to such conditions as may be specified, exemption from the obligations imposed by this subsection.

Service on foreign company.

372. Any process or notice required to be served on a foreign company shall be sufficiently served if addressed to any person whose name has been delivered to the registrar under the foregoing provisions of this Part and left at or sent by registered post to the address which has been so delivered:

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Provided that–

(i) where any such company makes default in delivering to the registrar the name and address of a person resident in Kenya who is authorized to accept on behalf of the company service of process or notices; or

(ii) if at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on behalf of the company, or for any reason cannot be served,

any process or notice may be served on the company by leaving it at or sending it by registered post to any place of business established by the company in Kenya.

Cessation of business by foreign company and striking off register.

373. (1) If any foreign company ceases to have a place of business in Kenya, it shall forthwith give notice in writing of the fact to the registrar for registration and as from the date on which notice is so given the obligation of the company to deliver any document to the registrar shall cease and the registrar shall strike the name of the company off the register.

(2) Where the registrar has reasonable cause to believe that a foreign company has ceased to have a place of business in Kenya, he may send by registered post to the person authorized to accept service on behalf of the company and, if more than one, to all such persons, a letter inquiring whether the company is maintaining a place of business in Kenya.

(3) If the registrar receives an answer to the effect that the company has ceased to have a place of business in Kenya or does not within three months receive any reply, he may strike the name of the company off the register.

Penalties.

374. If any foreign company fails to comply with any of the foregoing provisions of this Part, the company and every officer or agent of the company who knowingly and wilfully authorizes or permits the default shall be liable to a fine not exceeding one thousand shillings, or, in the case of a continuing offence, one hundred shillings for every day during which the default continues.

Interpretation of sections 366 to 374.

375. For the purposes of the foregoing provisions of this Part–

"director" in relation to a company includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;

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"place of business" includes a share transfer or share registration office;

"prospectus" has the same meaning as when used in relation to a company incorporated under this Act;

"secretary" includes any person occupying the position of secretary by whatever name called.

Prospectuses

Dating of prospectus and particulars to be contained therein. 9 of 1967, Sch.

376. (1) It shall not be lawful for any person to issue, circulate or distribute in Kenya any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Kenya, whether the company has or has not established, or when formed will or will not establish, a place of business in Kenya, unless the prospectus is dated and–

(a) contains particulars with respect to the following matters–

(i) the instrument constituting or defining the constitution of the company;

(ii) the legislation, or provisions having the force of legislation, by or under which the incorporation of the company was effected;

(iii) an address in Kenya where the said instrument, enactments or provisions, or copies thereof, and if the same are in a language other than English an English translation thereof certified in the prescribed manner, can be inspected;

(iv) the date on which and the country in which the company was incorporated;

(v) whether the company has established a place of business in Kenya, and, if so, the address of its principal office in Kenya;

(b) subject to the provisions of this section, states the matters specified in Part I of the Third Schedule and sets out the reports specified in Part II of that Schedule, subject always to the provisions contained in Part III of that Schedule:

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Provided that the provisions of subparagraphs (i), (ii) and (iii) of paragraph *(a)* shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business, and, in the application of Part I of the Third Schedule for the purposes of this subsection, paragraph 2 thereof shall have effect with the substitution, for the reference to the articles, of a reference to the constitution of the company.

(2) Any condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement imposed by virtue fo paragraph *(a)* or paragraph *(b)* of subsection (1), or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) It shall not be lawful for any person to issue to any person in Kenya a form of application for shares in or debentures of such a company or intended company as is mentioned in subsection (1) unless the form is issued with a prospectus which complies with this part of this Act and the issue whereof in Kenya does not contravene the provisions of section 377:

Provided that this subsection shall not apply if it is shown that the form of application was issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

(4) In the event of non-compliance with or contravention of any of the requirements imposed by paragraphs *(a)* and *(b)* of subsection (1), a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if-

(a) as regards any matter not disclosed, he proves that he was not cognizant thereof; or

(b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or

(c) the non-compliance or contravention was in respect of matters which, in the opinion of the court dealing with the case, were immaterial or were otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters contained in paragraph 16 of the Third Schedule, no director or other person shall incur any liability in

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respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(5) This section—

(a) shall not apply to the issue to existing members or debenture holders of a company or a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons;

(b) except in so far as it requires a prospectus to be dated, shall not apply to the isse of a prospectus relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued,

but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently

(6) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act, apart from this section.

Provisions as to expert's consent and allotment.

377. (1) It shall not be lawful for any person to issue, circulate or distribute in Kenya any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Kenya, whether the company has or has not established, or when formed will or will not establish, a place of business in Kenya-

(a) if, where the prospectus includes a statement purporting to be made by an expert, he has not given, or has before delivery of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included or there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as aforesaid; or

(b) if the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by all the provisions (other than penal provisions) of sections 52 and 53 so far as applicable.

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(2) In this section, "expert" includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him, and for the purposes of this section a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

Registration of prospectus.

378. (1) It shall not be lawful for any person to issue, circulate or distribute in Kenya any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Kenya, whether the company has or has not established, or when formed will or will not establish, a place of business in Kenya, unless before the issue, circulation or distribution of the prospectus in Kenya, a copy thereof certified by the chairman and two other directors of the company as having been approved by resolution of the managing body has been delivered to the registrar for registration and the prospectus states on the face of it that a copy has been so delivered, and there is endorsed on or attached to the copy–

(a) any consent to the issue of the prospectus required by section 377;

(b) a copy of any contract required by paragraph 14 of the Third Schedule to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof; and

(c) where the persons making any report required by Part II of that Schedule have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 29 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(2) The references in paragraph *(b)* of subsection (1) to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a language other than English, be construed as references to a copy of a translation of the contract in English or a copy embodying a translation in English of the parts in a language other than English, as the case may be, being a translation certified in the prescribed manner to be a correct translation, and the reference to a copy of a contract required to be available for inspection shall include a reference to a copy of a translation thereof or a copy embodying a translation of parts thereof.

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Penalty for contravention of sections 376 to 378.

379. Any person who is knowingly responsible for the issue, circulation or distribution of a prospectus, or for the issue of a form of application for shares or debentures, in contravention of any of the provisions of sections 376, 377 and 378 shall be liable to a fine not exceeding ten thousand shillings.

Civil liability for mis-statements in prospectus.

380. Section 45 shall extend to every prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Kenya, whether the company has or has not established, or when formed will or will not establish, a place of business in Kenya, with the substitution for references to section 42 of references to section 377.

Interpretation of provisions as to prospectus.

381. (1) Where any document by which any shares in or debentures of a company incorporated outside Kenya are offered for sale to the public would, if the company concerned had been a company within the meaning of this Act, have been deemed by virtue of section 47 to be a prospectus issued by the company, that document shall be deemed to be, for the purposes of this Part, a prospectus issued by the company.

(2) An offer of shares or debentures for subscription or sale to any person whose ordinary business it is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this Part.

(3) In this Part, "prospectus", "shares" and "debentures" have the same meaning as when used in relation to a company incorporated under this Act.

Part XI – General Provisions as to Registration

Appointment of registrar, etc. L.N. 649/1963, 9 of 1967, Sch.

382. (1) There shall be a registrar, a deputy registrar and such assistant registrars as may be necessary for the registration of companies under this Act.

(2) The deputy registrar and every assistant registrar may, subject to the directions of the registrar, perform any act or discharge any duty which the registrar may lawfully do or is required by this Act to do, and for such purposes shall have all the powers, privileges and authority of the registrar.

(3) The Minister may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies.

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(4) The Minister may make regulations with respect to the duties of the registrar, deputy registrar and assistant registrars under this Act.

Fees.

383. The fees to be paid to the registrar under this Act shall be such as may from time to time be prescribed by the Minister.

Inspection, production and evidence of documents kept by registrar.

384. (1) Any person may–

(a) inspect the documents kept by the registrar, on payment of the prescribed fee;

(b) require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the registrar, on payment for the certificate, certified copy or extract of the prescribed fee:

Provided that–

(i) in relation to documents delivered to the registrar with a prospectus in pursuance of subparagraph (i) of paragraph *(b)* of. subsection (1) of section 43, the rights conferred by this subsection shall be exercisable only during the fourteen days beginning with the date of the prospectus or with the permission of the registrar, and in relation to documents so delivered in pursuance of paragraph *(b)* of subsection (1) of section 378 the said rights shall be exercisable only during the fourteen days beginning with the date of the prospectus, or with the permission of the registrar; and

(ii) the right conferred by paragraph *(a)* of this subsection shall not extend to any copy sent to the registrar under section 351 of a statement as to the affairs of a company or of any comments of the receiver or his successor or a continuing receiver or manager thereon, but only to the summary thereof, except where the person claiming the right either is, or is the agent of, a person stating himself in writing to be a member or creditor of the company to which the statement relates, and the right conferred by paragraph *(b)* of this subsection shall be similarly limited.

(2) No process for compelling the production of any documents kept by the registrar shall issue from any court except with the leave of that court, and any such process if issued shall bear thereon a statement that it is issued with the leave of the court.

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(3) A copy of, or extract from, any document kept and registered at the office of the registrar, certified to be a true copy under the hand of the registrar (whose official position it shall not be necessary to prove), shall in all legal proceedings be admissible as prima facie evidence of such document or extract, as the case may be, and of the matters, transactions and accounts therein recorded.

(4) The registrar shall not, in any legal proceeding to which he is not a party, be compellable–

(a) to produce any document the contents of which can be proved under subsection (3); or

(b) to appear as a witness to prove the matters, transactions or accounts recorded in any such document,

unless by order of the court made for special cause.

(5) Any person untruthfully stating himself in writing for the purposes of proviso (ii) to subsection (1) to be a member or creditor of a company shall be liable to a fine not exceeding one thousand shillings.

Enforcement of duty of company to make returns to registrar.

385. (1) If a company, having made default in complying with any provision of this Act which requires it to file with, deliver or send to the registrar any return, account or other document, or to give notice to him of any matter, fails to make good the default within fourteen days after the service of a notice on the company requiring it to do so, the court may, on an application made to the court by any member or creditor of the company or by the registrar, make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company responsible for the default.

(3) Nothing in this section shall be taken to prejudice the operation of any written law imposing penalties on a company or its officers in respect of any such default as aforesaid.

Part XII–Miscellaneous Provisions With Respect to Insurance and Produce Companies, and Certain Societies and Partnerships

Certain companies to publish periodical statement.
1 of 1985,
9 of 1989, 2nd Sch.

386. (1) Every company, including a company incorporated outside Kenya and having a place of business in Kenya, being an insurance company or being a deposit provident or benefit society, shall, before it commences business, and also on the first Monday in February

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and the first Tuesday in August in every year during which it carries on business, deliver to the registrar for registration a statement in the form set out in the Ninth Schedule, or as near thereto as circumstances admit.

(2) A copy of the statement shall be exhibited in a conspicuous place in every office of the company, or other place where the business of the company is carried on.

(3) Every member and every creditor of the company shall be entitled to a copy of the statement, on payment of a sum not exceeding one shilling.

(4) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

(5) This section shall not apply to or in respect of a building society registered under the Building Societies Act, or a bank or financial institution or mortgage finance company licensed under the Banking Act. Cap. 489. Cap. 488.

Certain companies deemed insurance companies.

387. For the purposes of this Act a company which carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance company.

Produce companies.

388. (1) The articles of a produce company may empower the directors thereof to make, and from time to time to amend, vary, rescind or revoke, any by-laws not inconsistent with the provisions of this Act or with the memorandum and articles, for the time being, of such produce company, and any by-laws lawfully so made shall be binding on such produce company and the members thereof to the same extent in all respects as, under the provisions of subsection (1) of section 22, the memorandum and articles of such produce company so bind such company and the members thereof.

(2) It shall not be competent for a member of a produce company to contest any suit, claim, action or proceeding between such member and such produce company or between such member and any other member of such produce company on the ground that any article of such produce company or that any by-law made under any such article constitutes a contract in restraint of trade.

(3) The articles of a produce company may prescribe fines to be imposed on its members by the directors of such produce company for infringement of any article of such produce company or of any by-law lawfully made under any such articles:

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Provided that no such fine shall be imposed upon any member of a produce company for infringement of any article of such produce company or of any by-law lawfully made under any such article until written notice of intention to impose the fine and the reason, therefor has been transmitted to such member and he has had an opportunity of showing cause against the imposition of a fine, and, if he so desires, of being heard with or without witnesses.

(4) Any fine imposed in accordance with the provisions of subsection (3) may be recovered by suit in any competent court.

(5) The whole or any part of any fine imposed, in accordance with the provisions of subsection (3), may be set off against any moneys due, on any account whatsoever, from the produce company to the member upon whom such fine has been imposed.

(6) A member of a produce company shall not be deemed to have infringed any article or by-law of such produce company requiring him to sell or deliver any product of agriculture to or through such produce company if his failure so to sell or deliver the same is due solely to the fact that before becoming a member of such produce company he had contracted to sell or deliver the same to some other person:

Provided that full and true particulars of any such contract were disclosed to the directors of such produce company by the person concerned before he became a member thereof.

(7) The articles of a produce company may regulate the resignation and provide for the expulsion of members thereof; and, in the case of any produce company having a share capital, may constitute the directors of such company compulsory agents for sale of all shares held in such company by any member who has died, resigned or who has been lawfully expelled therefrom.

(8) For the purposes of this section, "produce company" means a company membership whereof is by its articles restricted to persons engaged in–

(a) the occupation of agriculture; or

(b) the occupation of processing, warehousing, manufacturing, storage, transport or marketing of any product of agriculture; or

(c) either or both of the occupations mentioned in paragraphs *(a)* and *(b)*:

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Provided that nothing in this subsection contained shall prevent any person from becoming a member of any such produce company as the holder of preference shares which carry a limited dividend and in respect of which there are no voting rights unless payment of such dividend is in arrear.

(9) In this section, "agriculture" includes horticulture and forestry.

Prohibition of partnerships with more than twenty members. 9 of 1967, Sch.

389. No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Act, Act of the United Kingdom, or of letters patent.

PART XIII – GENERAL

Form of Registers, Etc.

Form of registers, etc.

390. (1) Any register, index, minute book or book of account required by this Act to be kept by a company may be kept either by making entries in bound books or by recording the matters in question in any other manner.

(2) Where any such register, index, minute book or book of account is not kept by making entries in a bound book, but by some other means, adequate precautions shall be taken for guarding against falsification and facilitating its discovery, and, where default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a fine not exceeding one thousand shillings and further shall be liable to a default fine.

Service of Documents

Service of documents.

391. (1) A document may be served on a company by personally serving it on an officer of the company, by sending it by registered post to the registered postal address of the company in Kenya, or by leaving it at the registered office of the company.

(2) A document may be served on the registrar by leaving it at, or sending it by registered post to, his office.

Returns, etc., filed out of time.

392. (1) Where, under any provision of this Act, any return, account, notice or other document or particulars is or are required to be filed, delivered, given or sent to the registrar within a specified period, the duty to file, deliver, give or send the same shall not cease on the expiration of that period but shall be a continuing duty.

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(2) The registrar shall, on payment of such additional fee as may be prescribed, register any document delivered to him for registration notwithstanding the expiration of the period within which the same ought to have been delivered but no such registration shall relieve any person from any liability he may have incurred by reason of his default in delivering such document within the specified period.

Offences

Penalty for false statements.

393. If any person in any return, report, certificate, balance sheet or other document, required by or for the purposes of any of the provisions of this Act specified in the Tenth Schedule, wilfully makes a statement false in any material particular, knowing it to be false, he shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding ten thousand shillings or to both.

Penalty for improper use of word "limited".

394. If any person or persons trade or carry on business under any name or title of which "limited", or any contraction or imitation of that word, is the last word, that person or those persons shall, unless duly incorporated with limited liability, be liable to a fine not exceeding one hundred shillings for every day upon which that name or title has been used.

Provision with respect to default fines and meaning of "officer in default".

395. (1) Where, by any section of this Act, it is provided that a company and every officer of the company who is in default shall be liable to a default fine, the company and every officer shall, for every day during which the default, refusal or contravention continues, be liable to a fine not exceeding such amount as is specified in such section, or, if the amount of the fine is not so specified, to a fine not exceeding one hundred shillings.

(2) For the purpose of any section of this Act which provides that an officer of a company who is in default shall be liable to a fine or penalty, "officer who is in default" means any officer of the company:

Provided that–

(i) in any proceedings against an officer of a company who is alleged to be in default, it shall be a good defence to prove that he had reasonable grounds to believe, and did believe, that a competent and reliable person was responsible for complying with the particular requirement and was in a position to discharge that responsibility; and

(ii) an officer who is in default shall not be sentenced to imprisonment for such default unless, in the opinion of the court, the offence was committed wilfully.

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Production and inspection of books where offence suspected.

396. (1) If on an application made to a judge of the High Court in chambers by the Attorney-General, or the registrar, there is shown to be reasonable cause to believe that any person has, while an officer of a company, committed an offence in connection with the management of the company's affairs and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company, an order may be made -

(a) authorizing any person named therein to inspect the said books or papers or any of them for the purpose of investigating and obtaining evidence of the offence; or

(b) requiring the secretary of the company or such other officer thereof as may be named in the order to produce the said books or papers or any of them to a person named in the order at a place so named.

(2) Subsection (1) shall apply also in relation to any books or papers of a person carrying on the business of banking so far as they relate to the company's affairs, as it applies to any books or papers of or under the control of the company, except that no such order as is referred to in paragraph *(b)* thereof shall be made by virtue of this subsection.

(3) The decision of a judge of the High Court on an application under this section shall not be appealable.

Cognizance of offences.

397. (1) No court inferior to a subordinate court of the first class shall try any offence under this Act.

(2) Proceedings in respect of any offence under this Act may, notwithstanding anything to the contrary contained in the Criminal Procedure Code, be taken by the Attorney-General or by the registrar at any time within twelve months from the date on which evidence sufficient in the opinion of the Attorney-General or the registrar, as the case may be, to justify the proceedings comes to the knowledge of the Attorney-General or the registrar, as the case may be: Cap. 75.

Provided that proceedings shall not be so taken more than three years after the commission of the offence.

(3) For the purposes of subsection (2), a certificate of the Attorney-General or the registrar as to the date on which such evidence as aforesaid came to his knowledge shall be conclusive evidence thereof.

(4) Subsection (2), so far as it relates to the time within which proceedings may be taken, and subsection (3), shall apply to proceedings in respect of offences under the repealed Companies Ordinance, as it

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applies to proceedings in respect of the offences mentioned in subsection (2):

Provided that this subsection shall not have effect in relation to any proceedings if the time allowed under the said Ordinance apart from this section for taking them had already expired before the appointed day.

Application of fines.

398. The court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards rewarding the person on whose information or at whose suit the fine is recovered.

Provisions relating to institution of criminal proceedings by the Attorney-General.

399. (1) Nothing in this Act relating to the institution of criminal proceedings by the Attorney-General shall be taken to preclude any person from instituting or carrying on any such proceedings.

(2) Where by this Act the Attorney-General is permitted or required to institute or carry on any criminal or other proceedings or to make any application, such proceedings may be instituted or carried on and such application may be made by the Attorney-General or on behalf of the Attorney-General by any person who -

(i) has been instructed by the Attorney-General to do so; and

(ii) is otherwise entitled to appear before the court or before a judge or magistrate in chambers by virtue of the Advocates Act or, in the case of criminal proceedings, the provisions of the Criminal Procedure Code relating to the appointment of public prosecutors :

Cap. 16.
Cap. 75.

Provided that, where by this Act the consent of the Attorney-General is required before any proceedings are instituted or thing done, nothing in this subsection shall be taken as permitting any person other than the Attorney-General to give such consent.

Saving for privileged communications.

400. Where proceedings are instituted under this Act against any person by the Attorney-General or the registrar, nothing in this Act shall be taken to require any person who has acted as advocate for the defendant to disclose any privileged communication made to him in that capacity.

Legal Proceedings

Legal Proceedings Costs in actions by certain limited companies.

401. Where a limited company is plaintiff in any suit or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

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Power of court to grant relief in certain cases.

402. (1) If in any proceeding for negligence, default, breach of duty or breach of trust against an officer of a company or a person employed by a company as auditor (whether he is or is not an officer of the company) it appears to the court hearing the case that that officer or person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust that court may relieve him, either wholly or partly, from his liability on such terms as the court may think fit.

(2) Where any such officer or person aforesaid has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the court for relief, and the court on any such application shall have the same power to relieve him as under this section it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

Power to enforce orders.

403. Orders made by the High Court under this Act may be enforced in the same manner as orders made in a suit pending therein.

Regulations; power to alter tables and forms.
L.N. 649/1963.

404. (1) The Minister may make regulations to alter or add to the requirements of this Act as to the matters to be stated in a company's balance sheet, profit and loss account and group accounts, and in particular of those of the Sixth Schedule; and any reference in this Act to the said Sixth Schedule shall be construed as a reference to that Schedule with any alterations or additions made by regulations for the time being in force under this subsection.

(2) The Minister may make regulations–

(a) to alter Table A, and the form in the Ninth Schedule; and

(b) to alter or add to Tables B, C, D and E in the First Schedule and the forms in Part II of the Fifth Schedule,

but no alteration made by the Minister to Table A shall affect any company registered before the alteration, or repeal as respects that company any portion of that Table.

(3) No regulations shall be made under subsection (1) so as to render more onerous the requirements therein referred to, unless a draft

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of the instrument containing the regulations has been laid on the table of, and has been approved by resolution of, the National Assembly.

(4) In addition to the powers conferred by this section, the Minister may make regulations in respect of any matters which by this Act are to be or may be appointed or prescribed (other than matters which are to be or may be appointed or prescribed by any other person under any provision of this Act) or which are to be or may be provided for by the Minister.

Saving for repealed Companies Ordinance.

405. (1) An order made on an application under section 213 or subsection (4) of section 269 of the repealed Companies Ordinance, which is in force on the appointed day shall have effect as if it were an order under section 189 of this Act.

(2) Nothing in this Act shall affect any prosecution by a liquidator instituted or ordered by the court to be instituted under section 271 of the repealed Companies Ordinance, and the court shall have the same power of directing how any costs and expenses properly incurred by a liquidator in any such prosecution are to be defrayed as it would have had if this Act had not been enacted.

(3) Any document referring to any former written law relating to companies shall be construed as referring to the corresponding provision of this Act.

(4) Any person appointed to any office under or by virtue of the repealed Companies Ordinance shall be deemed to have been appointed to that office under or by virtue of this Act.

(5) Any register kept under any of the repealed Ordinances shall be deemed part of the register to be kept under the corresponding provisions of this Act.

(6) All funds and accounts constituted under this Act shall be deemed to be in continuation of the corresponding funds and accounts constituted under any of the repealed Ordinances.

(7) Nothing in this Act shall affect–

(a) the incorporation of any company registered under any of the repealed Ordinances;

(b) Table A in the First Schedule to any of the repealed Ordinances, or any part thereof, so far as the same apply to any company existing on the appointed day.

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(8) Where on the appointed day the articles of any company carrying on business in Kenya require any matter or thing to be done by the passing of an extraordinary resolution, such matter or thing shall, on and after the appointed day, be deemed to have been lawfully and sufficiently done if it is done by the passing of a special resolution.

(9) Where any offence, being an offence for the continuance of which a penalty was provided, has been committed under the repealed Companies Ordinance, proceedings may be taken under this Act in respect of the continuance of the offence after the appointed day in the same manner as if the offence had been committed under the corresponding provisions of this Act.

(10) The mention of particular matters in this section shall be without prejudice to the general application of section 23 of the Interpretation and General Provisions Act, which relates to the effect of repeals. Cap. 2.

406. The provisions of this Act with respect to winding up shall not apply to any company of which the winding up has commenced before the appointed day, but every such company shall be wound up in the same manner and with the same incidents as if this Act had not been enacted, and for the purposes of the winding up the repealed Companies Ordinance shall be deemed to remain in full force. Provision as to winding up commenced prior to appointed day.

FIRST SCHEDULE (ss. 2 and 11) 8 of 2008, s. 60.

Tables A, B, C, D and E

TABLE A

Part I - Regulations For Management Of A Company Limited By Shares, Not Being A Private Company

Interpretation

1. In these regulations–

"the Act" means the Companies Act;

"the seal" means the common seal of the company;

"secretary" means any person appointed to perform the duties of the secretary of the company.

Expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form.

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Unless the context otherwise requires, words or expressions contained in these regulations shall bear the same meaning as in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company.

Share Capital and Variation of Rights

2. Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, any share in the company may be issued with such preferred, deferred or other special rights or such restrictions, whether in regard to dividend, voting, return of capital or otherwise as the company may from time to time by ordinary resolution determine.

3. Subject to the provisions of section 60 of the Act, any preference shares may, with the sanction of an ordinary resolution, be issued on the terms that they are, or at the option of the company are liable, to be redeemed on such terms and in such manner as the company before the issue of the shares may by special resolution determine.

4. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the company is being wound up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.

5. The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking *pari passu* therewith.

6. The company may exercise the powers of paying commissions conferred by section 55 of the Act, provided that the rate per cent or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the said section and the rate of the commission shall not exceed the rate of 10 per cent of the price at which the shares in respect whereof the same is paid are issued or an amount equal to 10 per cent of such price (as the case may be). Such commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in one way and partly in the other. The company may also on any issue of shares pay such brokerage as may be lawful.

7. Except as required by law, no person shall be recognized by the company as holding any share upon any trust, and the company shall not be bound by or be compelled in any way to recognize (even when having notice thereof) any equitable, contingent, future or partial interest in any share or any interest in any fractional part of a share or (except only as by these regulations

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or by law otherwise provided) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.

8. Every person whose name is entered as a member in the register of members shall be entitled without payment to receive within two months after allotment or lodgment of transfer (or within such other period as the conditions of issue shall provide) one certificate for all his shares or several certificates each for one or more of his shares upon payment of Sh. 2/50 for every certificate after the first or such less sum as the directors shall from time to time determine. Every certificate shall be under the seal and shall specify the shares to which it relates and the amount paid up thereon:

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

9. If a share certificate be defaced, lost or destroyed, it may be renewed on payment of a fee of Sh. 2/50 or such less sum and on such terms (if any) as to evidence and indemnity and the payment of out-of-pocket expenses of the company of investigating evidence as the directors think fit.

10. The company shall not give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company or in its holding company nor shall the company make a loan for any purpose whatsoever on the security of its shares or those of its holding company, but nothing in this regulation shall prohibit transactions mentioned in the proviso to section 56 (1) of the Act.

Lien

11. The company shall have a first and paramount lien on every share (not being a fully paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a first and paramount lien on all shares (other than fully paid shares) standing registered in the name of a single person for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this regulation. The company's lien, if any, on a share shall extend to all dividends payable thereon.

12. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless a sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death or bankruptcy.

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13. To give effect to any such sale the directors may authorize some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

14. The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue, if any, shall (subject to a like lien for sums not presently payable as existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

Calls on Shares

15. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment thereof made payable at fixed times, provided that no call shall exceed one-fourth of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last preceding call, and each member shall (subject to receiving at least 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 his shares. A call may be revoked or postponed as the directors may determine.

16. A call shall be deemed to have been made at the time when the resolution of the directors authorizing the call was passed and may be required to be paid by instalment.

17. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

18. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment thereof to the time of actual payment at such rate not exceeding 5 per cent per annum as the directors may determine, but the directors shall be at liberty to waive payment of such interest wholly or in part.

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

20. The directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

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

Transfer of Shares

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

23. Subject to such of the restrictions of these regulations as may be applicable, any member may transfer all or any of his shares by instrument in writing in any usual or common form or any other form which the directors may approve.

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

25. The directors may also decline to recognize any instrument of transfer unless -

(a) a fee of Sh. 2/50 or such lesser sum as the directors may from time to time require is paid to the company in respect thereof;

(b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer; and

(c) the instrument of transfer is in respect of only one class of share.

26. If the directors refuse to register a transfer they shall within sixty days after the date on which the transfer was lodged with the company send to the transferee notice of the refusal.

27. The registration of transfers may be suspended at such times and for such periods as the directors may from time to time determine, provided always that such registration shall not be suspended for more than thirty days in any year.

28. The company shall be entitled to charge a fee not exceeding Sh. 2/50 on the registration of every probate, letters of administration, certificate of death or marriage, power of attorney or other instrument.

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Transmission of Shares

29. In case of the death of a member the survivor or survivors where the deceased was a joint holder, and the personal representatives of the deceased where he was a sole holder, shall be the only persons recognized by the company as having any title to his interest in the shares; but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.

30. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such evidence being produced as may from time to time properly be required by the directors and subject as hereinafter provided, elect either to be registered himself as holder of the share or to have some person nominated by him registered as the transferee thereof, but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by that member before his death or bankruptcy, as the case may be.

31. If the person so becoming entitled shall elect to be registered himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects. If he shall elect to have another person registered he shall testify his election by executing to that person a transfer of the share. All the limitations, restrictions and provisions of these regulations relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.

32. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company:

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

Forfeiture of Shares

33. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

34. 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 time appointed the shares in respect of which the call was made will be liable to be forfeited.

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35. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

36. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

37. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were payable by him to the company in respect of the shares, but his liability shall cease if and when the company shall have received payment in full of all such moneys in respect of the shares.

38. 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 a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share. The company may receive the consideration, if any, given for the share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

39. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

Conversion of Shares into Stock

40. The company may by ordinary resolution convert any paid-up shares into stock, and reconvert any stock into paid-up shares of any denomination.

41. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as and subject to which the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; and the directors may from time to time fix the minimum amount of stock transferable but so that such minimum shall not exceed the nominal amount of the shares from which the stock arose.

42. The holders of stock shall, according to the amount of stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except

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participation in the dividends and profits of the company and in the assets on winding up) shall be conferred by an amount of stock which would not, if existing in shares, have conferred that privilege or advantage.

43. Such of the regulations of the company as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder".

Alteration of Capital

44. The company may from time to time by ordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

45. The company may by ordinary resolution–

(a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

(b) subdivide its existing shares, or any of them, into shares of smaller amount than is fixed by the memorandum of association subject, nevertheless, to the provisions of section 63 (1) *(d)* of the Act;

(c) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

46. The company may by special resolution reduce its share capital, any capital redemption reserve fund or any share premium account in any manner and with, and subject to, any incident authorized, and consent required, by law.

General Meetings

47. The company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of the company and that of the next:

Provided that so long as the 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. The annual general meeting shall be held at such time and place as the directors shall appoint.

48. All general meetings other than annual general meetings shall be called extraordinary general meetings.

49. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as

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provided by section 132 of the Act. If at any time there are not within Kenya sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible at that in which meetings may be convened by the directors.

Notice of General Meetings

50. Every general meeting shall be called by twenty-one days' notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of meeting and, in case of special business, the general nature of that business, and shall be given, in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company:

Provided that a meeting of the company shall, notwithstanding that it is called by shorter notice than that specified in this regulation, be deemed to have been duly called if it is so agreed–

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

(ii) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than 95 per cent in nominal value of the shares giving that right.

51. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

Proceedings at General Meetings

52. All business shall be deemed special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the accounts, balance sheets, and the reports of the directors and auditors, the election of directors in the place of those retiring and the appointment of, and the fixing of the remuneration of, the auditors.

53. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members present in person shall be a quorum.

54. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place or to such other day and at such other time and place as the directors may determine, and if at the adjourned

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meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

55. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he shall not be present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act the directors present shall elect one of their number to be chairman of the meeting.

56. If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

57. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

58. At any general meeting a resolution put to the vote of the 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–

(a) by the chairman; or

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

(c) by any member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or

(d) by a member or members holding shares in the company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

Unless a poll be so 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 proceedings of the company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

The demand for a poll may be withdrawn.

59. Except as provided in regulation 61, if a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the

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poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

60. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

61. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

Votes of Members

62. Subject to any rights or restrictions for the time being attached to any class or classes of shares, on a show of hands every member present in person shall have one vote, and on a poll every member shall have one vote for each share of which be is the holder.

63. 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.

64. A member of unsound mind in respect of whose estate a manager has been appointed under section 38 of the Mental Treatment Act may vote, whether on a show of hands or on a poll, by his said manager, and any such manager may, on a poll, vote by proxy.

65. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

66. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

67. On a poll votes may be given either personally or by proxy.

68. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorized in writing, or, if the appointor is a corporation, either under seal, or under the hand of an officer or attorney duly authorized. A proxy need not be a member of the company.

69. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company or at such other place within Kenya as is specified for that purpose in the notice

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convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.

70. An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit–

" Limited

I/We , of , being a member/members of the above-named company, hereby appoint of or failing him, of ,as my/our proxy to vote for me/us on my/our behalf at the [annual or extraordinary, as the case may be] general meeting of the company to be held on the day of 19 , and at any adjournment thereof.

Signed this day of ,19 ."

71. Where it is desired to afford members an opportunity of voting for or against a resolution the instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit–

" Limited

I/ W ,of ,being a member/members of the above-named company, hereby appoint of , or failing him, of , as my/our proxy to vote for me/us on my/our behalf at the [annual or extraordinary, as the case may be] general meeting of the company to be held on the

Signed this day of , 19 .

This form is to be used *in favour of /against the resolution. Unless otherwise instructed, the proxy will vote as he thinks fit.

*Strike out whichever is not desired."

72. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

73. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principa1 or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the share in respect of which the proxy is given, provided that no intimation in writing of such death, insanity, revocation or transfer as aforesaid shall have been received by the company at the office before the commencement of the meeting or adjourned meeting at which the proxy is used.

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Corporations Acting by Representatives at Meetings

74. Any corporation which is a member of the company may by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of the company or of any class of members of the company, and the person so authorized shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

Directors

75. The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum of association or a majority of them and until such determination the signatories to the Memorandum of Association shall be the first directors.

76. The remuneration of the directors shall from time to time be determined by the company in general meeting. Such remuneration shall be deemed to accrue from day to day. The directors may also be paid all traveling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings of the company or in connection with the business of the company.

77. The shareholding qualification for directors may be fixed by the company in general meeting, and unless and until so fixed no qualification shall be required.

78. A director of the company may be or become a director or other officer of, or otherwise interested in, any company promoted by the company or which the company may be interested as shareholder or otherwise, and no such director shall be accountable to the company for any remuneration or other benefits received by him as a director or officer of, or from his interest in, such other company unless the company otherwise direct.

Borrowing Powers

79. The directors may exercise all the powers of the company to borrow money, and to mortgage or charge its undertaking, property and uncalled capital, or any part thereof, and to issue debentures, debenture stock, and other securities whether outright or as security for any debt, liability or obligation of the company or of any third party:

Provided that the amount for the time being remaining undischarged of moneys borrowed or secured by the directors as aforesaid (apart from temporary loans obtained from the company's bankers in the ordinary course of business) shall not any time, without the previous sanction of the company in general meeting, exceed the nominal amount of the share capital of the company for the time being issued, but nevertheless no lender or other person dealing with the company shall be concerned to see or inquire whether this limit is observed. No debt incurred or security given in excess of such limit shall be invalid or ineffectual except in the case of express notice to the lender or the recipient of the security at the time when the debt was incurred or security given that the limit hereby imposed had been or was thereby exceeded.

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Powers and Duties of Directors

80. The business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and registering the company, and may exercise all such powers of the company as are not, by the Act or by these regulations, required to be exercised by the company in general meeting, subject, nevertheless, to any of these regulations, to the provisions of the Act and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

81. The directors may from time to time and at any time by power of attorney appoint any company, firm or person or body of persons, whether nominated directly or indirectly by the directors, to be the attorney or attorneys of the company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under these regulations) and for such period and subject to such conditions as they may think fit, and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors may think fit and may also authorize any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

82. The company may exercise the powers conferred by section 37 of the Ordinance with regard to having an official seal for use abroad, and such powers shall be vested in the directors.

83. The company may exercise the powers conferred upon the company by sections 121 to 124 (both inclusive) of the Act with regard to the keeping of a branch register, and the directors may (subject to the provisions of those sections) make and vary such regulations as they may think fit respecting the keeping of any such register.

84. (1) A director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company shall declare the nature of his interest at a meeting of the directors in accordance with section 200 of the Act.

(2) A director shall not vote in respect of any contract or arrangement in which he is interested, and if he shall do so his vote shall not be counted, nor shall he be counted in the quorum present at the meeting, but neither of these prohibitions shall apply to-

(a) any arrangement for giving any director any security or indemnity in respect of money lent by him to or obligations undertaken by him for the benefit of the company; or

(b) to any arrangement for the giving by the company of any security to a third party in respect of a debt or obligation of the company for which the director himself has assumed responsibility in whole or in part under a guarantee or indemnity or by the deposit of a security; or

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(c) any contract by a director to subscribe for or underwrite shares or debentures of the company; or

(d) any contract or arrangement with any other company in which he is interested only as an officer of the company or as holder of shares or other securities,

and these prohibitions may at any time be suspended or relaxed to any extent, and either generally or in respect of any particular contract, arrangement or transaction, by the company in general meeting.

(3) A director may hold any other office or place of profit under the company (other than the office of auditor) in conjunction with his office of director for such period and on such terms (as to remuneration and otherwise) as the directors may determine and no director or intending director shall be disqualified by his office from contracting with the company either with regard to his tenure of any such other office or place of profit or as a vendor, purchaser or otherwise, nor shall any such contract, or any contract or arrangement entered into by or on behalf of the company in which any director is in any way interested, be liable to be avoided, nor shall any director so contracting or being so interested be liable to account to the company for any profit realized by any such contract or arrangement by reason of such director holding that office or of the fiduciary relation thereby established.

(4) A director, notwithstanding his interest, may be counted in the quorum present at any meeting whereat he or any other director is appointed to hold any such office or place of profit under the company or whereat the terms of any such appointment are arranged, and he may vote on any such appointment or arrangement other than his own appointment or the arrangement of the terms thereof.

(5) Any director may act by himself or his firm in a professional capacity for the company, and he or his firm shall be entitled to remuneration for professional services as if he were not a director; provided that nothing herein contained shall authorize a director or his firm to act as auditor to the company.

85. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for moneys paid to the company, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as the directors shall from time to time by resolution determine.

86. The directors shall cause minutes to be made in books provided for the purpose–

(a) of all appointments of officers made by the directors;

(b) of the names of the directors present at each meeting of the directors and of any committee of the directors;

(c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors,

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and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

87. The directors on behalf of the company may pay a gratuity or pension or allowance on retirement to any director who has held any other salaried office or place of profit with the company or to his widow or dependants and may make contributions to any fund and pay premiums for the purchase or provision of any such gratuity, pension or allowance.

Disqualification of Directors

88. The office of director shall be vacated if the director -

(a) ceases to be a director by virtue of section 183 or 186 of the Act; or

(b) becomes bankrupt or makes any arrangement or composition with his creditors generally; or

(c) becomes prohibited from being a director by reason of any order made under section 189 of the Act; or

(d) becomes of unsound mind; or

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

(f) shall for more than six months have been absent without permission of the directors from meetings of the directors held during that period.

Rotation of Directors

89. 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.

90. 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.

91. A retiring director shall be eligible for re-election.

92. The company at the meeting at which a director retires in manner aforesaid may fill the vacated office by electing a person thereto, and in default the retiring director shall if offering himself for re-election be deemed to have been re-elected, unless at such meeting it is expressly resolved not to fill such vacated office or unless a resolution for the re-election of such director shall have been put to the meeting and lost.

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93. No person other than a director retiring at the meeting shall unless recommended by the directors be eligible for election to the office of director at any general meeting unless not less than three nor more than twenty-one days before the date appointed for the meeting there shall have been left at the registered office of the company notice in writing signed by a member duly qualified to attend and vote at the meeting for which such notice is given, of his intention to propose such person for election, and also notice in writing signed by that person of his willingness to be elected.

94. The company may from time to time by ordinary resolution increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

95. The directors shall have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these regulations. Any director so appointed shall hold office only until the next following annual general meeting, and shall then be eligible for re-election but shall not be taken into account in determining the directors who are to retire by rotation at such meeting.

96. The company may by ordinary resolution, of which special notice has been given in accordance with section 142 of the Act, remove any director before the expiration of his period of office notwithstanding anything in these regulations or in any agreement between the company and such director. Such removal shall be without prejudice to any claim such director may have for damages for breach of any contract of service between him and the company.

97. The company may by ordinary resolution appoint another person in place of a director removed from office under regulation 96, and, without prejudice to the powers of the directors under regulation 95, the company in general meeting may appoint any person to be a director either to fill a casual vacancy or as an additional director. A person appointed in place of a director so removed or to fill such a vacancy shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of Directors

98. The directors may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors. It shall not be necessary to give notice of a meeting of directors to any director for the time being absent from Kenya.

99. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be two.

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100. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

101. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be a chairman of the meeting.

102. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.

103. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

104. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chairman shall have a second or casting vote.

105. All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

106. A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

Managing Director

107. The directors may from time to time appoint one or more of their body to the office of managing director for such period and on such terms as they think fit, and, subject to the terms of any agreement entered into in any particular case, may revoke such appointment. A director so appointed shall not, whilst holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors, but his appointment shall be automatically determined if he cease from any cause to be a director.

108. A managing director shall receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the directors may determine.

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109. The directors may entrust to and confer upon a managing director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and either collaterally with or to the exclusion of their own powers and may from time to time revoke, withdraw, alter or vary all or any of such powers.

Secretary

110. The secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.

111. No person shall be appointed or hold office as a secretary who is–

(a) the sole director of the company; or

(b) a corporation the sole director of which is the sole director of the company; or

(c) the sole director of a corporation which is the sole director of the company.

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

The Seal

113. The directors shall provide for the safe custody of the seal, which shall only be used by the authority of the directors or of a committee of the directors authorized by the directors in that behalf, and every instrument to which the seal shall be 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.

Dividends and Reserve

114. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

115. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

116. No dividend shall be paid otherwise than out of profits.

117. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the

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business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit. The directors may also without placing the same to reserve carry forward any profits which they may think prudent not to divide.

118. Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but no amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this regulation as paid on the share. All dividends shall be apportioned and paid proportionally to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it shall rank for dividend as from a particular date such share shall rank for dividend accordingly.

119. The directors may deduct from any dividend payable to any member all sums of money (if any) presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.

120. Any general meeting declaring a dividend or bonus may direct payment of such dividend or bonus wholly or partly by the distribution of specific assets and in particular of paid-up shares, debentures or debenture stock of any other company or in any one or more of such ways, and the directors shall give effect to such resolution, and where any difficulty arises in regard to such distribution, the directors may settle the same as they think expedient, and in particular may issue fractional certificates and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any members upon the footing of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as may seem expedient to the directors.

121. Any dividend, interest or other moneys payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any dividends, bonuses or other moneys payable in respect of the shares held by them as joint holders.

122. No dividend shall bear interest against the company.

Accounts

123. The directors shall cause proper books of account to be kept with respect to–

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

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

(c) the assets and liabilities of the company.

Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.

124. The books of account shall be kept at the registered office of the company, or, subject to section 147 (3) of the Act, at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

125. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorized by the directors or by the company in general meeting.

126. The directors shall from time to time, in accordance with sections 148, 150 and 157 of, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets, group accounts (if any) and reports as are referred to in those sections.

127. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting, together with a copy of the auditors' report, shall not less than twenty-one days before the date of the meeting be sent to every member of, and every holder of debentures of, the company and to every person registered under regulation 31: Provided that this regulation shall not require a copy of those documents to be sent to any person of whose address the company is not aware or to more than one of the joint holders of any shares or debentures.

Capitalization of Profits

128. The company in general meeting may upon the recommendation of the directors resolve that it is desirable to capitalize any part of the amount for the time being standing to the credit of any of the company's reserve accounts or to the credit of the profit and loss account or otherwise available for distribution, and accordingly that such sum be set free for distribution amongst the members who would have been entitled thereto if distributed by way of dividend and in the same proportions on condition that the same be not paid in cash but be applied either in or towards paying up any amounts for the time unpaid on any shares held by such members respectively or paying up in full unissued shares or debentures of the company to be allotted and distributed credited as fully paid up to and amongst such members in the proportion aforesaid, or partly in the one way and partly in the other and the directors shall give effect to such resolution: Provided that a share premium account and a capital redemption reserve fund may, for the purposes of this regulation, only be applied in the paying up of unissued shares to be issued to members of the company as fully-paid bonus shares.

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129. Whenever such a resolution as aforesaid shall have been passed the directors shall make all appropriations and applications of the undivided profits resolved to be capitalized thereby, and all allotments and issues of fully-paid shares or debentures, if any, and generally shall do all acts and things required to give effect thereto, with full power to the directors to make such provision by the issue of fractional certificates or by payment in cash or otherwise as they think fit for the case of shares or debentures becoming distributable in fractions, and also to authorize any person to enter on behalf of all the members entitled thereto into an agreement with the company providing for the allotment to them respectively, credited as fully paid up, of any further shares or debentures to which they may be entitled upon such capitalization, or (as the case may require) for the payment up by the company on their behalf, by the application thereto of their respective proportions of the profits resolved to be capitalized, of the amounts or any part of the amounts remaining unpaid on their existing shares, and any agreement made under such authority shall be effective and binding on all such members.

Audit

130. Auditors shall be appointed and their duties regulated in accordance with sections 159 to 162 of the Act.

Notices

8 of 2008, s. 60.
8 of 2008.

131. A notice may be given by the company to any member either personally or by sending it by post to him at his registered address, or (if he has no registered address within Kenya) to him at the address, if any, within Kenya supplied by him to the company for the giving of notice to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, pre-paying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of 72 hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

Provided that in the case of a notice of an annual general meeting, such notice may also be given by–

(a) publishing a notice containing a summary of both the annual financial statement and auditors' report, in at least any two local daily newspapers with national circulation for at least two consecutive days; or

(b) sending to every member, a notice through the electronic media containing a summary of both the annual financial statement and auditors' report.

132. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the register of members in respect of the share.

133. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like

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description, at the address, if any, within Kenya supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

134. Notice of every general meeting shall be given in any manner hereinbefore authorized to–

(a) every member except those members who (having no registered address within Kenya) have not supplied to the company an address within Kenya for the giving of notices to them;

(b) every person upon whom the ownership of a share devolves by reason of his being a personal representative or a trustee in bankruptcy of a member where the member but for his death or bankruptcy would be entitled to receive notice of the meeting; and

(c) the auditor for the time being of the company.

No other person shall be entitled to receive notices of general meetings.

Winding Up

135. If the company shall be wound up the liquidator may, with the sanction of a special resolution of the company and any other sanction required by the Act, divide amongst the members in specie or kind the whole or any part of the assets of the company (whether they shall consist of property of the same kind or not) and may, for such purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members. The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trust for the benefit of the contributories as the liquidator, with the like sanction, shall think fit, but so that no member shall be compelled to accept any shares or other securities whereon there is any liability.

Indemnity

136. Every director, managing director, agent, auditor, secretary and other officer for the time being of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under section 402 of the Act which relief is granted to him by the court.

Part II – Regulations for the Management of a Private Company Limited by Shares

1. The regulations contained in Part I of Table A (with the exceptionof regulations 24 and 53) shall apply.

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2. The company is a private company and accordingly–

(a) the right to transfer shares is restricted in manner hereinafter prescribed;

(b) the number of members of the company (exclusive of persons who are in the employment of the company and of persons who having been formerly in the employment of the company were while in such employment and have continued after the determination of such employment to be members of the company) is limited to fifty: Provided that where two or more persons hold one or more shares in the company jointly they shall for the purpose of this regulation be treated as a single member;

(c) any invitation to the public to subscribe for any shares or debentures of the company is prohibited;

(d) the company shall not have power to issue share warrants to bearer.

3. The directors may, in their absolute discretion and without assigning any reason therefor, decline to register any transfer of any share, whether or not it is a fully paid share.

4. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided two members present in person or by proxy shall be a quorum.

5. Subject to the provisions of the Act, a resolution in writing signed by all the members for the time being entitled to receive notice of and to attend and vote at general meetings (or being corporations by their duly authorized representatives) shall be as valid and effective as if the same had been passed at a general meeting of the company duly convened and held.

Note. – Regulations 3 and 4 of this Part are alternative to regulations 24 and 53 respectively of Part I.

TABLE B

Form of Memorandum of Association of a Company Limited by Shares

1st. – The name of the company is "The Lake Victoria Steam Packet Company, Limited".

2nd. – The registered office of the company will be situate in Kenya.

3rd. – The objects for which the company is established are, "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object".

4th. – The liability of the members is limited.

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5th. – The share capital of the company is two hundred thousand shillings divided into one thousand shares of two hundred shillings each.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Postal Addresses, and Occupations of Subscribers	*Number of Shares taken by each Subscriber*	*Signatures of Subscribers*
1.		
2.		
3.		
4.		
5.		
6.		
7.		
	_____	
Total shares taken	_____	

Dated the ..... day of .....19.....

Witness to the above signatures.

TABLE C

FORM OF MEMORANDUMAND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE,AND NOT HAVING A SHARE CAPITAL

Memorandum of Association

1st. – The name of the company is "The Nairobi School Association, Limited".

2nd. – The registered office of the company will be situate in Kenya.

3rd. – The objects for which the company is established are the carrying on a school for boys in the City of Nairobi and the doing all such other things as are incidental or conducive to the attainment of the above object.

4th. – The liability of the members is limited.

5th. – Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding two hundred shillings.

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WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Postal Addresses and Occupations of Subscribers	*Signatures of Subscribers*
1.	
2.	
3.	
4.	
5.	
6.	
7.	

Dated the.....day of....., 20.....

Witness to the above signatures.

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF ASSOCIATION

Interpretation

l. In these articles–

"the Act" means the Companies Act;

"the seal" means the common seal of the company;

"secretary" means any person appointed to perform the duties of the secretary of the company.

Expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form.

Unless the context otherwise requires, words or expressions contained in these articles shall bear the same meaning as in the Act or any statutory modification thereof in force at the date at which these articles become binding on the company.

Members

2. The number of members with which the company proposes to be registered is 500, but the directors may from time to time register an increase of members.

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3. The subscribers to the memorandum of association and such other persons as the directors shall admit to membership shall be members of the company.

General Meetings

4. The company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of the company and that of the next:

Provided that so long as the 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. The annual general meeting shall be held at such time and place as the directors shall appoint.

5. All general meetings other than annual general meetings shall be called extraordinary general meetings.

6. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section 132 of the Act.If at any time there are not within Kenya sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Notice of General Meetings

7. Every general meeting shall be called by twenty-one days' notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of meeting and, in case of special business, the general nature of that business and shall be given, in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the articles of the company, entitled to receive such notices from the company:

Provided that a meeting of the company shall, notwithstanding that it is called by shorter notice than that specified in this article be deemed to have been duly called if it is so agreed –

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

(ii) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together representing not less than 95 per cent of the total voting rights at that meeting of all the members.

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8. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

Proceedings at General Meetings

9. All business shall be deemed special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the accounts, balance sheets, and the reports of the directors and auditors, the election of directors in the place of those retiring and the appointment of, and the fixing of the remuneration of the auditors.

10. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members present in person shall be a quorum.

11. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, or to such other day and at such other time and place as the directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum.

12. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he shall not be present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act the directors present shall elect one of their number to be chairman of the meeting.

13. If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

14. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

15. At any general meeting a resolution put to the vote of the 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 -

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(a) by the chairman; or

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

(c) by any member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting.

Unless a poll be so 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 the effect in the book containing the minutes of proceedings of the company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

The demand for a poll may be withdrawn.

16. Except as provided in article 18, if a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

17. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

18. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

19. Subject to the provisions of the Act a resolution in writing signed by all the members for the time being entitled to receive notice of and to attend and vote at general meetings (or being corporations by their duly authorized representatives) shall be as valid and effective as if the same had been passed at a general meeting of the company duly convened and held.

Votes of Members

20. Every member shall have one vote.

21. A member of unsound mind in respect of whose estate a manager has been appointed under section 38 of the Mental Treatment Act may vote, whether on a show of hands or on a poll, by his said manager, and any such manager may, on a poll, vote by proxy.

22. No member shall be entitled to vote at any general meeting unless all moneys presently payable by him to the company have been paid.

23. On a poll votes may be given either personally or by proxy.

24. The instrument appointing a proxy shall be in writing under the hand

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of the appointor or of his attorney duly authorized in writing, or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorized. A proxy need not be a member of the company.

25. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company or at such other place within Kenya as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll, and under the hand of an officer or attorney duly authorized. A proxy

26. An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit -

"……Limited.

I/We ..... of ....., being a member/members of the above-named company, hereby appoint ..... of ..... or failing him ..... of, as my/our proxy to vote for me/us on my/our behalf at the [annual or extraordinary, as the case may be] general meeting of the company to be held on the ..... day of .....,19….., and at any adjournment thereof.

Signed this .....day of ....., 19....."

27. Where it is desired to afford members an opportunity of voting for or against a resolution the instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit -

".....Limited.

I/We ..... of ....., being a member/members of the above-named company, hereby appoint ..... of..... or failing him ..... of ..... as my/our proxy to vote for me/us on my/our behalf at the [annual or extraordinary, as the case may be] general meeting of the company to be held on the ..... day of .....,19....., and at any adjournment thereof.

Signed this .....day of ....., 19.....

This form is to be used *in favour of/against the resolution. Unless otherwise instructed, the proxy will vote as he thinks fit.

*Strike out whichever is not desired."

28. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

29. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, provided that no intimation in writing of such death, insanity or revocation as aforesaid shall have been received by the company at the office before the commencement of the meeting or adjourned meeting at which the proxy is used.

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Corporations Acting by Representatives at Meetings

30. Any corporation which is a member of the company may by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of the company, and the person so authorized shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

Directors

31. The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum of association or a majority of them.

32. The remuneration of the directors shall from time to time be determined by the company in general meeting. Such remuneration shall be deemed to accrue from day to day. The directors shall also be paid all traveling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings of the company or in connection with the business of the company.

Borrowing Powers

33. The directors may exercise all the powers of the company to borrow money, and to mortgage or charge its undertaking and property, or any part thereof, and to issue debentures, debenture stock and other securities, whether outright or as security for any debt, liability or obligation of the company or of any third party.

Powers and Duties of Directors

34. The business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and registering the company, and may exercise all such powers of the company as are not, by the Act or by these articles, required to be exercised by the company in general meeting subject nevertheless to the provisions of the Act or these articles and to such regulations, being not inconsistent with the aforesaid provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

35. The directors may from time to time and at any time by power of attorney appoint any company, firm or person or body of persons, whether nominated directly or indirectly by the directors, to be the attorney or attorneys of the company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under these articles) and for such period and subject to such conditions as they may think fit, and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors may think fit and may also authorize any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

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36. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for moneys paid to the company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as the directors shall from time to time by resolution determine.

37. The directors shall cause minutes to be made in books provided for the purpose–

(a) of all appointments of officers made by the directors;

(b) of the names of the directors present at each meeting of the directors and of any committee of the directors;

(c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors,

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

Disqualification of Directors

38. The office of director shall be vacated if the director -

(a) without the consent of the company in general meeting holds any other office of profit under the company; or

(b) becomes bankrupt or makes any arrangement or composition with his creditors generally; or

(c) becomes prohibited from being a director by reason of any order made under section 189 of the Act; or

(d) becomes of unsound mind; or

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

(f) ceases to be a director by virtue of section 186 of the Act; or

(g) is directly or indirectly interested in any contract with the company and fails to declare the nature of his interest in manner required by section 200 of the Act.

A director shall not vote in respect of any contract in which he is interested or any matter arising thereout, and if he does so vote his vote shall not be counted.

Rotation of Directors

39. 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.

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40. 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.

41. A retiring director shall be eligible for re-election.

42. The company at the meeting at which a director retires in manner aforesaid may fill the vacated office by electing a person thereto, and in default the retiring director shall, if offering himself for re-election, be deemed to have been re-elected, unless at such meeting it is expressly resolved not to fill such vacated office or unless a resolution for the re-election of such director shall have been put to the meeting and lost.

43. No person other than a director retiring at the meeting shall unless recommended by the directors be eligible for election to the office of director at any general meeting unless, not less than three nor more than twenty-one days before the date appointed for the meeting, there shall have been left at the registered office of the company notice in writing, signed by a member duly qualified to attend and vote at the meeting for which such notice is given, of his intention to propose such person for election, and also notice in writing signed by that person of his willingness to be elected.

44. The company may from time to time by ordinary resolution increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

45. The directors shall have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these articles. Any director so appointed shall hold office only until the next following annual general meeting, and shall then be eligible for re-election, but shall not be taken into account in determining the directors who are to retire by rotation at such meeting.

46. The company may by ordinary resolution, of which special notice has been given in accordance with section 142 of the Act, remove any director before the expiration of his period of office notwithstanding anything in these articles or in any agreement between the company and such director. Such removal shall be without prejudice to any claim such director may have for damages for breach of any contract of service between him and the company.

47. The company may by ordinary resolution appoint another person in place of a director removed from office under article 46. Without prejudice to the powers of the directors under article 45 the company in general meeting may appoint any person to be a director either to fill a casual vacancy or as an additional director. The person appointed to fill such a vacancy shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

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Proceedings of Directors

48. The directors may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors. It shall not be necessary to give notice of a meeting of directors to any director for the time being absent from Kenya.

49. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be two.

50. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the articles of the company as the necessary quorum of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

51. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but, if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

52. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.

53. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

54. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by majority of votes of the members present, and in the case of an equality of votes the chairman shall have a second or casting vote.

55. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

56. A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

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Secretary

57. The secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.

58. A provision of the Act or these articles requiring or authorizing a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the secretary.

The Seal

59. The directors shall provide for the safe custody of the seal, which shall only be used by the authority of the directors or of a committee of the directors authorized by the directors in that behalf, and every instrument to which the seal shall be 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.

Accounts

60. The directors shall cause proper books of account to be kept with respect to -

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

(b) all sales and purchases of goods by the company; and
(c) the assets and liabilities of the company.

Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.

61. The books of account shall be kept at the registered office of the company, or, subject to section 147 (3) of, at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

62. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorized by the directors or by the company in general meeting.

63. The directors shall from time to time in accordance with sections 148, 150 and 157 of the Act, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets, group accounts (if any) and reports as are referred to in those sections.

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64. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting, together with a copy of the auditor's report, shall not less than twenty-one days before the date of the meeting be sent to every member of, and every holder of debentures of, the company:

Provided that this article shall not require a copy of those documents to be sent to any person of whose address the company is not aware or to more than one of the joint holders of any debentures.

Audit

65. Auditors shall be appointed and their duties regulated in accordance with sections 159 to 162 of the Act.

Notices

66. A notice may be given by the company to any member either personally or by sending it by post to him at his registered address, or (if he has no registered address within Kenya) to him at the address, if any, within Kenya supplied by him to the company for the giving of notice to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of 72 hours after the letter containing the same is posted, and in any other case, at the time at which the letter would be delivered in the ordinary course of post.

67. Notice of every general meeting shall be given in any manner hereinbefore authorized to–

(a) every member except those members who (having no registered address within Kenya) have not supplied to the company an address within Kenya for the giving of notices to them;

(b) every person being a personal representative or a trustee in bankruptcy of a member where the member but for his death or bankruptcy would be entitled to receive notice of the meeting; and

(c) the auditor for the time being of the company.

No other person shall be entitled to receive notices of general meetings.

Names, Postal Addresses and Occupations of Subscribers	*Signatures of Subscribers*
1.	
2.	
3.	
4.	
5.	
6.	
7.	

Dated the ……..... day of ……...……..,19……

Witness to the above signatures.

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TABLE D

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND HAVING A SHARE CAPITAL

Memorandum of Association

1st. – The name of the company is " the Elgon Hotel Company, Limited".

2nd. – The registered office of the company will be situate in Kenya.

3rd. – The objects for which the company is established are "the facilitating travelling on Mount Elgon, by providing hotels and conveyances by land for the accommodation of travellers, and the doing all such other things as are incidental or conducive to the attainment of the above object".

4th. – The liability of the members is limited.

5th – Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company, contracted before he ceases to be a member, and the costs, charges and expenses of winding up the same and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding twenty pounds.

6th – The share capital of the company shall consist of five hundred thousand shillings, divided into five thousand shares of one hundred shillings each.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

	Names, Postal Addresses, and Occupations of Subscribers	*Number of Shares taken by each Subscriber*	*Signatures of Subscribers*
1.			
2.			
3.			
4.			
5.			
6.			
7.		_____	
	Total shares taken	_____	

Dated the …… day of ……..,19……

Witness to the above signatures

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ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF ASSOCIATION

1. The number of members with which the company proposes to be registered is 50, but the directors may from time to time register an increase of members.

2. The regulations of Table A, Part I, set out in the First Schedule of the companies Act shall be deemed to be incorporated with these articles and shall apply to the company.

Names, Postal Addresses and Occupations of Subscribers	*Signatures of Subscribers*
1.	
2.	
3.	
4.	
5.	
6.	
7.	

Dated the .....day of ....., 19.....

Witness to the above signatures.

TABLE E

MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY HAVING A SHARE CAPITAL

Memorandum of Association

1st. The name of the company is "The Patent Stereotype Company".

2nd. The registered office of the company will be situate in Kenya.

3rd. The objects for which the company is established are "the working of a patent method of founding and casting stereotype plates, of which method John Smith, of Nairobi, is the sole patentee, and the doing of all such things as are incidental or conducive to the attainment of the above objects".

WE, the several persons whose names are subscribed, are desirous of being formed into a company, in pursuance of this Memorandum of Association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

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Names, Postal Addresses and Occupation of Subscribers	*Number of Shares taken by each Subscriber*	*Signatures of Subscribers*
1.		
2.		
3.		
4.		
5.		
6.		
7.		
Total of shares taken		

Dated the..... day of....., 20.....

Witness to the above signatures.

ARTICLES OF ASSOCIATION TO ACCOMPANY THE PRECEDING MEMORANDUM OF ASSOCIATION

1. The number of members with which the company proposes to be registered is 20, but the directors may from time to time register an increase of members.

2. The share capital of the company is two thousand shillings, divided into twenty shares of one hundred shillings each.

3. The company may by special resolution -

(a) increase the share capital by such sum to be divided into shares of such amount as the resolution may prescribe;

(b) consolidate its shares into shares of a larger amount than its existing shares;

(c) subdivide its shares into shares of a smaller amount than its existing shares;

(d) cancel any shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person;

(e) reduce its share capital in any way.

4. The regulations of Table A, Part I, set out in the First Schedule to the

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Companies Act (other than regulations 40 to 46 inclusive) shall be deemed to be incorporated with these articles and shall apply to the company.

Names, Postal Addresses and Occupations of Subscribers	*Signatures of Subscribers*
1.	
2.	
3.	
4.	
5.	
6.	
7.	

Dated the ..... day of .....,19.....

Witness to the above signatures.

SECOND SCHEDULE (s. 32)

Form of Statement in Lieu of Prospectus to be Delivered to Registrar by a Private Company on Becoming a Public Company and reports to be set out therein

PART I - FORM OF STATEMENT AND PARTICULARS TO BE CONTAINED THEREIN

THE COMPANIES ACT

Statement in lieu of Prospectus delivered for registration by
(insert the name of the company)

Pursuant to section 32 of the Companies Act

Delivered for registration by

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The nominal share capital of the company...	Sh.
Divided into	Shares of Sh. each Shares of Sh. each Shares of Sh. each Shares of Sh. each
Amount (if any) of above capital which consists of redeemable preference shares.	
The earliest date on which the company has power to redeem these shares.	
Names, occupations and postal addresses of directors or proposed directors.	
Amount of shares issued	Shares.
Amount of commissions paid in connection therewith.	
Amount of discount (if any) allowed on the issue of any shares, or so much thereof as has not been written off at the date of the statement..	
Unless more than one year has elapsed since the date on which the company was entitled to commence business -	
Amount of preliminary expenses.....	Sh.
By whom those expenses have been paid or are payable.	
Amount paid to any promoter	Name of promoter- Amount: Sh.
Consideration for the payment.....	Consideration-
Any other benefit given to any promoter.	Name of promoter- Nature and value of benefit- Consideration-
Consideration for giving of benefit	
If the share capital of the company is divided into classes of different shares,the right of voting at meeting of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.	
Number and amount of shares and debentures issued within the two years preceding the date of this statement as fully or partly paid up otherwise than for cash or agreed to be so issued at the date of this statement.	1. shares of Sh. fully paid. 2. shares upon which Sh. per share credited as paid. 3. debenture Sh.
Consideration for the issue of those shares or debentures	4. Consideration-
Number, description and amount of any shares or debentures which any person has or is entitled to be given an option to subscribe for, or to acquire from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale	1. shares of Sh. and debentures of Sh.

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Period during which option is exercisable...	2. Until
Price to be paid for shares or debentures subscribed for or acquired upon option.	3.
Consideration for option or right to option	4. Consideration-
Persons to whom option or right to option was given or, if given to existing shareholders or debenture-holders as such, the relevant shares or debentures	5. Names and postal addresses-
Names and postal addresses of vendors of property (1)purchased or acquired by the company within the two years preceding the date of this statement or (2) agreed or proposed to be purchased or acquired by the company, except where the contract for its purchase or acquisition was entered into in the ordinary course of business and there is no connection between the contract and the company ceasing to be a private company or where the amount of the purchase money is not material.	
Amount (in cash, shares or debentures) paid or payable to each separate vendor.	
Amount paid or payable in cash, shares or debentures for any such property, specifying the amount paid or payable for goodwill.. ….	Total purchase price Sh. Cash .. .. Sh. Shares .. .. Sh. Debentures .. .. Sh. Goodwill .. .. .. Sh.
Short particulars of any transaction relating to any such property which was completed within the two preceding years and in which any vendor to the company or any person who is, or was at the time thereof, a promoter, director or proposed director of the company had any interest direct or indirect	
Dates of, parties to, and general nature of every material contract (other than contracts entered into in the ordinary course of business or entered into more than two years before the delivery of this statement).	

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Time and place at which the contracts or copies thereof may be inspected or (1) in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, and (2) in the case of a contract wholly or partly in a foreign language, a copy of a translation thereof in English or embodying a translation in English of the parts in a foreign language, as the case may be, being a translation certified in the prescribed manner to be a correct translation.	
Full particulars of the nature and extent of the interest of every director in any property purchased or acquired by the company within the two years preceding the date of this statement or	
proposed to be purchased or acquired by the company or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become or to qualify him as, a director, or otherwise for services rendered or to be rendered to the company by him or by the firm.	
Rates of the dividends (if any) paid by the company in respect of each class of shares in the company in each of the five financial years immediately preceding the date of this statement or since the incorporation of the company, whichever period is the shorter.	
Particulars of the cases in which no dividends have been paid in respect of any class of shares in any of these years.	

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(Signatures of the persons above named as directors or proposed directors or of their agents authorized in writing.)

.....
.....
.....

PART II– REPORTS TO BE SET OUT

1. If unissued shares or debentures of the company are to be applied in the purchase of a business, a report made by accountants (who shall be named in the statement) upon–

(a) the profits or losses of the business in respect of each of the five financial years immediately preceding the delivery of the statement to the registrar; and

(b) the assets and liabilities of the business at the last date to which the accounts of the business were made up.

2. (1) If unissued shares or debentures of the company are to be applied directly or indirectly in any manner resulting in the acquisition of shares in a body corporate which by reason of the acquisition or anything to be done in consequence thereof or in connection therewith will become a subsidiary of the company, a report made by accountants (who shall be named in the statement) with respect to the profits and losses and assets and liabilities of the other body corporate in accordance with subparagraph (2) or (3), as the case requires, indicating how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company, and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired.

(2) If the other body corporate has no subsidiaries, the report referred to in subparagraph (1) shall–

(a) so far as regards profits and losses, deal with the profits or losses of the body corporate in respect of each of the five financial years immediately preceding the delivery of the statement to the registrar; and

(b) so far as regards assets and liabilities, deal with the assets and liabilities of the body corporate at the last date to which the accounts of the body corporate were made up.

(3) If the other body corporate has subsidiaries, the report referred to in subparagraph (1) shall–

(a) so far as regards profits and losses, deal separately with the other body corporate's profits or losses as provided by the last foregoing subparagraph, and in addition deal either–

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(i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the other body corporate; or

(ii) individually with the profits or losses of each subsid iary, so far as they concern members of the other body corporate,

or, instead of dealing separately with the other body corporate's profits or losses, deal as a whole with the profits or losses of the other body corporate and, so far as they concern members of the other body corporate, with the combined profits or losses of its subsidiaries; and

(b) so far as regards assets and liabilities, deal separately with the other body corporate's assets and liabilities as provided by the last foregoing subparagraph and, in addition, deal either -

(i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the other body corporate's assets and liabilities; or

(ii) individually with the assets and liabilities of each subsidiary,

and shall indicate as respects the assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.

PART III–PROVISIONS APPLYING TO PARTS I AND II OF THIS SCHEDULE

3. In this Schedule the expression "vendor" includes a vendor as defined in Part III of the Third Schedule, and the expression "financial year" has the meaning assigned to it in that Part of that Schedule.

4. If in the case of a business which has been carried on, or of a body corporate which has been carrying on business, for less than five years, the accounts of the business or body corporate have only been made up in respect of four years, three years, two years or one year, Part II of this Schedule shall have effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years.

5. Any report required by Part II of this Schedule shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or shall make those adjustments and indicate that adjustments have been made.

6. Any report by accountants required by Part II of this Schedule shall be made by accountants qualified under this Act for appointment as auditors of a company which is not a private company and shall not be made by any accountant who is an officer or servant, or a partner of or in the employment of an officer or servant, of the company, or of the company's subsidiary or holding company or of a subsidiary of the company's holding company; and for the

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purposes of this paragraph the expression "officer" shall include a proposed director but not an auditor.

THIRD SCHEDULE (ss. 32, 40, 43, 49, 376 and 378)

Matters to be Specified in Prospectus and Reports to be set out therein

PART I – MATTERS TO BE SPECIFIED

1. The number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company.

2. The number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors.

3. The names, occupations and postal addresses of the directors or proposed directors.

4. Where shares are offered to the public for subscription, particulars as to–

(a) the minimum amount which, in the opinion of the directors must be raised by the issue of those shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters -

(i) the purchase price of any 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 preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company;

(iii) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters;

(iv) working capital; and

(b) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

5. The time of the opening of the subscription lists.

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6. The amount payable on application and allotment on each share, and, in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, the amount actually allotted, and the amount, if any, paid on the shares so allotted.

7. The number, description and amount of any shares in or debentures of the company which any person has, or is entitled to be given, an option to subscribe for, together with the following particulars of the option, that is to say-

(a) the period during which it is exercisable;

(b) the price to be paid for shares or debentures subscribed for under it;

(c) the consideration (if any) given or to be given for it or for the right to it;

(d) the names and postal addresses of the persons to whom it or the right to it was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures.

8. The number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.

9. (1) As respects any property to which this paragraph applies-

(a) the names and postal addresses of the vendors;

(b) the amount payable in cash, shares or debentures to the vendor and, where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor;

(c) short particulars of any transaction relating to the property completed within the two preceding years in which any vendor of the property to the company or any person who is, or was at the time of the transaction, a promoter or a director or proposed director of the company had any interest direct or indirect.

(2) The property to which this paragraph applies is property purchased or acquired by the company or proposed s to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus or the purchase or acquisition of which has not been completed at the date of the issue of the prospectus, other than property-

(a) the contract for the purchase or acquisition whereof was entered into in the ordinary course of the company's business,

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the contract not being made in contemplation of the issue nor the issue in consequence of the contract; or

(b) as respects which the amount of the purchase money is not material.

10. The amount, if any, paid or payable as purchase money in cash, shares or debentures for any property to which the last foregoing paragraph applies, specifying the amount, if any, payable for goodwill.

11. The amount, if any, paid within the two preceding years, or payable, as commission (but not including commission to sub-underwriters) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in or debentures of the company, or the rate of any such commission.

12. The amount or estimated amount of preliminary expenses and the persons by whom any of those expenses have been paid or are payable, and the amount or estimated amount of the expenses of the issue and the persons by whom any of those expenses have been paid or are payable.

13. Any amount or benefit paid or given within the two preceding years or intended to be paid or given to any promoter, and the consideration for the payment or the giving of the benefit.

14. The dates of, parties to and general nature of every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than two years before the date of issue of the prospectus.

15. The names and postal addresses of the auditors, if any, of the company.

16. Full particulars of the nature and extent of the interest, if any, of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.

17. If the prospectus invites the public to subscribe for shares in the company and the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

18. In the case of a company which has been carrying on business, or of a business which has been carried on for less than three years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.

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PART II – REPORTS TO BE SET OUT

19. (1) A report by the auditors of the company with respect to -

(a) profits and losses and assets and liabilities, in accordance with subparagraph (2) or (3), as the case requires; and

(b) the rates of the dividends, if any, paid by the company in respect of each class of shares in the company in respect of each of the five financial years immediately preceding the issue of the prospectus, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years,

and, if no accounts have been made up in respect of any part of the period of five years ending on a date three months before the issue of the prospectus, containing a statement of that fact.

(2) If the company has no subsidiaries, the report shall -

(a) so far as regards profits and losses, deal with the profits or losses of the company in respect of each of the five financial years immediately preceding the issue of the prospectus; and

(b) so far as regards assets and liabilities, deal with the assets and liabilities of the company at the last date to which the accounts of the company were made up.

(3) If the company has subsidiaries, the report shall -

(a) so far as regards profits and losses, deal separately with the company's profits or losses as provided by subparagraph (2), and in addition, deal either -

(i) as a whole with the combined profits or losses of its sub sidiaries, so far as they concern members of the company; or

(ii) individually with the profits or losses of each subsid iary, so far as they concern members of the company,

or, instead of dealing separately with the company's profits or losses, deal as a whole with the profits or losses of the company and, so far as they concern members of the company, with the combined profits or losses of its sub sidiaries; and

(b) so far as regards assets and liabilities, deal separately with the company's assets and liabilities as provided by the last foregoing subparagraph and, in addition, deal either -

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(i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the company's assets and liabilities; or

(ii) individually with the assets and liabilities of each subsidiary,

and shall indicate as respects the assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.

20. If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made by accountants (who shall be named in the prospectus) upon -

(a) the profits or losses of the business in respect of each of the five financial years immediately preceding the issue of the prospectus; and

(b) the assets and liabilities of the business at the last date to which the accounts of the business were made up.

21. (1) If–

(a) the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in any manner resulting in the acquisition by the company of shares in any other body corporate; and

(b) by reason of that acquisition or anything to be done in consequence thereof or in connection therewith that body corporate will become a subsidiary of the company,

a report made by accountants (who shall be named in the prospectus) upon -

(i) the profits or losses of the other body corporate in respect of each of the five financial years immediately preceding the issue of the prospectus; and

(ii) the assets and liabilities of the other body corporate at the last date to which the accounts of the body corporate were made up.

(2) The said report shall–

(a) indicate how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired; and

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(b) where the other body corporate has subsidiaries, deal with the profits or losses and the assets and liabilities of the body corporate and its subsidiaries in the manner provided by subparagraph (3) of paragraph 19 in relation to the company and its subsidiaries.

PART III – PROVISIONS APPLYING TO PARTS I AND II OF SCHEDULE

22. Paragraphs 2, 3, 12 (so far as it relates to preliminary expenses) and 16 shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

23. Every person shall for the purposes of this Schedule, be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where-

(a) the purchase money is not fully paid at the date of the issue of the prospectus;

(b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus;

(c) the contract depends for its validity or fulfilment on the result of that issue.

24. Where any property to be acquired by the company is to be taken on lease, this Schedule shall have effect as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "sub- purchaser" included a sub-lessee.

25. References in paragraph 7 to subscribing for shares or debentures shall include acquiring them from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.

26. For the purposes of paragraph 9 where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors.

27. If in the case of a company which has been carrying on business, or of a business which has been carried on for less than five years, the accounts of the company or business have only been made up in respect of four years, three years, two years or one year, Part II of this Schedule shall have effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years.

28. The expression "financial year" in Part II of this Schedule means the year in respect of which the accounts of the company or of the business, as the case may be, are made up, and where by reason of any alteration of the date on which the financial year of the company or business terminates the accounts of the company or business have been made up for a period greater or less than a year, that greater or less period shall for the purpose of that Part of this Schedule be deemed to be a financial year.

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29. Any report required by Part II of this Schedule shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or shall make those adjustments and indicate that adjustments have been made.

30. Any report by accountants required by Part II of this Schedule shall be made by accountants qualified under this Act for appointment as auditors of a company which is not a private company and shall not be made by any accountant who is an officer or servant, or a partner of or in the employment of an officer or servant, of the company or of the company's subsidiary or holding company or of a subsidiary of the company's holding company; and for the purposes of this paragraph the expression "officer" shall include a proposed director but not an auditor.

FOURTH SCHEDULE (s.50)

Form of statement in lieu of prospectus to be delivered to registrar by a company which does not issue a prospectus or which does not go to allotment on a prospectus issued, and reports to be set out therein.

PART 1- FORM OF STATEMENT AND PARTICULARS TO BE CONTAINED THEREIN

THE COMPANIES ACT

Statement in *lieu* of prospectus delivered for registration by
(*insert the name of the company*)

Pursuant to section 50 of the Companies Act

Delivered for registration by .....

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The nominal share capital of the company..	Sh.
Divided into	Shares of Sh. each Shares of Sh. each Shares of Sh. each Shares of Sh. each
Amount (if any) of above capital which consists of redeemable preference shares.	
The earliest date on which the company has power to redeem these shares.	
Names, occupations and postal addresses of directors or proposed directors.	
If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.	
Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.	1. shares of Sh. fully paid.
The consideration for the intended issue of those shares and debentures.	2. shares upon which Sh. per share credited as paid. 3. debenture Sh. 4. Consideration:-
Number, description and amount of any shares or debentures which any person has or is entitled to be given an option to subscribe for, or to acquire from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.	1. shares of Sh. and debentures of Sh.

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Period during which option is exercisable.	2. Until
Price to be paid for shares or debentures subscribed for or acquired under option.	3.
Consideration for option or right to option.	4. Consideration:
Persons to whom option or rights to option was given or, if given to existing share holders or debenture holders as such, the relevant shares or debentures.	5. Names and postal addresses.-
Names and postal addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the company except where the contract for its purchase or acquisition was entered into in the ordinary course of the business intended to be carried on by the company or the amount of the purchase money is not material.	
Amount (in cash, shares or debentures) payable to each separate vendor.	
Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for good will.	Total purchase price Sh. Cash.. ... ... Sh. Shares.. .. .. Sh. Debentures.. ... . Sh. Good will.. ... . Sh.
Short particulars of any transaction relating to any such property which was completed within the two preceding years and in which any vendor to the company or any person who is, or was at the time thereof, a promoter, director or proposed director of the company had any interest direct or indirect.	
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company; or	Amount paid. Amount payable.
Rate of the commission	Rate per cent.
The number of shares, if any, which persons have agreed for a commission to subscribe absolutely.	
Estimated amount of preliminary expences	Sh.
By whom those expenses have been paid or are payable.	

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Amount paid or intended to be paid to any promoter.	Name of promoter Amount Sh.
Consideration for the payment	
Any other benefit given or intended to be given to any promoter.	Considaration:– Name of promoter:– Nature and value of benefit:-
Consideration for giving of benefit..	
Dates of, parties to and general nature of every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the delivery of this statement).	Consideration:–
Time and place at which the contract or copies thereof may be inspected or (1) in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, and (2) in the case of a contract wholly or partly in a foreign language, a copy of a translation thereof in English or embodying a translation in English of the parts in a foreign language, as the case may be, being a translation certified in the prescribed manner to be a correct translation.	
Names and postal addresses of the auditors of the company (if any).	
Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.	

(Signatures of the persons above-named as directors or proposed directors, or of their agents authorized in writing)

.....

.....

Date .....

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PART II – REPORTS TO BE SET OUT

1. Where it is proposed to acquire a business, a report made by accountants (who shall be named in the statement) upon–

(a) the profits or losses of the business in respect of each of the five financial years immediately preceding the delivery of the statement to the registrar; and

(b) the assets and liabilities of the business at the last date to which the accounts of the business were made up.

2. (1) Where it is proposed to acquire shares in a body corporate which by reason of the acquisition or anything to be done in consequence thereof or in connection therewith will become a subsidiary of the company, a report made by accountants (who shall be named in the statement) with respect to the profits and losses and assets and liabilities of the other body corporate in accordance with subparagraph (2) or (3), as the case requires, indicating how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company, and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired.

(2) If the other body corporate has no subsidiaries, the report referred to in the last foregoing subparagraph shall–

(a) so far as regards profits and losses, deal with the profits or losses of the body corporate in respect of each of the five financial years immediately preceding the delivery of the statement to the registrar; and

(b) so far as regards assets and liabilities, deal with the assets and liabilities of the body corporate at the last date to which the accounts of the body corporate were made up.

(3) If the other body corporate has subsidiaries, the report referred to in subparagraph (1) shall–

(a) so far as regards profits and losses, deal separately with the other body corporate's profits or losses as provided by the last foregoing subparagraph, and in addition deal either -

(i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the other body corporate; or

(ii) individually with the profits or losses of each subsidiary, so far as they concern members of the other body corporate,

or, instead of dealing separately with the

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other body corporate's profits or losses, deal as a whole with the profits or losses of the other body corporate and, so far as they concern members of the other body corporate, with the combined profits or losses of its subsidiaries; and

(b) so far as regards assets and liabilities, deal separately with the other body corporate's assets and liabilities as provided by the last foregoing subparagraph and, in addition, deal either -

(i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the other body corporate's assets and liabilities; or

(ii) individually with the assets and liabilities of each subsidiary,

and shall indicate as respects the assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.

PART III – PROVISIONS APPLYING TO PARTS I AND II OF THIS SCHEDULE

3. In this Schedule the expression "vendor" includes a vendor as defined in Part III of the Third Schedule, and the expression "financial year" has the meaning assigned to it in that Part of that Schedule.

4. If in the case of a business which has been carried on, or of a body corporate which has been carrying on business, for less than five years, the accounts of the business or body corporate have only been made up in respect of four years, three years, two years or one year, Part II of this Schedule shall have effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years.

5. Any report required by Part II of this Schedule shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or shall make those adjustments and indicate that adjustments have been made.

6. Any report by accountants required by Part II of this Schedule shall be made by accountants qualified under this Act for appointment as auditors of a company which is not a private company and shall not be made by any accountant who is an officer or servant, or a partner of or in the employment of an officer or servant, of the company or of the company's subsidiary or holding company or of a subsidiary of the company's holding company; and for the purposes of this paragraph the expression "officer" shall include a proposed director but not an auditor.

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FIFTH SCHEDULE (s. 125)

Contents and form of Annual Return of a Company having a Share Capital

PART I – CONTENTS

1. The situation of the registered office of the company and the company's registered postal address.

2. (1) If the register of members is, under the provisions of this Act, kept elsewhere than at the registered office of the company, the address of the place where it is kept.

(2) If any register of holders of debentures of the company or part of any such register is, under the provisions of this Act, kept elsewhere than at the registered office of the company, the address of the place where it is kept.

3. A summary, distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, specifying the following particulars–

(a) the amount of the share capital of the company and the number of shares into which it is divided;

(b) the number of shares taken from the commencement of the company up to the date of the return;

(c) the amount called up on each share;

(d) the total amount of calls received;

(e) the total amount of calls unpaid;

(f) the total amount of the sums (if any) paid by way of commission in respect of any shares or debentures;

(g) the discount allowed on the issue of any shares issued at a discount or so much of that discount as has not been written off at the date on which the return is made;

(h) the total amount of the sums (if any) allowed by way of discount in respect of any debentures since the date of the last return;

(i) the total number of shares forfeited;

(j) the total amount of shares for which share warrants are outstanding at the date of the return and of share warrants issued and surrendered respectively since the date of the last return, and the number of shares comprised in each warrant.

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4. Particulars of the total amount of the indebtedness of the company as at the date of this return in respect of all mortgages and charges which are required to be registered with the registrar under this Act.

5. A list–

(a) containing the names and postal addresses of all persons who, on the fourteenth day after the company's annual general meeting for the year, are members of the company, and of persons who have ceased to be members since the date of the last return or, in the case of the first return, since the incorporation of the company;

(b) stating the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return (or, in the case of the first return, since the incorporation of the company) by persons who are still members and have ceased to be members respectively and the dates of registration of the transfers;

(c) if the names aforesaid are not arranged in alphabetical order, having annexed thereto an index sufficient to enable the name of any person therein to be easily found.

6. All such particulars with respect to the persons who at the date of the return are the directors of the company and any person who at that date is the secretary of the company as are by this Act required to be contained with respect to directors and the secretary respectively in the register of the directors and secretaries of a company.

PART II – FORM

ANNUAL RETURN of Limited,

made up to the day of , 20

(being the fourteenth day after the date of the annual general meeting for the year 19).

1. Address.
(*Situation and postal address of the registered office of the company*)

2. Situation of Registers of Members and Debenture-holders.

(a) (Address of place at which the register of members is kept, if other than the registered office of the company.)

(b) (Address of any place in Kenya other than the registered office of the company at which is kept any register of holders of debentures of the company or part of any such register which is kept outside Kenya.)

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3. Summary of Share Capital and Debentures.

(a) Nominal Share Capital

Nominal share capital Sh. ..... divided into:

(Insert number and class) shares of ..... each
....shares of .....each
.... shares of .....each
.... shares of .....each

(b) Issued Share Capital and Debentures

	Number	*Class*	
Number of shares of each class taken up to the date of this return (which number must agree with the total shown in the list as held by existing members)	.....	.....	shares
	.....	.....	shares
	.....	.....	shares
	.....	.....	shares
Number of shares of each class issued subject to payment wholly in cash.	.....	.....	shares
	.....	.....	shares
	.....	.....	shares
	.....	.....	shares
Number of shares of each class issued as fully paid up for a consideration other than cash	.....	.....	shares
	.....	.....	shares
	.....	.....	shares
	.....	.....	shares
Number of shares of each class issued as partly paid up for a consideration issued other than cash and extent to which each such share is so paid up.	…….....	….....……..	shares issued as paid up to the extent of Sh. ..... per share.
	.....	.....	shares issued as paid up to the extent of Sh. ..... per share.
	.....	.....	shares issued as paid up to the extent of Sh. ..... per share.
	.....	.....	shares
Number of shares (if any) of each class issued at a discount.	.....	.....	shares
	.....	.....	shares
	.....	.....	shares
	.....	.....	shares
Amount of discount on the issue of shares which has not been written off at the date of this return.	Sh.		

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		Number	*Class*	
Amount called up on number of shares of each class.	Sh. .. per share on	.....	.....	shares
	Sh. .. per share on	.....	.....	shares
	Sh. .. per share on	.....	.....	shares
	Sh. .. per share on	.....	.....	shares

Total amount of calls received, including payments on application and allotment and any sums received on shares forfeited. Sh. .....

Total amount (if any) agreed to be considered as paid on number of shares of each class issued as fully paid up for a consideration other than cash. Sh. …on

.....	.....	shares
.....	.....	shares
.....	.....	shares
.....	.....	shares

	Number	*Class*	
Total amount (if any) agreed to be considered as paid on number of shares of each class) issued as partly paid up for a onsideration other than cash. Sh. ..on	.....	.....	shares
	.....	.....	shares
	.....	.....	shares
	.....	.....	shares

Total amount of calls unpaid. Sh. .....

Total amount of the sums (if any) paid by way of commission in respect of any shares or debentures. Sh. .....

Total amount of the sums (if any) allowed by way of discount in respect of any debentures since the date of the last return. Sh.....

	Number	*Class*	
Total number of shares of each class forfeited.	.....	.....	shares
	.....	.....	shares
	.....	.....	shares
	.....	.....	shares

Total amount paid (if any) on shares forfeited. Sh.....

Total amount of shares for which share warrants to bearer are outstanding. Sh.....

Total amount of share warrants to bearer issued and surrendered respectively since the date of the last return. Issued : Sh..... Surrendered : Sh.....

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Number of shares comprised in each share warrant to bearer, specifying in the case of warrants of different kinds, particulars of each kind. .....

4. Particulars of Indebtedness.

Total amount of indebtedness of the company in respect of all mortgages and charges which are required to be registered with the registrar of companies under the Companies Ordinance.

Sh.....

5. List of Past and Present Members.

List of persons holding shares or stock in the company on the fourteenth day after the annual general meeting for 20....., and of persons who have held shares or stock therein at any time since the date of the last return, or in the case of the first return, of the incorporation of the company.

Folio in register ledger containing particulars	Names and postal addresses	Account of shares				Remarks
		Number of shares held by existing members atdate of return *†	Particulars of shares transferred since the date of the last return, or, in the case of the first return, of the incorporation of the company, by *(a)* persons who are still members and *(b)* persons who have ceased to be members ‡			
			Number†	Date of registration of transfer		
				(a)	*(b)*	

*The aggregate number of shares held by each member must be stated, and the aggregate must be added up so as to agree with the number of shares stated in the Summary of Share Capital and Debentures to have been taken up.

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†When the shares are of different classes these columns should be subdivided so that the number of each class held, or transferred, may be shown separately. Where any shares have been converted into stock the amount of stock held by each member must be shown.

‡The date of registration of each transfer should be given as well as the number of shares transferred on each date. The particulars should be placed opposite the name of the transferor and not opposite that of the transferee, but the name of the transferee may be inserted in the "Remarks" column immediately opposite the particulars of each transfer.

Notes

1. If the return for either of the two immediately preceding years was given as at the date of that return the full particulars required as to past and present members and the shares and stock held and transferred by them, only such particulars need be given as relate to persons ceasing to be or becoming members since the date of the last return and to shares transferred since that date or to changes as compared with that date in the amount of stock held by a member.

2.If the names in the list are not arranged in alphabetical order, an index sufficient to enable the name of any person to be readily found must be annexed.

6. Particulars of Directors and Secretaries.

Particulars of the persons who are directors of the company at the date of this return.

Name (In the case of an individual, present Christian name or names and surname. In the case of a corporation, the corporate name.)	Any former Christian name or names and surname.	Nation ality.	Usual postal address. (In case of a corporation, the registered or principal office).	Occupation and particulars of all other directorships.	Date of Birth

Particulars of the person who is secretary of the company at the date of this return.

Name (In the case of an individual, present Christian name or names and surname. In the case of a corporation, the corporate name.)	Any former Christian name or names and surname.	Usual postal address. (In the case of a corporation the registered or principal office).

Signed....., Director.

Signed....., Secretary.

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Notes

"Director" includes any person who occupies the position of a director by whatsoever name called, and any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

"Christian name" includes a forename, and "surname", in the case of a peer or person usually known by a title different from his surname, means that title.

"Former Christian name" and "former surname" do not include -

(a) in the case of a peer or a person usually known by a British title different from his surname, the name by which he was known previous to the adoption of or succession to the title; or

(b) in the case of any person, a former Christian name or surname where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years or has been changed or disused for a period of not less than twenty years; or

(c) in the case of a married woman the name or surname by which she was known previous to the marriage.

The names of all, bodies corporate incorporated in Kenya of which the director is also a director, should be given, except bodies corporate of which the company making the return is the wholly-owned subsidiary or bodies corporate which are the wholly-owned subsidiaries either of the company or of another company of which the company is the wholly-owned subsidiary. A body corporate is deemed to be the wholly-owned subsidiary of another if it has no members except that other and that other's wholly-owned subsidiaries and its or their nominees. If the space provided in the form is insufficient, particulars of other directorship should be listed on a separate statement attached to this return.

Dates of birth need only be given in the case of a company which is subject to section 186 of the Companies Act, namely, a company which is not a private company or which, being a private company, is the subsidiary of a body corporate incorporated in Kenya which is not a private company.

Where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated.

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*Delivered for filing by.....

CERTIFICATES AND OTHER DOCUMENTS ACCOMPANYING ANNUAL RETURN

Certificate to be Given by a Director and the Secretary of Every Private Company

We certify that the company has not since the date of† (the incorporation of the company /the last annual return) issued any invitation to the public to subscribe for any shares or debentures of the company.

Signed ....., Director.

Signed ....., Secretary.

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Further Certificate to be Given as Aforesaid if the Number of Members of the Company Exceeds Fifty

We certify that the excess of the number of members of the company over fifty consists wholly of persons who, under paragraph *(b)* of subsection (1) of section 30 of the Companies Act are not to be included in reckoning the number of fifty.

Signed ....., Director.

Signed ....., Secretary.

Certified Copies of Accounts

In the case of every company to which section 128 of the Companies Act applies, there shall be annexed to this return a written copy, certified both by a director and by the secretary of the company to be a true copy, of every balance sheet laid before the company in general meeting during the period to which this return relates (including every document required by law to be annexed to the balance sheet) and a copy (certified as aforesaid) of the report of the auditors on, and of the report of the directors accompanying, each such balance sheet. If any such balance sheet or document required by law to be annexed thereto is in a foreign language there must also be annexed to that balance sheet a translation in English of the balance sheet or document certified in the prescribed manner to be a correct translation. If any such balance sheet as aforesaid or document required by law to be annexed thereto did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheet or document aforesaid, as the case may be, there must be made such additions to and corrections in the copy as would have been required to be made in the balance sheet or document in order to make it comply with the said requirements, and the fact that the copy has been so amended must be stated thereon.

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* This should be printed at the bottom of the first page of the return.

† In the case of the first return strike out the second alternative .In the case of a second or subsequent return strike out the first alternative.

SIXTH SCHEDULE (ss. 58,149,152 and 157)

Accounts – Preliminary

1. Paragraphs 2 to 11 of this Schedule apply to the balance sheet and 12 to 14 to the profit and loss account, and are subject to the exceptions and modifications provided by Part II of this Schedule in the case of a holding company and by Part III thereof in the case of companies of the classes there mentioned; and this Schedule has effect in addition to the provisions of sections 197 and 198 of this Act.

Part I – General Provisions as to balance Sheet and Profit and Loss Account

Balance Sheet

2. The authorized share capital, issued share capital, liabilities and assets shall be summarized, with such particulars as are necessary to disclose the

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general nature of the assets and liabilities, and there shall be specified–

(a) any part of the issued capital that consists of redeemable preference shares, and the earliest date on which the company has power to redeem those shares;

(b) so far as the information is not given in the profit and loss account, any share capital on which interest has been paid out of capital during the financial year, and the rate at which interest has been so paid;

(c) the amount of the share premium account;

(d) particulars of any redeemed debentures which the company has power to re-issue.

3. There shall be stated under separate headings, so far as they are not written off–

(a) the preliminary expenses;

(b) any expenses incurred in connection with any issue of share capital or debentures;

(c) any sums paid by way of commission in respect of any shares or debentures;

(d) any sums allowed by way of discount in respect of any debentures; and

(e) the amount of the discount allowed on any issue of shares at a discount.

4. (1) The reserves, provisions, liabilities and fixed and current assets shall be classified under headings appropriate to the company's business:

Provided that–

(i) where the amount of any class is not material, it may be in cluded under the same heading as some other class; and

(ii) Where any assets of one class are not separable from assets of another class, those assets may be included under the same heading;

(iii) where any asset cannot properly be described either as "fixed or as "current" it shall be separately classified and described.

(2) Fixed assets shall also be distinguished from current assets.

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(3) The method or methods used to arrive at the amount of the fixed assets under each heading shall be stated.

5. (1) The method of arriving at the amount of any fixed asset shall, subject to subparagraph (2), be to take the difference between-

(a) its cost or, if it stands in the company's books at a valuation, the amount of the valuation; and

(b) the aggregate amount provided or written off since the date of acquisition or valuation, as the case may be, for depreciation or diminution in value,

and for the purposes of this paragraph the net amount at which any assets stand in the company's books at the commencement of this Act (after deduction of the amounts previously provided or written off for depreciation or diminution in value) shall, if the figures relating to the period before the commencement of this Act cannot be obtained without unreasonable expense or delay, be treated as if it were the amount of a valuation of those assets made at the commencement of this Act and, where any of those assets are sold, the said net amount less the amount of the sales shall be treated as if it were the amount of a valuation so made of the remaining assets.

(2) Subparagraph (1) shall not apply–

(a) to assets for which the figures relating to the period begining with the commencement of this Act cannot be obtained with out unreasonable expense or delay; or

(b) to assets the replacement of which is provided for wholly or partly–

(i) by making provision for renewals and charging the cost of replacement against the provision so made; or

(ii) by charging the cost of replacement direct to rev enue; or

(c) to any investments of which the market value (or, in the case of investments not having a market value, their value as estimated by the directors) is shown either as the amount of the investments or by way of note; or

(d) to goodwill, patents or trade marks.

(3) For the assets under each heading whose amount is arrived at in accordance with subparagraph (1), there shall be shown -

(a) the aggregate of the amounts referred to in head *(a)* of that subparagraph; and

(b) the aggregate of the amounts referred to in head *(b)* thereof.

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(4) As respects the assets under each heading whose amount is not arrived at in accordance with subparagraph (1) because their replacement is provided for as mentioned in subparagraph (2) *(b)*, there shall be stated–

(a) the means by which their replacement is provided for; and

(b) the aggregate amount of the provision (if any) made for renewals and not used.

6. The aggregate amounts respectively of capital reserves, revenue reserves and provisions (other than provisions for depreciation, renewals or diminution in value of assets) shall be stated under separate headings:

Provided that–

(i) this paragraph shall not require a separate statement of any of the said three amounts which is not material; and

(ii) the registrar may direct that it shall not require a separate statement of the amount of provisions where he is satisfied that that is not required in the public interest and would prejudice the company, but subject to the condition that any heading stating an amount arrived at after taking into account a provision (other than as aforesaid) shall be so framed or marked as to indicate that fact.

7. (1) There shall also be shown (unless it is shown in the profit and loss account or a statement or report annexed thereto, or the amount involved is not material)–

(a) where the amount of the capital reserves, of the revenue reserves or of the provisions (other than provisions for depreciation, renewals or diminution in value of assets) shows an increase as compared with the amount at the end of the immediately preceding financial year; the source from which the amount of the increase has been derived; and

(b) where–

(i) the amount of the capital reserves or of the revenue reserves shows a decrease as compared with the amount at the end of the immediately preceding financial year; or

(ii) the amount at the end of the immediately preceding financial year of the provisions (other than provisions for depreciation, renewals or diminution in value of assets) exceeded the aggregate of the sums since applied and amounts still retained for the purposes thereof,

the application of the amounts derived from the difference.

(2) Where the heading showing any of the reserves or provisions

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aforesaid is divided into subheadings, this paragraph shall apply to each of the separate amounts shown in the subheadings instead of applying to the aggregate amount thereof.

8. (1) There shall be shown under separate headings–

(a) the aggregate amounts respectively of the company's trade investments, quoted investments other than trade investments and unquoted investments other than trade investments;

(b) if the amount of the good will and of any patents and trade marks or part of that amount is shown as a separate item in or is otherwise ascertainable from the books of the company, or from any contract for the sale or purchase of any property to be acquired by the company, or from any documents in the possession of the company relating to the stamp duty payable in respect of any such contract or the conveyance of any such property, the said amount so shown or ascertained so far as not written off or, as the case may be, the said amount so far as it is so shown or ascertainable and as so shown or ascertained, as the case may be;

(c) the aggregate amount of any outstanding loans made under the authority of provisos (i) and (ii) of subsection (1) of section 56 of this Act;

(d) the aggregate amount of bank loans and overdrafts;

(e) the net aggregate amount (after deduction of income tax) which is recommended for distribution by way of dividend.

(2) Nothing in head *(b)* of the foregoing subparagraph shall be taken as requiring the amount of the goodwill, patents and trade marks to be stated otherwise than as a single item.

(3) The heading showing the amount of the quoted investments other than trade investments shall be subdivided, where necessary, to distinguish the investments as respects which there has, and those as respects which there has not, been granted a quotation or permission to deal on a stock exchange of repute.

9. Where any liability of the company is secured or otherwise than by operation of law on any assets of the company, the fact that that liability is so secured shall be stated, but it shall not be necessary to specify the assets on which the liability is secured.

10. Where any of the company's debentures are held by a nominee of or trustee for the company, the nominal amount of the debentures and the amount at which they are stated in the books of the company shall be stated.

11. (1) The matters referred to in the following subparagraphs shall be stated by way of note, or in a statement or report annexed, if not otherwise shown.

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(2) The number, description and amount of any shares in the company which any person has an option to subscribe for, together with the following particulars of the option, that is to say–

(a) the period during which it is exercisable;

(b) the price to be paid for shares subscribed for under it.

(3) The amount of any arrears of fixed cumulative dividends on the company's shares and the period for which the dividends or, if there is more than one class each class of them are in arrear, the amount to be stated before deduction of income tax, except that, in the case of tax-free dividends, the amount shall be shown free of tax and the fact that it is so shown shall also be stated.

(4) Particulars of any charge on the assets of the company to secure the liabilities of any other person, including, where practicable, the amount secured.

(5) The general nature of any other contingent liabilities not provided for and, where practicable, the aggregate amount or estimated amount of those liabilities, if it is material.

(6) Where practicable the aggregate amount or estimated amount, if it is material, of contracts for capital expenditure, so far as not provided for.

(7) If in the opinion of the directors any of the current assets have not a value, on realization in the ordinary course of the company's business, at least equal to the amount at which they are stated, the fact that the directors are of that opinion.

(8) The aggregate market value of the company's quoted investments, other than trade investments, where it differs from the amount of the investments as stated, and the stock exchange value of any investments of which the market value is shown (whether separately or not) and is taken as being higher than their stock exchange value.

(9) The basis on which foreign currencies have been converted into East African currency, where the amount of the assets or liabilities affected is material.

(10) The amount or the estimated amount of any liability to income tax in respect of the profits made by the company to the date of the balance sheet, together with the basis on which such amount, if any, set aside for income tax is computed.

(11) Except in the case of the first balance sheet laid before the company after the commencement of this Act, the corresponding amounts at the end of the immediately preceding financial year for all items shown in the balance sheet.

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Profit and Loss Account

12. (1) There shall be shown–

(a) the amount charged to revenue by way of provision for depreciation, renewals or diminution in value of fixed assets;

(b) the amount of the interest on the company's debentures and other fixed loans;

(c) the amount of the charge for income tax and any other taxation on profits to date;

(d) the amounts respectively provided for redemption of share capital and for redemption of loans;

(e) the amount, if material, set aside or proposed to be set aside to, or withdrawn from, reserves;

(f) subject to subparagraph (2), the amount, if material, set aside to provisions other than provisions for depreciation, renewals or diminution in value of assets or, as the case may be, the amount, if material, withdrawn from such provisions and not applied for the purposes thereof;

(g) the amount of income from investments, distinguishing between trade investments and other investments;

(h) the aggregate amount of the dividends paid and proposed.

(2) The registrar may direct that a company shall not be obliged to show an amount set aside to provisions in accordance with subparagraph (1) *(f)*, if he is satisfied that that is not required in the public interest and would prejudice the company, but subject to the condition that any heading stating an amount arrived at after taking into account the amount set aside as aforesaid shall be so framed or marked as to indicate that fact.

13. If the remuneration of the auditors is not fixed by the company in general meeting, the amount thereof shall be shown under a separate heading, and for the purposes of this paragraph, any sums paid by the company in respect of the auditors' expenses shall be deemed to be included in the expression "remuneration"

14. (1) The matters referred to in the following subparagraphs shall be stated by way of note, if not otherwise shown.

(2) If depreciation or replacement of fixed assets is provided for by some method other than a depreciation charge or provision for renewals, or is not provided for, the method by which it is provided for or the fact that it is not provided for, as the case may be.

(3) The basis on which the amount, if any, set aside for income tax is computed.

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(4) Whether or not the amount stated for dividends paid and proposed is for dividends subject to deduction of income tax.

(5) Except in the case of the first profit and loss account laid before the company after the commencement of this Act the corresponding amounts for the immediately preceding financial year for all items shown in the profit and loss account.

(6) Any material respects in which any items shown in the profit and loss account are affected–

(a) by transactions of a sort not usually undertaken by the company or otherwise by circumstances of an exceptional or non-recurrent nature; or

(b) by any change in the basis of accounting.

PART II – SPECIAL PROVISIONS WHERE THE COMPANY IS A HOLDING OR SUBSIDIARY COMPANY

Modifications of and Additions to Requirements as to Company's Own Accounts

15. (1) This paragraph shall apply where the company is a holding company, whether or not it is itself a subsidiary of another body corporate.

(2) The aggregate amount of assets consisting of shares in, or amounts owing (whether on account of a loan or otherwise) from, the company's subsidiaries, distinguishing shares from indebtedness, shall be set out in the balance sheet separately from all the other assets of the company, and the aggregate amount of indebtedness (whether on account of a loan or otherwise) to the company's subsidiaries shall be so set out separately from all its other liabilities and–

(a) the references in Part I of this Schedule to the company's investments shall not include investments in its subsidiaries required by this paragraph to be separately set out; and

(b) paragraph 5,subparagraph (1) *(a)* of paragraph 12 and subparagraph (2) of paragraph 14 of this Schedule shall not apply in relation to fixed assets consisting of interests in the company's subsidiaries.

(3) There shall be shown by way of note on the balance sheet or in a statement or report annexed thereto the number, description and amount of the shares in and debentures of the company held by its subsidiaries or their nominees, but excluding any of those shares or debentures in the case of which the subsidiary is concerned as personal representative or in the case of which it is concerned as trustee and neither the company nor any subsidiary thereof is beneficially interested under the trust, otherwise than by way of security only for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

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(4) Where group accounts are not submitted, there shall be annexed 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 members of the holding company and is not dealt with in the company's accounts, of the subsidiaries' profits after deducting the subsidiaries' losses (or *vice versa*)–

(i) for the respective financial years of the subsidiaries ending with or during the financial year of the company; and

(ii) for their previous financial years since they respectively became the holding company's subsidiary;

(c) the net aggregate amount of the subsidiaries' profits after deducting the subsidiaries' losses (or *vice versa*)–

(i) for the respective financial years of the subsidiaries ending with or during the financial year of the company; and

(ii) for their other financial years since they respectively became the holding company's subsidiary,

so far as those profits are dealt with, or provision is made for those losses, in the company's accounts;

(d) any qualifications contained in the report of the auditors of the subsidiaries on their accounts for their respective financial years ending as aforesaid, and any note or saving contained in those accounts to call attention to a matter which, apart from the note or saving, would properly have been referred to in such a qualification, in so far as the matter which is the subject of the qualification or note is not covered by the company's own accounts and is material from the point of view of its members,

or, in so far as the information required by this subparagraph is not obtainable, a statement that it is not obtainable:

Provided that the registrar may, on the application or with the consent of the company's directors, direct that in relation to any subsidiary this subparagraph shall not apply or shall apply only to such extent as may be provided by the direction.

(5) Paragraphs *(b)* and *(c)* of subparagraph (4) of this paragraph shall apply only to profits and losses of a subsidiary which may properly be treated in the holding company's accounts as revenue profits or losses, and the profits or losses attributable to any shares in a subsidiary for the time being held by the holding company or any other of its subsidiaries shall not (for that or any other purpose be treated as aforesaid so far as they are profits or losses for the

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period before the date on or as from which the shares were acquired by the company or any of its subsidiaries, except that they may in a proper case be so treated where–

(a) the company is itself the subsidiary of another body corporate; and

(b) the shares were acquired from that body corporate or a subsidiary of it,

and for the purposes of determining whether any profits or losses are to be treated as profits or losses for the said period the profit or loss for any financial year of the subsidiary may, if it is not practicable to apportion it with reasonable accuracy by reference to the facts, be treated as accruing from day to day during that year and be apportioned accordingly.

(6) Where group accounts are not submitted, there shall be annexed to the balance sheet a statement showing, in relation to the subsidiaries (if any) whose financial years did not end with that of the company -

(a) the reasons why the company's directors consider that the subsidiaries' financial years should not end with that of the company; and

(b) the date on which the subsidiaries' financial years ending last before that of the company respectively ended or the earliest and latest of those dates.

16. (1) The balance sheet of company which is a subsidiary of another body corporate, whether or not it is itself a holding company, shall show the aggregate amount of its indebtedness to all bodies corporate of which it is a subsidiary or a fellow subsidiary and the aggregate amount of the indebtedness of all such bodies corporate to it, distinguishing in each case between indebtedness in respect of debentures and otherwise.

(2) For the purposes of this paragraph a company shall be deemed to be a fellow subsidiary of another body corporate if both are subsidiaries of the same body corporate but neither is the other's.

Consolidated Accounts of Holding Company and Subsidiaries

17. Subject to the following paragraphs of this Part of this Schedule, the consolidated balance sheet and profit and loss account shall combine the information contained in the separate balance sheets and profit and loss accounts of the holding company and of the subsidiaries dealt with by the consolidated accounts, but with such adjustments (if any) as the directors of the holding company think necessary.

18. Subject as aforesaid and to Part III of this Schedule, the consolidated accounts shall, in giving the said information, comply, so far as practicable, with the requirements of this Act as if they were the accounts of an actual company.

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19. Sections 197 and 198 of this Act shall not, by virtue of the two last foregoing paragraphs, apply for the purpose of the consolidated accounts.

20. Paragraph 7 of this Schedule shall not apply for the purpose of any consolidated accounts laid before a company with the first balance sheet so laid after the commencement of this Act.

21. In relation to any subsidiaries of the holding company not dealt with by the consolidated accounts–

(a) subparagraphs (2) and (3) of paragraph 15 of this Schedule shall apply for the purpose of those accounts as if those accounts were the accounts of an actual company of which they were subsidiaries; and

(b) there shall be annexed the like statement as is required by subparagraph (4) of that paragraph where there are no group accounts, but as if references therein to the holding company's accounts were references to the consolidated accounts.

22. In relation to any subsidiaries (whether or not dealt with by the consolidated accounts), whose financial years did not end with that of the company, there shall be annexed the like statement as is required by subparagraph (6) of paragraph 15 of this Schedule where there are no group accounts.

Part III – Exception for Licensed and Scheduled Banks and for Insurance Companies

23. (1) So long as any licensed bank or any scheduled bank complies with the requirements of any enactment in force in the country of the incorporation of such bank relating to the keeping of accounts by a banking company it shall not be subject to the requirements of Part I of this Schedule:

Provided that if the Minister is satisfied that any licensed bank or any scheduled bank is not complying with the requirements of any such enactment of its country of incorporation, or if there are no such requirements in such enactment, he may by order direct that such bank shall comply with the requirements of Part I of this Schedule.

(2) For the purposes of this Part of this Schedule "licensed bank" and "scheduled bank" shall have the same meanings as in the Banking Act.

24. An insurance company, as defined in the Insurance Companies Act, which is subject to the requirements of that Act as respects the preparation and deposit with the registrar of insurance companies of a balance sheet and profit and loss account shall not, so long as it complies with those requirements, be subject to the requirements of Part I of this Schedule, other than -

(a) as respects its balance sheet, those of paragraphs 2 and 3, paragraph 4 (so far as it relates to fixed and current assets), paragraph 8 (except subparagraph (1) *(a)* and *(d)* and sub-paragraph (3)), paragraphs 9 and 10 and paragraph 11 (except subparagraphs (4) to (8) inclusive and (10)); and

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(b) as respects its profit and loss account, those of subparagraph (1) *(h)* of paragraph 12, paragraph 13 and subparagraphs (1), (4) and (5) of paragraph 14.

PART IV – INTERPRETATION OF SCHEDULE

25. (1) For the purposes of this Schedule, unless the context otherwise requires–

(a) the expression "provision" shall, subject to subparagraph (2) of this paragraph, mean any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of providing for any known liability of which the amount cannot be determined with substantial accuracy;

(b) the expression "reserve" shall not, subject as aforesaid, include any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of providing for any known liability;

(c) the expression "capital reserve" shall not include any amount regarded as free for distribution through the profit and loss account and the expression "revenue reserve" shall mean any reserve other than a capital reserve,

and in this paragraph the expression "liability" shall include all liabilities in respect of expenditure contracted for and all disputed or contingent liabilities.

(2) Where–

(a) any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets, not being an amount written off in relation to fixed assets before the commencement of this Act; or

(b) any amount retained by way of providing for any known liability is in excess of that which in the opinion of the directors is reasonably necessary for the purpose, the excess shall be treated for the purposes of this Schedule as a reserve and not as a provision.

26. For the purposes aforesaid, the expression "quoted investment" means an investment as respects which there has been granted a quotation or permission to deal on any stock exchange of repute and the expression "unquoted investment" shall be construed accordingly.

SEVENTH SCHEDULE (s. 162)

MATTERS TO BE EXPRESSLY STATED IN AUDITORS' REPORT

1. Whether they have obtained all the information and explanations

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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. (1) Whether the company's balance sheet and (unless it is framed as a consolidated profit and loss account) profit and loss account dealt with by the report are in agreement with the books of account and returns.

(2) Whether, in their opinion and to the best of their information and according to the explanations given them, the said 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 as 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, as the case may be, give a true and fair view thereof subject to the non-disclosure of any matters (to be indicated in the report) which by virtue of Part III of the Sixth Schedule are not required to be disclosed.

4. 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 provisions of this Act so as to give a true and fair view of the state of affairs and profit or loss of the company and its subsidiaries dealt with thereby, so far as concerns members of the company, or, as the case may be, so as to give a true and fair view thereof subject to the non-disclosure of any matters (to be indicated in the report) which by virtue of Part III of the Sixth Schedule are not required to be disclosed.

EIGHTH SCHEDULE (s. 308)

PROVISIONS OF THIS ACT WHICH DO NOT APPLY IN THE CASE OF A WINDING UP SUBJECT TO SUPERVISION OF THE COURT

Section	*Subject matter*
232	Statement of company's affairs to be submitted to official receiver.
233	Report by official receiver.
234	Power of court to appoint liquidators.
235	Appointment and powers of provisional liquidator.
236	Appointment, style, etc., of liquidators.
237	Provisions where person other than official receiver is appointed liquidator.
238	Except subsection (5). General provisions as to liquidators.
242	Exercise and control of liquidator's powers.
243	Books to be kept by liquidator.
244	Payments by liquidator into bank.
245	Audit of liquidator's accounts.
246	Control over liquidators.

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247–Release of liquidators.
248–Meetings of creditors and contributories to determine whether committee of inspection shall be appointed.
249–Constitution and proceedings of committee of inspection.
250–Powers of court where no committee of inspection.
258–Appointment of special manager.
265–Power to order public examination of promoters and officers.
268–Delegation to liquidator of certain powers of court.
347–Power to appoint official receiver as receiver for debenture holders or creditors.

NINTH SCHEDULE (s. 386)

Form of Statement to be Published by Deposit, Provident or Benefit Societies

*The share capital of the company is....., divided into ..... shares of ..... each.

The number of shares issued is .....

Calls to the amount of ..... shillings per share have been made, under which the sum of ..... shillings has been received.

The liabilities of the company on 1st January (or July) were–

Debts owing to sundry persons by the company–
On decree, Sh.
On notes or bills, Sh.
On contracts, Sh.
On estimated liabilities, Sh.

The assets of the company on that day were–
Government securities (*stating them*).
Bills of exchange and promissory notes, Sh.
Cash at the bankers, Sh.
Other securities, Sh.

TENTH SCHEDULE (s. 393)

Provisions Referred to in Section 393

Section or provision of Schedule	*Subject matter*
17	Conclusiveness of certificate of incorporation.
32	Statement in lieu of prospectus to be delivered to registrar by company on ceasing to be private company.
40	Matters to be stated and reports to be set out in prospectus.
50	Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to registrar.

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54 Return as to allotments.
96 Registration of charges.
97 (1) Duty of company to register charges created by company.
98 Duty of company to register charges existing on property acquired.
111 Restrictions on commencement of business.
126 (Except paragraph *(a)* of subsection (1).) Particulars in annual return of company not having a share capital.
129 Certificates to be sent by private company with annual return.
130 Statutory meeting and statutory report.
162 (l),(3) Auditors' report and right to information and explanations.
182 Restrictions on appointment or advertisement of director.
299 Notice by liquidator of his appointment.
351 (2) Abstract of receiver's receipts and payments.
353 Delivery to registrar of accounts of receivers and managers.
366 Documents, etc., to be delivered to registrar by foreign companies carrying on business in Kenya.
368 Returns to be delivered to registrar by foreign company.
370 Accounts of foreign company.
371 Obligation to state name of foreign company, whether limited and country where incorporated
Schedule V, Part I, paragraphs 2, 4 and 6.
Particulars in annual return of company having a share capital.

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* If the company has no share capital the portion of the statement relating to capital and shares must be omitted.

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L.N.370/1968.
L.N.312/1964.
L.N. 14/1983.

Bank prescribed under sections 342, 343

The National Bank of Kenya Limited.

Rules under section 344

THE COMPANIES (HIGH COURT) RULES

1. These Rules may be cited as the Companies (High Court) Rules.

2. (1) In these Rules, except where the context otherwise requires–

"company" means a company formed and registered under the Companies Act and to which any application under these Rules relates;

"the Court" means the High Court or includes any judge or other officer who for the time being exercises the jurisdiction of the High Court in company matters;

"inquiry" means any inquiry made as to the debt, claims or liabilities of or affecting a company or as to any such debt, claims or liabilities ordered by the Court under these Rules;

"Registrar" means the Registrar, a Deputy Registrar or a District Registrar of the High Court.

(2) A form referred to by number means the form so numbered in the Schedule to these Rules with such variations to the form as the circumstances may require.

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3. Any proceedings brought under Rules shall be deemed to be a suit within the meaning of the Civil Procedure Act and any Rules made thereunder, and the general practice of the Court, including the course of procedure and practice in chambers, shall apply so far as may be practicable, except if and so far as the Act Rules otherwise provide.

4. Every petition, notice of motion and summons, and all notices, affidavits and other proceedings under any petition, notice of motion or summons, shall be intituled in the Court, and in the matter of the company (showing, where applicable, that the company is in liquidation), in the matter of the Companies Act and in the matter of the particular application.

5. The following applications shall be made by petition–

(a) applications to cancel an alteration of objects under section 8 of the Act;

(b) applications to cancel an alteration in conditions in the memorandum under section 25 of the Act;

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(c) applications to confirm the reduction of any share premium account or any capital redemption reserve fund under section 58 or section 60 of the Act:

(d) applications to sanction the issue of shares at a discount under section 59 of the Act;

(e) applications to confirm a reduction of capital under section 69 of the Act;

(f) applications to cancel any variation of the rights of holders of special classes of shares under section 74;

(g) applications to sanction a compromise or arrangement under section 207 of the Act;

(h) applications to restore a company's name to the register under section 339 of the Act;

(i) applications for relief by officers of a company or by persons employed as auditors by a company under section 402 of the Act.

6. Applications to declare the dissolution of a company void under section 338 of the Act shall be made by petition, except where the dissolution was ordered as a result of proceedings upon a petition presented to the Court, in which case application will be by notice of motion in such proceedings.

7. Applications to rectify the register of members of a company under section 118 of the Act shall be by originating motion or when the company is in voluntary liquidation by summons.

8. The following applications shall be made by notice of motion -

(a) applications for relief in case of default by a private company in complying with the provisions of its articles under section 31 of the Act;

(b) applications to extend the time for registration of a charge or to rectify any omission or misstatement with respect to any charge or in a memorandum of satisfaction under section 102 of the Act;

(c) applications for the appointment of inspectors under sections 165 and 166 of the Act;

(d) applications to inquire into the case of officers and agents of a company who have refused to produce any document or answer any question under section 168 of the Act;

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[Subsidiary]

(e) applications that shares or debentures shall cease to be subject to restrictions imposed by the Registrar of Companies under section 175 of the Act;

(f) applications for meetings of creditors or members of a com

pany under section 207 (1) of the Act;

(g) applications for the purpose of preventing or settling the terms of the acquisition of shares under section 210 of the Act.

9. The following applications shall be made by summons-

(a) applications to extend the time for delivery of documents to the Registrar in cases where sanction of the Court is required;

(b) applications to extend the time for the issue of shares at a discount under section 59 of the Act;

(c) applications in regard to delivery of certificates or debentures under section 82 of the Act;

(d) applications to inspect any register of holders of debentures or to obtain copies thereof or of any trust deed for securing debentures under section 89 of the Act;

(e) applications for summoning a meeting of debenture holders under section 90 of the Act;

(f) applications to inspect copies of instruments creating a charge and to inspect the register of charges under section 106 of the Act;

(g) applications to inspect the register of members or the index of names of a company or to obtain copies of such register under section 115 of the Act;

(h) applications for and in regard to meetings of a company under section 135 of the Act;

(i) applications that a company shall not be bound to circulate a statement under section 140 of the Act;

(j) applications to inspect the minutes of proceedings at general meetings of a company or to obtain copies thereof under section 146 of the Act;

(k) applications that an auditor's or a director's representations should not be sent out or read at a meeting under section 160 or section 185 of the Act;

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(l) applications that a person should be examined on oath under section 168 of the Act;

(m) applications for leave to be a director of or to manage a company under section 188 or section 189 of the Act;

(n) applications to inspect the register of directors' holdings of shares or debentures under section 196 of the Act, or the

register of directors and secretaries under section 201 of the Act;

(o) applications for facilitating reconstructions or amalgamations under section 209 of the Act where the matters to which such applications relate have not been dealt with, or fully dealt with, on the hearing of the petition to sanction to compromise or arrangement to which they relate;

(p) applications for directions by a receiver or manager under section 348 of the Act;

(q) applications for enforcing the duty of a receiver or manager or of a company to make returns or render accounts under sections 354 and 385 of the Act;

(r) applications for inspection or production of the books of a company under section 396 of the Act.

10. (1) Where a petition has been presented pursuant to any of paragraphs *(a)*, *(b)*, *(c)*, *(e)*, *(f)* and (i) of rule 5 of these Rules or where an order is sought under section 209 of the Act, an application shall in every case be made by summons to the judge in chambers for directions as to the proceedings to be taken.

(2) Upon the hearing of the summons or upon any adjourned hearing or hearings thereof or any subsequent application, the judge may make such order or orders or give such directions as he may think fit as to all the proceedings to be taken and more particularly with respect to the following matters -

(a) the publication of notices; and

(b) where the Court orders an inquiry as to the debts, claims or liabilities of or affecting a company or as to any of such debts, claims or liabilities, the proceedings to be taken for settling the list of creditors entitled to object, including the dispensing with the observance of section 69 (2) of the Act as regards any class or classes of creditors, fixing the date with reference to which the list of such creditors is to be made out, and generally fixing a time for and giving directions as to all other necessary or proper steps in the matter whether expressly mentioned in any of these Rules,

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and in any such case the first order upon the summons for directions shall be in Form 1 in the Schedule.

11. Where the Court has ordered any inquiry under rule 10 (2) *(b)*, the following provisions shall apply–

(a) the company shall, within seven days after such order or such further or other time as the judge may allow, file in the office of the Registrar, an affidavit made by some officer or officers of the company competent to make the same, verifying a list containing so far as possible the names and addresses of the creditors of the company to whom such inquiry extends; every such list shall also contain the amounts due to the creditors therein named respectively in respect of debts, claims or liabilities to which the inquiry extends or in the case of any such debts payable on a contingency or not ascertained or any such claim admissible to proof in a winding-up of the company the value, so far as can be justly estimated, of such debt or claim; every such list and a copy of every such affidavit shall be left at the office of the Registrar not later than one day after the filing off affidavit;

(b) the person making any such affidavit shall state therein his belief that the list verified by such affidavit is correct, and that there was not at the date so fixed as aforesaid any debt, claim or liability which, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company, except the debts, claims or liabilities set forth in such list and any debts, claims or liabilities to which the inquiry does not extend, and shall state his means of knowledge of the matters deposed to in such affidavit; such affidavit shall be in Form 2 in the Schedule;

(c) copies of such list containing the names and addresses of such creditors, and the total amount so due to them (including the value of any debts or claims estimated as aforesaid) but omitting the amounts due to them respectively, or (as the judge thinks fit) complete copies of such list, shall be kept at the registered office of the company and at the office of the advocate to the company and any person desirous of inspecting the same may at any time during the ordinary hours of business inspect and take extracts from the same on payment of the sum of ten shillings;

(d) the company shall, within seven days after the filing of such affidavit or such further or other time as the judge may allow, send to each creditor whose name is entered in the said list a notice stating the amount of the proposed reduction of capital, the effect of the order directing the inquiry and the amount or estimated value of the debt or the contingent debt or claim or both for which such creditor is entered in the said list, and the time (such time to be fixed by the judge) within which, if he

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claims to be entitled to be entered on such list as a creditor for a larger amount, he must send in his name and address, and the particulars of his debt or claim, and the name and address of his advocate (if any) to the advocate of the company, and such notice shall be sent through the post in a prepaid letter addressed to each such; creditor at his last known address or place of abode, and shall be in Form 3 in the Schedule;

(e) notice of the presentation of the petition, of the effect of the order directing the inquiry and of the list of creditors shall, after the filing of the affidavit mentioned in paragraph *(a)*, be published at such times, and in such newspaper as the judge shall direct; and every such notice shall state the amount of the proposed reduction of capital, and the places where the aforesaid list of creditors may be inspected, and the time within which creditors of the company who are not but are entitled to be entered on the said list, and are desirous of being entered therein, must send in their names and addresses, and the particulars of their debts or claims, and the names and addresses of their advocates (if any) to the advocate of the company; and such notice shall be in Form 4 in the Schedule;

(f) the company shall, within such time as the judge shall direct, file in the office of the Registrar an affidavit made by the person to whom the particulars of debts or claims are, by such notices as are mentioned in paragraphs *(c)* and *(d)*, required to be sent in, stating the result of such notices respectively and verifying a list containing the names and addresses of the persons (if any) who have sent in the particulars of their debts or claims in pursuance of such notices respectively, and the amounts of such debts or claims, and some competent officer or officers of the company shall join in such affidavit, and shall in such list distinguish which (if any) of such debts and claims are wholly, or as to any and what part thereof, admitted by the company, and which (if any) of such debts and claims are wholly, or as to any and what part thereof, disputed by the company, and which (if any) of such debts and claims are alleged by the company to be wholly, or as to any and what part thereof, not included to the inquiry, such affidavit shall also state which of the persons who are entered in the list as creditors and which of the persons who have sent in particulars of their debts or paid or have consented to the proposed reduction; and such affidavit shall be in Form 5 in the Schedule, and such list and a copy of such affidavit shall be left at the office of the Registrar within such time as the judge shall direct;

(g) if the company contends that a person is not entitled to be entered in the list of creditors in respect of any debt or claim whether admitted or not or if any debt or claim, the particulars of which are so sent in, is not admitted by the company at its full amount, then and in every such case, unless the company is willing to appropriate in such manner as the judge shall direct

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the full amount of such debt or claim, the company shall, if the judge thinks fit so to direct, send to the creditor a notice that he is required to come in and establish his title to be entered on the list or as the case may be to come in and prove such debt or claim or part thereof as is not admitted by the company, by a day to be therein named, being not less than four clear day after such notice, and being the time appointed by the judge for

adjudicating upon such titles, debts and claims and such notice shall be sent in the manner mentioned in paragraph *(d)* of this rule, and shall be in Form 6 in the Schedule;

(h) the result of the settlement of the list of creditors shall be stated in a certificate by the Registrar, and such certificate shall state what debts or claims (if any) have been disallowed, and shall distinguish the debts or claims the full amount of which the company is willing to appropriate, and the debts or claims (if any) the amount of which has been fixed by inquiry and adjudication in manner provided by section 69 of the Act and these Rules, and the debts or claims (if any) the full amount of which the company does not admit or is not willing to appropriate or the amount of which has not been fixed by inquiry and adjudication as aforesaid; and shall show which of the creditors have consented to the proposed reduction, and the total amount of the debts due to them, and the total amount of the debts or claims the payment of which has been secured in manner provided by section 69 of the Act and the persons to or by whom the same are due or claimed; the said certificate shall also state what creditors have under paragraph *(g)* come in and sought to establish their title to be entered on the list and whether such claims have been allowed or not, but it shall not be necessary to make in such certificate any further or other reference to any creditors who are not entitled to be entered in the list or to any debts or claims to which the inquiry does not extend or to show therein the several amounts of the debts or claims of any persons who have consented to the proposed reduction or the payment of whose debts or claims has been secured as aforesaid;

(i) the consent of any creditor, whether in respect of a debt due or presently due or a debt payable on a contingency or not ascertained or a claim admissible to proof in a winding-up of the company, may be evidenced in any manner which the judge thinks reasonable sufficient, having regard to the amount of his debt or claim and all the circumstances of the case;

(j) the petition shall not be heard until the expiration of at least eight clear days from the filing of such certificate as is mentioned in paragraph *(i)*;

(k) before the hearing of the petition, notices stating the day on which the same is appointed to be heard shall be published at

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such times and in such newspapers as the judge directs, and such notices shall be in Form 7 in the Schedule.

12. Unless in any particular case the Court otherwise directs, every order sanctioning the issue of shares at a discount shall contain a direction that a copy of such order shall be delivered to the Registrar of Companies for registration within ten days from the date thereof or within such further or other time as the court may allow and that the order shall not take effect till such copy has been so delivered.

13. Where an application is made under section 209 of the Act, the order shall be in Form 8 in the Schedule.

SCHEDULE

FORM 1 (r. 10 (2))

IN THE HIGH COURT OF KENYA AT

MISCELLANEOUS CAUSE NO OF 19

In the Matter of (a) *Limited*

and

In the Matter of the Companies Act

and

In the Matter of an Application for (b)

(a) Insert full name of company.

(b) Insert relief sought.

ORDER

UPON READING the application of the Petitioner by Summons filed on the day of ,19 , the Petition filed on the day of , 19 , the affidavit of [*in support of the Petition*], the affidavit of [*service of notices convening meetings*] and the exhibits therein respectively referred to AND UPON HEARING counsel for the Petitioners AND IT APPEARING that the special resolution for the reduction of the capital of the said company referred to in the said Petition has been duly passed.

IT IS ORDERED:

*That section 69 (2) of the Act shall not apply to *(c)*

and

That an inquiry be made what are the debts, claims and liabilities of and affecting the said company on the day of, 19 *other than debts, claims or liabilities

*If applicable.

(c) Here set out class of creditors to whom section 69 (2) of the Act is not to apply.

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FORM 1– (*contd.*)

(d) Here set out any debts, claims or liabilities which have been excluded from the provisions of section 69 (2) of the Act by the earlier part of the order.

in respect of *(d)*

That notice of the presentation of the said Petition and *that a list of creditors to whom such inquiry extends is to be made out as of the said day of , 19 , to be

(e) Specify newspapers and dates of publication ordered.

inserted in *(e)*

That the said list and an affidavit verifying it be filed and served on the Registrar within days of the date hereof.

FORM 2 (r. 11 *(b)*)

[*Heading as in Form 1*]

AFFIDAVIT

I A.B …….. of……..……..…

make oath and say:

1. The paper annexed here to and marked "A" contains a list of the creditors of and persons having claims on the said company on the…….. day of ……..,19……., being the date fixed by the order in this matter dated the……19….. , together with their respective addresses, and the nature and amount of their respective debts or claims, and such list is, to the best of my knowledge, information and belief, a true and accurate list of such creditors and persons having claims on the day aforesaid.

2. To the best of my knowledge, information and belief there was not, at the date aforesaid, any debt, claim or liability which would, if such date were the commencement of the winding-up of the company, be admissible in proof against the said company other than and except the debts, claims and liabilities set forth in the said list and debts, claims and liabilities to which the inquiry directed ,by the order made herein and dated the day of , 19 , does not extend. I am enabled to make this statement from the facts within my knowledge as the of the said company, and from information derived upon investigation of the affairs and the books, documents and papers of the said company.

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[Subsidiary]

FORM 2–(*contd.*)

SWORN etc.

A – LIST OF CREDITORS

Name, Address and Description of Creditors	*Nature of Debt or Claim*	*Amount or estimated Value of Debt or Claim*

FORM 3 (r. 11 *(d)*)

[*Heading as in Form 1*]

NOTICE TO CREDITORS

TO:

You are requested to take notice that a Petition has been presented to the High Court for confirming the reduction of the capital of the above company from shillings to shillings , and that by an order dated ,19 , an inquiry was directed as to the debts, claims and liabilities of the said company on the day of , 19 , *other than the debts, claims and liabilities in respect of *(c)*.

* If applicable.

(c) Here set out the nature of debts, etc., to which inquiry does not extend.

In the list of persons admitted by the company to have been on the…… day of , 19 , creditors of the company for debts, claims and liabilities to which the inquiry extends, your name is entered as a creditor *(d)*.

(d) Here state the amount of the debt or nature of the claim.

If you claim in respect of such debt, claim or liability to have been on the last-mentioned day a creditor to a larger amount than is stated above you must, on or before the day of ,19 , send your name and address, the particulars of your claim and the name and address of your advocate (if any) to the undersigned at . In default of your so doing the above entry in the list of creditors will in all proceedings under the above application to reduce the capital of the company be treated as correct

Dated

Advocate for the Company.

FORM 4 (r. 11 *(e)*)

IN THE HIGH COURT OF KENYA AT

MISCELLANEOUS CAUSE NO. …….....OF 19……..

(a) Limited

(a) Insert full name of company.

NOTICE is hereby given that a Petition for confirming the reduction of the capital of the above company from shillings to shillings was on the day of 19 ,

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FORM 4 – (*contd.*)

presented to the High Court and is now pending. And that by an order dated ,19 , an inquiry was directed as to debts, claims and liabilities of the said company as on the day of ,19 , *other than debts, claims and liabilities in respect of *(b)*

* If applicable.

(b) Here set out the nature of debts, claims and liabilities to which the inquiry does not extend.

A list of the persons admitted to have been creditors of the company for debts, claims and liabilities to which the said inquiry extends on the day of ,19 , may be inspected at *(c)* at any time during the usual business hours on payment of the charge of ten shillings.

(c) Insert places where it may be inspected.

Any person who claims to have been on the said day of, 19 , and still to be, a creditor of the company in respect of any such debt, claim or liability, and who is not entered on the said list and claims to be so entered, must, on or before the day of , 19 , send his name and address, and the particulars of his claim and the name and address of his advocate (if any), to the undersigned at . or in default thereof he will be precluded from objecting to the proposed reduction of capital.

Dated

Advocate for the Company.

FORM 5 (r. 11 *(f)*)

IN THE HIGH COURT OF KENYA AT

MISCELLANEOUS CAUSE NO OF 20

(a) Insert full name of company.

In the Matter of (a) .....Limited

and

In the Matter of the Companies Act

AFFIDAVIT

We, C.D.etc. the Secretary of the company,
E.F. etc. the advocate of the company, and
A.B. etc. director of the company, severally
make oath and say:

Rule 11 *(d)*.

I the said C.D. for myself, say:

1. I did on the day of , 19 , in the manner hereinafter mentioned, serve a true copy of the notice annexed and marked "B" upon each of the persons whose names, addresses and descriptions appear in the first column of the list of creditors marked "A" annexed to the affidavit of

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[Subsidiary]

FORM 5 – (*contd.*)

filed on the day of ,19 .

2. I served the copies of the said notice by addressing them to the said persons, affixing the proper postage stamps, and posting them at the Post Office on the day of ,19 , at o'clock in the noon.

And I the said E.F. for myself, say:

3. A true copy of the notice annexed and marked "C" has appeared *(b)*

Rule 11 *(e)*.
(b) insert names of newspapers and dates of publication.

4. I have on the paper annexed and marked "D" set forth a list of all claims, the particulars of which have been sent in to me pursuant to the said notice "B" by persons claiming to be creditors of the said company for larger amounts than are stated in the list of creditors marked "A" referred to in the Affidavit of filed on the day of ,19 ,
(or)

No person has sent in to me pursuant to the said notice "B" a claim to be entered on the said list for a larger sum than that in respect of which he is entered in the said list "A".

5. I have, on the paper annexed and marked "E", set forth a list of all claims, the particulars of which have been sent in to me pursuant to the notice referred to in paragraph 3 hereof by persons claiming to be creditors of the said company on the day of , 19 , not appearing on the said list of creditors marked "A", and who claimed to be entered thereon.
(or)

No claims have been sent in to me pursuant to the notice referred to in paragraph 3 hereof by persons not entered on the said list "A" and claiming to be so entered.

And we C.D. and A.B. for ourselves, say:

6. We have in the first part of exhibit "D" and also in the first part of Exhibit "E", respectively, set forth such of the said debts and claims as are admitted by the said company to be due wholly or in part, and how much is admitted to be due in respect of such of the said debts and claims as are not wholly admitted, and such of the said debts and claims as the company contends are wholly or as to any and what part thereof not included in the inquiry in this matter.

Rule 11 *(f)*.

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7. We have, in the second parts of exhibits "D" and "E" set forth such of the said debts and claims as are wholly disputed by the said company, and such of the said debts and claims as the company contends would even if admitted be wholly or as to any and what part thereof not included in the inquiry in this matter.

8. In the said exhibits "D" and "E" are distinguished such of the debts the full amounts whereof are proposed to be appropriated in such manner as the judge shall direct;

And I the said C.D. further say:

FORM 5 – (*contd.*)

9. The exhibit annexed and marked "F" contains the receipts and the written consents of such of the persons named in the said list "A" (and in the exhibits "D" and "E") as have been paid by the said company or have consented to the proposed reduction of capital.

10. The said company is willing to set apart and appropriate the full amount of the debts, claims and liabilities specified in the said list "A" (and in the exhibits "D" and "E") in respect of which consents have not been obtained or which the said company has not paid.

11. All rent, rates, taxes, salaries, wages and other incidental expenses current on the said day of , 19 , and since become due have been paid by the said company.

SWORN etc.

EXHIBIT "D"

List of debts and claims of which the particulars have been sent in to by persons claiming to be creditors of the said company for larger amounts than are stated in the list of creditors made out by the company.

FIRST PART

Debts and claims wholly or partly admitted by the company:

Names, addresses and descriptions of creditors	Particulars of debt or claim	Total amount claimed	Amount admitted by the company to be within the inquiry and due to the creditor	Debts proposed to be appropriated in full although disputed	Amounts admitted by the company to be owing but which it is contended are not within the inquiry

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SECOND PART

Debts and claims wholly disputed by the company:

Names, addresses and descriptions of claimants	Particulars of claim	Total amount claimed	Debts proposed to be appropriated in full although disputed	Amounts which even if admitted it is contended would not be within the inquiry

FORM 5–(*contd.*)

EXHIBIT "E"

List of debts and claims of which the particulars have been sent in to by persons claiming to be creditors of the company, and to be entered on the list of the creditors made out by the company.

FIRST PART

Debts and claims wholly or partly admitted by the company:

Names, addresses and descriptions of creditors	Particulars of debt or claim	Total amount claimed	Amount admitted by the company to be within the inquiry and due to the creditor	Debts proposed to be appropriated in full although disputed	Amounts admitted by the company to be owing but which it is contended are not within the inquiry

SECOND PART

Debts and claims wholly disputed by the company:

Names, addresses and descriptions of claimants	Particulars of claim	Total amount claimed	Debts proposed to be appropriated in full although disputed	Amounts which even if admitted it is contended would not be within the inquiry

NOTE– The names are to be inserted alphabetically.

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[Subsidiary]

FORM 6 (r. 11 *(g)*)

[*Heading as in Form* 5]

NOTICE TO CREDITOR TO COME IN AND PROVE

To:

You are hereby required to come in and prove the debt claimed by you against the above company, by filing your affidavit and serving a copy thereof upon the advocate for the company on or before the day of , 19 , and you are to attend by your advocate at the Judge's Chambers at on the day of , 19 , at o'clock in the forenoon being the time appointed for hearing and adjudicating upon the claim and produce any securities or documents relating to your claim.

* Delete whichever is inapplicable.

In default of your complying with the above directions, you will *be precluded from objecting to the proposed reduction of the capital of the company/in all proceedings relative to the proposed reduction of the capital of the company be treated as a creditor for such amount only as is set out against your name in the list of creditors.

Dated

Advocate for the Company.

FORM 7 (r. 11 *(k)*)

[*Heading as in Form* 4]

NOTICE is hereby given that a petition presented to the High Court on the day of , 19 , for confirming the reduction of the capital of the above company from shillings to shillings , is directed to be heard at on the day of , 19 Dated

Advocate for the Company.

FORM 8 (r. 13)

[*Heading as in Form* 1]

ORDER

UPON READING the application of the Petitioner by Summons filed on the day of ,19 ,the Petition filed on the day of ,19 ,the affidavit of [*in the support of the petition*], the affidavit of [*service of notices convening meetings*] and the exhibits therein respectively referred to

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FORM 8 – (*contd.*)

AND UPON HEARING counsel for the Petitioners, AND IT APPEARING that the special resolution for the reduction of the capital of the said company referred to in the said Petition has been duly passed

IT IS ORDERED:

1. That all the property rights and powers of the transfer on company specified in the first and second schedules hereto and all other property rights and powers of the transferor company be transferred without further act or deed to the transferee company and accordingly the same shall pursuant to section 209 (2) of the Companies Act be transferred to and vest in the transferee company for all the estate and interest of the transferor company therein but subject nevertheless to all charges now affecting the same *other than *(c)*.

2. That all the liabilities and duties of the transferor company be transferred without further act or deed to the transferee company and accordingly the same shall pursuant to section 209 (2) of the Companies Act be transferred to and become the liabilities and duties of the transferee company.

3. That all proceedings now pending by or against the transferor company be continued by or against the transferee company.

4. That the transferee company do without further application allot to such members of the transferor company as have not given such notice of dissent as is required by clause …… of the scheme of compromise or arrangement herein the shares in the transferee company to which they are entitled under the said scheme.

5. That the transferor company do within fourteen days after the date of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such copy being so delivered the transferor company shall be dissolved and the Registrar of Companies shall place all documents relating to the transferor company and registered with him on the file kept by him in relation to the transferee company and the files relating to the said two companies shall be consolidated accordingly.

6. Liberty to apply.

* If applicable.
(c) Here set out any charges which by virtue of the compromise or arrangement are to cease to have effect.

SCHEDULE 1

[*Insert a short description of the immovable property of the transferor company.*]

SCHEDULE 2

[*Insert a short description of all stocks, shares, debentures and other choses in action of the transferor company.*]

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L. N. 686/1961,
L. N. 26/1970,
L .N. 28/1977,
L. N. 14/1983.

THE COMPANIES (WINDING UP) RULES

PRELIMINARY

Citation.

1. These Rules may be cited as the Companies (Winding Up) Rules.

Interpretation.

2. In these Rules, except where the context otherwise requires-

"company" means a company which is being wound up, or against which proceedings to have it wound up, or proceedings under section 211 of the Act, have been commenced;

"judge" means a judge of the court;

"prescribed" in relation to fees or charges means prescribed by the rules of the court;

"proceedings" means the proceedings in the winding up of a company under the Act, or proceedings under section 211 of the Act;

"registrar" means the registrar or a deputy registrar or a district registrar of the court;

"sealed" means sealed with the seal of the court.

Application.

3. (1) Subject to the provisions of this rule, these Rules shall apply to the proceedings in every winding up under the Act which commences on or after the appointed day, and to all proceedings under section 211 of the Act.

(2) Rules which from their nature and subject-matter, or which by the headings above the group in which they are contained or by their terms, are made applicable only to the proceedings in a winding up by the court, or only to such proceedings and to proceedings in a creditors' voluntary winding up, shall not apply to the proceedings in a voluntary winding up, or, as the case may be, in a members' voluntary winding up.

(3) Rules which from their nature and subject- matter, or which by the headings above the group in which they are contained or by their terms, are made applicable only to the proceedings in a winding up, whether by the court or voluntarily or subject to the supervision of the court, shall not apply to proceedings under section 211 of the Act.

Forms.

4. The forms in the Schedule to these Rules, where applicable, and, where they are not applicable, forms of the like character, with such variations as circumstances may require, shall be used for the purpose of these Rules.

COURT AND CHAMBERS

Proceedings in court and chambers.

5. (1) The following matters and applications to the court shall be heard in open court–

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(a) petitions;

(b) public examinations;

(c) applications under subsection (1) of section 325 of the Act;

(d) applications to rectify the register;

(e) appeals from the official receiver;

(f) appeals from any decision or act of the liquidator;

(g) applications relating to the admission or rejection of proofs;

(h) proceedings under section 324 of the Act;

(i) applications under section 338 of the Act;

(j) applications under section 334 of the Act;

(k) applications under subsections (1) and (2) of section 323 of the Act;

(l) applications under section 189 of the Act;

(m) applications under subsection (2) of section 402 of the Act;

(n) applications for the committal of any person to prison for contempt;

(o) such matters and applications as a judge may from time to time by any general or special order direct to be heard in open court.

(2) Any other matter or application may be heard and determined in chambers.

Applications in chambers.

6. Subject to the provisions of the Act and of these Rules–

(a) the registrar may, under the general or special directions of a judge, hear and determine any application or matter which under the Act and these Rules may be heard and determined in chambers;

(b) any matter or application before the registrar may at any time be adjourned by him to be heard before a judge either in chambers or in court;

(c) any matter or application may, if a judge or, as the case may be, the registrar thinks fit, be adjourned from chambers to court or from court to chambers.

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Motions and summonses.

7. (1) Every application in court, other than a petition, shall be made by motion, notice of which shall be served on every person against whom an order is sought not less than three clear days before the day named in the notice for hearing the motion.

Form No. 2

(2) Every application in chambers shall be made by summons as in Form No. 2 set out in the Schedule to these Rules which, unless otherwise ordered, shall be served on every person against whom an order is sought not less than three clear days before the day named in the notice for hearing the summons, and shall require the person or persons to whom the summons is addressed to attend at the time and place named in the summons.

PROCEEDINGS

Title of proceedings.

Form No. 1

8. (1) All documents in any proceedings shall be dated, and shall, with any necessary additions, be intituled in the matter of the company to which they relate and in the matter of the Act and otherwise as in Form No. 1. Numbers and dates may be denoted by figures.

(2) The first proceeding in any year shall have a distinctive number assigned to it in the office of the registrar, and all proceedings subsequent to the first proceeding shall bear the same number as the first proceeding.

Written or printed proceedings.

9. All proceedings shall be written or printed, or partly written and partly printed, on paper thirteen inches in length and eight inches in breadth, or thereabouts, and shall have a stitching margin:

Provided that no objection shall be allowed to any proof or affidavit on account only of its being written or printed on paper of other size.

Documents to be sealed.

10. All orders, summonses, petitions, warrants or other documents of any kind in any proceedings and certified copies thereof shall be sealed.

Issue of summons.

11. Every summons in proceedings in court shall be prepared by the applicant or his advocate and issued from the office of the registrar; a summons, when sealed, shall be deemed to be issued; and the person taking out the summons shall file in the office of the registrar a duplicate thereof.

Orders.

12. Every order, whether made in court or in chambers, shall be drawn up by the registrar, unless in any proceeding a judge or registrar making the order otherwise directs; where a direction is given that no order need be drawn up, a note or memorandum of the order, signed or initialed by the judge, or the registrar making the order, shall be sufficient evidence of the order having been made.

File of proceedings.

13. A file of proceedings shall be kept by the registrar on which, subject to the directions of the court, all petitions, affidavits, summonses, orders, proofs when filed in court, notices, depositions and other proceedings in the matter shall be placed and remain on record.

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Copies.

14. (1) All copies of petitions, affidavits, depositions, papers and writings, or any parts thereof, required by the official receiver or any liquidator, contributory, creditor, officer of a company or other person entitled thereto, shall be provided by the registrar, and shall, except as to figures, be written out at length, and be sealed and delivered without any unnecessary delay, and in the order in which they have been bespoken.

(2) Where it is impracticable to make written copies of such documents, the registrar may authorize the use of photographic copies.

Inspection of file.

15. Every person who has been a director or officer of a company which is being wound up, and the official receiver or an officer duly authorized by him, shall be entitled free of charge, and every contributory and every creditor whose claim or proof has been admitted shall be entitled on payment of the prescribed fee, at all reasonable times, to inspect a file of proceedings and to take copies of, or extracts from, any document therein, or be furnished with such copies or extracts on payment of the prescribed fee.

Use of file by official receiver and return of exhibits.

16. (1) Where, in the exercise of his functions under the Act or these Rules, the official receiver requires to inspect a file of proceedings, the registrar shall permit the official receiver to inspect the same.

(2) Upon the conclusion of a public examination, any exhibits received in evidence of the court may be delivered to the official receiver.

Service of Process and Enforcement of Orders

Service of process.

17. (1) It shall be the duty of the registrar to serve such orders, summonses, petitions and notices as the court may require him to serve and to execute warrants and other process.

(2) Nothing in this rule shall require any order, summons, petition or notice to be served by a bailiff or officer of the court which is not specially by the Act or these Rules required to be so served, unless the court in any particular proceedings by order so directs.

Service by post.

18. All notices, summonses and other documents, other than those of which personal service is required, may be served by post.

Validity of service.

19. No service shall be deemed invalid by reason that the name, or any of the names other than the surname of the person to be served, has been omitted from the document containing the person's name, provided that the court is satisfied that in other respects the service of the document has been sufficient.

Enforcement of orders.

20. Every order of the court made in the exercise of powers conferred by the Act and these Rules may be enforced as if it were a judgment or order of the court made in the exercise of its ordinary jurisdiction.

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PETITION

Form of petition. Forms Nos. 3, 4,5.

21. Every petition shall be in Form No. 3, 4 or 5 with such variations as circumstances may require.

Presentation of petition and deposit.

22. (1) A petition shall be presented at the office of the registrar, who shall appoint the time and place at which the petition is to be heard.

(2) Notice of the time and place so appointed shall be written on the petition and sealed copies thereof, and the registrar may, at any time before the petition has been advertised, alter the time appointed and fix another time.

(3) Upon the presentation of a petition, the petitioner shall deposit with the official receiver the sum of one thousand shillings and such further sum, if any, as the court may from time to time direct, to cover the fees and expenses to be incurred by the official receiver as provisional liquidator; and no petition shall be received unless the receipt of the official receiver for the deposit payable on the presentation of the petition is produced to the proper office of the court.

(4) The official receiver shall account for the money so deposited to the petitioner, and any sum so paid by a petitioning creditor shall be repaid to such creditor, except and so far as such deposit may be required, by reason of insufficiency of assets, for the payment of the fees of and expenses incurred by the official receiver, out of the property of the company in the priority prescribed by these Rules.

Advertisement of petition. Forms Nos. 6, 7. L. N. 14/1983.

23. Except where the court gives leave to advertise before service, every petition shall be advertised not less than seven days after service on the company and at least seven days before the hearing as follows-

(a) once in the Gazette, and once at least in one newspaper circulating in the district where the registered office, or principal or last known principal place of business, as the case may be, of the company is or was situate, and in such other or additional newspaper as is directed by the court; and

(b) such advertisement shall state the date on which the petition was presented and the name and address of the petitioner and of his advocate, and shall contain a note at the foot thereof stating that any person who intends to appear on the hearing of the petition, either to oppose or support it, must send notice of his intention to the petitioner, or to his advocate, within the time and manner prescribed by rule 29, and an advertisement of a petition for the winding up of a company by the court which does not contain such a note shall be deemed to be invalid:

Provided that, if the petitioner, or his advocate, does not within the time prescribed by these Rules, or within such extended time as the registrar may allow, duly advertise the petition in the manner prescribed by this rule, the appointment of the time and place at which the petition is to be heard shall be cancelled by the registrar and the file shall be closed unless a judge or the registrar shall otherwise direct.

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Service of petition.

24. (1) Every petition shall, unless presented by the company, be served upon the company at its registered office, if any, and, if there is no registered office, at the principal or last known principal place of business thereof, by leaving a copy of the petition with any member, officer or servant of the company, or, if no such member, officer or servant can be found, by leaving a copy at such registered office or principal place of business, or by serving it on such member, officer or servant of the company as the court may direct; and, where the company is being wound up voluntarily, the petition shall also be served upon the liquidator, if any, appointed for the purpose of winding up the affairs of the company.

Form Nos. 8, 9.

(2) An affidavit of service of such petition shall be sworn and filed by the officer executing service thereof.

Verification of petition.
Form Nos. 10, 11.

25 Every petition shall be verified by an affidavit, which shall be sworn by the petitioner, or by one of the petitioners if more than one, or, where the petition is presented by a corporation, by a director, secretary or other principal officer thereof, and shall be sworn and filed within four days after the petition is presented, and such affidavit shall be prima facie evidence of the contents of the petition.

Copy of petition to be furnished to creditor or contributory.

26. Every contributory, or, in the case of a petition for the winding up of a company, every creditor, of the company shall be entitled to be furnished by the advocate of the petitioner with a copy of the petition within twenty-four hours on paying the prescribed charge for such copy.

Interim Liquidator

Appointment of interim liquidator.
Form No. 12.

27. (1) After a petition has been presented, the court, upon the application of a creditor, or of a contributory, or of the company, and upon proof by affidavit of sufficient grounds for so doing, may, upon such terms as the court thinks fit, appoint an interim liquidator.

(2) Any order appointing an interim liquidator shall bear the number of the petition, and shall state the nature and a short description of the property of which the interim liquidator is ordered to take possession, and the duties to be performed by the interim liquidator.

(3) Subject to any order of the court, if no order for the winding up of the company is made upon the petition, or if an order for the winding up of the company on the petition is rescinded, or if all proceedings on the petition

are stayed, or if an order is made continuing the voluntary winding up of the company subject to the supervision of the court, an interim liquidator shall be entitled to be paid, out of the property of the company, all costs, charges and expenses properly incurred by him as interim liquidator, including such sum as is payable under the scale of fees for the time being in force, and may retain out of such property the amount of such costs, charges and expenses.

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HEARING OF PETITIONS AND ORDERS MADE THEREON

Attendance before hearing to show compliance with these Rules.

28. (1) After a petition has been presented, the petitioner or his advocate shall, on a day to be appointed by the registrar, attend before him to satisfy him that the petition has been duly advertised, that the prescribed affidavit verifying the contents thereof and the affidavit of service, if any, have been duly filed and that the provisions of these Rules have been duly complied with by the petitioner.

(2) No order shall be made on the petition of any petitioner who has not, before the hearing of the petition, attended before the registrar, at the time appointed, and satisfied him in manner required by this rule.

Notice by persons who intend to appear.

29. (1) Every person who intends to appear on the hearing of a petition shall serve on the petitioner or his advocate, at the address stated in the advertisement of the petition, notice of his intention to do so.

(2) Such notice shall contain the address of such person, and shall be signed by him or by his advocate, and shall be served in time to reach the address not later than four o'clock in the afternoon of the day before the day appointed for the hearing of the petition, or, if such day is a Monday, not later than noon on the Saturday before such day; the notice shall be in Form No. 13 with such variations as circumstances may require.

Form No. 13.

(3) Any person who fails to comply with the provisions of paragraph (1) shall not, without the special leave of the court, be allowed to appear on the hearing of the petition.

List of names and addresses of persons who appear on the petition.
Form No. 14.

30. (1) The petitioner or his advocate shall prepare a list of the names and addresses of the persons who have given notice of their intention to appear on the hearing of the petition, and of their respective advocates; such list shall be in Form No. 14.

(2) On the day appointed for hearing the petition, a fair copy of the list or if no notice of intention to appear has been given a statement in writing to that effect, shall be filed by the petitioner or his advocate in court before the hearing of the petition.

Affidavits in opposition and reply.

31. (1) Affidavits in opposition to a petition shall be filed within seven days of the date on which the affidavit verifying the petition is filed, and notice of the filing of every such affidavit shall be given to the petitioner or his advocate on the day on which such affidavit is filed.

(2) An affidavit in reply to an affidavit filed in opposition to a petition shall be filed within three days of the date on which notice of such affidavit is received by the petitioner or his advocate.

Substitution of creditor or contributory for withdrawing petitioner.

32. (1) When a petitioner for an order that a company be wound up by the court or subject to the supervision of the court is not entitled to present a petition, or, whether so entitled or not, where he either-

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(a) fails to advertise his petition within the time prescribed by these Rules or such extended time as the registrar may allow; or

(b) consents to withdraw his petition, or to allow it to be dismissed or the hearing of it to be adjourned, or fails to appear in support of his petition when it is called in court on the day originally fixed for the hearing thereof, or on any day to which the hearing has been adjourned; or

(c) if appearing, does not apply for an order in the terms of the prayer of his petition,

the court may, upon such terms as it may think fit, substitute as petitioner any creditor or contributory who appears to the court to have a right to present a petition, and who is desirous of so doing.

(2) An order to substitute a petition may, where a petitioner fails to advertise his petition within the time prescribed by these Rules, of consent to withdraw his petition, be made in chambers at any time.

Order to Wind Up a Company Under Section 211 of the Act

Notice that winding up has been pronounced to be given to official receiver.

33. (1)When an order for the winding up of a company, or for the appointment of an interim liquidator before the making of an order for the winding up of the company, has been made, the registrar shall, on the same day, sent to the official receiver a notice informing him that the order has been made.

Forms Nos. 15, 16.

(2) Such notice shall be in Forms Nos. 15 and 16 respectively with such variations as circumstances may require.

Documents for drawing up order to be filed with registrar.

34. It shall be the duty of the petitioner or his advocate, and of all other persons who have appeared on the hearing of the petition, not later than the day following the day on which an order for the winding up of a company or on order under section 211 of the Act is made, to file at the office of the registrar all the documents required for the purpose of enabling the registrar to complete the order forthwith.

No appointment for settling order.

35. Except in the case of an order made under section 211 of the Act, it shall not be necessary for the registrar to make an appointment to settle the order, unless in any particular case the special circumstances make an appointment necessary.

Contents of winding-up order.
Form No. 17.

36. (1) An order for winding up a company by the court shall be in Form No. 17.

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(2) An order to wind up a company or for the appointment of an interim liquidator shall contain at the foot thereof a notice stating that it will be the duty of such of the persons who are liable to make out or concur in making out the company's statement of affairs, as the official receiver may require, to attend on the official receiver at such time and place as he may appoint and to give him such information as he may require.

Transmission and advertisement of winding-up order.

37. (1) When an order that a company be wound up, or for the appointment of an interim liquidator, has been made-

(a) three copies of the order duly sealed shall forthwith be sent by the registrar to the official receiver;

(b) the official receiver shall cause one sealed copy of the order to be served upon the company by post, or, if there is no registered office, at its principal or last known principal place of business, or upon such other person or persons, or in such other manner, as the court may direct, and shall file a certificate of service of the order;

Form No. 108 (1).

(c) the official receiver shall forthwith cause the order to be published in the Gazette;

Form No. 18.

(d) the official receiver shall forthwith publish notice of the making of the order in such newspaper circulating in Kenya as he may consider appropriate.

(2) An order for the winding up of a company subject to the supervision of the court shall,before the expiration of twelve days from the date thereof, be published by the petitioner once in the Gazette, and shall be served on such persons and in such manner as the court directs.

Form No. 19.

(3) Where an order under section 211 of the Act has been made, a certified copy of the order shall, unless the court otherwise orders, be served by the petitioner on the company and on the registrar of companies in the manner prescribed by subparagraph *(b)* of paragraph 1, and, where such order involves a reduction of capital or alteration of the memorandum of association, the Act and Rules of Court relative to such matters shall apply as the court may direct.

Notice to the officer charged with execution.

38. For the purposes of section 317 of the Act, a notice that -

(a) a winding-up petition has been presented, or

(b) a winding-up order has been made, or

(c) an interim liquidator has been appointed, or

(d) a meeting has been called at which there is to be proposed a resolution for the voluntary winding up of the company, or

(e) a resolution has been passed for the voluntary winding up of the company,

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shall be in writing and shall be addressed to the officer charged with the execution thereof, and may be served by being delivered by hand or by registered post.

Special Manager

Appointment of special manager.

39. (1) An application by the official receiver for the appointment of a special manager shall be supported by a report of the official receiver, which shall be placed on the file of proceedings, and such report shall either state the amount of remuneration which, in the opinion of the official receiver, ought to be allowed to the special manager, or that it is, in the opinion of the official receiver, desirable that the fixing of such remuneration should be deferred; no affidavit by the official receiver in support of the application shall be required.

(2) The remuneration of the special manager shall, unless the court in any case otherwise directs, be stated in the order appointing him, but the court may at any subsequent time, for good cause shown, make an order for payment to the special manager of further remuneration.

Accounting by special manager. Form No. 20.

40. Every special manager shall account to the official receiver, and the special manager's accounts shall be verified by affidavit, and, when approved by the official receiver, the totals of the receipts and payments shall be added by the official receiver to his accounts.

Statement Of Affairs

Preparation of statement of affairs.

Form No. 21.

41. (1) A person who under section 232 of the Act has been required by the official receiver to submit and verify a statement of affairs of a company shall be furnished by the official receiver with such forms and instructions as the official receiver, in his discretion, considers necessary; the statement shall be made out in duplicate, one copy of which shall be verified by affidavit, and the official receiver shall cause to be filed with the registrar the verified statement of affairs.

(2) The official receiver may from time to time hold personal interviews with any of the persons mentioned in any of paragraphs *(a)*, *(b)*, *(c)* and *(d)* of subsection (2) of section 232 of the Act, for the purpose of investigating the company's affairs, and it shall be the duty of every such person to attend on the official receiver at such time and place as the official receiver may appoint and give the official receiver all information which he may require.

Extension of time for submitting statement of affairs.

42. When any person requires any extension of time for submitting a statement of affairs, he shall apply to the official receiver, who may, if he thinks fit, give a written certificate extending the time, which certificate shall be filed with the proceedings and shall render an application to the court unnecessary.

Information subsequent to statement of affairs.

43. After the statement of affairs of a company has been submitted to the official receiver, it shall be the duty of each person who has made or concurred in making it, if and when required, to attend on the official receiver and answer all questions which may be put to him, and give all such additional information as may be required of him by the official receiver in relation to the statement of affairs.

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[Subsidiary] Default.

44. Any default in complying with the requirements of section 232 of the Act may be reported by the official receiver to the court.

Expenses of statement of affairs.

45. A person who is required to make or concur in making any statement of affairs of a company shall, before incurring any costs or expenses in and about the preparation and making of the statement, apply to the official receiver for his sanction and submit a statement of the estimated costs and expenses which it is intended to incur; and, except by order of the court, no person shall be allowed out of the assets of the company any costs or expenses which have not before being incurred been sanctioned by the official receiver.

Dispensing with statement of affairs.

46. (1) Any application to dispense with the requirements of section 232 of the Act shall be supported by a report of the official receiver showing the special circumstances which, in his opinion, render such a course desirable.

(2) When the court has made an order dispensing with the requirements of the said section, it may give such consequential directions as it may see fit, and in particular it may give directions as to the sending of any notices which are, by these Rules, required to be sent to any person mentioned in the statement of affairs.

Appointment of Liquidator in a Winding up by the Court

Appointment of liquidator on report of meetings of creditors and contributories.

47. (1) As soon as possible after the first meetings of creditors and contributories have been held, the official receiver shall report the result of each meeting to the court.

Form No. 22.

(2) *(a)* Upon the result of the meetings of creditors and contributories being reported to the court, if there is a difference between the determinations of the meetings of the creditors and contributories, the court shall, on the application of the official receiver, fix a time and place for considering the resolutions and determinations, if any, of the meetings, deciding differences, and making such order as is necessary.

Form No. 23.

(b) In any other case the court may, upon the application of the official receiver, forthwith make any appointment necessary for giving effect to any such resolutions or determinations.

(3) When a time and place have been fixed for the consideration of the resolutions and determinations of the meetings, such time and place shall be advertised by the official receiver in such manner as the court directs, but so that the first or only advertisement shall be published not less than seven days before the time so fixed.

(4) Upon the consideration of the resolutions and determinations of the meetings, the court shall hear the official receiver and any creditor or contributory.

(5) Every appointment of a liquidator other than the official receiver in a winding up by the court shall be notified to the registrar of companies in

Form No. 24.

Form No. 24.

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(6) *(a)* If a liquidator other than the official receiver is appointed, the official receiver shall, as soon as the liquidator has given security, cause notice of the appointment to be published in the Gazette. Form No. 108 (7).

(b) If a committee of inspection is appointed the official receiver shall similarly cause notice of the appointment to be published in the Gazette.

(c) The expense of such publication shall be paid by the liquidator, but may be charged by him against the assets of the company.

(7) Every appointment of a liquidator shall be advertised by the liquidator in a newspaper circulating in Kenya immediately after the appointment has been made, and the liquidator has given the required security. Form No. 25.

(8) If a liquidator in a winding up by the court dies, or resigns, or is removed, another liquidator may be appointed in his place in the same manner as in the case of a first appointment, and the official receiver shall, on the request of not less than one-tenth in value of the creditors or contributories, summon meetings for the purpose of determining whether or not the vacancy shall be filled; but none of the provisions of this rule shall apply where the liquidator is released under section 247 of the Act, in which case the official receiver shall remain liquidator. Form No. 108 (9).

Security by Liquidator or Special Manager in a Winding Up by the Court

48. In the case of a special manager or a liquidator other than the official receiver, the following provisions as to security shall have effect, namely– Provisions as to security.

(a) the security shall be given to the official receiver in such manner as the court may from time to time direct;

(b) it shall not be necessary for security to be given in each separate winding up; but security may be given either specially in a particular winding up, or generally, to be available for any winding up in which the person giving security may be appointed, either as liquidator or special manager;

(c) the official receiver shall fix the amount and nature of such security, and may from time to time, as he thinks fit, either increase or diminish the amount of special or general security which any person has given;

(d) the official receiver shall issue a certificate that security has been given to his satisfaction, and a copy of such certificate shall be filed with the registrar; Form No. 126.

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(e) the cost of furnishing the required security by a liquidator or special manager, including any premiums which he may pay to a guarantee society, shall be borne by him personally, and shall not be charged against the assets of the company as an expense incurred in the winding up.

Failure to give or keep up security.

49. (1) If a liquidator or special manager fails to give the required security within the time stated for that purpose in the order appointing him, or any extension thereof, the official receiver shall report such failure to the court, which may thereupon rescind the order appointing the liquidator or special manager.

(2) If a liquidator or special manager fails to keep up his security, the official receiver shall report such failure to the court, which may thereupon remove the liquidator or special manager and make such order as to costs as the court shall think fit.

(3) Where an order is made under this rule rescinding an order for the appointment of or removing a liquidator, the court may direct that meetings shall be held for the purpose of determining whether an application shall be made to the court for another liquidator to be appointed, and thereupon the same meetings shall be summoned and the same proceedings may be taken as in the case of a first appointment of a liquidator.

Voluntary Winding Up.

Declaration of solvency. Form No. 27.

50. The declaration to be made in accordance with section 276 of the Act by the directors of a company which it is proposed to wind up voluntarily shall be in Form No. 27.

Notification of appointment. Form No. 28. Form No. 29.

51. (1) Every appointment of a liquidator in a members' voluntary winding up shall be notified to the registrar of companies in Form No. 28, and every appointment of a liquidator in a creditors' voluntary winding up shall be in Form No. 29.

Form No. 108 (8).

(2) Every such liquidator shall cause notice of his appointment to be published in the Gazette.

Statement of assets and liabilities. Form No. 30.

52. The statement of assets and liabilities which a liquidator shall lay before a meeting of creditors of a company summoned in accordance with section 281 (1) of the Act shall be in Form No. 30.

Public Examination

Consideration of report.

53. The consideration of a report made by the official receiver pursuant to subsection (2) of section 233 of the Act shall be before a judge in chambers, and the official receiver shall personally, or by his deputy or advocate, attend the consideration of the report and give the court any further information or explanation with reference to the matters stated in the report which the court may require.

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Procedure consequent on order for public examination. Form No. 31.

54. Where a judge makes an order under section 265 of the Act, directing any person to attend for public examination–

(a) the examination shall be held before a judge;

(b) the judge may, if he thinks fit, either in the order for examination or by any subsequent order, give directions as to the special matters on which any such person is to be examined.

Application for day for holding examination.

55. Upon an order directing a person to attend for public examination being made, the official receiver shall, unless a judge otherwise direct, without further order, take an appointment for the public examination to be held.

Appointment of time and place for public examination. Form No. 32.

56. A day and place shall be appointed for holding the public examination, and notice of the day and place so appointed shall be given by the official receiver to the person to be examined by sending to him such notices by post at least fourteen days before the day so appointed, unless the court otherwise directs.

Notice of public examination to creditors and contributories. Form No. 108 (3).

57. (1) The official receiver shall give notice of the time and place appointed for holding a public examination to the creditors and contributories by advertisement in a newspaper circulating in Kenya, and shall also cause notice of the appointment to be published in the Gazette.

(2) Where an adjournment of the public examination has been directed, notice of the adjournment shall not, unless otherwise directed by the court, be advertised in any newspaper or in the Gazette.

Default in attendance.

58. If any person who has been directed by the court to attend for public examination fails to attend at the time and place appointed, and shows no good cause for such failure, or if, before the day appointed for the examination, the official receiver satisfies the court that such person has absconded, or that there is reason for believing that he is about to abscond with the intention of avoiding examination, the court may, upon proof to its satisfaction that notice of the order and of the time and place appointed for attendance at the public examination was duly served, without any further notice, issue a warrant for, the arrest of the person required to attend, or make such other order as the court thinks fit.

Form No. 33.

Notes of examination to be filed. Forms Nos. 34, 35.

59. The notes of every public examination shall, after being signed as required by subsection (7) of section 265 of the Act, be filed with the registrar.

Proceedings By Or Against Directors, Promoters And Officers

Applications by or against delinquent directors, promoters and officers.

60. (1) An application made to the court under any of the following provisions of the Act-

(a) section 324;

(b) subsection (1) or subsection (2) of section 323;

(c) section 189; or

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(d) subsection (2) of section 402,

shall be made by motion, supported by affidavit.

(2) The notice of motion shall state the nature of the declaration or order for which application is made, and the affidavit shall state the grounds of the application, and, unless otherwise ordered, the notice of motion and the affidavit shall be served, in like manner as a summons under the Civil Procedure Rules, on every person against whom an order is sought, not less than eight days before the day named in the notice of motion for hearing the application.

Cap. 21, Sub. Leg.

(3) Every person served with a notice of motion may reply thereto by affidavit, which shall be served upon the party taking out the notice, and filed not less than two days before the day named for hearing the application.

(4) On the day named for hearing the application, the court may give such directions as it shall think fit as to the taking of oral evidence, as to cross-examination either before a judge on the hearing in court of any deponents to affidavits in support of or in opposition to the application, as to any report it may require the official receiver or liquidator to make and generally as to the procedure on the notice of motion and for the hearing thereof.

(5) Where any such order as is mentioned in paragraph (4) has been made, then, if after such order and before the motion has been set down for hearing or adjourned either party wishes to apply for any further direction as to any interlocutory matter or thing, he shall restore the motion to the cause list and shall give two dear days' notice in writing to the other party stating the grounds of the application; a copy of such notice shall be filed with the registrar two clear days before the day for which the motion is restored.

Hearing of application.

61. (1) A judge shall hear all applications under section 189 of the Act.

(2) Where any order has been made under the said section, any application for leave arising out of such order shall be made in the winding up of the company in relation to which such order was made, and the dissolution of the company or the stay of all proceedings in such winding up shall not be a bar to such application or to the granting of leave.

Use of depositions taken at public examinations.

62. Where, in the course of the proceedings in a winding up by the court, an order has been made for the public examination of persons named in the order pursuant to section 265 of the Act, then, in any proceedings subsequently instituted under any of the provisions of the Act mentioned in paragraph (1) of rule 60, the verified notes of the examination of each person who was examined under the order shall, subject as hereinafter mentioned, and to any order or directions of the court as to the manner and extent in and to which the notes shall be used, and subject to all just exceptions to the admissibility in evidence against any particular person or persons of any of the statements contained in the notes of the examinations, be admissible in evidence against any of the persons against whom the application is made who, under section 265 of the Act and the order for the public examination, was, or had the opportunity of being, present at and taking part in the examination:

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Provided that–

(i) before any such notes of a public examination are used on any such application, the person intending to use the same shall, not less than fifteen days before the day appointed for hearing the application, give notice of such intention to each person against whom it is intended to use such notes, or any of them, specifying the notes or parts of the notes which it is intended to use against him, and furnish him with copies of such notes, or parts of notes, except notes of the person's own depositions;

(ii) every person against whom the application is made shall be at liberty to cross-examine or re-examine, as the case may be, any person the notes of whose examination are read, in all respects as if such person had made an affidavit on the application.

Witnesses and Depositions

Appointment of shorthand writers.

63. (1) The court or the officer of the court before whom any examination under the Act and these Rules is directed to be held may at any time in any proceedings, if it is considered desirable so to do, appoint a person (hereafter in this rule referred to as a shorthand writer) to take down in shorthand or otherwise the evidence of any person examined.

Form No. 36.

(2) The shorthand writer appointed under this rule shall make the declaration in Form No. 36.

Depositions at private examinations.

64. (1) The official receiver may attend in person, or by a deputy official receiver, or an advocate employed for the purpose, any examination of a witness under section 263 of the Act, and may take notes of the examination for his own use, and put such questions to the persons examined as the country may allow.

(2) The notes of the depositions of a person examined under section 263 of the Act, or under any order of the court, other than the notes of the depositions of a person examined at a public examination under section 265 of the Act, shall be forthwith filed in the office of the registrar, but shall not be filed, or be open to the inspection of any creditor, contributory or other person, except the official receiver or liquidator, unless and until the court so directs, and the court may from time to time give such general or special directions as it thinks fit as to the custody and inspection of such notes and the furnishing of copies of or extracts therefrom.

Disclaimer

Disclaimer.

65. (1) Any application for leave to disclaim any part of the property of a company pursuant to subsection (1) of section 315 of the Act shall be by *ex parte* summons; such summons shall be supported by an affidavit showing the parties interested and what their interests are.

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(2) On the hearing of the summons, the court shall give such directions as it thinks fit and, in particular, directions as to the notices to be given to the parties interested or any of them, and the court may adjourn the application to enable any such party to attend.

(3) *(a)* Where a liquidator disclaims a leasehold interest, he shall forthwith file the disclaimer at the office of the registrar.

(b) The disclaimer shall contain particulars of the interest disclaimed and a statement of the persons to whom notice of the disclaimer has been given.

(c) Until the disclaimer is filed by the liquidator the disclaimer shall be inoperative.

Forms Nos. 37, 38.

(d) A disclaimer shall be in Form No. 37 and a notice of disclaimer in Form No. 38 with such variations as circumstances may require.

(4) Where any person claims to be interested in any part of the property of a company which the liquidator wishes to disclaim, he shall, at the request of the liquidator, furnish a statement of the interest so claimed by him.

Vesting of Disclaimed Property

Vesting of disclaimed property.

66. (1) Any application under subsection (6) of section 315 of the Act for an order for the vesting of any disclaimed property in, or the delivery of any such property to, any person shall be supported by the affidavit filed on the application for leave to disclaim such property.

(2) Where such an application as aforesaid relates to disclaimed property of a leasehold nature and it appears that there is any mortgagee by demise, including a chargee by way of legal mortgage, or under-lessee of such property, the court may direct that notice shall be given to such mortgagee or under-lessee that, if he does not elect to accept and apply for such a vesting

order as aforesaid upon the terms required by the above-mentioned subsection and imposed by the court within a time to be fixed by the court and stated in the notice, he will be excluded from all interest in and security upon the property, and the court may adjourn the application for such notice to be given and for such mortgagee or under-lessee to be added as a party to, and served with, the application and if, he sees fit, to make such election and application as is mentioned in the notice.

(3) If, at the expiration, of the time so fixed by the court, such mortgagee or under-lessee fails to make such election and application, the court may make an order vesting the property in the applicant and excluding such mortgagee or under-lessee from all interest in or security upon the property.

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Arrangements with Creditors and Contributories in a Winding Up by the Court

Report by official receiver on arrangements and compromises.

67. (1) In a winding up by the court, if application is made to the court to sanction any compromise or arrangement, the court may, before giving its sanction thereto, hear a report by the official receiver as to the terms of the scheme, and as to the conduct of the directors and other officers of the company, and as to any other matters which, in the opinion of the official receiver, ought to be brought to the attention of the court.

(2) The report shall not be placed upon the file, unless and until the court directs it to be filed.

Collection and Distribution of Assets in a Winding Up by the Court

Collection and distribution of company's assets by liquidator.

68. (1) The duties imposed on the court by subsection (1) of section 252 of the Act in a winding up by the court with regard to the collection of the assets of the company and the application of the assets in discharge of the company's liabilities shall be discharged by the liquidator as an officer of the court, subject to the control of the court.

(2) For the purpose of the discharge by the liquidator of the duties imposed by subsection (1) of section 252 of the Act, and paragraph (1) of this rule, the liquidator in a winding up by the court shall, for the purpose of acquiring or retaining possession of the property of the company, be in the same position as if he were a receiver of the property appointed by the court, and the court may, on his application, enforce such acquisition or retention accordingly.

Power of liquidator to require delivery of property.

69. (1) The powers conferred on the court by section 253 of the Act shall be exercised by the liquidator.

Form No. 39.

(2) Any contributory for the time being on the list of contributories, trustee, receiver, banker or agent or officer of a company which is being wound up under order of the court shall, on notice from the liquidator and within such time as he shall by such notice require, pay, deliver, convey, surrender or transfer to or into the hands of the liquidator any money, property, books or papers which happen to be in his hands for the time being and to which the

company is prima facie entitled.

List of Contributories in a Winding Up by the Court

Liquidator to settle list of contributories.
Form No. 40.

70. (1) Unless the court dispenses with the settlement of a list of contributories, the liquidator shall, with all convenient speed after his appointment, settle a list of contributories of the company, and shall appoint a time and place for that purpose.

(2) The list of contributories shall contain a statement of the address of, and the number of shares or extent of interest to be attributed to, each contributory, and the amount called up and the amount paid up in respect of

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such shares or interest, and shall distinguish the several classes of contributories.

(3) As regards representative contributories, the liquidator shall, so far as is practicable, observe the requirements of subsection (2) of section 252 of the Act.

Appointment of time and place for settlement of list. Forms Nos. 41, 42.

71. The liquidator shall give notice in writing of the time and place appointed for the settlement of the list of contributories to every person whom he proposes to include in the list, and shall state in the notice to each person in what character and for what number of shares or interest he proposes to include such person in the list and what amount has been called up and what amount paid up in respect of such shares or interest.

Settlement of list of contributories. Form No. 43.

72. On the day appointed for settlement of the list of contributories, the liquidator shall hear any person who objects to being settled as a contributory, and after such hearing shall finally settle the list, which, when so settled, shall be the list of contributories of the company.

Notice to contributories. Forms Nos. 44, 45.

73. The liquidator shall forthwith give notice to every person whom he has finally placed on the list of contributories stating in what character and for what number of shares or interest he has been placed on the list and what amount has been called up and what amount paid up in respect of such shares or interest, and in the notice he shall inform such person that any application for the removal of his name from the list, or for a variation of the list, must be made to the court, by summons, within twenty-one days from the date of the service on the contributory or alleged contributory of notice of the fact that his name is settled on the list of contributories.

Application to the court to vary the list. Form No. 46.

74. (1) Subject to the power of the court to extend the time or to allow an application to be made notwithstanding the expiration of the time limited for that purpose, no application to the court by any person who objects to the list of contributories as finally settled by the liquidator shall be entertained after the expiration of twenty-one days from the date of the service on such person or notice of the settlement of the list.

(2) The official receiver shall not in any case be personally liable to pay any costs of or in relation to an application to set aside or vary his act or decision settling the name of a person on the list of contributories of a company.

Variation of or addition to list of contributories. Form No. 47.

75. The liquidator may, from time to time, vary or add to the list of contributories, but any such variation or addition shall be made in the same manner in all respects as the settlement of the original list.

Calls

Calls by liquidator.

76. The powers and duties of the court in relation to making calls upon contributories conferred by section 255 of the Act shall and may be exercised, in a winding up by the court, by the liquidator as an officer of the court, subject to the proviso to section 268 of the Act, and to the following provisions–

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(a) where the liquidator desires to make any call on the contributories, or any of them, for any purpose authorized by the Act, if there is a committee of inspection he may summon a meeting of such committee for the purpose of obtaining their sanction to the intended call;

(b) the notice of the meeting shall be sent to each member of the committee of inspection in sufficient time to reach him not less than seven days before the day appointed for holding the meeting, and shall contain a statement of the proposed amount of the call, and the purpose for which it is intended; notice of the intended call and the intended meeting of the committee of inspection shall also be advertised once at least in a newspaper circulating in Kenya; and the advertisement shall state the time and place of the intended meeting of the committee of inspection, and that each contributory may either attend the said meeting and be heard, or make any communication in writing to the liquidator or members of the committee of inspection, to be laid before the meeting, in reference to the said intended call; Forms Nos. 48, 49.

(c) at the meeting of the committee of inspection, any statements or representations made either to the meeting personally or addressed in writing to the liquidator or members of the committee by any contributory shall be considered before the intended call is sanctioned;

(d) the sanction of the committee shall be given by resolution, which shall be passed by a majority of the members present; and Form No. 50.

(e) where there is no committee of inspection, the liquidator shall not make a call without first obtaining the leave of the court.

Application to the court for leave to make a call. Forms Nos. 51,52,53,54.

77. In a winding up by the court, an application to the court for leave to make any call on the contributories of a company, or any of them, for any purpose authorized by the Act shall be made by summons stating the proposed amount of such call, which summons shall be served at least four clear days before the day appointed for making the call on every contributory proposed to be included in such call; or, if the court so directs, notice of such intended call may be given by advertisement, without a separate notice to each contributory.

Document making the call. Form No. 55.

78. When the liquidator is authorized, by resolution or order, to make a call on the contributories, he shall file with the registrar a document making the call in Form No. 55 with such variations as circumstances may require.

Service of notice of a call. Forms Nos. 54, 56, 57.

79. When a call has been made by the liquidator in a winding up by the court, a copy of the resolution of the committee of inspection or order of the court, if any, as the case may be, shall forthwith after the call has been made be served upon each of the contributories included in such call, together with a notice from the liquidator specifying the amount or balance due from such contributory in respect of such call, but such resolution or order need not be advertised unless for any special reason the court so directs.

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Enforcement of call. Forms Nos. 58, 59, 60.

80. The payment of the amount due from each contributory on a call may be enforced by order of the court, to be made in chambers on summons by the liquidator.

PROOFS

Proof of debt.

81. In a winding up by the court, every creditor shall, subject as hereinafter provided, prove his debt, unless a judge in any particular winding up gives directions that any creditors or class of creditors shall be admitted without proof.

Mode of proof.

82. (1) A debt may be proved in any winding up by delivering or sending through the post an affidavit verifying the debt.

Form No. 61.

(2) In a winding up by the court, the affidavit shall be so sent to the official receiver or, if the liquidator has been appointed, to the liquidator; and in any other winding up the affidavit may be so sent to the liquidator.

Verification of proof.

83. An affidavit proving a debt may be made by the creditor himself or by some person authorized by or on behalf of the creditor; and if made by a person so authorized, it shall state his authority and means of knowledge.

Contents of proof. Form No. 61.

84. (1) An affidavit proving a debt shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated.

(2) The official receiver or liquidator to whom the proof is sent may, at any time, call for the production of the vouchers.

Statement of security.

85. An affidavit proving a debt shall state whether the creditor is or is not a secured creditor.

Proof before whom sworn.

86. An affidavit proving a debt may, in a winding up by the court, be sworn before the official receiver or a deputy official receiver.

Costs of proof.

87. A creditor shall bear the cost of proving his debt unless the court otherwise orders.

Discount.

88 A creditor proving his debt shall deduct therefrom-

(a) any discount which he may have agreed to allow for payment in cash in excess of five per centum on the net amount of his claim; and

(b) all trade discounts.

Periodical payments.

89. When any rent or other periodical payment falls due on a stated date, and the order or resolution to wind up is made at any time other than on such

date, the persons entitled to the rent or payment may prove for a proportionate part thereof up to the date of the winding-up order or resolution as if the rent or payment became due from day to day:

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Provided that, where the liquidator remains in occupation of premises demised to a company which is being wound up, nothing herein contained shall prejudice or affect the right of the landlord of such premises to claim payment by the company, or the liquidator, of rent during the period of the company's, or the liquidator's occupation.

Interest.

90. On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed, and which is overdue at the date of the commencement of the winding up, the creditor may prove for interest at a rate not exceeding six per centum per annum to that date from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise than from the time when a demand in writing has been made giving notice that interest will be claimed from the date of the demand until the time of payment.

Proof for debt payable at a future time.

91. A creditor may prove for a debt not payable at the date of the winding-up order or resolution, as if it were payable presently, and may receive dividends equally with the other creditors, deducting only therefrom a rebate of interest at the rate of six per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable according to the terms on which it was contracted.

Workmen's wages. Form No. 62.

92. (1) In any case in which it appears that there are numerous claims for wages by workmen and others employed by the company, it shall be sufficient if one proof for all such claims is made either by a foreman or by some other person on behalf of all such creditors.

(2) Such proof shall have annexed thereto as forming part thereof a schedule setting forth the names of the workmen and others, and the amounts severally due to them.

(3) Any proof made in compliance with this rule shall have the same effect as if separate proofs had been made by each of the said workmen and others.

Production of bills of exchange and promissory notes.

93. Where a creditor seeks to prove in respect of a bill of exchange, promissory note or other negotiable instrument or security on which the company is liable, such bills of exchange, note, instrument or security must, subject to any special order of the court to the contrary, be produced to the official receiver, chairman of a meeting or liquidator, as the case may be, and be marked by him before the proof can be admitted either for voting or for any purpose.

Transmission of proofs to liquidator.

94. Where a liquidator is appointed in a winding up by the court, all proofs of debts received by the official receiver shall be handed over to the liquidator, but the official receiver shall first make a list of such proofs, and take a receipt thereon from the liquidator for such proofs.

Admission and Rejection of Proofs and Preferential Claims and Appeal to the Court

Notice to creditors to prove.

95. (1) Subject to the provisions of the Act, and unless otherwise ordered by the court, the liquidator in any winding up may, from time to time, fix a

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certain day, which shall be not less than fourteen days from the date of the notice, on or before which the creditors of the company are to prove their debts or claims and to establish any title they may have to priority under section 311 of the Act, or to be excluded from the benefit of any distribution made before such debts are proved, or, as the case may be, from objecting to such distribution.

(2) The liquidator shall give notice in writing of the day so fixed by advertisement in such newspaper as he considers convenient, and in a winding up by the court to every person mentioned in the statement of affairs as a creditor who has not proved his debt, and to every person mentioned in the statement of affairs as a preferential creditor whose claim to be a preferential creditor has not been established and is not admitted, and in any other winding up to the last known address or place of abode of each person who, to the knowledge of the liquidator, claims to be a creditor or preferential creditor of the company and whose claim has not been admitted.

(3) All the rules hereinafter set out as to admission and rejection of proofs shall apply with the necessary variations to any such claim to priority as aforesaid.

Examination of proof.

96. (1) The liquidator shall examine every proof of debt lodged with him, and the grounds of the debt, and, in writing, admit or reject it, in whole or in part, or require further evidence in support of it.

Form No. 63.

(2) If he rejects the proof, he shall state in writing to the creditor the grounds of the rejection.

Appeal by creditor.

97. If a creditor or contributory is dissatisfied with the decision of the liquidator in respect of a proof, the court may, on the application of the creditor or contributory, reverse or vary the decision; but, subject to the power of the

court to extend the time, no application to reverse or vary the decision of the liquidator in a winding up by the court rejecting a proof sent to him by a creditor, or person claiming to be a creditor, shall be entertained unless notice of the application is given before the expiration of thirty days from the date of the service of the notice of rejection.

Expunging at instance of liquidator.

98. If the liquidator thinks that a proof has been improperly admitted, the court may, on the application of the liquidator, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

Expunging at instance of creditor.

99. The court may also expunge or vary a proof upon the application of a creditor or contributory if the liquidator declines to interfere in the matter.

Oaths.

100. For the purpose of any of his duties in relation to proofs, the liquidator, in a winding up by the court, may administer oaths and take affidavits.

Official receiver's powers.

101. In a winding up by the court the official receiver, before the appointment of a liquidator, shall have all the powers of a liquidator with respect to the examination, admission and rejection of proofs, and any act or decision of his in relation thereto shall be subject to the like appeal.

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Proofs to be filed. Form No. 64.

102. Every liquidator in a winding up by the court other than the official receiver shall, on the first day of every month, file with the registrar a certified list of all proofs, if any, received by him during the preceding month, distinguishing in such lists the proofs admitted, those rejected and such as stand over for further consideration; and, in the case of proofs admitted or rejected, he shall cause the proofs to be filed with the registrar.

Procedure where creditor appeals.

103. The liquidator in a winding up by the court, including the official receiver when he is liquidator, shall, within three days after receiving notice from a creditor of his intention to appeal against a decision rejecting a proof, file such proof with the registrar, with a memorandum thereon of his disallowance thereof.

Time for dealing with proofs by official receiver.

104. Subject to the power of the court to extend the time in a winding up by the court, the official receiver as liquidator, not later than fourteen days from the latest date specified in the notice of his intention to declare a dividend as the time within which such proofs must be lodged, shall, in writing, either admit or reject wholly, or in part, every proof lodged with him or require further evidence in support of it.

Time for dealing with proofs by liquidator.

105. Subject to the power of the court to extend the time, the liquidator in a winding up by the court, other than the official receiver, within twenty-eight days after receiving a proof, which has not previously been dealt with, shall, in writing, either admit or reject it wholly, or in part, or require further evidence in support of it:

Provided that, where the liquidator has given notice of his intention to declare a dividend, he shall, within fourteen days after the date mentioned in the notice as the latest date up to which proofs must be lodged, examine, and,

in writing, admit or reject, or require further evidence in support of, every proof which has not been already dealt with, and shall give notice of his decision rejecting a proof wholly, or in part, to the creditors affected thereby; and where a creditor's proof has been admitted the notice of dividend shall be a sufficient notification of the admission.

Costs of appeals from decisions as to proofs.

106. The official receiver shall in no case be personally liable for costs in relation to an appeal from his decision rejecting any proof wholly or in part.

Dividends in a Winding Up by the Court

Dividends to creditors. Forms Nos. 65, 66, 108 (4).

107. (1) Not more than two months before declaring a dividend, the liquidator in a winding up by the court shall give notice in the Gazette of his intention to do so, and shall, at the same time, give notice to such of the creditors mentioned in the statement of affairs as have not proved their debts; such notice shall specify the latest date up to which proofs must be lodged, which shall not be less than fourteen days from the date of such notice.

(2) *(a)* Where any creditor, after the date mentioned in the notice of intention to declare a dividend as the latest date up to which proofs may be lodged, appeals against the decision of the liquidator rejecting a proof, notice

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of appeal shall, subject to the power of the court to extend the time in special cases, be given within seven days from the date of the notice of the decision against which the appeal is made, and the liquidator may in such case make provision for the dividend upon such proof, and the probable cost of such appeal in the event of the proof being admitted.

(b) Where no notice of appeal has been given within the time specified in this rule, the liquidator shall exclude all proofs which have been rejected from participation in the dividend.

(3) Immediately after the expiration of the time fixed by this rule for appealing against the decision of the liquidator, he shall proceed to declare a dividend, and shall give notice thereof in the Gazette, and shall also send a notice of dividend to each creditor whose proof has been admitted.

Forms Nos. 67, 108 (5).

(4) *(a)* If it becomes necessary, in the opinion of the liquidator and the committee of inspection, to postpone the declaration of the dividend beyond the limit of two months, the liquidator shall give a fresh notice in the Gazette of his intention to declare a dividend; but it shall not be necessary for the liquidator to give a fresh notice to such of the creditors mentioned in the statement of affairs as have not proved their debts.

Form No. 108 (4).

(b) In all other respects the same procedure shall follow the fresh notice as would have followed the original notice.

(5) Upon the declaration of a dividend, a liquidator, other than the official receiver, shall forthwith transmit to the official receiver a list of the proofs filed with the registrar under rule 102, which list shall be in Form No. 68 or 69, as the case may require.

Forms Nos. 68,69.

(6) Dividends may, at the request and risk of the person to whom they are payable, be transmitted to him by post.

(7) If a person to whom dividends are payable desires that they shall be paid to some other person, he may file with the liquidator a document in Form No. 70, which shall be a sufficient authority for payment of the dividend to the person therein named.

Form No. 70.

Return of capital contributories. Forms Nos. 71,72, 108 (6).

108. (1) Every order by which the liquidator in a winding up by the court is authorized to make a return to contributories of the company shall, unless the court otherwise directs, contain or have appended thereto a schedule or list, which the liquidator shall prepare, setting out in a tabular form the full names and addresses of the persons to whom the return is to be paid, and the amount of money payable to each person, and particulars of the transfers of shares, if any, which have been made or the variations in the list of contributories which have arisen since the date of the settlement of the list of contributories, and such other information as may be required to enable the return to be made.

(2) The schedule or list shall be in Form No. 72, with such variations as circumstances require, and the liquidator shall send a notice of return to each contributory, and shall give notice in the Gazette.

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Meetings of Creditors and Contributories in Winding up by the Court

First meeting of creditors and contributories.

109. (1) Unless the court otherwise directs, the meetings of creditors and contributories under section 236 of the Act, hereinafter referred to as the first meetings of creditors and contributories, shall be held within sixty days after the date of the winding-up order.

(2) The dates of such meetings shall be fixed, and they shall be summoned by the official receiver.

Notice of first meetings in Gazette. Form No. 108 (2).

110. The official receiver shall forthwith give notice in the Gazette of the date fixed by him for the first meetings of creditors and contributories.

Summoning of first meetings.

111. The first meetings of creditors and contributories shall be summoned as hereinafter provided.

Form of notices of first meetings. Forms Nos. 73, 74.

112. The notices of first meetings of creditors and contributories may be in Forms Nos. 73 and 74, and the notices to creditors shall state a time within which the creditors must lodge their proofs in order to entitle them to vote at the first meeting.

Notice of first meeting to officers of company. Form No. 75.

113. (1) The official receiver shall also give to each of the officers of the company who, in his opinion, ought to attend the first meetings of creditors and contributories seven days' notice of the time and place appointed for each meeting.

(2) The notice may either be delivered personally or sent by prepaid letter post, as may be convenient.

(3) It shall be the duty of every officer who receives notice of such meeting to attend, if so required by the official receiver, and if any such officer fails to attend the official receiver shall report such failure to the court.

Summary of statement of affairs.

114. (1) The official receiver shall also, as soon as practicable, send to each creditor mentioned in the company's statement of affairs, and to each person appearing from the company's books or otherwise to be a contributory

of the company, a summary of the company's statement of affairs, including the causes of its failure, and any observations thereon which the official receiver may think fit to make; but the proceedings at a meeting shall not be invalidated by reason of any summary or notice required by these Rules not having been sent or received before the meeting.

(2) Where, before the winding-up order, the company has commenced to be wound up voluntarily, the official receiver may, if in his absolute discretion he sees fit so to do, send to the persons aforesaid, or any of them, an account of such voluntary winding up showing how such winding up has been conducted and how the property of the company has been disposed of and any observations which the official receiver may think fit to make on such account or on the voluntary winding up.

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General Meetings of Creditors and Contributories in Relation to Winding Up by the Court and of Creditors in Relation to a Creditors' Voluntary Winding Up

Liquidator's meetings of creditors and contributories.

115. (1) In addition to the first meetings of creditors and contributories and in addition also to meetings of creditors and contributories directed to be held by the court under section 336 of the Act, hereinafter referred to as court meetings of creditors and contributories, the liquidator in any winding up by the court may himself from time to time, subject to the provisions of the Act and the control of the court, summon, hold and conduct meetings of the creditors or contributories, hereinafter referred to as liquidators' meetings of creditors and contributories, for the purpose of ascertaining their wishes in all matters relating to the winding up.

(2) In any creditors' voluntary winding up, the liquidator may himself from time to time summon, hold and conduct meetings of creditors for the purpose of ascertaining their wishes in all matters relating to the winding up; and such meetings and all meetings of creditors which a liquidator or a company is by the Act required to convene in or immediately before such a voluntary winding up and all meetings convened by a creditor in a voluntary winding up under these Rules are hereinafter called voluntary liquidation meetings.

Application of rules as to meetings.

116. Except where and so far as the nature of the subject-matter or the context may otherwise require, the rules as to meetings hereinafter set out shall apply to first meetings, court meetings, liquidator's meetings of creditors and contributories and voluntary liquidation meetings, but so nevertheless that the said rules shall take effect as to first meetings subject and without prejudice

to any express provisions of the Act and as to court meetings subject and without prejudice to any express directions of the court.

Summoning of meetings.

117. (1) The official receiver or liquidator shall summon all meetings of creditors and contributories by giving not less than seven days' notice of the time and place thereof in the Gazette and in a newspaper; and shall, not less than seven days before the day appointed for the meeting, send by post to every person appearing by the company's books to be a creditor of the company notice of the meeting of creditors, and to every person appearing by the company's

Form No. 76.

books or otherwise to be a contributory of the company notice of the meeting of contributories.

(2) *(a)* The notice to each creditor shall be sent to the address given in his proof or, if he has not proved, to the address given in the statement of affairs of the company, if any, or to such other address as may be known to the person summoning the meeting.

(b) The notice to each contributory shall be sent to the address mentioned in the company's books as the address of such contributory, or to such other address as may be known to the person summoning the meeting.

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(3) In the case of meetings under section 291 of the Act, the continuing liquidator, or if there is no continuing liquidator any creditor, may summon the meeting.

(4) This rule shall not apply to meetings under section 286 or section 294 of the Act.

Proof of notice. Forms Nos. 77, 78.

118. A certificate by the official receiver or other officer of the court, or by the clerk of any such person, or an affidavit by the liquidator, or creditor, or his advocate, or the clerk of either of such persons, or, as the case may be, by some officer of the company or its advocate or the clerk of such company or advocate, that the notice of any meeting has been duly posted shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed.

Place of meetings.

119. (1) Every meeting shall be held at such place as is, in the opinion of the person convening the same, most convenient for the majority of the creditors or contributories.

(2) Different times or places may, if thought expedient, be named for the meetings of creditors and for the meetings of contributories.

Costs of calling meetings.

120. (1) The costs of summoning a meeting of creditors or contributories at the instance of any person other than the official receiver or liquidator shall be paid by the person at whose instance it is summoned, who shall, before the meeting is summoned, deposit with the official receiver or liquidator, as the case may be, such sum as may be required by the official receiver or liquidator as security for the payment of such costs.

(2) The costs of summoning such meeting of creditors or contributories, including all disbursements for printing, stationery, postage and the hire of room, shall be calculated at the following rate for each creditor or contributory to whom notice is required to be sent, namely, five shillings per creditor or contributory for the first twenty creditors or contributories, two shillings per creditor or contributory for the next thirty creditors or contributories, and one shilling per creditor or contributory for any number of creditors or contributories after the first fifty.

(3) The said costs shall be repaid out of the assets of the company if the court by order, or if the creditors or contributories, as the case may be, by resolution, so direct.

(4) This rule shall not apply to meetings under section 286 or section 291 of the Act.

Chairman of meeting.

121. (1) Where a meeting is summoned by the official receiver or the liquidator, he or someone nominated by him shall be chairman of the meeting.

Form No. 79.

(2) At every other meeting of creditors or contributories, the chairman shall be such person as the meeting by resolution appoints.

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(3) This rule shall not apply to meetings under section 286 of the Act.

Ordinary resolution of creditors and contributories.

122. At a meeting of creditors, a resolution shall be deemed to be passed when a majority in number and value of the creditors present, personally or by proxy, and voting on the resolution, have voted in favour of the resolution, and at a meeting of the contributories a resolution shall be deemed to be passed when a majority in number and value of the contributories present, personally or by proxy, and voting on the resolution, have voted in favour of the resolution, the value of the contributories being determined according to the number of votes conferred on each contributory by the regulations of the company.

Copy of resolution to be filed.

123. The official receiver or, as the case may be, the liquidator shall file with the registrar a copy certified by him of every resolution of a meeting of creditors or contributories in a winding up by the court.

Non-reception of notice by a creditor.

124. Where a meeting of creditors or contributories is summoned by notice, the proceedings and resolutions at the meeting shall, unless the court otherwise orders, be valid notwithstanding that some creditors or contributories may not have received the notice sent to them.

Adjournments. Form No. 80.

125. The chairman may, with the consent of the meeting, adjourn it from time to time and from place to place, but the adjourned meeting shall be held at the same place as the original meeting unless in the resolution for adjournment another place is specified or unless the court otherwise orders.

Quorum.

126. (1) A meeting may not act for any purpose except the election of a chairman, the proving of debts and the adjournment of the meeting unless there are present or represented in the case of a creditors' meeting at least three creditors entitled to vote, or in the case of a meeting of contributories at least three contributories, or all the creditors entitled to vote or all the contributories if the number of creditors entitled to vote or the number of contributories, as the case may be, does not exceed three.

(2) If within half an hour from the time appointed for the meeting a quorum of creditors or contributories, as the case may be, is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place or to such other day or time or place as the

chairman may appoint, but so that the day appointed shall be not less than seven nor more than twenty-one days from the day from which the meeting was adjourned.

Creditors entitled to vote.

127. (1) In the case of a first meeting of creditors or of an adjournment thereof, a person shall not be entitled to vote as a creditor unless he has duly lodged with the official receiver, not later than the time mentioned for that purpose in the notice convening the meeting or adjourned meeting, a proof of the debt which he claims to be due to him from the company.

(2) In the case of a court meeting or liquidator's meeting of creditors, a person shall not be entitled to vote as a creditor unless he has lodged with the official receiver or liquidator a proof of the debt which he claims to be due

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to him from the company and such proof has been admitted wholly or in part before the date on which the meeting is held.

(3) This rule and rules 128, 129, 130 and 131 shall not apply to a court meeting of creditors held prior to the first meeting of creditors.

(4) This rule shall not apply to any creditors or class of creditors who by virtue of these Rules or any directions given thereunder are not required to prove their debts or to any voluntary liquidation meeting.

Cases in which creditors may not vote.

128. A creditor shall not vote in respect of any unliquidated or contingent debt or any debt the value of which is not ascertained, nor shall a creditor vote in respect of any debt on, or secured by, a current bill of exchange or promissory note held by him unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the company, and against whom a receiving order in bankruptcy has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

Votes of secured creditors.

129. (1) For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof, or in a voluntary liquidation in such a statement as is hereinafter mentioned, the particulars of his security, the date when it was given and the value at which he assesses it, and shall be entitled to vote only in respect of the balance, if any, due to him after deducting the value of his security.

(2) If he votes in respect of his whole debt, he shall be deemed to have surrendered his security, unless the court, on application, is satisfied that the omission to value the security has arisen from inadvertence.

Creditor required to give up security.

130. The official receiver or liquidator may, within thirty days after a proof, or in a voluntary liquidation a statement, estimating the value of a security as aforesaid has been used in voting at a meeting, require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated with an addition thereto of twenty per centum:

Provided that, where a creditor has valued his security, he may at any time before being required to give it up correct the valuation by a new proof and deduct the new value from his debt, but in that case the said addition of twenty per centum shall not be made if the security is required to be given up.

Admission and rejection of proofs for purpose of voting.

131. (1) The chairman shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to a right of appeal to the court.

(2) If he is in doubt whether a proof shall be admitted or rejected, he shall mark it as objected to and allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

Statement of security.

132. For the purpose of voting at any voluntary liquidation meetings, a secured creditor shall, unless he surrenders his security, file with the

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liquidator, or where there is no liquidator at the registered office of the company, before the meeting, a statement giving the particulars of his security, the date when it was given and the value at which he assesses it.

Minutes of meeting.

133. (1) The chairman shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for that purpose, and the minutes shall be signed by him or by the chairman of the next ensuing meeting.

(2) A list of creditors and contributories present at every meeting shall be made and kept in Form No. 81.

Form No. 81.

PROXIES TN RELATION TO A WINDING UP BY THE COURT AND TO MEETINGS OF CREDITORS IN A CREDITORS' VOLUNTARY WINDING UP

Proxies.

134. (1) A creditor or a contributory may vote either in person or by proxy.

(2) *(a)* Where a person is authorized in manner provided by section 139 of the Act to represent a corporation at any meeting of creditors or contributories, such person shall produce to the official receiver or liquidator or other chairman of the meeting a copy of the resolution so authorizing him.

(b) Such copy must either be under the seal of the corporation or certified to be a true copy by the secretary or a director of the corporation.

(3) The following rules as to proxies shall not, unless otherwise directed by the court, apply to a court meeting of creditors or contributories prior to the first meeting.

Form of proxies.
Forms Nos. 82, 83.

135. Every instrument of proxy shall be in Form No. 82 or 83.

Forms of proxy to be sent with notices.

136. General and special forms of proxy shall be sent to the creditors and contributories with the notice summoning the meeting and neither the name nor description of the official receiver or liquidator or any other person shall be printed or inserted in the body of any instrument of proxy before it is so sent.

General proxies.

137. A creditor or a contributory may give a general proxy to any person.

Special proxies.

138. A creditor or a contributory may give a special proxy to any person to vote at any special meeting or adjournment thereof -

(a) for or against the appointment or continuance in office of any specified person as liquidator or member of the committee of inspection; and

(b) on all questions relating to any matters other than those above referred to and arising at the meeting or an adjournment thereof.

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Solicitation by liquidator to obtain proxies.

139. Where it appears to the satisfaction of the court that any solicitation has been used by or on behalf of a liquidator in obtaining proxies or in procuring his appointment as liquidator except by the direction of a meeting of creditors or contributories, the court, if it thinks fit, may order that no remuneration be allowed to the person by whom, or on whose behalf, the solicitation was exercised, notwithstanding any resolution of the committee of inspection or of the creditors or contributories to the contrary.

Proxies to official receiver or liquidator.

140. A creditor or a contributory in a winding up by the court may appoint the official receiver or liquidator, and in a voluntary winding up the liquidator, or, if there is no liquidator, the chairman of a meeting, to act as his general or special proxy.

Holder of proxy not to vote on matter in which he is financially interested.

141. No person acting under either a general or a special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer in a position to receive any remuneration out of the estate of the company otherwise than as a creditor rateably with the other creditors of the company:

Provided that where any person holds special proxies to vote for an application to the court in favour of the appointment of himself as liquidator he may use the said proxies and vote accordingly.

Lodging of proxies.

142. (1) A proxy intended to be used at the first meeting of creditors or contributories, or an adjournment thereof, shall be lodged with the official receiver not later than the time mentioned for that purpose in the notice

convening the meeting, or the adjourned meeting, which time shall be not earlier than twelve o'clock noon of the day but one before, nor later than twelve o'clock noon of the day before, the day appointed for such meeting, unless the court otherwise directs.

(2) In every other case, a proxy shall be lodged with the official receiver or liquidator in a winding up by the court, with the company at its registered office for a meeting under section 286 of the Act, and with the liquidator or, if there is no liquidator, with the person named in the notice convening the meeting to receive the same in a voluntary winding up, not later than four

o'clock in the afternoon of the day before the meeting, or adjourned meeting, at which it is to be used.

(3) No person shall be appointed a general or special proxy who is under twenty-one years of age.

Use of proxies by deputy.
Form No. 79.

143. Where an official receiver who holds any proxies cannot attend the meeting for which they are given, he may, in writing, depute some person under his official control to use the proxies on his behalf and in such manner as he may direct.

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Filling in where creditor blind or incapable.

144. The proxy of a creditor blind or incapable of writing may be accepted if such creditor has attached his signature or mark thereto in the presence of a witness who has added to his signature his description and residence, and has certified at the foot of the proxy that all such insertions have been made at the request and in the presence of the creditor before he attached his signature or mark.

Attendance and Appearance of Parties

Attendance at proceedings.

145. (1) *(a)* Every person for the time being on the list of contributories of the company, and every person whose proof has been admitted, shall be at liberty, at his own expense, to attend proceedings, and shall be entitled, upon payment of the costs occasioned thereby, to have notice of all such proceedings as by written request he desires to have notice of.

(b) If the court is of opinion that the attendance of any such person upon any proceedings has occasioned any additional costs which ought not to be borne by the funds of the company, it may direct such costs, or a gross sum in lieu thereof, to be paid by such person, who shall not be entitled to attend any further proceedings until he has paid the same.

(2) The court may, from time to time, appoint any one or more of the creditors or contributories to represent before the court, at the expense of the company, all or any class of the creditors or contributories, upon any question or in relation to any proceedings before the court, and may remove the person so appointed; if more than one person is appointed under this paragraph to represent one class, the persons appointed shall employ the same advocate to represent them.

(3) No creditor or contributory shall be entitled to attend any proceedings in chambers unless and until he has entered in a book to be kept by the

registrar for that purpose, his name and address, and the name and address of his advocate, if any, and, upon any change of his address, or of his advocate, his new address, and the name and address of his new advocate.

Attendance of liquidator's advocate.

146. Where the attendance of the liquidator's advocate is required on any proceedings in court or chambers, the liquidator need not attend in person, except in cases where his presence is necessary in addition to that of his advocate, or the court directs him to attend.

Liquidator and Committee of Inspection

Remuneration of liquidator.

147. (1) The remuneration of a liquidator, unless the court otherwise orders, shall be fixed by the committee of inspection, and shall be in the nature of a commission or percentage of which one part shall be payable on the amount realized, after deducting the sums, if any, paid to secured creditors, other than debenture holders, out of the proceeds of their securities, and the other part on the amount distributed in dividend.

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(2) If the official receiver is of opinion that the remuneration of a liquidator as fixed by the committee of inspection is unnecessarily large, he may apply to the court, and thereupon the court shall fix the amount of the remuneration of the liquidator.

(3) If there is no committee of inspection, the remuneration of the liquidator shall, unless the court otherwise orders, be fixed by the scale of fees and percentages for the time being payable on realizations and distributions by the official receiver as liquidator.

(4) This rule shall only apply to a liquidator appointed in a winding up by the court.

Limit of remuneration.

148. Except as provided by the Act or by these Rules, a liquidator shall not, in any circumstances whatever, make any arrangement for, or accept from any advocate, auctioneer or any other person connected with the company of which he is liquidator, or who is employed in or in connection with the winding up of the company, any gift, remuneration or pecuniary or other consideration or benefit whatever beyond the remuneration to which under the Act and these Rules he is entitled as liquidator, nor shall he make any arrangement for giving up, or give up any part of such remuneration to any such advocate, auctioneer, or other person.

Dealings with assets.

149. (1) Neither the liquidator nor any member of the committee of inspection of a company shall, while acting as liquidator or member of such committee, except with leave of the court, either directly or indirectly, by himself or any employer, partner, clerk, agent or servant, become purchaser of any part of the company's assets.

(2) Any such purchase made contrary to the provisions of this rule may be set aside by the court on the application of the official receiver in a winding up by the court or of any creditor or contributory in any winding up, and the court may make such order as to costs as the court thinks fit.

Restriction on purchase of goods by liquidator.

150. Where the liquidator carries on the business of the company, he shall not, without the express sanction of the court, purchase goods for the carrying on of such business from any person whose connection with him is of such a

nature as would result in his obtaining any portion of the profit, if any, arising out of the transaction.

Committee of inspection not to make profit.

151. (1) No member of a committee of inspection shall, except with the express sanction of the court, directly or indirectly, by himself or by any employee, partner, clerk, agent or servant, be entitled to derive any

profit from any transaction arising out of the winding up or to receive out of the assets any payment for services rendered by him in connection with the administration of the assets, or for any goods supplied by him to the liquidator for or on account of the company.

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(2) In a winding up by the court, if it appears to the official receiver or in a voluntary winding up if it appears to the committee of inspection or to any meeting of creditors or contributories that any profit or payment has been made contrary to the provisions of this rule, they may disallow such payment or recover such profit, as the case may be, on the audit of the liquidator's accounts or otherwise.

Costs of obtaining sanction of court.

152. In any case in which the sanction of the court is obtained under rule 150 or rule 151, the costs of obtaining such sanction shall be borne by the person in whose interest such sanction is obtained, and shall not be payable out of the company's estate.

Sanction of payments to committee.

153. (1) Where the sanction of the court to a payment to a member of a committee of inspection for services rendered by him in connection with the administration of the company's assets is obtained, the order of the court shall specify the nature of the services, and such sanction shall only be given where the service performed is of a special nature.

(2) Except with the leave of the court, no remuneration shall, in any circumstances, be paid to a member of a committee for services rendered by him in the discharge of the duties attaching to his office as a member of such committee.

Discharge of costs before assets handed to liquidator.

154. (1) When a liquidator appointed by the court has notified his appointment to the registrar of companies and has given security to the court, the official receiver shall forthwith put the liquidator into possession of all property of the company of which the official receiver may have custody:

Provided that such liquidator, before the assets are handed over to him by the official receiver, shall first discharge any balance due to the official receiver on account of fees, costs and charges properly incurred by him, and on account of any advances properly made by him in respect of the company, together with interest on such advances at the rate of six per centum per annum, and the liquidator shall pay all fees, costs and charges of the official receiver which may not have been discharged by the liquidator before being put into possession of the property of the company, whether incurred before or after he has been put into such possession.

(2) The official receiver shall be deemed to have a lien upon the company's assets until such balance shall have been paid and the other liabilities shall have been discharged.

(3) It shall be the duty of the official receiver, if so requested by the liquidator, to communicate to the liquidator all such information respecting the estate and affairs of the company as may be necessary or conducive to the due discharge of the duties of the liquidator.

(4) This rule and rule 155 shall only apply in a winding up by the court.

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Resignation of liquidator.

155. (1) A liquidator who desires to resign his office shall summon separate meetings of the creditors and contributories of the company to decide whether or not the resignation shall be accepted.

(2) If the creditors and contributories by ordinary resolutions both agree to accept the resignation of the liquidator, he shall file with the registrar a memorandum of his resignation and shall send notice thereof to the official receiver, and the resignation shall thereupon take effect.

(3) In any other case, the liquidator shall report to the court the result of the meetings and shall send a report to the official receiver, and thereupon the court may, upon the application of the liquidator or the official receiver, determine whether or not the resignation of the liquidator shall be accepted, and may give such directions and make such orders as, in the opinion of the court, are necessary.

Office of liquidator vacated by his insolvency.

156. If a receiving order in bankruptcy is made against a liquidator, he shall thereby vacate his office, and for the purposes of the application of the Act and these Rules shall be deemed to have been removed.

Payments into and out of a Bank

Payments out of bank.

157. All payments out of the Companies Liquidation Account shall be made in such manner as the official receiver may from time to time direct.

Special bank account. Forms Nos. 84, 85.

158. (1) Where the liquidator in a winding up by the court is authorized to have a special bank account, he shall forthwith pay all moneys received by him into that account to the credit of the liquidator of the company.

(2) All payments out shall be made by cheque payable to order, and every cheque shall have marked or written on the face of it the name of the company, and shall be signed by the liquidator and, except where the liquidator is the official receiver, shall be counter-signed by at least one member of the committee of inspection and by such other person, if any, as the committee of inspection may appoint.

(3) Where application is made to the court to authorize the liquidator in a winding up by the court to make his payments into and out of a special bank account, the court may grant such authorization for such time and on such terms as it may think fit, and may at any time order the account to be closed if it is of opinion that the account is no longer required for the purposes mentioned in the application.

Books

Record file.

159. In a winding up by the court, the official receiver, until a liquidator is appointed by the court, and thereafter the liquidator, shall keep a file, to be called the record file, in which he shall record all minutes of, and all proceedings had and resolutions passed at, any meeting of creditors or contributories, or of the committee of inspection, and all such matters as may he necessary to give

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a correct view of his administration of the company's affairs; but he shall not be bound to insert in the record file any document of a confidential nature, such as the opinion of counsel on any matter affecting the interest of the creditors or contributories, nor need he exhibit such document to any person other than a member of the committee of inspection or the official receiver.

Cash book.

160. (1) In a winding up by the court, the official receiver, until a liquidator is appointed by the court, and thereafter the liquidator, shall keep a book, to be called the cash book, which shall be in such form as the Minister may from time to time direct, in which he shall, subject to the provisions of these Rules as to trading accounts, enter from day to day the receipts and payments made by him.

(2) In a winding up by the court, a liquidator, other than the official receiver, shall submit the record file and the cash book, together with any other requisite books and vouchers, to the committee of inspection, if any, when required, and not less than once in every three months.

(3) In a creditors' voluntary winding up, the liquidator shall keep such books as the committee of inspection or, if there is no such committee, as the creditors direct, and all books kept by the liquidator shall be submitted to the committee of inspection or, if there is no such committee, to the creditors with any other books, documents, papers and accounts in his possession relating to his office as liquidator or to the company as and when the committee of inspection or if there is no such committee, the creditors direct.

Investment of Funds

Investment of funds.
Forms Nos. 86, 87.

161. (1) Where in a winding up by the court, or in a creditors' voluntary winding up, the committee of inspection are of opinion that any part of the cash balance standing to the credit of the account of the company should be invested, they shall sign a certificate and request, and shall transmit such certificate and request to the official receiver.

(2) Where the committee of inspection in any such winding up are of opinion that it is advisable to sell any of the securities in which the moneys of the company's assets are invested, they shall sign a certificate and request to that effect, and shall transmit such certificate and request to the official receiver.

(3) Where there is no committee of inspection in any such winding

up as is mentioned in paragraphs (1) and (2), if a case has, in the opinion of the liquidator, arisen for the investment of funds of the company or a sale of securities in which the company's funds have been invested, the liquidator shall sign and transmit to the official receiver a certificate of the facts on which his opinion is founded, and a request to the official receiver to make the investment or sale mentioned in the certificate, and the official receiver may thereupon, if he thinks fit, invest or sell the whole or any part of the said funds and securities in the manner provided in section 343 of the Act, and the said certificate and request shall be sufficient authority to the official receiver for the said investment or sale.

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ACCOUNTS AND AUDIT IN A WINDING UP BY THE COURT

Audit of cash book. Form No. 88.

162. Except where the official receiver is liquidator, the committee of inspection shall, not less than once in every three months, audit the liquidator's cash book and certify therein under their hands the day on which the said book was audited.

Audit of liquidator's account by official receiver.

163. (1) *(a)* The liquidator shall, at the expiration of six months from the date of the winding up order, and at the expiration of every succeeding six months thereafter until his release, transmit to the official receiver a copy of the cash book for such period, in duplicate, together with the necessary vouchers and copies of the certificates of audit by the committee of inspection.

(b) He shall also forward with the first accounts a summary of the company's statement of affairs, showing thereon the amounts realized, and explaining the cause of the non-realization of such assets as may be unrealized.

(c) The liquidator shall also at the end of every six months forward to the official receiver with his accounts a report upon the position of the liquidation of the company in such form as the official receiver may direct.

(2) When the assets of the company have been fully realized and distributed, the liquidator shall forthwith send in his accounts to the official receiver, although the six months may not have expired.

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Form No. 89.

(3) The accounts sent in by the liquidator shall be verified by him by affidavit.

Liquidator carrying on business. Form No. 90.

164. (1) Where the liquidator carries on the business of the company, he shall keep a distinct account of the trading, and shall incorporate in the cash book the total weekly amounts of the receipts and payments on such trading accounts.

Form No. 91.

(2) The trading account shall, from time to time and not less than once in every month, be verified by affidavit, and the liquidator shall thereupon submit such account to the committee of inspection if any, or such member thereof as may be appointed by the committee for that purpose, who shall examine and certify the same.

Copy of accounts to be filed.

165. When the liquidator's accounts have been audited, the official receiver shall certify the fact upon the account, and thereupon the duplicate copy, bearing a like certificate, shall be filed with the registrar of companies, and shall be open to the inspection of any person on payment of the same fee as is payable with respect to the inspection of the file of proceedings under rule 15.

Summary of accounts.

166. (1) The liquidator shall prepare a summary of such accounts, and shall, subject to any dispensation granted by the official receiver under subsection (5) of section 245 of the Act, send a printed copy of that summary by post to every creditor and contributory.

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(2) The cost of printing and posting such copy shall be a charge upon the assets of the company.

Affidavit of no receipts or payments.

167. Where a liquidator has not, since the date of his appointment or since the last audit of his accounts, as the case may be, received or paid any sum of money on account of the assets of the company, he shall, at the time when he is required to transmit his accounts to the official receiver, forward to the official receiver an affidavit of no receipts or payments.

Proceedings on resignation, etc., of liquidator-disposal of books.

168. (1) Upon a liquidator resigning or being released or removed from his office, he shall deliver over to the official receiver or, as the case may be, to the new liquidator all books kept by him, and all other books, documents, papers and accounts in his possession relating to the office of liquidator; and the release of a liquidator shall not take effect unless and until he has delivered over to the official receiver or, as the case may be, to the new liquidator all the books, documents, papers and accounts which he is by this rule required to deliver on his release.

(2) The court may, at any time during the progress of the liquidation, on the application of the liquidator or the official receiver, direct that such of the books, papers and documents of the company or of the liquidator as are no longer required for the purpose of the liquidation may be sold, destroyed or otherwise disposed of.

Expenses of sales.

169. (1) Where property forming part of a company's assets is sold by the liquidator through an auctioneer or other agent, the gross proceeds of the sale shall be paid over by such auctioneer or agent, and the charges and expenses connected with the sale shall afterwards be paid to such auctioneer or agent, on the production of the necessary certificate of the taxing officer.

(2) Every liquidator by whom such auctioneer or agent is employed shall, unless the court otherwise orders, be accountable for the proceeds of every such sale.

Final Accounts and Returns in Voluntary Winding Up

Final accounts and returns in voluntary winding up. Form No. 92.

170. The account required by sections 283 and 294 of the Act to be made up by the liquidator as soon as the affairs of the company are fully wound up shall be in Form No. 92.

Return of holding of meetings. Forms Nos. 93, 94.

171. The return to be made by the liquidator to the registrar of companies of the holding of meetings called in accordance with sections 283 and 294 of the Act shall be in Forms Nos. 93 and 94.

Taxation of costs payable by or to official receiver or liquidator or by company.

172. (1) Every advocate, manager, accountant, auctioneer, broker or other person employed by the official receiver or liquidator in a winding up by court shall on request by the official receiver or liquidator, to be made a sufficient time before the declaration of a dividend, deliver his bill of costs or charges to the official receiver or liquidator for the purpose of taxation, and, if he fails to do so within the time stated in the request, or such extended time as the court may allow, the liquidator shall declare and distribute the dividend

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without regard to such person's claim, and subject to any order of the court the claim shall be forfeited.

(2) The request by the official receiver or liquidator shall be in Form No. 95. Form No. 95.

Lodgment of bill.

173. (1) The bill or charges, if incurred in a winding up by the court before the appointment of a liquidator, shall be lodged with the official receiver, and if incurred after the appointment of a liquidator shall be lodged with the liquidator.

(2) The official receiver or the liquidator, as the case may be, shall lodge the bill or charges with the registrar.

Notice of appointment.

174. Where a bill of costs or charges in any winding up has been lodged with the registrar, he shall give notice of an appointment to tax the same, in a winding up by the court, to the official receiver, and in every winding up, to the liquidator and to the person to or by whom the bill or charges is or are to be paid, as the case may be.

Copy of the bill to be furnished.

175. (1) Every person whose bill or charges in a winding up by the court is or are to be taxed, shall, on the application of either the official receiver or the liquidator, furnish a copy of such bill or charges, on payment of the prescribed charge, which payment shall be charged on the assets of the company.

(2) The official receiver shall call the attention of the liquidator to any items which, in his opinion, ought to be disallowed or reduced, and may attend or be represented on the taxation.

Applications for costs.

176. Where any party to, or person affected by, any proceeding, other than a proceeding under section 211 of the Act, desires to make an application for an order that he be allowed his costs, or any part of them, incidental to such proceeding, and such application is not made at the time of the proceeding -

(a) such party or person shall serve notice of his intended application on the official receiver or on the liquidator, as the case maybe;

(b) the official receiver or liquidator may appear in such application and object thereto;

(c) no costs of, or incidental to, such application shall be allowed to the applicant unless the court is satisfied that the application could not have been made at the time of the proceeding.

Certificate of taxation. Form No. 96.

177. (1) Upon the taxation of any bill of costs, charges or expenses being completed, the registrar shall issue to the person presenting such bill for taxation his allowance or certificate of taxation.

(2) The bill of costs, charges and expenses, together with the allowance or certificate, shall be filed with the registrar.

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[Subsidiary]

Certificate of employment.

178. Where the bill or charges of any advocate, manager, accountant, auctioneer, broker or other person employed by the official receiver or liquidator is or are payable out of the assets of the company, a certificate in writing, signed by the official receiver or liquidator, as the case may be, shall at the taxation be produced to the registrar, setting forth whether any, and if so what, special terms of remuneration have been agreed to, and, in the case of the bill of costs of an advocate, a copy of the resolution or other authority sanctioning the appointment of an advocate to assist the liquidator in the performance of his duties and the instructions given to such advocate by the liquidator.

Costs of execution.

179. In any case in which, pursuant to subsection (1) of section 317 of the Act, the court is required to deliver goods or money to a liquidator, the officer of the court charged with the execution shall, without delay, bring in his bill of costs for taxation, and they shall be taxed by the registrar, and unless such bill of costs is brought in for taxation within one month from the date when the court makes such delivery the liquidator may decline to pay the same.

Taxation of costs of execution after deduction.

180. If a liquidator, in writing, requires any costs which an officer of the court charged with execution has deducted under subsection (2) of section 317 of the Act to be taxed, such officer shall within seven days from the date of the request bring in such costs for taxation, and they shall be taxed by the registrar, and any amount disallowed on such taxation shall forthwith be paid over by the officer to the liquidator.

Costs and Expenses Payable out of the assets of the Company

Liquidator's charges.

181. (1) Where a liquidator or special manager in a winding up by the court receives remuneration for his services as such, no payment shall be allowed on his accounts in respect of the performance by any other person of the ordinary duties which are required by the Act or these Rules to be performed by himself.

(2) Where a liquidator is an advocate, he may contract that the remuneration for his services as liquidator shall include all professional services.

Costs payable out of the assets.

182. (1) The assets of a company in a winding up by the court remaining after payment of the fees and expenses properly incurred in preserving, realizing or getting in the assets, including, where the company has previously

commenced to be wound up voluntarily, such remuneration, costs and expenses as the court may allow to a liquidator appointed in such voluntary winding

up, shall, subject to any order of the court, be liable to the following payments, which shall be made in the following order of priority, namely–

(i) the taxed costs of the petition, including the taxed costs of any person appearing on the petition whose costs are allowed by the court;

(ii) the remuneration of the special manager, if any;

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(iii) the costs and expenses which may be allowed of any person who makes or concurs in making the company's statement of affairs;

(iv) the necessary disbursements and remuneration of the official receiver when appointed as interim or provisional liquidator in a winding up by the court, other than expenses properly incurred in preserving, realizing or getting in the assets here-in before provided for;

(v) the deposit or deposits lodged with the official receiver on any application to the court for his appointment as interim or provisional liquidator;

(vi) the necessary disbursements of any liquidator other than an interim or provisional liquidator appointed in the winding up by the court, other than expenses properly incurred in pre-serving, realizing or getting in the assets hereinbefore provided for;

(vii) the costs of any person properly employed by any such liquidator;

(viii) the remuneration of any such liquidator;

(ix) the actual out-of-pocket expenses necessarily incurred by the committee of inspection, subject to the approval of the official receiver.

(2) No payments in respect of bills or charges of advocates, managers, accountants, auctioneers, brokers or other persons, other than payments for costs and expenses incurred and sanctioned under rule 45 and payments of bills which have been taxed and allowed under orders made for the taxation thereof, shall be allowed out of the assets of the company without proof that the same have been considered and allowed by the registrar; and the registrar shall, before passing the bills of charges of an advocate, satisfy himself that the appointment of an advocate to assist the liquidator in the performance of his duties has been duly sanctioned:

Provided that the official receiver, when acting as liquidator, may, without taxation, pay and allow the costs and charges of any person employed by him where such costs and charges are within the scale usually allowed by the court and do not exceed the sum of four hundred shillings.

(3) Nothing contained in this rule shall apply to or affect costs which, in the course of legal proceedings by or against a company which is being wound up by the court, are ordered by the court in which such proceedings are pending or a judge thereof to be paid by the company or the liquidator, or the rights of the person to whom such costs are awarded.

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Conclusion of Winding Up

Conclusion of winding up.

183. The winding up of a company shall, for the purposes of section 333 of the Act, be deemed to be concluded-

(a) in the case of a company wound up by order of the court, at the date on which the order dissolving the company has been reported by the liquidator to the registrar of companies, or at the date of the order of the court releasing the liquidator pursuant to section 247 of the Act;

(b) in the case of a company wound up voluntarily, or under the supervision of the court, at the date of the dissolution of the company, unless at such date any funds or assets of the company remain unclaimed or undistributed in the hands or under the control of the liquidator, or any person who has acted as liquidator, in which case the winding up shall not be deemed to be concluded until such funds or assets have either been distributed or paid into the Companies Liquidation Account.

Delivery of liquidator's statements.

184. In a voluntary winding up or a winding up under the supervision of the court, the statements with respect to the proceedings in and position of the liquidation of a company the winding up of which is not concluded within a year after its commencement shall be delivered to the registrar of companies twice in every year as follows-

(a) the first statement, commencing at the date when a liquidator was first appointed and brought down to the end of a period of twelve months from the commencement of the winding up, shall be delivered within thirty days from the expiration of such period, or within such extended period as the official receiver may sanction, and the subsequent statements shall be delivered at intervals of six months, each statement being brought down to the end of the period of six months for which it is delivered; but, in cases in which the assets of the company have been fully realized and distributed before the expiration of a period of six months, a final statement shall be delivered forthwith;

Forms Nos. 97, 99, 100, 101.

(b) subject to rule 185, Form No. 97 and where applicable Forms Nos. 99, 100 and 101 with such variations as circumstances may require, shall be used, and the directions specified in such forms, unless the official receiver otherwise directs, shall be observed in reference to every statement;

Form No. 98.

(c) every statement shall be delivered in duplicate, and shall be verified by an affidavit in Form No. 98 with such variations as circumstances may require.

Affidavit of no receipts or payments. Forms Nos. 97, 98.

185. Where, in a voluntary winding up or a winding up under the supervision of the court, a liquidator has not, during any period for which a statement has to be delivered, received or paid any money on account of the company, he shall, at the date on which he is required to transmit his

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statement, deliver to the registrar of companies the prescribed statement in Form No. 97 in duplicate, containing the particulars therein required with respect to the proceedings in the position of the liquidation, and with such statement shall also deliver an affidavit of no receipts or payments in Form No. 98.

Unclaimed Funds and Undistributed Assets in the Hands of the Liquidator

Payment of undistributed and unclaimed money into companies liquidation account.

186. (1) All money in the hands or under the control of a liquidator of a company representing unclaimed dividends which for six months from the date when the dividend became payable have remained in the hands or under the control of the liquidator shall forthwith on the expiration of the period of six months be paid into the Companies Liquidation Account.

(2) In a voluntary winding up or a winding-up order under the supervision of the court, all other moneys in the hands or under the control of a liquidator of a company representing unclaimed or undistributed assets or held by the company in trust which, under subsection (1) of section 334 of the Act, the liquidator is to pay into the Companies Liquidation Account, shall be ascertained as on the date to which the statement of receipts and payments delivered to the registrar of companies is brought down, and the amount to be paid to the Companies Liquidation Account shall be the minimum balance of such money which the liquidator has had in his hands or under his control during the period of six months immediately preceding the date to which the statement is brought down, less such part, if any, thereof as the official receiver may authorize him

to retain for the immediate purposes of the liquidation; and such amount shall be paid into the Companies Liquidation Account within fourteen days from the date to which the statement of account is brought down.

(3) Notwithstanding anything in this rule, any moneys in the hands of the liquidator at the date of the dissolution of the company representing unclaimed or undistributed assets or dividends or held by the company in trust in respect of dividends or other sums due to any person as a member of the company shall forthwith be paid by him into the Companies Liquidation Account.

Liquidator to furnish information to official receiver. Form No. 102.

187. In a voluntary winding up or a winding up under the supervision of the court, every person who has acted as liquidator of any company, whether the liquidation has been concluded or not, shall furnish to the official receiver particulars of any money in his hands or under his control representing unclaimed or undistributed assets of the company or held by the company in trust in respect of dividends or other sums due to any person as a member of the company, and such other particulars as the official receiver may require for the purpose of ascertaining or getting in any money payable into the Companies

Liquidation Account; and the official receiver may require such particulars to be verified by affidavit.

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Official receiver may call for verified accounts.

188. (1) In a voluntary winding up or a winding up under the supervision of the court, the official receiver may at any time order any such person as is mentioned in rule 187 to submit to him an account, verified by affidavit, of

Forms Nos. 97, 98, 99, 100, 101.

the sums received and paid by him as liquidator of the company, and may direct and enforce an audit of the account.

Cap. 30.

(2) For the purposes of section 334 of the Act and of these Rules, the court has and may exercise all the powers conferred by the Bankruptcy Act with respect to the discovery and realization of the property of a debtor, and the provisions of Part III of that Act with respect thereto shall, with any necessary modification, apply to proceedings under section 334 of the Act.

Application to the court for enforcing an account, and getting in money.

189. An application by the official receiver for the purpose of ascertaining and getting in money payable into the Companies Liquidation Account pursuant to section 334 of the Act shall be made by motion.

Application for payment out by person entitled.

190. An application by a person claiming to be entitled to any money paid into the Companies Liquidation Account in pursuance of section 334 of the Act shall be made in such form and manner as the official receiver may from time to time direct, and shall, unless the official receiver otherwise directs, be accompanied by a certificate of the liquidator that the person claiming is entitled and such further evidence as the official receiver may direct.

Application by liquidator for payment out.

191. A liquidator who requires to make payments out of money paid into the Companies Liquidation Account in pursuance of section 334 of the Act, either by way of distribution or in respect of the costs and expenses of the proceedings, shall apply in such form and manner as the official receiver may direct, and the official receiver may thereupon either make an order for

payment to the liquidator of the sum required by him for the purposes aforesaid or direct cheques to be issued to the liquidator for transmission to the persons to whom the payments are to be made.

Release of Liquidator In a Winding Up by the Court

Proceedings for release of liquidator. Forms Nos. 103, 104, 105.

192. (1) A liquidator in a winding up by the court, before making application to the court for his release, shall give notice of his intention so to do to all the creditors who have proved their debts, and to all the contributories, and shall send with the notice a summary of all receipts and payments in the winding up.

Form No. 108 (10).

(2) When the court has granted to a liquidator his release, a notice of the order granting the release shall be published in the Gazette; the liquidator shall provide the requisite fee for the Gazette, which he may charge against the company's assets.

Disposal of books and papers.

193. (1) The court may order that the books and papers of a company which has been wound up shall not be destroyed for such period, not exceeding five years from the dissolution of the company, as the court thinks fit.

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(2) Any creditor or contributory may make representations to the court with regard to the destruction of such books and papers.

(3) A resolution for the destruction of the books and papers of such a company within the said period of five years, or any shorter period fixed by an order of the court in force at the date of such resolution, shall not take effect until the expiration of such period of five years or of such shorter period unless the court shall otherwise direct.

(4) At least one week's notice shall be given to the official receiver of any application to the court for an order for the destruction of the books and papers of a company before the expiration of such period of five years or shorter period.

Applications under section 246 and section 325 of the Act.

194. (1) An application by the official receiver to the court to examine on oath the liquidator or any other person, pursuant to section 246 of the Act, or to confer on the official receiver with respect to the company concerned the powers of investigating the affairs of the company mentioned in subsection (3) of section 325 of the Act, shall be made *ex parte*, and shall be supported by a report to the court filed with the registrar, stating the circumstances in which the application is made.

(2) The report shall for the purposes of such application be prima facie evidence of the statements therein contained.

Books to be Kept, and Returns to be Made, by Officer of the Court

Books to be kept by officers of the court. Forms Nos. 106, 107.

195. (1) The registrar shall keep books in accordance with Forms Nos. 106 and 107, and the particulars given under the different heads in such books shall be entered forthwith after each proceeding has been concluded.

(2) The registrar whose duty it is to keep the books prescribed by these Rules shall make and transmit to the official receiver such extracts from the books, and shall furnish the official receiver with such information and returns, as the official receiver may from time to time require.

Gazetting in a Winding Up by the Court

Gazette notices. Form No. 108.

196. (1) All notices subsequent to the making by the court of a winding-up order in pursuance of the Act or of these Rules requiring publication in the Gazette shall be published by the official receiver or the liquidator, as the case may be.

(2) Where any winding-up order is amended, and also in any case in which any matter which has been published in the Gazette has been amended or altered, or in which a matter has been wrongly or inaccurately published, the official receiver shall arrange for such matter with the necessary amendments and alterations to be republished at the expense of the company's assets, or otherwise, as the official receiver may direct.

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[Subsidiary]

Filing memorandum of Gazette Notices. Form No. 109.

197. (1) Whenever the Gazette contains any advertisement relating to any winding-up proceedings, the official receiver or liquidator, as the case may be, shall file with the proceedings a memorandum referring to and giving the date of such advertisement.

(2) In the case of an advertisement in a local paper, the official receiver or liquidator, as the case may be, shall keep a copy of the paper, and a memorandum referring to and giving the date of the advertisement shall be placed on the file.

(3) For this purpose, one copy of each local paper in which any advertisement relating to any winding-up proceeding in the court is inserted shall be left with the official receiver or liquidator, as the case may be, by the person who inserts the advertisement.

(4) A memorandum under this rule shall be prima facie evidence that the advertisement to which it refers was duly inserted in the issue of the Gazette or newspaper mentioned in it.

Arrest and Committal

To whom warrants may be addressed.

198. A warrant of arrest or any other warrant issued under any of the provisions of the Act or of these Rules may be addressed to a court broker or other officer of the court or to a police officer.

Prison to which person arrested on warrant is to be taken.

199. Where the court issues a warrant for the arrest of a person under any of the provisions of the Act or of these Rules, the prison, to be named in the warrant of arrest, to which the person is committed shall, unless the court otherwise orders, be the prison used by the court in cases of orders of committal made in the exercise by the court of its ordinary jurisdiction.

Prison to which person arrested is to be conveyed, and production and custody of persons arrested.

200. (1) Where a person is arrested under a warrant of arrest issued under any of the provisions of the Act or of these Rules, other than sections 263 and 266 of the Act and rule 58 of these Rules, he shall be forthwith conveyed in the custody of the officer apprehending him to such prison and kept therein for the time mentioned in such warrant, unless sooner discharged by order of the court which originally issued the warrant or otherwise by law.

(2) Where a person is arrested under a warrant issued under section 263 or section 266 of the Act or under rule 58 of these Rules, he shall be forthwith conveyed in custody of the officer apprehending him to the prison, and the officer in charge of such prison shall produce such person before the court as it may from time to time direct, and shall safely keep him until such time as the court shall otherwise order, or such person is otherwise discharged by law.

Miscellaneous

Enlargement or abridgment of time.

201. The court may, in any case in which it sees fit, extend or abridge the time appointed by these Rules or fixed by any order of the court for doing any act or taking any proceeding.

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Formal defect not to invalidate proceedings.

202. (1) No proceedings under the Act or these Rules shall be invalid by reason of any formal defect or any irregularity, unless the court before which any objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of that court.

(2) No defect or irregularity in the appointment of the official receiver or of the appointment or election of a liquidator or member of a committee of inspection shall invalidate any act done by him in good faith.

Application of existing procedure.

203. In all proceedings in or before the court, or any judge, registrar or officer thereof, or over which the court has jurisdiction under the Act or these Rules, where no other provision is made by the Act or these Rules, the practice, procedure and regulations in such proceedings shall, unless the court otherwise directs, be in accordance with the rules and practice of the court.

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[Subsidiary]

SCHEDULE

FORM No. 1 (r. 8)

GENERAL TITLE

IN THE HIGH COURT OF KENYA AT . . . . . .

WINDING-UP CAUSE No. …… . . . . . OF 19……..

(a) Insert full name of Company.

IN THE MATTER OF *(a)*…… . . . . . LIMITED

AND

IN THE MATTER OF THE COMPANIES ACT

FORM No. 2 (r. 7)

SUMMONS (GENERAL)

(*Title*)*

*See Form No. 1.

(a) Name of respondent.

Let *(a)* ……..attend at…….....

(b) Name and description applicant.

on the ……....day of…..,19…..…., at.....
o'clock in the ...……noon, on the hearing of an application by *(b)*

(c) State object of application.

for an order that *(c)*

Dated this…….....…..day of…….. ,19…….

This summons was taken out by …….. of……
Advocates for…….

To ……

Note.-It you do not attend, either in person or by your advocates at the time and place above mentioned, such order will be made, and proceedings taken, as the judge may think just and expedient.

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[Subsidiary]

FORM No. 3 (r. 21)

PETITION (GENERAL FORM)

(*Title*)*

*See Form No. 1

To *(a)* ……..... *(a)* Insert title of Court.

The humble petition of *(b)* ……showeth as follows:– *(b)* Insert full name, title, etc., of petitioner.

1. The ……Limited (hereinafter called "the Company") was in the month of ……. incorporated under the Companies Act.

2. The registered office of the Company is at *(c)* ……. *(c)* State the full situation of the registered office.

and the registered postal address of the Company is at *(d)* ……. *(d)* State the registered postal address.

3. The nominal capital of the Company is Sh. ……. divided into shares of Sh. ……..each. The amount of the capital paid up or credited as paid up is Sh. …….

4. The objects for which the Company was established are as follows:–

To ……. and other objects set forth in the memorandum of association thereof.

[*Here set out in paragraphs the facts on which the petitioner relies, and conclude as follows:* –]

Your petitioner therefore humbly prays either: -

That the …….. Limited may be wound up by the Court under the provisions of the Companies Act

or

That the voluntary winding up of the ……. Limited may be continued but subject to the supervision of the Court,

or

That such order may be made in the premises as shall be just.

Note.– (e) It is intended to serve this petition on …… *(e)* This note will be unnecessary if the Company is petitioner.

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[Subsidiary]

FORM No. 4 (r. 21)

PETITION BY UNPAID CREDITOR ON SIMPLE CONTRACT

(*Title*)*

*See Form No. l.

(a) Insert title of Court.

To *(a)* …….

(b) Insert full name, title, etc., of petitioner.

The humble petition of *(b)* ……

showeth as follows:–

1. The …… Company Limited (hereinafter called "the Company") was in the month of …….. incorporated under the Companies Act.

(c) State the full situation of the registered office.

2. The registered office of the Company is at *(c)* ……..

(d) State the registered postal address.

and the registered postal address of the Company is *(d)* …….

3. The nominal capital of the Company is Sh. …….. divided into shares of Sh……... each. The amount of the capital paid up or credited as paid up is Sh. ……

4. The objects for which the Company was established are as follows: –

To ……. and other objects set forth in the memorandum of association thereof.

[Here set out in paragraphs the facts on which the petitioner relies, and conclude as follows: –]

(e) State consideration for the debt, with particulars so as to establish that the debt claimed is due.

5. The Company is indebted to your petitioner in the sum of Sh. …….. for *(e)* …….

6. Your petitioner has made application to the Company for payment of his debt, but the Company has failed or neglected to pay the same or any part thereof.

7. The Company is [insolvent and] unable to pay its debts.

8. In the circumstances it is just and equitable that the Company should be wound up.

Your petitioner therefore, etc. [*as in Form No. 3*].

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[Subsidiary]

FORM No. 5 (r. 21)

PETITION BY MINORITY SHAREHOLDER

(*Title*)*

*See Form No. l.

To *(a)* ……

(a) Insert title of Court.

The humble petition of *(b)* …….. showeth as follows:–

(b) Insert full name, title, etc., of petitioner.

1. The Company Limited (hereinafter called "the Company") was in the month of ……..incorporated under the Companies Act.

2. The registered office of the Company is at *(c)* …….....

(c) State the full situation of the registered office.

and the registered postal address of the Company is *(d)* ……..

(d) State the registered postal address.

3. The nominal capital of the Company is Sh. ..... ……divided into shares of Sh. .....……each. The amount of the capital paid up or credited as paid up is Sh. ……

4. The objects for which the Company was established are as follows:–

To …… and other objects set forth in the memorandum of association thereof.

[*Here set out in paragraphs the facts on which the petitioner relies and continue as follows:–*]

In these circumstances your petitioner submits that the affairs of the Company are being conducted in a manner oppressive to a part of the members of the Company (including your petitioner), and that, while it would be just and equitable that the Company should be wound up, to do so would unfairly prejudice your petitioner and that part of the members.

Your petitioner therefore humbly prays as follows:–

[*Here set out remedy sought and conclude:–*]

Or that such other order may be made in the premises as shall be just.

Note. - It is intended to serve this petition on ……..

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[Subsidiary]

FORM No. 6 (r.23)

ADVERTISEMENT OF PETITION (FOR WINDING-UP OR SUPERVISION ORDER)

(*Title*)*

*See Form No. 1.

Notice is hereby given that a petition for the winding up of the

above-named Company by *(a)*…….....….

the High Court was on the….....day of…..…….. ,19…...… ,

presented to the said Court by *(b)*

(a) If the winding up is to be subject to supervision insert instead of "by" the words "subject to the supervision of"

(b) Insert name and address of petitioner.

And the said petition is directed to be heard before the Court sitting at…… on the…. day of…… ,19…… , and any creditor or contributory of the said Company desirous to support or oppose the making of an order on the said petition may appear at the time of hearing in person or by his advocate for that purpose and a copy of the petition will be furnished by the undersigned to any creditor or contributory of the said Company requiring such copy on payment of the-regulated charge for the same.

(c) To be signed by the advocate to the petitioner or by the petitioner if he has no advocate.

Signed *(c)*…….

[*Name*]

[*Address*]

Note. - Any person who intends to appear on the hearing of the said petition must serve or send by post to the above-named notice in writing of his intention so to do. The notice must state the name and address of the person, or, if a firm, the name and address of the firm, and must be signed by the person or firm, or his or their advocate, if any, and must be served, or if posted must be sent by post, in sufficient time to reach the above named not later than……noon on…… . . . . . .

(d) If the day appointed for the hearing of the petition is a Monday, then noon on Saturday before such Monday; if any other day of the week, then 4 p.m. on the day immediately preceding the day appointed.

(d) _____ the…… day of …...…..., 19……

four o'clock in the afternoon of…….....….....…

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[Subsidiary]

FORM No. 7 (r. 23)

ADVERTISEMENT OF PETITION BY MINORITY SHAREHOLDER

(*Title*)*

*See Form No. 1.

Notice is hereby given that a petition for an order that *(a)*……..…… or for such other order as shall be just was presented to the High Court holden at…...…..... on the .....…….day of ….....….....… 19…….. , by *(b)*……

(a) Insert remedy sought in prayer of petition.

And that the said petition is directed to be heard before the Court sitting at…… on the…….. day of……,19…… ; and any creditor or contributory of the said Company desirous to support or oppose the making of an order on the said petition may appear at the time of the hearing, in person, or by his advocate, for that purpose; and a copy of the petition will be furnished by the undersigned to any creditor or contributory of the said Company requiring such copy on payment of the regulated charge for the same.

(b) Insert name and address of petitioner.

Signed *(c)*……

[*Name*]

[*Address*]

(c) To be signed by the advocate to the petitioner or by the petitioner if he has no advocate.

Note.-Any person who intends to appear on the hearing of the said petition must serve on or send by post to the above-named notice in writing of his intention so to do. The notice must state the name and address of the person, or, if a firm, the name and address of the firm, and must be signed by the person or firm, or his or their advocate, if any, and must be served, or if posted, must be sent by post in sufficient time to reach the above named not later than……..noon on……

*(d)*_____ the….....…..day of …...…..,19……

four o'clock in the afternoon of……

(d) If the day appointed for the hearing is a Monday, then noon on the Saturday before such Monday; if any other day, then 4 p.m. immediately preceding the day so appointed.

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[Subsidiary]

FORM No. 8 (r. 24)

AFFIDAVIT OF SERVICE OF PETITION ON MEMBERS, OFFICERS, OR SERVANTS

(*Title*)*

*See Form No. 1.

In the matter of a petition dated……..I,……. of…… make oath and say:–

1. [*In the case of service of petition on a Company by leaving it with a member, officer or servant at the registered office, or if no registered office, at the principal or last known principal place of business of the Company*].

That I did on…….. ,the……. day of…….. ,19…….. , serve the above-named Company with the above-mentioned petition by delivering to and leaving with [*name and description*] a member [*or* officer] [or servant] of the said Company a copy of the above-mentioned petition duly sealed with the seal of the Court at [*office or place of business as aforesaid*] before the hour of……. in the…….. noon.

2. [*In the case of no member, officer or servant of the Company being found at the registered office or place of business*].

That I did on……..,the…… day of…… ,19……having failed to find any member, officer or servant of the above-named Company at [*here state registered office or place of business*], leave there a copy of the above-mentioned petition, duly sealed with the seal of the Court, before the hour of……...…... in the…..... noon [*add where such sealed copy was left, e.g. affixed to the door of offices, or placed in letter box, or otherwise*].

3. [*In the case of directions by the Court as to the member, officer or servant of the Company to be served*].

That I did on…….. ,the…… day of…….. ,19…… serve [name or names and description] with a copy of the above-mentioned petition, duly sealed with the seal of the Court, by delivering the same, together with a true copy of the order for substituted service, dated……. ,19…… , personally to the said…….. at [*place*] before the hour of…….. in the……. noon.

4. The said petition is now produced and shown to me marked "A".

Sworn at, etc.

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[Subsidiary]

FORM No. 9 (r. 24)

AFFIDAVIT OF SERVICE OF PETITION ON LIQUIDATOR

(*Title*)*

*See Form No. 1.

In the matter of a petition dated…….. for winding up the above Company by [*or* under the supervision of] the Court [as the case may be].

I,……..... , of……..

make oath and say: -

That I did, on……..... , the……..... day of.....……. ,19….. serve [*name and description*], the Liquidator of the above-named Company, with a copy of the above-mentioned petition, duly sealed with the seal of the Court, by delivering the same personally to the said…….. at [*place*] before the hour of……..... in the……. noon.

The said petition is now produced and shown to me, marked "A".

Sworn at, etc.

FORM No. 10 (r. 25)

AFFIDAVIT VERIFYING PETITION

(*Title*)*

*See Form No. 1.

I, ……, of…….. make oath and say that such of the statements in the petition now produced and shown to me, and marked "A", as relate to *(a)* my own acts and deeds are true, and such of the said statements as relate to the acts and deeds of any other person or persons I believe to be true.

(a) If the petition is by a firm, substitute "the acts and deeds of my said firm".

Sworn at, etc.

FORM No. 11 (r. 25)

AFFIDAVIT VERIFYING PETITION OF A LIMITED COMPANY

(*Title*)*

*See Form No. 1.

I,…….. , of…… make oath and say as follows:–

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[Subsidiary]

1. I am [a director] [the secretary] of…….. Co. Ltd., the petitioner in the above matter, and am duly authorized by the said petitioner to make this affidavit on its behalf.

2. Such of the statements in the petition now produced and shown to me, marked "A", as relate to the acts and deeds of the said petitioner are true, and such of the statements as relate to the acts and deeds of any other person or persons I believe to be true.

Sworn at, etc.

FORM No. 12 (rr. 27 and 36 (2))

ORDER APPOINTING AN INTERIM LIQUIDATOR AFTER PRESENTATION OF PETITION AND BEFORE ORDER TO WIND UP

*See Form No. l.

(*Title*)*

The…… day of……. ,19…….

Upon the application [*etc.*], and upon reading [*etc.*], the Court doth hereby appoint the Official Receiver to be Interim Liquidator of the above-named Company. And the Court doth hereby limit and restrict the powers of the said Interim Liquidator to the following acts, that is to say [*describe the acts which the Interim Liquidator is to be authorized to do and the property of which he is to take possession*].

Note. - It will be the duty of such of the persons as are liable to make out or to concur in making out a statement of affairs, as the Official Receiver may require, to attend on the Official Receiver at such time and place as he may appoint and to give him all information he may require.

FORM No. 13 (r. 29)

NOTICE OF INTENTION TO APPEAR ON PETITION

*See Form No. 1.

(*Title*)*

(a) State full name and address or, if a firm, the name and address of the firm and address

Take notice that *(a)*……. ,of……a creditor for £…….. of …….[or contributory holding *(b)*…….. shares in] the above-named Company intends

to appear on the hearing of the petition advertised to be heard on the……. day of…….. ,19……. , and to support [or oppose] such petition.

(b) State number and class of shares held.

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[*Signed*] *(c)*

[*Address*]

[Subsidiary]
(c) To be signed by the person or his advocate.

To:- ……

FORM No. 14 (r. 30)

LIST OF PARTIES ATTENDING THE HEARING OF A PETITION

(*Title*)*

*See Form No.1.

The following are the names of those who have given notice oftheir intention to attend the hearing of the petition herein on the……day of…… ,19…… :–

Name	Address	Name and address of advocate of party who has given notice	Creditors: amount of debt	Contributories: numer of shares	Opposing	Supporting

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[Subsidiary]

FORM No. 15 (r. 33)

NOTIFICATION TO OFFICIAL RECEIVER OF WINDING-UP ORDER

*See Form No. 1.

(*Title*)*

To the Official Receiver of the Court……..

[*Address*]

Order pronounced this day by the Honourable Mr. Justice…….....…… [*or as the case may be*] for winding up the undermentioned Company under the Companies Act.

Name of company	Registered office of Company	Petitioner's Advocate	Date of presentation of petition

FORM No. 16 (r. 33)

NOTIFICATION TO OFFICIAL RECEIVER OF ORDER PRONOUNCED FOR APPOINTMENT OF INTERIM LIQUIDATOR PRIOR TO WINDING-UP ORDER BEING MADE

*See Form No. 1

(*Title*)*

To the Official Receiver of the Court

[*Address*]

Order pronounced this day by the Honourable Mr. Justice..... [*or as the case may be*] for the appointment of the Official Receiver as Provisional Liquidator of the undermentioned Company prior to any Winding-Up Order being made.

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[Subsidiary]

Name of company	Registered office of Company	Petitioner's Advocate	Date of presentation of petition

FORM No. 17 (r. 36)

ORDER FOR WINDING UP BY THE COURT

(*Title*)* **See* Form No. 1

The ……..day of…..…… , 19……

Upon the petition of the above-named Company [or A.B., of……, etc., a creditor [*or* contributory] of the above-named Company] on the ……..day of……,19…….. , preferred unto the Court, and upon hearing ……for the petitioner, and …….. for …….. , and upon reading the said petition, an affidavit of [the said petitioner], filed [*etc.*], verifying the said petition, an affidavit of L.M., filed [*etc.*], the *Kenya Gazette* of the ……. day of ……..19…….. , the……. newspaper of the ……day of ……, 19…… , [*enter any other papers*], each containing an advertisement of the said petition, [*enter any other evidence*], this Court doth order that the said Company be wound up by this Court under the provisions of the Companies Act, and that the Official Receiver *(a)* be constituted Provisional Liquidator of the affairs of the Company.

(a) or as may be (see section 231 of the Act).

And it is ordered that the costs of……. of the said petition be taxed and paid out of the assets of the said Company.

Note.– It will be the duty of such of the persons as are liable to make out or to concur in making out a statement of affairs, as the Official Receiver may require, to attend on the Official Receiver at such time and place as he may appoint, and to give him all information he may require.

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[Subsidiary]

FORM No. 18 (r. 37 (1) *(d)*)

NOTICE OF ORDER TO WIND UP (FOR NEWSPAPER)

In the matter of ……...…..Limited.

Nature of business:–

Winding-up Order made ……..,19……

Date and place of first meetings:–

Creditors …… , 19…… , at…….

Contributories ……,19……., at……

Official Receiver and Provisional Liquidator.

FORM No. 19 (r. 37 (2))

ORDER FOR WINDING UP, SUBJECT TO SUPERVISION

**See* Form No. l.

(*Title*)*

The ……day of ……,19…….. .

Upon the petition [etc.], this Court doth order that the voluntary winding up of the said ……Limited be continued, but subject to the supervision of this Court, and any of the proceedings under the said voluntary winding up may be adopted as the Court shall think fit; and it is ordered that the Liquidator appointed in the voluntary winding up of the said Company, or other the Liquidator for the time being, do on the ……..day of…… next, and thenceforth every three months, file with the Registrar a report in writing as to the position of, and the progress made with, the winding up of the said Company, and with the realization of the assets thereof, and as to any other matters connected with the winding up as the Court may from time to time direct. And it is ordered that no bills of costs, charges or expenses or special remuneration of any advocate employed by the Liquidator of the said Company or any remuneration, charges or expenses of such Liquidator, or of any manager, accountant, auctioneer, broker or other person, be paid out of the assets of the said Company, unless such costs, charges, expenses or remuneration shall have been taxed or allowed by the Registrar. And it is ordered that all such costs, charges, expenses and remuneration be taxed and ascertained accordingly. And it is ordered that the costs of the petitioner and of [*here insert any directions as to allowance of costs of petitioners and of persons appearing*]. And the creditors, contributories and Liquidator of the said Company, and all other persons interested, are to be at liberty to apply generally as there may be occasion.

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[Subsidiary]

FORM No. 20 (r. 40)

AFFIDAVIT BY SPECIAL MANAGER VERIFYING ACCOUNT

(*Title*)* **See* Form No. l.

I, ……, of ……
make oath and say as follows:–

1. The account hereunto annexed, marked "A", produced and shown to me at the time of swearing this my affidavit, and purporting to be my account as Special Manager of the estate or business of the above-named Company, contains a true account of all and every sums and sum of money received by me or by any other person or persons by my order or to my knowledge or belief for my use on account or in respect of the said estate or business.

2. The several sums of money mentioned in the said account hereby verified to have been paid or allowed have been actually and truly so paid and allowed for the several purposes in the said account mentioned.

3. The said account is just and true in all and every the items and particulars therein contained, according to the best of my knowledge and belief.

Sworn at, etc.

FORM No. 21 (r. 41)

STATEMENT OF AFFAIRS

(*Title*)* **See* Form No. 1.

Statement of affairs on the …...……...day of ……..…..….....,19……

the date _____ of the winding-up order / directed by the Official Receiver *(a)*

(a) Strike out inappropriate words.

I [We] ……,of……..make oath and say that the statement made overleaf and the several lists hereunto annexed marked .....are to the best of my [our] knowledge and belief a full, true and complete statement as to the affairs of the above-named Company, on the …….....day of……

,19....., the date _____ of the winding-up order / directed by the Official Receiver *(a)*

and that the said Company carries on the following business:– *(b)*.

(b) Set out nature of Company's business.

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[Subsidiary]

FORM No. 21 - (*contd.*)

Sworn at …….. this …….day of…… ,19.....… Before me, A Commissioner for Oaths.		Signature[s]

The Commissioner is particularly requested, before taking the affidavit, to ascertain that the full name, address and description of the deponent are stated, and to initial any crossing-out or other alterations in the printed form. A deficiency in the affidavit in any of the above respects will entail its refusal by the Court, and will necessitate its being re-sworn.

Note.– The several lists annexed are not exhibits to the affidavit.

Statement of to be annexed

STATEMENT AS TO THE AFFAIRS OF

.....LIMITED

ON THE .....,. 19..... , THE DATE

OF THE WINDING-UP ORDER

_____ SHOWING ASSETS AT

DIRECTED BY THE OFFICIAL RECEIVER

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[Subsidiary]

FORM No. 21–(*contd.*)

ESTIMATED REALIZABLE VALUES AND LIABILITIES EXPECTED TO RANK

ASSETS NOT SPECIFICALLY PLEDGED (as per list "A")	Estimated realisable values *sh.*
Balance at bank	
Cash in hand	
Marketable securities	
Bills receivable	
Trade debtors	
Loans and advances	
Unpaid calls	
Stock in trade	
Work in progress	
.....	
.....	
Freehold property	
Leasehold property	
Plant and machinery	
Furniture, fittings, utensils, etc.	
Patents, trade marks, etc.	
Investments other than marketable securities	
Other property, viz: -	
.....	
.....	

ASSETS SPECIFICALLY PLEDGED (as per List B)	*(a)* Estimated realizable values	*(b)* Due to secured creditors	*(c)* Deficiency ranking as unsecured(see next page)	Surplus carried to last column
	Sh.	*Sh.*	*Sh.*	*Sh.*
Freehold property				
.....				
.....				

Estimated surplus from assets specifically pledged . . ..

ESTIMATED TOTAL ASSETS AVAILABLE FOR PREFERENTIAL CREDITORS, DEBENTURE HOLDERS SECURED BY A FLOATING CHARGE, AND UNSECURED CREDITORS*

(carried forward to next page) . . ..Sh.

SUMMARY OF GROSS ASSETS	*(d)* *Sh.*
Gross realizable value of assets specifically pledged	
Other assets.	
GROSS ASSETS. .. ..*Sh.*	

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[Subsidiary] Affairs and Lists to Form No. 21.

FORM No. 21–(*contd.*)

ESTIMATED TOTAL ASSETS AVAILABLE FOR PREFERENTIAL CREDITORS, DEBENTURE HOLDERS SECURED BY A FLOATING CHARGE, AND UNSECURED CREDITORS* (brought forward from preceding page) .. .. Sh.		*Sh.*
(e) Gross Liabilities *Sh.*	LIABILITIES (to be deducted from surplus or added to deficiency as the case may be)	
	SECURED CREDITORS (as per List "B") to extent to which claims are estimated to be covered by assets specifically pledged (item *(a)* or *(b)* on preceding page, whichever is the less) ... ... [*Insert in "Gross Liabilities" column only.*]	
	PREFERENTIAL CREDITORS (as per List "C")	
	Estimated balance of assets available for debenture holders secured by a floating charge, and unsecured creditors* .. .. *Sh.*	
	Debenture holders secured by a floating charge (as per List "D")	
	ESTIMATED SURPLUS/DEFICIENCY as regards Debenture Holders* .. .. *Sh.*	
	UNSECURED CREDITORS (as per List "E"):- Estimated unsecured balance on claims of creditors partly secured on specific assets, brought from preceding page *(c)* .. ..

FORM No. 21 - (*Contd.*)

LIST "A"-ASSETS NOT SPECIFICALLY PLEDGED

Statement of Affairs List "A"

[*Full particulars of every description of property not specifically pledged and not included in any other list are to be set forth in this list*]

	Full statement and nature of property	Book value	Estimated to produce
State name of bankers.	Balance at bank . . . Cash in hand. . . . Marketable securities, viz.: . . . Bills receivable (as per Schedule I) . . . Trade debtors (as per Schedule II) . . . Loans and advances,viz.:. . . . Unpaid calls (as per Schedule III) . . . Stock in trade. . . . Work in progress . . . Freehold property, viz.:- Leasehold property, viz.:- Plan and machinery, viz.:- Furniture, fittings, utensils, etc. Patents, trade marks, etc., viz.:- . . . Investments other than marketable ecurities, viz.:- Other property, viz.:-		
State nature.			
State nature.			

[*Signed*]

Dated… ....……..……, 19….....

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SCHEDULE 1—BILLS OF EXCHANGE, PROMISSORY NOTES, ETC. ON HAND AVAILABLE AS ASSETS

The names to be arranged in alphabetical order and numbered consecutively

STATEMENT OF AFFAIRS
SCHEDULE I TO LIST "A"

No.	Name of acceptor of bill or note	Address, etc.	Amount of bill or note		Date when due	Estimated to produce		Particulars of any property held as security for payment of bill or note
			Sh.	*cts.*		*Sh.*	*cts.*	

[*Signed*]

Dated…. . . .. …… , 19…....….

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FORM No. 21 - (*Contd.*)

SCHEDULE II-TRADE DEBTORS

Statement of Affairs
Schedule II to List "A"

[*The names to be arranged in alphabetical order and numbered consecutively*]

NOTE.-If the debtor to the Company is also a creditor, but for a less amount thn his indebtness, the gross amount due to the Company and the amount of the contra account should be shown in the third column, and the balance only be inserted under the heading "Amount of Debt" thus:- *Sh.* *cts.*

Due to Company . .. .

FORM No. 21– (*contd.*)

SCHEDULE III-UNPAID CALLS

Statement of Affairs
Schedule III to List "A"

[*The names to be arranged in alphabetical order and numbered consecutively*]

Consecutive No.	No. in share register	Name of shareholder	Address	No. of shares held	Amount of call per share unpaid		Total amount due		Estimated to realize	
					Sh.	*cts.*	*Sh.*	*cts.*	*Sh.*	*cts.*

[*Signed*] Dated.....……, 19…..…

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FORM No. 21 - (*Contd.*)

LIST "B"

ASSETS SPECIFICALLY PLEDGED AND CREDITORS FULLY OR PARTLY SECURED

[*Not including Debenture Holders secured by a Floating Charge*]

Statement of Affairs
List "B"

[*The names of the secured creditors are to be shown against the assets on which their claims are secured, numbered consecutively, and arranged in alphabetical order as far as possible*]

Particulars of assets specifically pledged	Date when security given	Estimated value of security	No.	Name of creditor	Address and occupation	Amount of debt		Date when contracted		Consideration		Balance of debt unsecured carried to List "E"		Estimated surplus from security	
								Month	Year						
						Sh.	*cts.*			*Sh.*	*cts.*	*Sh.*	*cts.*		*cts.*

[*Signed*] Dated……....……, 19….....

[Subsidiary]

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FORM No. 21 - (*Contd.*)

LIST "C"

PREFERENTIAL CREDITORS FOR RATES, TAXES, SALARIES AND WAGES AND OTHERWISE

Statement of Affairs

List "C"

[*The names to be arranged in alphabetical order and numbered consecutively*]

No.	Name of creditor	Address and occupation	Nature of claim	Period during which claim accrued due	Date when due	Amount of claim		Amount payable in full		Balance not preferential carried to List "E"	
						Sh.	*cts.*	*Sh.*	*cts.*	*Sh.*	*cts.*

[*Signed*] .....Dated ..... 19.....

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FORM No. 21 - (*Contd.*)

LIST "D"

LIST OF DEBENTURE HOLDERS SECURED BY A FLOATING CHARGE

Statement of Affairs
List "D"

[*The names to be arranged in alphabetical order and numbered consecutively.*
Separate list must be furnished of holders of each issue of debentures, should more than one issue have been made]

No.	Name of holder	Address	Amount		Description of assets over which security extends
			Sh.	*cts.*	

[*Signed*] .....Dated ..... 19.....

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FORM No. 21 - (*Contd.*)

LIST "E"

UNSECURED CREDITORS

Statement of Affairs
List "E"

[*The names to be arranged in alphabetical order and numbered consecutively*]

NOTES.-1. When there is a contra account against the creditor less than his claim against the Company, the amount of the creditor's claim and the amount of the contra account should be shown in the third column and the balance only be inserted under the heading "Amount of Debt" thus:-

	Sh.	*cts.*
Total amount of claim ……		
Less: contra account ……..		

No such set-off should be included in Schedule I attached to List "A".

2. The particulars of any bills of exchange and promissory notes held by a creditor should be inserted immediately below the name and address of such creditor.

No.	Name	Address and occupation	Amount of debt		Date when contracted		Consideration
			Sh.	*Cts.*	Month	Year	
	Unsecured balance of creditors partly secured-brought forward from List "B" … …. Balance not preferential or preferential creditors brought forward from List "C"...						

[*Signed*] .....Dated ..... 19.....

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FORM No. 21 - (*Contd.*)

LIST "F"

LIST OF PREFERENCE SHAREHOLDERS

Statement of Affairs
List "F"

[*The names to be arranged in alphabetical order and number consecutively*]

Consecutive No.	Register No.	Name of shareholder	Address	Nominal amount of share	No. of shares held	Amount per share called up		Total amount called up	
						Sh.	*cts.*	*Sh.*	*cts.*

[*Signed*] .....Dated .....19.....

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FORM No. 21 - (*Contd.*)

LIST "G"

LIST OF ORDINARY SHAREHOLDERS

Statement of Affairs
List "G"

[*The names to be arranged in alphabetical order and number consecutively*]

Consecutive No.	Register No.	Name of shareholder	Address	Nominal amount of share	No. of shares held	Amount per share called up		Total amount called up	
						Sh.	*cts.*	*Sh.*	*cts.*

[*Signed*] .....Dated .....19.....

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FORM No. 21 - (*Contd.*)

LIST "H"

DEFICIENCY OF SURPLUS ACCOUNT

Statement of Affairs
List "H"

The period covered by this Account must commence on a date not less than three years before the date of the Winding –up Order (or the date directed by the Official Receiver) or, if the Company has not been incorporated for the whole of that period, the date of the formation of the Company, unless the Official Receiver otherwise agrees.

	Sh.	
ITEMS CONTRIBUTING TO DEFICIENCY (OR REDUCING SURPLUS) –		
(COPY ANNEXED) .. .. ..

FORM No. 21 - (*contd.*)

LIST "H"- (*Contd.*)

NOTE AS TO NET TRADING PROFITS AND LOSSES:-	*Sh.*
Particulars are to be inserted here (so far as applicable) of the items mentioned below, which are to be taken into account in arriving at the amount of net trading profits or losses shown in this Account:-	
Provisions for depreciation, renewals or diminution in value of fixed assets …….....…..	
Charges for East African income tax and other East African taxation on profits …….....….	
Interest on debentures and other fixed loans ……....	
Payments to directors made by the Company and required by law to be disclosed in the accounts……....	
Exceptional or non-recurring expenditure …….....……	
Less: exceptional or non-recurring receipts: - ……....	
Sh.	
Balance, being other trading profits or losses.....…….....*Sh.*	
Net b trading profits or losses as shown in Deficiency or Surplus Account above ……..	

[*Signed*] .....Dated .....19.....

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FORM No. 21 - (*Contd.*)

LIST "I"

Statement of Affairs
List "I"

IN SUBSTITUTION FOR SUCH OF THE LISTS "A" TO "H" AS WILL HAVE TO BE RETURNED BLANK

LIST	PARTICULARS	REMARKS Where no entries are made on any one or more of the Lists "A" to "H" the word "Nil" should be inserted in this column opposite the List or Lists thus left blank
A	Assets not specifically pledged …….....…..	
B	Assets specifically pledged and creditors fully or partly secured (not including debenture holders secured by a floating charge).....……..	
C	Preferential creditors for rates, taxes, salaries, wages and otherwise.....……	
D	Debenture holders secured by floating charge….....…….	
E	Unsecured creditors.....……	
F	Preference shareholders.....……..	
G	Ordinary shareholders.....……..	
H	Deficiency or Surplus account.....……	

[*Signed*] .....Dated .....19.....

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[Subsidiary]

FORM No. 22 (r. 47 (1)

REPORT OF RESULT OF MEETING OF CREDITORS OR CONTRIBUTORIES

See Form No. l.

(*Title*)*

In the matter of ..... Limited.

I,……., A.B., the Official Receiver of the Court [or as the case may be],chairman of a meeting of the creditors [*or contributories*] of the above-named Company, summoned by advertisement in the…… newspaper, of the…….. 19…… , and in the *Kenya Gazette* of the ……..,19….. , and by notice dated…… , 19……. , and held on the…… day of…….. 19…….. , at…….. do hereby report to the Court the result of such meeting as follows: -

The said meeting was attended, either personally or by proxy, by…….. creditors whose proofs of debt against the said Company were admitted for voting purposes, amounting in the whole to the value of Sh. …… [*or* by……. contributories, holding in the whole …….. shares in the said Company, and entitled respectively by the regulations of the Company to…… votes]. The question submitted to the said meeting was, whether the creditors [*or* contributories] of the said Company wished that an application should be made to the Court for appointing (1) a Liquidator in the place of the Official Receiver and (2) a Committee of Inspection [*or* other proposal submitted to the meeting].

The said meeting was unanimously of opinion that the said proposal should [*or* should not] be adopted; [*or* the result of the voting upon such question as follows: - *(a)*]

(a) Set out total number and value of creditors or total number and voting power of contributories voting for and against each resolution.

Dated this …….....…day of…….....……. 19..……

Chairman.

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[Subsidiary]

FORM No. 23 (r. 47 (2))

ORDER APPOINTING LIQUIDATOR

(*Title*)* **See* Form No. 1.

The…….....…….. day of……. 19...…..

Upon the application of the Official Receiver and Provisional Liquidator of the above-named Company, by summons dated…….. ,19…….. , and upon hearing the Applicant in person and upon reading the order to wind up the said Company dated……. ,19……. , and the reports of the Official Receiver of the results of the meetings of creditors and contributories made to the Court and respectively dated the…….. , 19…… , and the affidavit of…….. as to the fitness of the Liquidator hereinafter named filed on the……. day of…….. ,19……

It is ordered that ……. , of ……be appointed Liquidator of the above-named Company.

(a) And it is ordered that the following persons be appointed a Committee of Inspection to act with the said Liquidator, namely:– *(a)* To be struck out if no Committee of Inspection appointed.

And it is ordered that the said Liquidator do within seven days from the date of this order give security to the satisfaction of the Official Receiver as provided by the Companies (Winding Up) Rules. And notice of this order is to be gazetted and advertised in the ……..

FORM No. 24 (r. 47 (5))

No. of Company

NOTICE OF APPOINTMENT OF LIQUIDATOR ON WINDING UP BY THE COURT

Name of Company…….. Limited
Presented by……..

WINDING UP BY THE COURT

To the Registrar of Companies.

I [We],…… ,of…… hereby give you notice that, by an order of the…….. Court dated the……. day of…… ,19……. , I [we] have been appointed Liquidator[s] of ……..Limited.

Dated this…….. day of……. ,19……..

[*Signature*] *(a)* *(a)* To be signed by each Liquidator if more than one.

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[Subsidiary]

FORM No. 25 (r. 47 (7))

ADVERTISEMENT OF APPOINTMENT OF LIQUIDATOR

In the matter of…….Limited.

By order of the……., dated the.....……day of…….....……

19…….. , Mr……. ,of…….. , has been appointed Liquidator of the above-named Company with [*or* without] a Committee of Inspection.

Dated this…… day of…… , 19……

FORM No. 26 (r. 48 *(d)*)

CERTIFICATE THAT LIQUIDATOR OR SPECIAL MANAGER HAS GIVEN SECURITY

(*Title*)*

**See* Form, No. l.

This is to certify that…….. , of…… , who was on the…… day of…… , 19…….. , appointed Liquidator [*or* Special Manager] of the above-named Company, has duly given security to the satisfaction of the Official Receiver.

Dated this day…….. of…… ,19……

Official Receiver.

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[Subsidiary]

FORM No. 27 (r. 50)

No. of Company

DECLARATION OF SOLVENCY EMBODYING A STATEMENT OF ASSETS AND LIABILITIES ON MEMBERS' VOLUNTARY WINDING UP

Name of Company……..... Limited.

Presented by:…….....……

DECLARATION OF SOLVENCY

We,…… , of…… , and……...…… , of…, being

all the
_____ directors of…….....…… , do solemnly and the majority of the

sincerely declare that we have made a full inquiry into the affairs of this Company, and that, having so done, we have formed the opinion that this Company will be able to pay its debts in full within a period of…….. * months from the commencement of the winding up, and we append a statement of the Company's assets and liabilities as at…… ,19…… , being the latest practicable date before the making of this declaration. And we make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Oaths and Statutory Declarations Act.

*Insert a period of months not exceeding twelve.

Declared at……
this……. day of……. ,19…….
Before me,
A Commissioner for Oaths
or Notary Public or Magistrate.

Delete as necessary.

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[Subsidiary]

FORM No. 27– (*Contd.*)

STATEMENT OF ASSETS AND LIABILITIES

Statement as at……. ,19……. , showing assets at estimated realizable values and liabilities expected to rank.

ASSETS AND LIABILITIES			Estimated to realise or to rank for payment
ASSETS:-			*Sh.*
Balance at bank..			
Cash in hand			
Marketable securities			
Bills receivable			
Trade debtors..			
Loans and advances			
Unpaid calls			
Stock in trade			
Work in progress			
....			
....			
....			
Freehold property			
Leasehold property..			
Plant and machinery..			
Furniture, fittings, utensils, motor vehicles, etc.			
Patents, trade marks, etc.			
Investments other than marketable securities..			
Other property, viz.: -			
....			
....			
Estimated realizable value of assets.. .. .. *Sh.*			
LIABILITIES:-			
Secured on specific assets, viz.:-			
.....			
Secured by floating charge [s]			
Estimated cost of liquidation and other expenses including interest accruing until payment of debts in full... ... ... *Sh.*			
Unsecured creditors (amounts estimated to rank for payment)			
Trade accounts			
Bills payable...			
Accrued expenses...			
Other liabilities:			
....			
....			
Contingent liabilities:-			
....			
....			
Estimated surplus after paying debts in full ... .*Sh.*			

Remarks:

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[Subsidiary]

FORM No. 28 (r. 51)

No. of Company

NOTICE OF APPOINTMENT OF LIQUIDATOR IN

MEMBERS' VOLUNTARY WINDING UP

Name of Company……. Limited.

Nature of Business:……..

Presented by:

MEMBERS' VOLUNTARY WINDING UP

To the Registrar of Companies.

I [We], …… of…… hereby give you notice that I [we] have been appointed Liquidator[s] of ……
Limited, by *(a)* resolution of the Company, dated the…… day of……19…....…

(a) State how appointed, whether by resolution of the Company, or how otherwise, and adapt if necessary.

Dated this…..... day of……19…….

[*Signature*] *(b)*

(b) To be signed by each Liquidator if more than one.

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[Subsidiary]

FORM No. 29 (r. 51)

No. of Company

NOTICE OF APPOINTMENT OF LIQUIDATOR IN CREDITORS' VOLUNTARY WINDING UP

Name of Company…….....……..... Limited.
Nature of Business:
Presented by:

CREDITORS' VOLUNTARY WINDING UP

To the Registrar of Companies.

I [We],…….... , of……..…… , hereby give notice that I [we] have been appointed Liquidator[s] of ……Limited, by *(a)*……..

(a) State how appointed, whether by the creditors of the Company, or how otherwise.

(b) To be signed by each Liquidator if more than one.

[*Signature*] *(b)*

Dated this.....…..day of.....……. ,19...……

FORM No. 30 (r. 52)

STATEMENT OF ASSETS AND LIABILITIES

To be submitted to a meeting of creditors pursuant to section 28 of the Companies Act by the Liquidator in a Members' Voluntary Winding Up, if he is of the opinion that the Company is unable to pay its debts in full within the period stated in the Declaration of Solvency , viz . …….. * months from the commencement of the Winding Up.

*Insert period shown in the Declaration of solvency.

..... Limited
(in Liquidation).

Statement as……. ,19…… , showing assets at estimated realizable values and liabilities expected to rank.

(Date of commencement of Winding Up…… ,19……. .)

Liquidator's Remarks:

In particular the Liquidator should draw attention to any item where after taking his receipts and payments into account there is a substantial difference between his estimate and the director's estimate in the statement annexed to the Declaration of Solvency.

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[Subsidiary]

FORM No. 30 - (*Contd.*)

..... Limited (in liquidation)

STATEMENT AS AT…… ,19…. , SHOWING ASSETS AT ESTIMATED REALIZABLE VALUES AND LIABILITIES EXPECTED TO RANK

(DATE OF COMMENCEMENT OF WINDING UP……..... ,19.....….)

Estimated realizable values Sh.

ASSETS NOT SPECIFICALLY PLEDGED:

Balance at bank .. ..
Cash in hand.. .. ..
Marketable securities.. .. ..
Bills receivable .. ..
Trade debtors .. ..
Loans and advances.. .. ..
Unpaid calls.. .. ..
Stock in trade.. . .. .
Work in progress.. .. ..
....
....
Freehold property .. ..
Leasehold property .. ..
Plant and machinery.. .. ..
Furniture, fittings, utensils, etc... .. ..`
Patents, trade marks, etc.. .. ..
Investments other than .marketable, securities.. .. ..
Other property, viz.: -
....
....

ASSETS SPECIALLY PLEDGED	*(a)* Estimated realizable values *Sh.*	*(b)* Due to secured creditors	*(c)* Deficiency ranking as Unsecured (see next page) *Sh.*	Surplus carried to last column
Freehold property				
.....	*Sh.*	*Sh.*	*Sh.*	*Sh.*
.....				
	Sh.	*Sh.*	*Sh.*	*Sh.*

Estimated surplus from assets specifically pledged . . ..

~~ESTIMATED TOTAL~~ ASSETS AVAILABLE FOR PREFERENTIAL CREDITORS, DEBENTURE HOLDERS SECURED BY A FLOATING CHARGE, AND UNSECURED CREDITORS*
(*carried forward below*) . . .. .Sh.

SUMMARY OF GROSS ASSETS	*(d)* *Sh.*
Gross realizable value of assets specifically pledged	
Other assets.	
Gross assets. .. .. *Sh.*	

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[Subsidiary]

FORM No. 30–(*Contd.*)

ESTIMATED TOTAL ASSETS AVAILABLE FOR PREFERENTIAL CREDITORS, DEBENTURE HOLDERS SECURED BY A FLOATING CHARGE, AND UNSECURED CREDITORS* (brought forward from above) … … … .. … .. .. *Sh.*		*Sh.*
(e) Gross liabilities *Sh.*	LIABILITIES (to be deducted from surplus or added to deficiency as the case may be)	
	SECURED CREDITORS to extent to which claims are estimated to be covered by assets specifically pledged (item *(a)* or *(b)* on preceding page whichever is the less) . .. .

[Subsidiary]

*These figures must be read subject to the following notes:–
Strike out *(f)* or *(g)*.

(1) *(f)* there is no unpaid capital liable to be called up or

(g) The nominal amount of capital liable to be called up is Sh. .....estimated to produce Sh. .. ..which is[*not*]charged in favour of debenture holders.

(2) The estimates are subject to costs of the winding up and to any surplus or deficiency on trading pending realization of assets.

FORM No. 31 (r. 54)

ORDER DIRECTING A PUBLIC EXAMINATION

(*Title*)*

*See Form No. 1.

The…..…… day of…… ,19.....….

Upon reading the reports of the Official Receiver in the above matter, dated respectively the….. day of…….. ,19….. . the……day of……. ,19…. , and

It is ordered that the several persons whose names and addresses are set forth in the schedule hereto do attend before the court on a day and at a place to be named for the purpose ,and be publicly examined as to the promotion or formation of the company, as to the conduct of the business of the Company and as to their conduct and dealings as directors or officers of the Company.

THE SCHEDULE REFERRED TO

Name	Address	Connection with the Company

FORM No. 32 (r. 56)

NOTICE TO ATTEND PUBLIC EXAMINATION

(*Title*)*

*See Form No. 1.

Whereas by an order of this Court, made on the …….day of…… , 19….. , it was ordered that you, the undermentioned…… , should attend before the ……..Court, on a day and at a place to be named for the purpose, and be publicly examined as to the promotion or formation of the Company and as to the conduct of the business of the Company, and as to your conduct

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[Subsidiary]

and dealings as *(a)*

(a) Insert director or officer [or as the case may be].

And whereas the….. day of…….. , 19….. , at ……..o'clock in the……. noon, before the…… sitting at…… , has been appointed as the time and place for holding the said examination.

Notice is hereby given that you are required to attend at the same time and place, and at any adjournments of the examination which may be ordered, and to bring with you and produce all books, papers and writings and other documents in your power in any way relating to the above-mentioned Company. And take notice that if you fail, without reasonable excuse, to attend at such time and place and at any adjournments of the said public examination which may be ordered, you will be liable to be committed to prison without further notice.

Dated this ….....…day of……. 19....…..

Official Receiver

To:

FORM No. 33 (r. 58)

WARRANT AGAINST PERSON WHO FAILS TO ATTEND EXAMINATION

(*Title*)*

*See Form No. 1.

To X.Y., the officer of this Court and all police officers within the jurisdiction of the said Court and to the officer in charge of the [*here insert the name of the prison*].

(a) Name of person required to attend.

Whereas by order of the Court dated…… , 19…… , *(a)*…….. was ordered to attend before the Court on a day and at a place to be named for the purpose of being publicly examined.

And whereas, by evidence taken upon oath, it hath been made to appear to the satisfaction of the Court that the….. day of…….. 19…… ,at…… o'clock in the….. noon, before a judge of the High Court sitting at *(b)*……. , was appointed as the time and place for holding the said examination, and that notice of the said order and of the said time and place so appointed was duly served upon the said *(a)* ……..

(b) Place of examination.

[And whereas the said *(a)* ……..did without good cause fail to attend on the said…… day of…… , 19…… , for the purpose of being examined, according to the requirements of the said order of this Court made on the…….. day of…….. ,19… , directing him so to attend] [or and that the said *(a)* ……. has absconded] [*or* that there is reason to believe that the said *(a)* …….. is about to abscond] with a view to avoiding examination under the Companies Act].

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[Subsidiary]

These are therefore to require you the said ……..and such police officers as aforesaid to take the said *(a)* ……..and to deliver him to the officer in charge of the above-named prison, and you the said officer in charge to receive the said *(a)*…….. and him safely to keep in the said prison until such time as this Court may order.

Dated this…. day of…….. , 19……

FORM No. 34 (r. 59)

NOTES OF PUBLIC EXAMINATION WHERE A SHORTHAND WRITER IS APPOINTED

(*Title*)*

*See Form No. l.

Public Examination of *(a)*……
Before..... at the Court..... this ….....…
day of…… , 19……

(a) Mr. an officer [or as the case may be] of the above-named Company.

The above-named ……., being sworn and examined at the tune and place above mentioned, upon the several questions following being put and propounded to him, gave the several answers thereto respectively following each question, that is to say: - *(b)*

(b) Here set out the questions and the answers made thereto.

These are the notes of the public examination referred to in the memorandum of public examination of……...… taken before me this …….....day of ……..,19….....

FORM No. 35 (r.35)

NOTES OF PUBLIC EXAMINATION WHERE A SHORTHAND WRITER IS NOT APPOINTED

(*Title*)*

*See Form No. l.

Public Examination of *(a)*…….
Before at the Court this ……..day of…… ,19….

(a) Mr. an officer [or as the case may be] of the above-named Company

The above-named , being sworn and examined
at the time and place above mentioned, upon his oath saith as follows: - *(b)*

(b) Here set out the questions and the answers made thereto.

These are the notes of the public examination referred to in the memorandum of public examination of…..……. , taken before me this…..... day of……..... ,19…....

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[Subsidiary]

FORM No. 36 (r. 63 (2))

DECLARATION OF SHORTHAND WRITER

See Form No. l.

(*Title*)*

Before

I, ……., of…… , the shorthand writer appointed by this Court to take down the examination of…… do solemnly and sincerely declare that I will truly and faithfully take down the questions and answers put to and given by the said…… in this matter, and will deliver true and faithful transcripts thereof as the Court may direct.

Dated this…… day of ……..,19…....

Declared before me at the time and place above mentioned.

FORM No. 37 (r. 65 (3))

DISCLAIMER OF LEASE

See Form No.1.

(*Title*)*

Pursuant to an order of the Court dated the ……day of …….19….

I, ……,the Liquidator of the above-named Company, hereby disclaim all interest in the lease dated the……. day of ……..,19 ….whereby the premises *(a)* ……were demised to ……at a rent of Sh…….. per annum for a term of……..

(a) Insert description of the property disclaimed.

Notice of this disclaimer has been given to…….

Dated this……..... day of …….....19……...

Liquidator

FORM No. 38 (r. 65 (3))

NOTICE OF DISCLAIMER OF LEASE

See Form No. l.

(*Title*)*

Take notice that, pursuant to an order of the Court dated the…….....

day of ……, 19……. , I,……., the Liquidator of the above-named Company, by writing under my hand bearing date the …..... day

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[Subsidiary]

of……. , 19…… , disclaimed all interest in the lease dated the …….. day of…..…… , 19……. whereby the premises *(a)*…...…… were demised to……. at a rent of Sh…..…… per annum for a term of……

(a) Insert description of the property disclaimed.

The above-mentioned disclaimer has been filed at the office of the Registrar at *(b)*……

(b) State address.

Dated this…..... day of……..... „19.....……

Liquidator.

To:-
[*Address*]

FORM No. 39 (r. 69)

NOTICE BY LIQUIDATOR REQUIRING PAYMENT OF MONEY OR DELIVERY OF BOOKS, ETC., TO LIQUIDATOR

(*Title*)*

*See Form No.1.

Take notice that I, the undersigned *(a)*…… , have been appointed Liquidator of the above-named Company, and that you, the under-mentioned *(b)*……. , are required, within…… days after service hereof, to pay to me [or deliver, convey, surrender or transfer to or into my hands] as Liquidator of the said Company, at my office, situate at *(c)*…… , the sum of Sh…… , being the amount of debt appearing to be due from you on your account with the said Company [or any money, property, books or papers] [or specifically describe the property now being in your hands], and to which the said Company is entitled [or otherwise, as the case may be].

(a) Name of Liquidator.

(b) Name of person to whom notice is addressed.

(c) Address of Liquidator's office.

Dated this……. day of ……., 19….. .

[*Signed*]

Liquidator

To:-*(b)*
[*Address*]

FORM No. 40 (r. 70)

PROVISIONAL LIST OF CONTRIBUTORIES TO BE MADE OUT BY LIQUIDATOR

(*Title*)*

*See Form No. 1.

The following is a list of members of the Company liable to be placed on the list of contributories of the said Company, made out by me from the books and papers of the said Company, together with their respective addresses a

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[Subsidiary]

nd the number of shares [or extent of interest] to be attributed to each and the amount called up and the amount paid up in respect of such shares [or interest] so far as I have been able to make out or ascertain the same. In the first part of the list, the persons who are contributories in their own right are distinguished.

In the second part of the list, the persons who are contributories as being representatives of, or being liable for the debts of, others are distinguished.

FIRST PART–CONTRIBUTORIES IN THEIR OWN RIGHT

(1) Serial No.	(2) Name and description.	(3) Address	(4) Number of shares [*or* extent of interest]	(5) Amount called up at date of commencement of winding up.	(6) Amount paid up at date of commencement of winding up.

SECOND PART-CONTRIBUTORY AS BEING REPRESENTATIVES OF, OR LIABLE FOR THE DEBTS OF, OTHERS

(1) Serial No.	(2) Name and descrip-tion.	(3) Address	(4) In what character included.	(5) Number of shares [*or* extent of interest]	(6) Amount paid up at date of commencement of winding up.	(7) Amount paid up at date of commencement of winding up.

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[Subsidiary]

FORM No. 41 (r. 71)

NOTICE TO CONTRIBUTORIES OF APPOINTMENT TO SETTLE LIST OF CONTRIBUTORIES

(*Title*)* **See* Form No. l.

Take notice that I, ……, the Liquidator of the above-named Company, have appointed the……. day of……. ,19…..at …….. o'clock in the ……..noon, at *(a)*…… , to settle the list of the contributories of the above-named Company, made out by me, pursuant to the Companies Act, and the rules thereunder, and that you are included in such list. The character and the number of shares [or extent of interest] in and for which you are included and the amount called up and the amount paid up in respect of such shares [or interest] is stated below; if no sufficient cause is shown by you to the contrary at the time and place aforesaid, the list will be settled, including you therein. *(a)* Insert place of appointment.

Dated this ….....day of…….. 19….....

Liquidator.

To Mr. A.B. [*or to his advocate*].

(1) Serial No.	(2) Name and descrip-tion.	(3) Address	(4) In what character included.	(5) Number of shares [*or* extent of interest]	(6) Amount paid up at date of commencement of winding up.	(7) Amount paid up at date of commencement of winding up.

Note.– Contributories are under no obligation to attend the appointment referred to in the above notice if they are satisfied that the particulars contained in the notice are correct.

A shareholder's name cannot be omitted from the list of contributories on account of his inability to pay calls; this question will be dealt with when application is made for payment of the calls.

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[Subsidiary]

A change of address may be notified by giving notice by post BEFORE the date fixed for the appointment.

FORM No. 42 (r. 71)

AFFIDAVIT OF POSTAGE OF NOTICES OF APPOINTMENT TO SETTLE LIST OF CONTRIBUTORIES

**See Form No. 1.*

(*Title*)*

I, ……..,a *(a)*…….. , make oath and say as follows:–

(a) State the description of the deponent.

1. That I did on the….. day of…… 19…… send to each contributory mentioned in the list of contributories made out by the [Official Receiver and] Liquidator on the…….. day of…… , 19……. , and now on the file of proceedings of the above-named Company, at the address appearing in such list, a notice of the time and place of the appointment to settle the list of contributories in the form hereunto annexed marked "A", except that in the tabular form at the foot of such copies respectively I inserted the number on list, name, address, description, in what character included, the *(b)*…… , the amount called up and the amount paid up in respect of the shares [*or* interest] of the person on whom such copy of the said notice was served.

(b) "Number of shares" or "extent of Interest".

2. That I sent the said notices by putting the same prepaid into the post office at ……before the hour ……of …….o'clock in the…… noon on the said day.

Sworn at, etc.

FORM No. 43 (r. 72)

CERTIFICATE OF LIQUIDATOR OF FINAL SETTLEMENT OF THE LIST OF CONTRIBUTORIES

**See Form No. 1*

(*Title*)*

Pursuant to the Companies Act, and to the rules made thereunder, I, the undersigned, being the Liquidator of the above-named Company, hereby certify that the result of the settlement of the list of contributories of the above-named Company, so far as the said list has been settled up to the date of this certificate, is as follows:-

(1) The several persons whose names are set forth in the second column of the First Schedule hereto have been included in the said list of contributories as contributories of the said Company in respect of the *(a)* ……..set opposite the names of such contributories respectively in the said Schedule.

(a)"Number of shares" or "extent of Interest".

I have, in the first part of the said Schedule, distinguished such of the said several persons included in the said list as are contributories in their own right.

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[Subsidiary]

I have, in the second part of the said Schedule, distinguished such of the said several persons in the said list as are contributories as being representatives of or being liable for the debts of others.

2. The several persons whose names are set forth in the second column of the Second Schedule hereto were included in the provisional list of contributories and have been excluded from the said list of contributories.

3. I have, in the fifth column of the first part of the First Schedule and in the sixth column of the second part of the First Schedule and in the same column of the Second Schedule, set forth opposite the name of each of the several persons respectively the date when such person was included in or excluded from the said list of contributories.

4. I have, in the sixth and seventh columns of the first part of the First Schedule hereto and in the seventh and eight columns of the second part of the said Schedule, set forth opposite the names of each of the said persons respectively the amount called up at the date of the commencement of the winding up and the amount paid up at such date in respect of their shares [or interest].

5. Before settling the said list, I was satisfied by the affidavit of ……., clerk to ……., duly filed with the proceedings herein, that notice was duly sent by post to each of the persons mentioned in the said list, informing him that he was included in such list in the character and for the *(a)*…….....stated therein, and of the amount called up and the amount paid up in respect of such shares [or interest] and of the day appointed for finally settling the said list.

Dated this ……day of ……19…....

Liquidator.

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[Subsidiary]

FORM No. 43-(*Contd.*)

In the matter of …….....Limited.

THE FIRST SCHEDULE ABOVE REFERRED TO

FIRST PART-CONTRIBUTORIES IN THEIR OWN RIGHT

(1) Serial No. in list	(2) Name and descrip-tion.	(3) Address	(4) Number of shares [*or* extent of interest]	(5) Date when included in the list	(6) Amount paid up at date of commencement of winding up	(7) Amount paid up at date of commencement of winding up
					Sh.	*Sh.*

SECOND PART-CONTRIBUTORIES AS BEING REPRESENTATIVES OF, OR LIABLE FOR THE DEBTS OF, OTHERS

(1) Serial No. in list	(2) Name and descrip-tion.	(3) Address	(4) In what character included.	(5) No. of shares [*or* extent of interest]	(6) Date when included in the list.	(7) Amount called up at date of com-mencement of windingup	(8) Amount called up at date of com-mencement of winding up
						Sh.	*Sh.*

In the matter of …….....Limited.

THE SECOND SCHEDULE ABOVE REFERRED TO

(1) Serial No. in list	(2) Name and description.	(3) Address	(4) In what character proposed to be included	(5) Number of shares [*or* extent of interest]	(6) Date when excluded from the list

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[Subsidiary]

FORM No. 44 (r. 73)

NOTICE TO CONTRIBUTORY OF FINAL SETTLEMENT OF LIST OF CONTRIBUTORIES AND THAT HIS NAME IS INCLUDED

(*Title*)*

**See Form No. l.*

Take notice that I,…..…… , the Liquidator of the above-named Company, have, by certificate dated the……..... day of…...……. ,19…….. , under my hand, finally settled the list of contributories of thesaid Company, and that you are included in such list. The character and the number of shares [or extent of interest] in and for which you are included, and the amount called up and the amount paid up in respect of such shares [or interest] is stated below.

Any applications by you to vary the said list of contributories, or that your name may be excluded therefrom, must be made by you to the Court within twenty-one days from the service on you of this notice, or the same will not be entertained.

The said list may be inspected by you at the Chambers of the Registrar at *(a)*…….. on any day between the hours of…….. and……. *(a)* State address.
Dated this……..... day of…….. 19……

Liquidator.

To

[*or* to his advocate].

(1) Serial No. in list	(2) Name and descrip-tion.	(3) Address	(4) In what character included	(5) Number of shares [*or* extent of interest	(6) Amount called up at date of commencement of windingup	(7) Amount paid up at date of commencement of winding up

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[Subsidiary]

FORM No. 45 (r. 73)

AFFIDAVIT OF SERVICE OF NOTICE TO CONTRIBUTORY

*See Form No. l.

(*Title*)*

(a) State full description of deponent.

I,…….. , *(a)*……,of ……, make oath and say as follows: -

1. I did on the…….. day of……. , 19……. , in the manner hereinafter mentioned serve a true copy of the notice now produced and shown to me and marked "A" upon each of the respective persons whose names, descriptions and addresses appear in the second and third columns of the First Schedule to the list of contributories of the said Company made out by the [Official Receiver and] Liquidator of the Company on the…… day of…… ,19…… , and now on the file of proceedings of the said Company. In the tabular form at the foot of such copies respectively I inserted the number on list, name, address, description, in which character included, the *(b)*…… , the amount paid up and the amount called up in respect of the shares [or interest] of the person on whom such copy of the said notice was served, in the same words and figures as the same particulars are set forth in the said Schedule.

(b) "Number of shares" or "extent of Interest".

2. I served the said respective copies of the said notice, by putting them, duly addressed to such persons respectively according to their respective names and addresses appearing in the said Schedule, prepaid in the Post Office at…….. , before the hour of……. o'clock in the…….. noon of the said…….. day of……, 19……..

Sworn at, etc.

FORM No. 46 (r. 74 (1))

ORDER ON APPLICATION TO VARY LIST OF CONTRIBUTORIES

*See Form No. l.

(*Title*)*

The ….....…..day of…….. 19……..

Upon the application of W.N., by summons dated the…… day of……., 19…….. , for an order that the list of contributories of this Company and the Liquidator's certificate finally settling the same be varied by excluding the name of the applicant therefrom [or as the case may be], and upon hearing [etc.], and upon reading [etc.], It is ordered that the list of contributories of the Company and the Liquidator's certificate finally settling the same be varied by excluding the name of the said W.N. from the said list

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[Subsidiary]

FORM No.46–(*Contd.*)

of contributories [or by including the name of the said W.N. as a contributory in the said list for…… shares or as the case may be] [or the Court does not think fit to make any order on the said application, except that the said W.N. do pay to the Liquidator of the said Company his costs of this application, such costs to be taxed].

FORM No. 47 (r. 75)

SUPPLEMENTAL LIST OF CONTRIBUTORIES

(*Title*)*

*See Form No. 1.

1. The following is a list of persons who, since making out the list of contributories herein, dated the…….. day of…….. , 19…….. , I have ascertained are, or have been, holders of shares in [or members of] the above-named Company, and to the best of my judgment are contributories of the said Company.

2. The said supplemental list contains the names of such persons together with their respective addresses and the number of shares [or extent of interest] and the amount called up at the commencement of the winding up; and the amount paid up at such date in respect of the shares [or interest] to be attributed to each.

3. In the first part of the said list, such of the said persons as are contributories in their own right are distinguished.

4. In the second part of the said list, such of the said persons as are contributories as being representatives of, or being liable for the debts of, others are distinguished.

Dated this……. day of……. ,19…….

[*Official Receiver and] Liquidator.*

[*The supplemental list is to be made out in the same form as the original list*]

FORM No. 48 (r. 76 *(b)*)

NOTICE TO EACH MEMBER OF COMMITTEE OF INSPECTION OF MEETING FOR SANCTION TO PROPOSED CALL

(*Title*)*

*See Form No. 1.

Take notice that a meeting of the Committee of Inspection of the above-named Company will be held at…….. , on the *(a)*…… day of……, 19…….. , at……. o'clock in the…….. noon, for the purpose of considering and obtaining the sanction of the Committee to a call of Sh……. per share proposed to be made by the Liquidator on the contributories.

(a) To be a date not less than seven days from the date when the notice will in course of post reach

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[Subsidiary]

FORM No.47–(*Contd.*)

the person to whom it is addressed.

Annexed hereto is a statement showing the necessity for the proposed call and the amount required.

Dated this…..…..day of……. ,19……

Liquidator.

STATEMENT

1. The amount due in respect of proofs admitted against the Company, and the estimated amount of the costs, charges and expenses of the winding up, form in the aggregate the sum of Sh. or thereabouts.

2. The assets of the Company are estimated to realize the sum of Sh…… . There are no other assets, except the amounts due from certain of the contributories to the Company, and in my opinion it will not be possible to realize in respect of the said amounts more than Sh…….

3. The list of contributories has been duly settled, and persons have been settled on the list in respect of the total number of……. shares.

4. For the purpose of satisfying the several debts and liabilities of the Company, and of paying the costs, charges and expenses of the winding up, I estimate that a sum of Sh……. will be required in addition to the amount of the Company's assets hereinbefore mentioned.

5. In order to provide the said sum of Sh……. it is necessary to make a call on the contributories, and, having regard to the probability that some of them will partly or wholly fail to pay the amount of the call, I estimate that for the purpose of realizing the amount required it is necessary that a call of Sh…….. per share should be made.

[*Annex tabular statement showing amounts of debts, costs, etc., and of assets*]

FORM No. 49 (r. 76 *(b)*)

ADVERTISEMENT OF MEETING OF COMMITTEE OF INSPECTION TO SANCTION PROPOSED CALL

**See* Form No. 1.

(*Title*)*

Notice is hereby given that the undersigned Liquidator of the above-named Company proposes that a call should be made on all the contributories of the said Company, or, as the case may be, of Sh……. per share, and that he has summoned a meeting of the Committee of Inspection of the Company to be held at…… , on the…… day of…… ,19…… ,at ……..o'clock

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[Subsidiary]

FORM No.49–(*Contd.*)

in the…….noon, to obtain their sanction to the proposed call.

Each contributory may attend the meeting and be heard, or make any communication in writing to the Liquidator or the members of the Committee of Inspection with reference to the intended call.

A statement showing the necessity of the proposed call and the purpose for which it is intended may be obtained on application to the Liquidator at his office at *(a)*…….

(a) Insert address.

Dated this…… day of……. ,19……..

Liquidator.

FORM No. 50 (r. 76 (d))

RESOLUTION OF COMMITTEE OF INSPECTION SANCTIONING CALL

(*Title*)*

*See Form No. 1.

Resolved, that a call of Sh……. per share be made by the Liquidator on all the contributories of the Company[or as the case may be]

Members of the Committee of Inspection.

Dated this…… day of…….. 19……

FORM No. 51 (r. 77)

SUMMONS FOR LEAVE TO MAKE A CALL

(*Title*)*

*See Form No. 1.

Let the several persons whose names and addresses are set forth in the second column of the Schedule hereto, being contributories of the above-named Company, as shown in the third column of the said Schedule, attend at ……. on……the……day of……., 19…….. ,at o'clock in the…… noon, on the hearing of an application on the part of the [Official Receiver and] Liquidator of the Company for an order that he may be at liberty to make a call to the amount of Sh……. per share on all the contributories[or as the case may be]of the said Company.

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[Subsidiary]

FORM No.51–(*Contd.*)

Dated this…….. day of…… 19……..

This summons was taken out by [……...……of……..
Advocates for the] [Official Receiver and] Liquidator.
To:–

Note.- If you do not attend either in person or by your Advocate at the time and place above mentioned, such order will be made and proceedings taken as the Court may think just and expedient.

SCHEDULE

Number on list	Name and address	In what character included

FORM No. 52 (r. 77)

AFFIDAVIT OF LIQUIDATOR IN SUPPORT OF PROPOSED CALL

*See Form No. 1.

(*Title*)*

I ,…….. , of…… , etc., the Liquidator of the above-named Company, make oath and say as follows: -

1. I have in the Schedule now produced and shown to me, and marked "A", set forth a statement showing the amount due in respect of the debts proved and admitted against the said Company, and the estimated amount of the costs, charges and expenses of and incidental to the winding up of the affairs thereof, which several amounts form in the aggregate the sum of Sh…… or thereabouts.

2. I have also in the said Schedule set forth a statement of the assets in hand belonging to the said Company, amounting to the sums of Sh…….. and no more. There are no other assets belonging to the said Company, except the amounts due from certain of the contributories of the said Company, and, to the best of my information and belief, it will be impossible to realize in respect of the said amounts more than the sum of Sh…… or thereabouts.

3 ……. persons have been settled by me on the list of contributories of the said Company in respect of the total number of ……shares.

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[Subsidiary]

FORM No.52–(*Contd.*)

4. For the purpose of satisfying the several debts and liabilities of the said Company and of paying the costs, charges and expenses of and incidental

to the winding up of the affairs thereof, I believe the sum of Sh…… will be required in addition to the amount of the assets of the said Company mentioned in the said Schedule and the said sum of Sh…….

5. In order to provide the said sum of Sh…….. ,it is necessary to make a call upon the several persons who have been settled on the list of contributories as before mentioned, and, having regard to the probability that some of such contributories will partly or wholly fail to pay the amount of such call, I believe that for the purpose of realizing the amount required as before mentioned it is necessary that a call of Sh…….. per share should be made.

Sworn at, etc.

FORM No. 53 (r. 77)

ADVERTISEMENT OF APPLICATION FOR LEAVE TO MAKE A CALL

In the matter of……..... Limited.

Notice is hereby given that *(a)*…….. Court has appointed…….. the…….. day of…….. , 19…… , at ……o'clock in the…… noon, at *(b)*…… , to hear an application for leave to make a call on all the contributories of the said Company [or as the case may be] and that the Liquidator of the said Company proposes that such call shall be for Sh…… per share. All persons interested are entitled to attend at such day, hour and place, to offer objections to such call.

Dated this…..…… day of…...…… , 19……

Liquidator.

FORM No. 54 (rr. 77 and 79)

ORDER GIVING LEAVE TO MAKE A CALL

(*Title*)*

*See Form No. 1.

The……..... day of …….., 19…….

Upon the application by summons dated…….. ,19……..

of the [Official Receiver and] Liquidator of the above-named Company, and upon reading the order to wind up the above-named Company, the list of contributories of the said Company and the Liquidator's certificate of the

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[Subsidiary]

FORM No.54–(*Contd.*)

final settlement of the same, filed the……..day of…… , 19…….. , the affidavit of the said [Official Receiver and] Liquidator, filed the…… day of…….. , 19……. ,and the exhibit marked "A" therein referred to,

and an affidavit of…… , filed the…… day of ……, 19……..

It is ordered that leave be given to the [Official Receiver and]Liquidator to make a call of Sh…… per share on all the contributories of the said Company *(a)*

(a) Or as the case may be.

And it is ordered that each such contributory do, on or before the……. day of ……., 19…… , pay to the [Official Receiver and] Liquidator of the said Company the amount which will be due from him or her in respect of such call.

FORM No. 55 (r. 78)

DOCUMENT MAKING A CALL

(*Title*)*

*See Form No. 1.

I,……. , [the Official Receiver and] Liquidator of the above-named Company, in pursuance of *(a)*……. made [or passed] this…….. day of…….. ,19…… , hereby make a call of Sh…… per share on all the contributories of the Company, which sum is to be paid at my office *(b)*……. on the……..day of…….. ,19…… .

(a) An order of Court or resolution of the Committee of Inspection.
(b) Insert address.

Dated this…….. day of…… ,19……

Liquidator.

FORM No. 56 (r.79)

NOTICE OF CALL SANCTIONED BY COMMITTEE OF INSPECTION TO BE SENT TO CONTRIBUTORY

(*Title*)*

*See Form No. 1.

Take notice that the Committee of Inspection in the winding up of this Company have sanctioned a call for Sh…… per share on all the contributories of the Company.

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[Subsidiary]

FORM No.56–(*Contd.*)

The amount due from you in respect of the call is the sum of Sh…….. This sum should be paid by you direct to me at my office, at *(a)*…….. on or before the…….. day of……. ,19…….

(a) State address.

Dated this……. day of…….. ,19……..

To :–

Liquidator

Note. - If you do not pay the sum due from you by the date mentioned, interest will be claimed on such sum at the rate of six per centum per annum from the said date until payment.

FORM No. 57 (r. 79)

NOTICE TO BE SERVED WITH THE ORDER SANCTIONING A CALL

(*Title*)*

*See Form No. 1.

The amount due from you, A.B., in respect of the call made pursuant to leave given by the above [or within] order is the sum of Sh ……. , which sum is to be paid by you to me as the Liquidator of the said Company at my office *(a)*……..

(a) State address.

In default of payment interest at the rate of six per centum per annum will be charged upon the amount unpaid from the…….. day of…….. , 19……. , until payment.

Dated this…… day of…… , 19…….

To:

Liquidator.

FORM No. 58 (r.80)

AFFIDAVIT IN SUPPORT OF APPLICATION FOR ORDER FOR PAYMENT OF CALL

(*Title*)*

*See Form No. 1.

I,…… , of…….. , the Liquidator of the above-named Company, make oath and say as follows:–

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[Subsidiary]

FORM No.58–(*Contd.*)

1. The contributories of the said Company, whose names are set forth in the Schedule hereto annexed, marked "A", have not paid or caused to be paid the sums set opposite their respective names in the said Schedule, which sums are the amounts now due from them respectively under the call of Sh……..per share, duly made under the Companies Act, dated the…… day of…… , 19……

2. The respective amounts or sums set opposite the names of such contributories respectively in such Schedule are the true amounts due and owing by such contributories respectively in respect of the said call.

"A"

THE SCHEDULE ABOVE REFERRED TO

No. in list	Name and description	Address	In what character included	Amount due

Sworn at,etc.

Note.– In addition to the above affidavit, an affidavit of the service of the application for the call will be required in cases in which the Committee of Inspection or the Court has authorised a call to be made.

FORM No. 59 (r. 80)

ORDER FOR PAYMENT OF CALL DUE FROM A CONTRIBUTORY

*See Form No. l.

(*Title*)*

The……..... day of…..... 19……

Upon the application of the Liquidator of the above-named Company, and upon reading an affidavit of…….. filed the…… day of…… ,19…….. , and an affidavit of the Liquidator, filed the…… day

of…….. ,19……. , It is ordered that C.D., of [etc.], [or E.F., of (etc.)], the representative of L.M., late of [etc.], deceased], one of the contributories of the said Company [or if against several contributories, the several persons named in the second column of the Schedule to this order, being respectively contributories of the said Company,] do on or before the…… day of……. 19……..or subsequently within four days after service of this order, pay to *A.B.*, the Liquidator of the said Company, at his office

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[Subsidiary]

FORM No. 59–(*Contd.*)

(a)……the sum of Sh…….. , [if against a representative add out of the assets of the said L.M., deceased, in his hands as such representative as aforesaid, to be administered in due course of administration, if the said E.F. has in his hands so much to be administered] [or if against several contributories add the several sums of money set opposite to the respective names in the fifth column of the said Schedule hereto] such sum [or sums] being the amount [or amounts] due from the said C.D. [or L.M.] [or the said several persons respectively] in respect of the call of Sh……. per share duly made, dated the……. day of…… , 19……

(a) State address.

And it is ordered that the said several persons do, within the like period and at the place aforesaid, pay to the said A .B., as such Liquidator as aforesaid, interest at the rate of six shillings per centum per annum on the amounts specified in the fifth column of the said Schedule from the……. day of…… ,19……. , to the date of payment.

And it is ordered that the said several persons do, within the like period and. at the place aforesaid, pay to the said A. B., as such Liquidator as aforesaid, the several sums set opposite their respective names in the sixth column of the said Schedule, such sum being the proportion of the applicant's costs of the said application payable by such several persons respectively. [Add appropriate paragraphs as to amounts payable by married women and representatives of deceased persons (if any).]

(1) No. on list	(2) Name and description	(3) Address	(4) In what character included	(5) Amount due	(6) Proportion of costs	(7) Total amount payable exclusive of interest
				Sh.		*Sh.*

Note.–The copy for service of the above order must be endorsed as follows: "If you ,the undermentioned A.B., neglect to obey this order by the time mentioned therein you will be liable to process of execution, for the purpose of compelling you to obey the same."

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[Subsidiary]

FORM No. 60 (r. 80)

AFFIDAVIT OF SERVICE OF ORDER FOR PAYMENT OF CALL

(*Title*)*

*See Form No. 1.
(a) Fill in full name, address and occupation of deponent.

I, *(a)* ……....……, of….....……, make oath and say as follows:

1. I did on the ……day of ……, 19…….. , personally serve G.F., of…… , with an order made in this matter by this Court, dated the ……..day of…….. ,19…….. , whereby it was ordered [set out the order] by delivering to and leaving with the said G.F.., at ……, a true copy of the said order, and at the same time producing and showing unto him, the said G.F., the said original order.

2. There was endorsed on the said copy when so served the following words, that is to say, "If you, the undermentioned G.F., neglect to obey this order by the time mentioned therein, you will be liable to process of execution for the purpose of compelling you to obey the same."

Sworn at, etc.

FORM No. 61 (rr. 82 and 84)

PROOF OF DEBT, GENERAL FORM

(*Title*)*

*See Form No. 1.
(a) Fill in full name, address and occupation of deponent. If proof made by creditor, strike out clauses *(b)* .and *(c)*. If made by clerk of creditor, strike out *(c)*. If by clerk or agent of the Company, strike out *(b)*.
(d) Insert "me and to C.D. and E.F., my co-partners in trade [if any]", or, if by clerk or agent, insert name, address and description of principal.

You should attend carefully to these directions

I, *(a)*…….. , of……. make oath and say:–

(b) That I am in the employ of the undermentioned creditor' and that I am duly authorized by…….. to make this affidavit, and that it is within my own knowledge that the debt hereinafter deposed to was incurred and for the consideration stated, and that such debt, to the best of my knowledge and belief, still remains unpaid and unsatisfied.

(c) That I am duly authorized, under the seal of the Company hereinafter named, to make the proof of debt on its behalf.

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[Subsidiary]

FORM No. 61–(*Contd.*)

1. That the above-named Company was, at the date of the (*) order for winding up the same, viz. the…… day of……..19…… , and still is, justly and truly indebted to *(d)*…… in the sum of Sh…… cts…… for *(e)*…….. ,as shown by the account endorsed hereon, or by the following account, viz…….. , for which sum or any part thereof I say that I have not nor hath *(f)*…….. or any person by *(g)*…….. order to my knowledge or belief for *(g)*……use had or received any manner of satisfaction or security whatsoever, save and except the following *(h)*:–

Admitted to vote for Sh…….
the……..…day
of…….....… 19……

Official Receiver or
Liquidator

Date	Drawer	Acceptor	Amount		Due date
			Sh.	*cts.*	

Admitted to rank for dividend for Sh…….....this…….....…
day of……..., 19……

Official Receiver
or Liquidator.

Sworn at, etc.

Note.–The proof cannot be admitted for voting at the first meeting unless it is properly completed and lodged with the Official Receiver before the time named in the notice convening the meeting.

NOTE THIS

(e) State consideration, as "goods sold and delivered by me [and my said partner] to the Company between he dates of" or "moneys advanced by me in respect of the undermentioned bill of exchange", or as the case may be.

(f) "my said partners or any of them" or "the above-named creditor" (as the case may be)

(g) "my" or "our" or "their" or "his" (as the case may be).

(h) Here state the particulars of all securities held and, where the securities are on the property of the Company, assess the value of the same, and if any bills or other negotiable securities are held, specify them in the Schedule.

N.B.– Bills of exchange or other negotiable securities must be produced before the proof can be admitted.

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[Subsidiary]

FORM No. 61–(*Contd.*)

PARTICULARS OF ACCOUNT REFERRED TO ON OTHER SIDE
[*Credit should be given for contra accounts*]

Date	Consideration	Amount	Remarks The vouchers (if any) by which the account can be substantiated should be set out here
		Sh.	

FORM No. 62 (r. 92)

PROOF OF DEBT OF WORKMEN

(*Title*)*

**See* Form No. 1.

(a) Fill in full name, address and occupation of deponent.

(b) On behalf of the workmen and others employed by the above-mentioned Company.

I *(a)*……..... *(b)*….....……..... , make oath and say:-

1. That the above-named Company was, on the…….. day of…..... ,19……. and still is, justly and truly indebted to the several persons whose names, addresses and descriptions appear in the Schedule endorsed hereon in sums severally set against their names in the seventh column of such Schedule for wages due to them respectively as workmen or others in the employ of the Company in respect of services rendered by them respectively to the Company during such periods as are set out against their respective names in the fifth column of such Schedule, and for accrued holiday remuneration so due to them in respect of such periods as are set out in the sixth column of such Schedule, for which said sums or any part thereof,

I say that they have not, nor hath any of them, had or received any manner of satisfaction or security whatsoever.

Sworn at, etc.

[*Reverse*]

SCHEDULE REFERRED TO ON THE OTHER SIDE

(1) No.	(2) Full name of workma	(3) Address	(4) Description	(5) Period over which wages due	(6) Period over which accrued holiday remuneration due	(7) Amount due
						Sh. cts.

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[Subsidiary]

FORM No. 63 (r. 96)

NOTICE OF REJECTION OF PROOF OF DEBT

(*Title*)* *See Form No. l.

Take notice that, as [Official Receiver and] Liquidator of the above-named Company, I have this day rejected your claim against the Company *(a)*……. [to the extent of Sh…….].

(a) If proof wholly rejected, strike out words in brackets.

And further take notice that, subject to the power of the Court to extend the time, no application to reverse or vary any decision in rejecting your proof will be entertained after the expiration of……. days from this date.

Dated this……. day of…….. , 19……

[*Official Receiver and] Liquidator.*

To:–

FORM No. 64 (r. 102)

MONTHLY LIST OF PROOFS TENDERED TO BE FILED UNDER RULE 102

(*Title*)* *See Form No. l.

I hereby certify that the following is a correct list of all proofs tendered to me in the above matter during the past month.

Dated this…….. day of…… , 19……

Liquidator.

Name of creditor	Proofs tendered				
	Amount of proof		Whether admitted, rejected or standing over for further consideration	If admitted, amount	
	Sh.	*cts.*		*Sh.*	*cts.*

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[Subsidiary]

FORM No. 65 (r. 107 (1))

NOTICE TO CREDITORS OF INTENTION TO DECLARE DIVIDEND

*(Title)**

*See Form No. l.

A first [or second or final or as the case may be] dividend is intended to be declared in the above matter. You are mentioned as a creditor in the statement of affairs, but you have not yet proved your debt.

If you do not prove your debt by the…… day of…….. 19…… , you will be excluded from this dividend.

Dated this…..…….. day of…..……. ,19…….

Liquidator.

To X.Y.

FORM No. 66 (r. 107 (1))

NOTICE TO PERSONS CLAIMING TO BE CREDITORS OF INTENTION TO DECLARE FINAL DIVIDEND

*(Title)**

*See Form No. l.

Take notice that a final dividend is intended to be declared in the above matter, and that if you do not establish your claim to the satisfaction of the Court on or before the…….. day of……. ,19…… , or such later day as the Court may fix, your claim will be expunged, and I shall proceed to make a final dividend without regard to such claim.

Dated this……..... day of…..…….. ,19……

Liquidator.

To X.Y.

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[Subsidiary]

FORM No. 67 (r. 107 (3))

NOTICE OF DIVIDEND

Please bring this Dividend Notice with you

Cheques are cancelled at the expiration of six months from date of issue, but will be reissued free of charge on application within twelve months from date of issue.

A fee of Sh.1 when the dividend does not exceed Sh. 20, and Sh. 2/50 when the dividend exceeds Sh. 20, is chargeable on the re- issue of each cheque after twelve months from date of issue.

(*Title*)* **See* Form No. l.

Dividend of……. in Sh. 100.

[*Address*]
[*Date*]

Notice is hereby given that a…… dividend of…… in Sh.100 has been declared in this matter, and that the same may be received at my office, as above, on the…….. day of…….. 19…… , or on any subsequent ……, between the hours of…….. and…….

Upon applying for payment this notice must be produced entire, together with any bills of exchange, promissory notes or other negotiable securities held by you.

If you desire the dividend to be made payable to some other person, you should sign and lodge with the Liquidator an authority in the Form No.70 prescribed in the Companies (Winding Up) Rules.otherwise if you do not attend personally you must fill up and sign the subjoined forms of receipt and authority for delivery, when a cheque in your favour will be delivered in accordance with the authority.

To: -

Liquidator.

Note. - The receipt or authority should in the case of a firm be signed in the firm's name, or in the case of a limited company by an officer of the company so described.

RECEIPT

No. 19

Received of……. in this matter the sum of Sh……Cts. ….., being the amount payable to me [us] in respect of the…….. dividend of Sh…….. in Sh. 100 on my [our] claim against this Company.

Sh. Cts.

[*Payee's signature*]

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[Subsidiary]

FORM No. 67–(*Contd.*)

AUTHORITY FOR DELIVERY *(a)*

Sir,

Please deliver to me [us] by post at my [our] risk, or to the Bearer *(b)*…… , the cheque for the dividend payable to me [us] in this matter.

[*Payee's signature*]

To the [Official Receiver and] Liquidator.

Date……. 19……

Note:–

(a) This is an authority only to deliver the cheque, NOT to make it pay able to another person.

(b) Strike out words inapplicable. If not to be sent by post, strike out words in italics and insert the name of the person who is to receive the order.

FORM No. 68 (r. 107 (5))

CERTIFIED LIST OF PROOFS UNDER RULE 107 (5) OF THE COMPANIES (WINDING-UP) RULES, AND APPLICATION FOR ISSUE OF CHEQUES FOR DIVIDEND ON COMPANIES LIQUIDATION ACCOUNT

Companies Liquidation A/c.

Ledger Folio

**See* Form No. l.

(*Title*)*

I hereby certify that the following list has been compared with the proofs filed, and that the names of the creditors and the amounts for which the proofs are admitted are correctly stated.

Dated this ……day of…….. 19….

Liquidator.

I hereby certify that the following list has been compared with credit of the above Company with the Companies Liquidation Account at National Bank of Kenya Limited, and that the sum of Sh. ..... is required to meet the undermentioned dividends, on proofs which have been duly made and admitted to rank for dividend upon the Company, and I request that cheques may be issued to me.

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[Subsidiary]

FORM No. 68–(*Contd.*)

The dividend is payable on the …… day of…… ,19…. and notice of declaration thereof was forwarded to the Government Printer for insertion in the Kenya Gazette on the ……day of……. 19…...

Dated this..... day of.....……, 19…...

Liquidator.

[*Address to which cheques should be sent*]

To the Official Receiver.

No.	Surname	Christian names or forenames	Amount of proof		Amount of dividend	
			Sh.	cts.	Sh.	cts.

FORM No. 69 (r. 107 (5))

CERTIFIED LIST OF PROOFS FILED UNDER RULE 107 (5)
OF THE COMPANIES (WINDING UP) RULES
SPECIAL BANK CASE

(*Title*)*

*See Form No. l.

I hereby certify that the following list has been compared with the proofs filed, and that the names of the creditors and the amounts for which the proofs are admitted are correctly stated.

Dated this…..…….. day of……, 19…....

Liquidator.

I hereby certify that a dividend of Sh…… in the Sh. 100 has been declared, and that the creditors whose names are set forth below are entitled to the amounts set opposite their respective names.

Dated this…..... day of……. 19…....

Liquidator.

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[Subsidiary]

FORM No. 69–(*Contd.*)

To the Official Receiver.

Surname	Christian names or forenames	Amount of proof		Amount of dividend	
		Sh.	cts.	Sh.	cts.

FORM No. 70 (r.108)

AUTHORITY TO LIQUIDATOR TO PAY DIVIDENDS TO ANOTHER PERSON

(*Title*)*

*See Form No. l.

To the [Official Receiver and] Liquidator.

Sir,

I [We] hereby authorize and request you to pay to…….of ……..a specimen of whose signature is given below, all dividends as they are declared in the above-named matter, and which may become due and payable to me [us] in respect of the proof of debt for the sum of Sh. ….. against the above-named Company, made [by Mr…….] on my [our] behalf.

And I [we] further request that the cheque or cheques drawn in respect of such dividends may be made payable to the said…….. whose receipt shall be sufficient authority to you for the issue of such cheque or cheques in his name.

It is understood that this authority is to remain in force until revoked by me [us] in writing.

[*Signatures*]

[*Date*]

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[Subsidiary]

Witness to the Signature
of …… :

Witness to the Signature

FORM No. 70–(*Contd.*)

of …… :

Specimen of Signature of person appointed as above:

Witness to the Signature
of …… :

FORM No. 71 (r. 108)

NOTICE OF RETURN TO CONTRIBUTORIES

Please bring this notice with you

Cheques are cancelled at the expiration of six months from date of issue, but will be reissued free of charge on application within twelve months from month of issue.

A fee of Sh. 1 when the return does not exceed Sh. 20, and Sh. 2/50 when the return exceeds Sh. 20, is chargeable on the reissue of each cheque after twelve months from date of issue.

(*Title*)* **See* Form No. l.

Return of Sh. …….. per share

[*Address*]

[*Date*]

Notice is hereby given that a ……return of Sh…….. per share has been declared in this matter, and that the same may be received at my office, as above, on the…. day of ……19…… , or on any subsequent…….. between the hours of..... and……

Upon applying for payment, this notice must be produced entire, together with the share certificate. If you do not attend personally, you must forward the share certificate and fill up and sign the sub-joined forms of Receipt and Authority for delivery, when a cheque in your favour will be delivered in accordance with the Authority.

[*Signed*]

Liquidator.

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FORM No. 71–(*Contd.*)

Note–The receipt should be signed by the contributory personally, or in the case of joint contributories by each of them and in the case of a limited company by an officer of the company so described.

RECEIPT

No. ……..19…...…

Received of the…… in this matter the sum of Sh……. being the amount payable to……...…..... in respect of the……...…..... return of Sh. ….....…….per share held by…… in this Company.

[*Contributory's signature*]

_____

Sh.

_____

AUTHORITY FOR DELIVERY *(a)*

Sir,

Please deliver to me [us] by post at my[our] risk or to the bearer *(b)*…….....the cheque for the return payable to me [us] in this matter

[*Contributory's signature*]

Date….....…..19.....….

To the [Official Receiver and] Liquidator.

Note:–

(a) This is an authority only to deliver the cheque, NOT to make it payable to another person.

(b) Strike out words inapplicable. If NOT to be sent by post, strike out the words in italics and insert the name of the person who is to receive the cheque.

FORM NO. 72 (r.108)

SCHEDULE OF CONTRIBUTORIES

Schedule or List of Contributories Holding Paid-up shares to Whom Return is to be Paid (a)

In the matter of ……..…….Bankruptcy and Winding-Up Cause No. ..... of 19…...….

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[Subsidiary]

FORM No. 72–(*Contd.*)

	Number in settled list
	Name of contributory as per settled list
	Address
	Number of shares held as per settled list
	Total amount called up
	Total amount paid up
	Arrears of calls at date of return
	Previous returns of capital appropriated by Liquidator for arrears of calls
	Amount of return payable at …. per share
	Net return payable
	Date and particulars of transfer of interest or other valuation in list

(a) Where the articles provide that the amount divisible among members or any class of members shall be divisible in proportion to the amount paid up or which ought to have been paid up at the date of winding up, or contain any other provision which will necessitate further information before a return can be made, columns shall be added showing the amount called up and the amount paid up at such date in respect of shares then held by such members or class of members or such other facts as may be requisite.

FORM No. 73 (r. 112)

NOTICE TO CREDITORS OF FIRST MEETING

(*Title*)*

(Under the order for winding up the above-named Company, dated the…… day of…… ,19 …..)
Notice is hereby given that the first meeting of creditors in the above matter will be held at…… , on the ……day of…….. 19…….. , at …….. o'clock in the…… noon.

*See Form No. l.

To entitle you to vote thereat, your proof must be lodged with me not later than ……o'clock on the…….. day of……, 19……

Forms of proof and of general and special proxies are enclosed herewith.
Proxies to be used at the meeting must be lodged with me at…… , not later than ….....……..o'clock in the……. noon on the….....…… day of…….. , 19……..

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[Subsidiary]

FORM No. 73–(*Contd.*)

Dated this ……..…..day of ……..…..19…….

Official Receiver.

(The statement of the Company's affairs *(a)*……)

Note:–

1. At the first meetings of the creditors and contributories, they may, amongst other things–

(a) Here insert" has not been "lodged", in summary is enclosed."

(a) by resolution determine whether or not an application is to be made to the Court to appoint a Liquidator in place of the Official Receiver;

(b) by resolution determine whether or not an application shall be made to the Court for the appointment of a Committee of Inspection to act with the Liquidator and who are to be the members of the Committee if appointed.

2. If a Liquidator is not appointed by the Court, the Official Receiver will be the Liquidator.

FORM No. 74 (r. 112)

NOTICE TO CONTRIBUTORIES OF FIRST MEETING

*See Form No.1.

(*Title*)*

Notice is hereby given that the first meeting of the contributories in the above matter will be held at……... on the…..…… day of…….....….. , 19…… , at ……o'clock in the……. noon.

Forms of general and special proxies are enclosed herewith. Proxies to be used at the meeting must be lodged with me at …… not later than…….. o'clock in the …….noon on the…….. day of ……..,19……

Dated this ……day of…..…… , 19...…..

Official Receiver.

(a) Here insert "has not been lodged" or "has been lodged, and summary is enclosed".

(The Company's statement of affairs *(a)* ……)

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[Subsidiary]

Note:–

1. At the first meetings of creditors and contributories, they may amongst other things–

(a) by resolution determine whether or not an application shall be made to the Court to appoint a Liquidator in place of the Official Receiver;

(b) by resolution determine whether or not our application shall be made to the Court for the appointment of a Committee of Inspection to act with the Liquidator, and who are to be the members of the Committee if appointed.

2. If a Liquidator is not appointed by the Court, the Official Receiver will be the Liquidator.

FORM No. 75 (r. 113)

NOTICE TO OFFICERS OF COMPANY TO ATTEND FIRST MEETING OF CREDITORS OR CONTRIBUTORIES

(*Title*)*

*See Form No. l.

Take notice that the first meeting of creditors [or contributories] will be held on the…. day of……. ,19…… , at…… o'clock in the…… noon at *(a)* ……., and that you are required to attend thereat, and give such information as the meeting may require.

(a) Insert ere place where meeting will be held.

Dated this…….....….day of……., 19...….....

Official Receiver.

To *(b)*

(b) Insert name of person required to attend.

Rule 113. - The Official Receiver shall also give to each of the officers of the Company, who in his opinion ought to attend the first meeting of creditors and contributories, seven days' notice of the time and place appointed for each meeting. The notice may either be delivered personally or sent by prepaid post letter, as may be convenient.

It shall be the duty of every officer who receives notice of such meeting to attend if so required by the Official Receiver, and, if any such officer fails to attend, the Official Receiver shall report such failure to the Court.

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[Subsidiary]

FORM No. 76 (r. 117 (1))

NOTICE OF MEETING (GENERAL FORM)

*(Title)**

*See Form No. l.

Take notice that a meeting of creditors [or contributories] in the above matter will be held at…… on the……. day of…….. 19….. , at…… o'clock in the…… noon.

AGENDA

(a)

(a) Here insert purpose for which meeting called.

Dated this …….....day of…….....….. 19……..

[*Signed*] *(b)*

(b) "Liquidator" or "Official Receiver", or as the case may be. See r. 117.

Forms of general and special proxies are enclosed herewith. Proxies to be used at the meeting must be lodged with…….. at…… , not later than …….o'clock in the……. noon on the…… day of…… ,19……

FORM No. 77 (r. 118)

AFFIDAVIT OF POSTAGE OF NOTICES OF MEETING

*(Title)**

*See Form No. l.

I,…… a *(a)*…….. , make oath and say as follows: -

(a) State the description of the deponent.

1. That I did on the…….. day of…… , 19…. , send to each creditor mentioned in the Company's statement of affairs [or to each contributory mentioned in the register of members of the Company], a notice of the time and place of the *(b)* ……in the form hereunto annexed marked "A".

(b) Insert here "general" or "adjourned general" or "first" meeting of creditors, or contributories, as the case maybe.

2. That the notices for creditors were addressed to the said creditors respectively, according to their respective names and addresses appearing in the statement of affairs of the Company or the last known addresses of such creditors.

3. That the notices for contributories were addressed to the contributories respectively according to their respective names and registered or last known addresses appearing in the register of the Company.

4. That I sent the said notices by putting the same prepaid into the Post Office at…….. before the hour of ……..o'clock in the ……noon on the said day.

Sworn at, etc.

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[Subsidiary]

FORM No. 78 (r. 118)

CERTIFICATE OF POSTAGE OF NOTICES OF MEETING

(*Title*)*

*See Form No. l.

I, …… a clerk in the office of the Official Receiver, hereby certify: -

1. That I did on the…… day of…… 19….. ,send to *(a)*…… a notice of the time and the place of the first meeting, *(b)*……. in the form hereunto annexed marked "A".

(a) Each creditor mentioned in statement of affairs, or each contributory mentioned in Register of Members of Company, or as the case may be.

(b) Or "general meeting" or "an adjourned general meeting" or as the case may be.

[*Add paragraphs 2, 3 and 4 as in Form No. 77.*]

Dated this …….....day of …....……..19….....

[*Signature*]

FORM No. 79 (rr. 121 and 143)

AUTHORITY TO DEPUTY TO ACT AS CHAIRMAN OF MEETINGS AND USE PROXIES

(*Title*)*

*See Form No. l.

I,…….. , the Official Receiver, do hereby nominate…… of ……, to be chairman of the first meeting of creditors [or contributories] in the above matter, appointed to be held at…… on the….. day of…… ,19….. ,and I depute him, being a person in my employment or under my official control, to attend such meeting and use, on my behalf, any proxy or proxies held by me in this matter.

Dated this……..... day of ……19…....

Official Receiver

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[Subsidiary]

FORM No. 80 (r. 125)

MEMORANDUM OF ADJOURNMENT OF FIRST OR OTHER MEETING

(*Title*)*

*See Form No. l.

Before …… at…….. on the…… day of…….. 19…. , at …… o'clock in the…… noon.

(a) "First", or as the case may be.
(b) Insert "creditors" or "contributories" as the case may be.
(c) Here state reason for adjournment.

Memorandum.-The *(a)* ……meeting of *(b)*…… in the above matter was held at the time and place above-mentioned: but, in appearing that *(c)*…….. , the meeting was adjourned until the…. day of…….. , 19…. , at….. o'clock in the ……..noon, then to be held at the same place.

Chairman.

FORM No. 81 (r. 133 (2))

LIST OF CREDITORS (OR CONTRIBUTORIES) TO BE USED AT EVERY MEETING

(*Title*)*

*See Form No. l.

Meeting held at……. this…..... day of……,19…...

Consecutive number	Names of creditors *(a)* present or represented	Amount of proof *(b)*			
		In person		Proxies	
		Sh.	*cts.*	*Sh.*	*cts.*
1					
2					
3					
4					
5					
6					
7					
7	Total number of creditors *(a)* present or represented				

(a) Or "contributories".

(b) In case of contributories, insert "number of shares" and "number of votes according to the regulations of the Company".

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[Subsidiary]

FORM No. 82 (r. 135)

GENERAL PROXY

(*Title*)*

I [We]…… , of…….. ,a creditor [or contributory], hereby appoint *(a)*…… to be my [our] general proxy to vote at the meeting of creditors [or contributories] to be held in the above matter on the.... day of ……,19…. , or at any adjournment thereof.

Dated this…..... day of……..... ,19…....

[*Signed*] *(b)*

(a) The person appointed general proxy may in a winding up by the Court be the Official Receiver, the Liquidator or such other person as the creditor (or contributory) may approve, and in a voluntary winding up of the Liquidator, or if there is no Liquidator the Chairman of a meeting, but not the Official Receiver. The proxy form should be altered accordingly.

(b) If a firm, sign the firm's trading title, and add "by A.B., a partner in the said firm". If the appointor is a corporation, then the form of proxy must be under its common seal or under the hand of some other officer duly authorized in that behalf, and the fact that the officer is so authorized must be so stated. The proxy form when signed must be lodged by the time and at the address named for that purpose in the notice convening the meeting at which it is to be used.

———

FORM No. 83 (r. 135)

SPECIAL PROXY

(*Title*)*

I [We] ……. , a creditor [or a contributory], hereby appoint

(a) ……. as my [our] proxy at the meeting of creditors [or contributories] to be held on the… day of……. ,19…….. , or at any adjournment thereof, to vote (b)…… the resolution numbered……. in the notice convening.

Dated this…..... day of……..... ,19…....

[*Signed*] *(c)*

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[Subsidiary]

FORM No. 83–(*Contd.*)

Notes:–

(a) The person appointed proxy may in a winding up by the Court be the Official Receiver, the Liquidator or such other person as the creditor (or contributory) may approve, and in a voluntary winding up the Liquidator, or if there is no Liquidator the Chairman of a meeting, but not the Official Receiver. The proxy form should be altered accordingly. A creditor (or contributory) may give a special proxy to any person to vote at any specified meeting or adjournment thereof on all or any of the following matters -

(i) for or against the appointment or continuance in office of any specified person as Liquidator the Committee of Inspection;

(ii) on all questions relating to any matter, other than those above referred to, arising at a specified meeting or adjournment thereof.

(b) Here insert "for" or "against" as the case may require, and specify the particular resolution.

(c) If a firm, sign the firm's trading title, and add "by A.B., partner in the said firm". If the appointor is a corporation, then the form of proxy must be under its common seal or under the hand of some officer duly authorized in that behalf, and the fact that he is so authorized must be so stated. The proxy form when signed must be lodged by the time and at the address named for that purpose in the notice convening the meeting at which it is to be used.

FORM No. 84 (r. 158 (2))

APPLICATION TO COURT TO AUTHORIZE SPECIAL BANK ACCOUNT

(*Title*)*

*See Form No. l.

We, the Committee of Inspection, being of opinion that Mr. …….. of……. , the Liquidator in the above matter, should have a special bank account for the purpose of *(a)*…….hereby apply to the Court to authorize him to make his payments into and out of the……. bank.

(a) Here insert grounds of application

All cheques to be countersigned by…….. , a member of the Committee of Inspection, and by……..

Dated this.....…. day of…….....……,19…..

.....
.....
.....
} *Committee of Inspection*

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[Subsidiary]

FORM No. 85 (r.158)

ORDER OF COURT FOR SPECIAL BANK ACCOUNT

(*Title*)*

*See Form No. l.

You are hereby authorized to make your payments in the above matter into, and out of, the …….. bank.

[*Here insert any special terms*]

All cheques to be countersigned by ……. , a member of the Committee of Inspection, and by……

Dated this…..…….. day of…… ,19……

By order of the Court,

Registrar.

To:–

Liquidator.

FORM No. 86 (r. 161)

CERTIFICATE AND REQUEST BY COMMITTEE OF INSPECTION AS TO INVESTMENT OF FUNDS

(*Title*)*

We, the Committee of Inspection in the above matter, hereby certify that in our opinion the cash balance standing to the credit of the above-named Company is in excess of the amount which is required for the time being to answer demands in respect of such Company's estate, and request that the Official Receiver shall invest the sum of Sh. …… in Government securities, to be placed to the credit of the said account for the benefit of the said Company.

Dated this…..…….. day of…… ,19……

.....
..... Committee of Inspection.
.....

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[Subsidiary]

FORM No. 87 (r. 161)

REQUEST BY COMMITTEE OF INSPECTION TO OFFICIAL RECEIVER TO SELL SECURITIES

*(Title)**

**See* Form No. l.

We, the Committee of Inspection in the above matter, hereby certify that sum of Sh. ……..., forming part of the assets of the above-named Company, has been invested in Government securities, and that the sum of Sh. …… is now required to answer demands in respect of the said Company. And we request that so much of the said securities as may be necessary for the purpose of answering such demands may be realized by the Official Receiver and that the amount realized may be placed to the credit of the said Company.

Dated this…..…….. day of…… ,19……

.....
..... Committee of Inspection.
.....

FORM No. 88 (r. 162)

CERTIFICATE BY COMMITTEE OF INSPECTION AS TO AUDIT OF LIQUIDATOR'S ACCOUNTS

*(Title)**

**See* Form No. l

We, the undersigned, members of the Committee of Inspection in the winding up of the above-named Company, hereby certify that we have examined the foregoing cash book with the vouchers, and that to the best of our knowledge and belief the said cash book contains a full, true and complete account of the Liquidator's receipts and payments.

Dated this…..…….. day of…… ,19……

.....
..... Committee of Inspection.
.....

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[Subsidiary]

FORM No. 89 (r.163(3))

AFFIDAVIT VERIFYING LIQUIDATOR'S ACCOUNT
UNDER SECTION 245

(*Title*)*

*See Form No. l.

I, ……., of ……., the Liquidator of the above-named Company, make oath and say:–

That *(a)* [the account hereunto annexed marked "B" contains a full and true account of my receipts and payments in the winding up of the above-named

(a) If no receipts or payments, strike out words in brackets.

Company] from the ….day of…… ,19…. , to the ….day of…….. ,19…. , inclusive *(a)* [and that] I have not, nor has any other person by my order or for my use, during such period received any moneys on account of the said Company *(a)* [other than and except the items mentioned and specified in the said account].

Sworn at, etc.

FORM No. 90 (r.164 (1))

LIQUIDATOR'S TRADING ACCOUNT
UNDER SECTION 245

(*Title*)*

……., the Liquidator of the above-named Company in account with the estate.

RECEIPTS PAYMENTS

DR. CR.

Date	*Sh.*	*cts.*	Date	*Sh.*	*cts.*

Date *Liquidator*

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[Subsidiary]

FORM No. 90-(*Contd.*)

We have examined this account with the vouchers, and find the same correct, and we are of opinion the expenditure has been proper.

Dated this…..…….. day of…… ,19……

[*Member of the*] *Committee of Inspection*

FORM No. 91 (r.164 (2))

AFFIDAVIT VERIFYING LIQUIDATOR'S TRADINGACCOUNT

*(Title)**

**See* Form No. l.

I, ……, the Liquidator of the above-named Company, make oath and say that the account hereto annexed is a full, true and complete account of all money received and paid by me or by any person on my behalf in respect of the carrying on of the trade or business of the Company, and that the sums paid by me as set out in such account have, as I believe, been necessarily expended in carrying on such trade or business.

Sworn at, etc.

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FORM No. 92 (r. 170)

No. of Company

LIQUIDATOR'S STATEMENT OF ACCOUNT (MEMBERS' OR CREDITORS' VOLUNTARY WINDING UP)

Statement showing how the winding up has been conducted and the property of the Company has been disposed of

Name of Company……..... (in liquidation)

Presented by……...……..

MEMBERS'/CREDITORS' VOLUNTARY WINDING UP*

From…..……. , 19…..… (Commencement of Winding up) to…… ,19…..(Close of Winding up)

	Statement of assets liabilities	Receipts			Payments		
	Sh	*Sh*	*cts*		*Sh.*	*cts*	
Receipts –				Costs of advocate to liquidator ……..... Other law costs ……..... Liquidator's remuneration – *Sh.* *cts* Where applicable: ……% on Sh. Realized …… % on Sh. distributed			
Cash at bank …….....….							
Cash in hand …….....…….							
Marketable securities ……...……..... Sundry debtors …….....……..							
Stock in trade …….....……..…….							
Work in progress …….....…….. Freehold property …….....……..							
Leasehold property …….....……..……..				By whom fixed …….....….....…. Auctioneers' and valuers' charges……..... Costs of possession and maintenance of estate Costs of notices in Gazette and local papers …..……. Incidental outlay ……...……..……			
Plant and machinery …….....……...							
Furniture, fittings, utensils, etc …….....……							
Patents, trade marks, etc. …….....……..							
Investments other than marketable securities							
Surplus from securities …….....……				Total costs and charges …….....*Sh.*			
Unpaid calls at commencement of winding up							

[Subsidiary]

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FORM No. 92-(*Contd.*)

	Statement of assets liabilities	Receipts			Payments	
	Sh	*cts*	*Sh.*		*Sh.*	*cts*
Amounts received from calls on contributories made in the winding-up …..				(i) Debentue holders :- Payment of Sh. Per Sh. Debentures		
Receipts per trading account.				(ii) Creditors:- ……† preferential		
Other property, viz.: - ……..... …….....				……† unsecured:-		
Sh				Dividend(s) of Sh. cts. In Sh. 100/- on Sh. (The estimate of amount expected to rank for dividend was Sh.)		
Less:-						
Payments to redeem securities …….....				(iii) Returns to contributories:-		
Costs of execution …….....	*Sh*			Sh. …….. Cts. ….. per Sh……..... ……..‡ share …….....		
Payments per trading account …..... Net realizations …….....				Sh. ……. Cts. ….. per Sh……..... ……..‡ share …..... Sh. …….. Cts. ….. per Sh……..... ……..‡ share …….....		
				Balance		
	Sh			*Sh*		

(1) Assets, including …… shown in the statement of assets and liabilities and estimated to be of the value of Sh. ……. have proved to be unrealizable.

(2) State amount paid into the Companies Liquidation Account in respect of:- *Sh*

(a) unclaimed dividends payable to creditors in the winding up ……

(b) other unclaimed distributions in the winding up ……

(c) moneys held by the Company in trust in respect of dividends or other sums due before the commencement of the winding up to any person as a member of the Company ……..

(3) Add here any special remarks the Liquidator thinks desirable:-

Dated this .....……day of ……..…, 19…..... [*Signature of liquidator*[s]]
[*Address*]

*Delete as necessary.
†State number. Preferential creditors need not be separately shown if all creditors have been paid in full.
‡State nominal value and class of share.

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[Subsidiary]

FORM No. 93 (r. 171)

RETURN OF FINAL WINDING-UP MEETING IN MEMBERS' VOLUNTARY WINDING UP

Name of Company …….Limited.

Presented by:

MEMBERS' VOLUNTARY WINDING UP

To the Registrar of Companies:

I [We]…….. , of ……, being the Liquidator[s] of ……. Limited, hereby inform you that a general meeting of the Company was duly

held on
(a) _____ the……..... day of…….. ,19…..... ,
summoned for

(a) Strike out that which does not apply.

pursuant to section 283 of the Companies Act, for the purpose of having an account (of which a copy is attached hereto) *(b)* laid before it showing how the winding up of the Company has been conducted and the property of the Company has been disposed

the same was done accordingly.
of, and that _____ *(a)*.
no quorum was present at the meeting.

(b) The copy account accompanying this return must be authenticated by the written signature[s] of the Liquidator[s].

Dated this…..... day of…..…… ,19……. ,

Liquidator[s] *(c)*.

(c) To be signed by each Liquidator if more than one.
No. of Company

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[Subsidiary]

FORM No. 94 (r. 171)

RETURN OF FINAL WINDING-UP MEETINGS OF MEMBERS AND CREDITORS IN CREDITORS' VOLUNTARY WINDING UP

Name of Company ….....…….Limited.

Presented by:

CREDITORS' VOLUNTARY WINDING UP

To the Registrar of Companies:

I [We] ……., of…….. , being the Liquidator[s] of ……Limited, hereby inform you: -

(1) That a general meeting of this Company was duly *(a)*

held on
_____ the .....….....day of…....…. ,19..…. , pursuant
summoned for

to section 294 of the Companies Act, for the purpose of having an account (of which a copy is attached hereto) *(b)* laid before it showing how the winding up of the Company has been conducted and the property of the Company has been

the same was done accordingly. *(a)*
disposed of, and that _____
no quorum was present.

(2) That a meeting of the creditors of this Company was

held on
duly *(a)*_____ the……. day of……. , 19….. ,
summoned for

pursuant to section 294 of the Companies Act, for the purpose of having the said account laid before it showing how the winding up of the Company has been conducted and the property of the Company has been disposed of, and that
the same was done accordingly.
_____ *(a)*.
no quorum was present at the meeting..

Dated this…..... day of ……..,19.....… ,

Liquidator [s] *(c)*.

(a) Strike out that which does not apply.

(b) The copy account accompanying this return must be authenticated by the written signature(s) of the Liquidators).

(c) To be signed by each Liquidator if more than one.
No. of Company

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[Subsidiary]

FORM No. 95 (r. 172)

REQUEST TO DELIVER BILL FOR TAXATION

(*Title*)*

*See Form No. l.

I hereby request that you will within…….. days of this date, or such further time as the court may allow, deliver to me for taxation by the proper officer your bill of costs [or charges] as *(a)* ……. failing which I shall, in pursuance with the Companies Act and Rules, proceed to declare and distribute a dividend without regard to any claim which you may have against the assets of the company and your claim against the assets of the company will be liable to be forfeited.

(a) Here insert nature of employment.

Dated this ….....…. day of ……...…. 19…....

[*Official Receiver and*] *Liquidator*.

FORM No. 96 (r. 177)

CERTIFICATE OF TAXATION

(*Title*)*

I hereby certify that the bill of costs [or charges] [or expenses] of Mr. C.D. [here state capacity in which employed or engaged] [where necessary add pursuant to an order of the court dated the …… day of ……19…..], has been taxed and has been allowed at the sum of Sh. …… [where necessary add which sum is to be paid to the said C.D by …… as directed by the said order].

Dated this ……..... day of……..... 19.....…..

Sh.

Registrar.

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[Subsidiary]

FORM No. 97 (rr. 184, 185 and 188)

No. of Company

STATEMENT OF RECEIPTS AND PAYMENTS AND
GENERAL DIRECTION AS STATEMENTS

Name of Company …….....……. Limited.

This is the exhibit
marked "B" referred to
in the affidavit of…….. ,
sworn before me this
……. day of ……., 19……...

*A Commissioner for
Oaths.*

1. Every statement must be on sheets measuring thirteen inches by sixteen inches.

2. Every statement must contain a detailed account of all the Liquidator's realizations and disbursements in respect of the Company. The statement of realization should contain a record of all receipts derived from assets existing at the date of the winding-up resolution and subsequently realized, including balance in bank, book debts, calls collected, property sold, etc., and the account of disbursements should contain all payments for costs and charges, or to creditors or contributories. Where property has been realized, the gross proceeds of sale must be entered under realizations and the necessary payments incidental to sales must be entered as disbursements. These accounts should not contain payments into the Companies Liquidation Account (except unclaimed dividends (see paragraph 5)) or payments into or out of bank, or temporary investments by the Liquidator, or the proceeds of such investments when realized, which should be shown separately-

(a) by means of the bank pass book;

(b) by a separate detailed statement of moneys invested by the Liquidator and investments realized.

Interests allowed or charged by the bank, bank commission, etc., and profit or loss upon the realization of temporary investments should, however, be inserted in the accounts of realizations or disbursements, as the case may be. Each receipt and payment must be entered in the account in such manner as sufficiently to explain its nature. The receipts and payments must severally be added up at the foot of each sheet, and the total carried forward from one account to another without any intermediate balance, so that the gross totals shall represent the total amounts received and paid by the Liquidator respectively.

3. When the Liquidator carries on a business, a trading account must be forwarded as a distinct account, and the total of receipts and payment on the trading account must alone be set out in the statement.

4. When dividends or installments of compositions are paid to creditors, or a return of surplus assets is made to contributories, the total amount of which dividend, or installment of compositions, or return to contributories, actually paid, must be entered in the statement of disbursements as one sum, and the Liquidator must forward separate accounts showing in lists the amount of the claim

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[Subsidiary]

FORM No. 97–(*Contd.*)

of each creditor, and of surplus assets payable to each contributory, distinguishing in each list the dividends or installments of compositions and shares of surplus assets actually paid and those remaining unclaimed. Each list must be on sheets measuring thirteen inches by eight inches.

5. When unclaimed dividends, installments of composition, or returns of surplus assets are paid into the Companies Liquidation Account, the total amount so paid in should be entered in the statement of disbursements as one sum.

6. Credit should not be taken in the statement of disbursements for any amount in respect of Liquidator's remuneration, unless it has been duly allowed by resolution of the Committee of Inspection or of the creditors or of the Company in general meeting, or by order of Court, as the case may require.

LIQUIDATOR'S STATEMENT OF ACCOUNT

Name of Company:
Nature of proceedings (whether a members' or creditors' voluntary winding up or a winding up under the supervision of the Court):

Date of commencement of winding up:
Date to which statement is brought down:
Name and address of Liquidator:

This statement is required in duplicate.

LIQUIDATOR'S STATEMENT OF ACCOUNT

pursuant to section 333 of the Companies Act

REALIZATIONS					DISBURSEMENTS				
Date	Of whom received	Nature of assets realized	Amount		Date	To whom Paid	Nature of disbursements	Amount	
		Brought forward	*Sh.*	*cts.*			Brought forward	*Sh.*	*cts.*
		Carried forward					Carried forward		

Note.– No balance should be shown on this account, but only the total realizations and disbursements, which should be carried forward to the next account.

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[Subsidiary]

FORM No. 97–(*Contd.*)

ANALYSIS OF BALANCE

	Sh.	*cts.*
Total realizations .....…….	:	
Total disbursements …….	:	
Balance		
	Sh.	*cts.*

The balance is made up as follows:–

1. Cash in hands of Liquidator …….....

Sh. *cts.*

2. Total payments into bank, including balance at date of commencement of winding up (as per bank book) …..
   Total withdrawals from bank …….

   Balance at bank …….....

3. Account in Companies Liquidation Account.……....….....

Sh. *cts.*

*4. Amounts invested by Liquidator …….....
   Less amounts realized from same balance ……...…

Total balance as shown above …….....…… *Sh.*

*The investment or deposit of money by the Liquidator does not withdraw it from the operation of section 334 of the Companies Act, and any such investments representing money held for six months or upwards must be realized and paid into the Companies Liquidation Account, except in the case of investments in Government securities, the transfer of which to the control of the Official Receiver will be accepted as a sufficient compliance with the terms of the section.

Note.–1. Full details of stocks purchased for investment and of realization thereof should be given in a separate statement.

Note.–2. The Liquidator should also state:–

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[Subsidiary]

(a) The amount of the estimated assets and liabilities at the date of the commencement of the winding up	Assets (after deducting amounts charged to secured creditors and debenture holders) …… Sh. Liabilities – secured creditors ……..*Sh.* debenture holders …… *Sh.* unsecured creditors …….. *Sh.*
(b) The total amount of the capital paid up at the date of the commencement of the winding up	Paid up in cash …….. *Sh.* Issued as paid up otherwise …..……. *Sh* than for cash
(c) The general description and estimated value of outstanding assets (if any)	
(d) The causes which delay the termination of the winding up	
(e) The period within which the winding up may probably be completed	

FORM No. 98 (rr. 184, 185 and 188)

No. of Company

AFFIDAVIT VERIFYING STATEMENT OF
LIQUIDATOR'S ACCOUNT UNDER SECTION 333

Name of Company …….....…….. Limited.

I, ……., of …….. , the Liquidator of the above-named Company, make oath and say:-

That [the account hereunto annexed marked "B" contains a full and true account of my receipts and payments in the winding up of the above-named Company] from the …… day of ……., 19 …… , to the …….. day of …… ,19 ……., inclusive [and that] I have not, nor has any other person by my order, or for my use during such period, received or paid any moneys on account of the said Company, [other than and except the items mentioned and specified in the said account].

I further say that the particulars in the annexed Form 97, marked "B", with respect to the proceedings in and position of the liquidation, are true to the best of my knowledge and belief.

Sworn at …….

Note. - If no receipts or payments, strike out the words in brackets. The affidavit is not required in duplicate, but it must in every case be accompanied by a statement in Form 97 in duplicate.

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[Subsidiary]

FORM No. 99 (rr. 184 and 188)

No. of Company

LIQUIDATOR'S TRADING ACCOUNT UNDER SECTION 333

Name of Company ……..... Limited.

(a) Here insert the name of the Liquidator.

(a) ……, the Liquidator of the above-named Company, in account with the estate.

Dr.	RECEIPTS			PAYMENTS			Cr.
Date		*Sh.*	*cts.*	Date		*Sh.*	*cts.*
	TOTAL *Sh.*				TOTAL *Sh.*		

[*This acount is required in dupliicate in addition to Form No. 97*]

Dated this ……..... day of …….. 19 ...……

Liquidator.

FORM No.100 (rr. 184 and 188)

No. of Company

LIST OF DIVIDENDS OR COMPOSITION

Name of Company ……..…….. Limited.

I hereby certify that a dividend [or composition] of Sh. …….. in Sh.100 was declared payable on and after the ……. day of ……, 19 …… , and that the creditors whose names are set forth below are entitled to the amounts set opposite their respective names, and have been paid such amounts except in the cases specified as unclaimed.

Dated this ……..... day of ….....……. 19 ……

Liquidator.

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[Subsidiary]

FORM No.100–(*Contd.*)

To the Registrar of Companies.

Surname	Christian names or forenames	Amount of proof		Amount of dividend [or composition]			
				Paid		Unclaimed	
		Sh.	*cts.*	*Sh.*	*cts.*	*Sh.*	*cts.*
	Total *Sh.*						

[*This list is required in duplicate*]

FORM No. 101 (rr. 184 and 188)

No. of Company

LIST OF AMOUNTS PAID OR PAYABLE TO CONTRIBUTORIES

Name of Company …….....
.....….. Limited.

I hereby certify that a return of surplus assets was declared payable to contributories on and after the …… day of ……., 19 ……, at the rate of Sh. …… per share, and that the contributories whose names are set forth below are entitled to the amounts set opposite their respective names, and have been paid such amounts except in the cases specified as unclaimed.

Dated this ……..... day of ….....…….. ,19 ……..

Liquidator.

To the Registrar of Companies.

Surname	Christian names or forenames	No. of shares	Amount of dividend [or composition]			
			Paid		Unclaimed	
			Sh.	*cts.*	*Sh.*	*cts.*
	Total *Sh.*					

[*This list is required in duplicate*]

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[Subsidiary]

FORM No. 102 (r. 187)

AFFIDAVIT VERIFYING ACCOUNT OF UNCLAIMED AND UNDISTRIBUTED FUNDS

*See Form No.1.

(*Title*)*

I, ……. of ……., make oath and say that the particulars entered in the statement hereunto annexed marked "A" are correct, and truly set forth all money in my hands or under my control, representing unclaimed or undistributed assets of the above-named Company or held by the Company in trust in respect of dividends or other sums due to any person as a member of the Company, and that the amount due by me to the Companies Liquidation Account in respect of unclaimed dividends and undistributed funds is Sh. …….

Sworn at, etc.

———

FORM No. 103 (r. 192)

NOTICE TO CREDITORS AND CONTRIBUTORIES OF INTENTION TO APPLY FOR RELEASE

*See Form No.1.

(*Title*)*

Take notice that I, the undersigned Liquidator of the above-named Company, intend to apply to the Court for my release; and further take notice that any objection you may have to the granting of my release must be notified to the Court within twenty-one days of the date hereof.

A summary of all receipts and payments in the winding up is hereto annexed.

Dated this ……..... day of …..…….. ,19 ……..

To:–

Liquidator.

Note.– Section 247 (3) of the Companies Act provides as follows:–

An Order of the Court releasing the Liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company or otherwise in relation to his conduct as Liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

———

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[Subsidiary]

FORM No. 104 (r.192)

APPLICATION BY LIQUIDATOR TO COURT FOR RELEASE

(*Title*)*

*See Form No. 1.

I,…… ,the Liquidator of the above-named Company, do hereby report to the court as follows:–

1. That the whole of the property of the Company has been realized for the benefit of the creditors and contributories [and a dividend to the amount of Sh. …….. in Sh. 100 has been paid as shown by the statement hereunto annexed, and a return of ……. per share has been made to the contributories of the Company];

[*or* That so much of the property of the Company as can, according to the joint opinion of myself and the Committee of Inspection, hereunto annexed, in writing under our hands, be realized without needlessly protracting the liquidation, has been realized, as shown by the statement hereunto annexed, and a dividend to the amount of Sh. ..…… per Sh. 100 has been paid, together with a return of …..……per share to the contributories of the Company].[*Add, if necessary*, and that the rights of the contributories between themselves have been adjusted].

2. I therefore request the Court to cause a report on my accounts to be prepared, and to grant me a certificate of release.

Dated this ….....…day of …….. , 19….....

Liquidator.

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FORM No. 105 (r. 192)

STATEMENT TO ACCOMPANY NOTICE OF APPLICATION FOR RELEASE

(*Title*)*

DR. STATEMENT SHOWING POSITION OF COMPANY AT DATE OF APPLICATION FOR RELEASE CR.

	Estimated to produce as per Company's statement of affairs		Receipts			Payments	
	Sh.	*cts.*	*Sh.*	*cts.*		*Sh.*	*cts*
To total receipts from date of winding-up order, viz:- [State particulars under the several headings specified in the statement of affairs]					By Official Receiver's and Court fees, (including stationery, printing and postages in respect of contributors, creditors and debtors) and fees for audit …….....…….....		
Receipts per trading account ….....……					Law costs of petition..... *Sh.* *cts*		
Other receipts …….....….....….....

[Subsidiary]

FORM No. 105 -(*Contd.*)

	Estimated to produce as per Company's statement of affairs		Receipts			Payments	
	Sh.	*cts.*	*Sh.*	*cts.*		*Sh.*	*cts.*
					Creditors, viz.:-		
					*preferential		
					*unsecured: dividend of Sh..... in Sh. 100/-		
					The estimate of amount expected to rank for dividend was Sh.		
					Amount returned to contributories		
					Balance		
	Sh.				*Sh.*		

*State number of creditors.

Assets not yet realized including calls estimated to produce Sh.

[Add here any special remarks the Liquidator thinks desirable]

Creditors can obtain any further information by inquiry at the office of the liquidator.

[*Signature of Liquidator*]

Date this..... day ....., 19..... [*Address*]

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[Subsidiary]

FORM 106 (r. 195)

REGISTER OF WINDING-UP ORDERS TO BE KEPT IN THE COURT

Number of winding- up order	Number of petition	Date of petition	Date of winding-up order	Dates of public examinations (if any)	Liquidator

---

FORM No. 107 (r. 195)

REGISTER OF WINDING-UP PETITIONS TO BE KEPT IN THE COURT

No. of petition	Name of company	Address of registered office	Description of company	Date of petition	Petitioner	Date of winding-up order

---

FORM No. 108 (r. 196)

NOTICES FOR KENYA GAZETTE.

(1) NOTICE OF WINDING-UP ORDER.
(*rule* 37 (1) *(c)*)

Name of company.

Address of registered office.

Registered postal address.

Court.

Number of matter.

Date of order.

Date of presentation of petition (where it is known that a voluntary winding up preceded the presentation of the petition, the date of the resolution for voluntary winding up should also be given).

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[Subsidiary]

FORM No. 108–(*Contd.*)

(2) NOTICE OF FIRST MEETINGS
(*rule* 110)

Name of company.
Address of registered office.
Registered postal address.
Nature of business.
Court.
Number of matter.

Creditors:	Date	Hour
	Place	
Contributories:	Date	Hour
	Place	

(3) NOTICE OF DAY APPOINTED FOR PUBLIC EXAMINATION
(*rule* 57 (1) and (2))

Name of company.
Address of registered office.
Registered postal address.
Nature of business.
Court.
Number of matter.
Date fixed for examination.
Names of persons to be examined.
Hour.
Place.

(4) NOTICE OF INTENDED DIVIDEND
(*rule* 107 (1) (4))

Name of company.
Address of registered office.
Registered postal address.
Nature of business.
Court.
Number of matter.
Last day for receiving proofs.
Name of liquidator.
Address.

(5) NOTICE OF DIVIDEND
(*rule* 107 (3))

Name of company.
Address of registered office.
Registered postal address.
Nature of business.
Court.
Number of matter.
Amount per Sh. 100.
First and final, or otherwise.
When payable.
Where payable.

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FORM No. 108–(*Contd.*)

(6) NOTICE OF RETURN TO CONTRIBUTORIES
(*rule* 108)

Name of company.

Address of registered office.

Registered postal address.

Nature of business.

Court.

Number of matter.

Amount per share.

First and final, or otherwise.

When payable.

Where payable.

(7) NOTICE OF APPOINTMENT OF LIQUIDATOR - WINDING UP BY THE COURT
(*rule* 47 (6))

Name of company.

Address of registered office.

Registered postal address.

Nature of business.

Court.

Number of matter.

Liquidator's name.

Address.

Date of appointment.

(8) NOTICE OF APPOINTMENT OF LIQUIDATOR-

MEMBERS
_____ VOLUNTARY WINDING UP
CREDITORS

(rule 51)

Name of company.

Address of registered office.

Registered postal address.

Nature of business.

Liquidator's name.

Address[es].

Date of appointment.

By whom appointed.

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[Subsidiary]

FORM No. 108–(*Contd.*)

(9) NOTICE OF DEATH, RESIGNATION OR REMOVAL OF LIQUIDATOR

(*rule* 47 (8))

Name of company.
Address of registered office.
Registered postal address.
Nature of business.
Court.
Number of matter.
Liquidator's name.
Address.
Date of death, resignation or removal.

(10) NOTICE OF RELEASE OF LIQUIDATOR

(*rule* 192 (2))

Name of company.
Address of registered office.
Registered postal address.
Nature of business.
Court.
Number of matter.
Liquidator's name.
Address.
Date of release.

FORM No. 109 (r. 197)

MEMORANDUM OF ADVERTISEMENT OR GAZETTING

Name of paper.
Date of issue.
Date of filing.
Nature of order.
Etc.

[*Signed*]

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[Subsidiary]
L.N. 687/1961,
L.N. 27/1977,
L.N. 91/1999
L.N. 81/2003.

THE COMPANIES (WINDING-UP FEES) RULES

1. These Rules may be cited as the Companies (Winding-up Fees) Rules.

2. The fees specified in the Schedule to these Rules shall be paid to the official receiver in accordance with the provisions of the said Schedule.

SCHEDULE

FEES

	Kshs.
1. On a bond with sureties.....	600
2. On an affidavit, including a proof of debt.....	200
3. On an application to the Official Receiver, after six months after the date of issue, for re-issue of a lapsed cheque, money order or payable order in respect of moneys standing to the credit of the Companies Liquidation Account.....	200
4. On the audit of the liquidator's account under section 245 of the Act a fee according to the following scale on the amount brought to credit including the produce of calls on contributories, but after deducting*(a)* the amount spent out of the moneyreceived in carrying on the business of the company, and *(b)* amounts paid by the Official Receiver or liquidator to secured creditors (other than debenture holders):	
On the first Ksh. 100,000 or fraction thereof ……2%	
On the next Ksh. 1,900,000 or fraction thereof ……1½%	
On the next Ksh. 8,000,000 or fraction thereof ……1%	
On the next Ksh. 10,000,000 or fraction thereof ……½%	
On any excess over Ksh.20,000,000 ……¼%	
5. Where the Official Receiver acts as Provisional or Interim Liquidator only:	
(a) Where no winding-up order is made upon the petition, or where a winding-up order is rescinded or, all further proceedings are stayed before the summoning of the statutory meetings of creditors and contributories; such amount as the court may consider reasonable to be paid by the petitioner, or by the company as the court may direct, in respect of the services of the Official Receiver as Provisional or Interim Liquidator.	

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[Subsidiary]

SCHEDULE–(*Contd.*)

(b) Where a winding-up order is made but the Official Receiver is not continued as liquidator after the statutory meetings of creditors and contributories-

(i) in respect of every ten members, creditors and debtors, and every fraction of 10 up to 1,000……..……..... 2,000

(ii) on the value of the company's property as estimated in the statement of affairs, or, where the court has dispensed with the submission of a statement of affairs on the value of the company's property as estimated by the Official Receiver after deducting (in cases where a person other than the Official Receiver has, before but not on the day of the making of a winding-up order been appointed Receiver for debenture-holders) the amount due to debenture-holders:

On the first KSh. 100,000 or fraction thereof ……..	4%
On the next KSh. 400,000 or fraction thereof ……..	2%
On the next KSh. 1,500,000 or fraction thereof ……	1%
On any excess over KSh. 2,000,000 …….	½ %

6. Where the official receiver acts as liquidator of the company and special manager is appointed (to include the Official Receiver's services as Provisional or Interim Liquidator); such amount as the court on the application of the Official Receiver may consider reasonable.

7. In all other cases where the Official Receiver acts as a liquidator of the company (to include his services as Provisional or Interim Liquidator)-

(a) in respect of every ten members, creditors and debtors, and every fraction of 10……..... 3,000

(b) upon the total assets, including produce of calls on contributories, realized or brought to credit by the Official Receiver, after deducting sums on which fees are chargeable under item 8 of this Schedule, and the amount spent out of the money received in carrying on the business of the company-

On the first Ksh.200,000 or fraction thereof…...	18%
On the next Ksh. 300,000 or fraction thereof ….	14%
On the next Ksh. 500,000 or fraction thereof ….	12%
On any excess over Ksh. 1,000,000 ……...	6%

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SCHEDULE–(*Contd.*)

(c) on the amount distributed in dividend or paid to contributories preferential creditors and debenture-holders by the Official Receiver, half the above percentages.

8.Where the Official Receiver collects, calls or realizes property for debenture-holders, the same fees as under paragraphs *(b)* and *(c)* of item 7 of this Schedule, to be paid out of the proceeds of such calls or property.

9. Where the Official Receiver realizes property for secured creditors other than debenture-holders the same fees as under paragraph *(b)* of item 7 of this Schedule, to be paid out of the proceeds of such property.

10. Where the Official Receiver performs any special duties not provided for in this Schedule, such amount as the court, on the application of the Official Receiver, considers reasonable.

11. (a) For travelling, keeping possession, law costs and other reasonable expenses of the Official Receiver, the amount disbursed or incurred.

(b) Filing a petition 10,000

12. On payment of money out of the companies liquidation account under section 334 of the Act -

(a) where the money consists of unclaimed dividends paid out, Ksh. 10 on every Ksh. 100 or fraction thereof;

(b) where the money consists of undistributed funds or balances on the first KSh. 100,000, KSh.10 on every Ksh 100 or fraction thereof; and on any excess over KSh. 100,000, KSh. 5 on every Ksh. 1,003 or fraction thereof, but so that-

(i) the total fee payable in any liquidation shall not exceed KSh. 500,000;

(ii) any payment of money out of the companies liquidation account in respect of the fee payable to the Official Receiver under this paragraph of this item shall be disregarded in calculating the fee.

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Regulations under section 404 (4)

[Subsidiary]
LN. 685/1961,
L.N.294/1964,
L.N.122/1967,
L.N. 44/1969,
L.N. 7/1971,
L.N.130/1975.

THE COMPANIES REGULATIONS

Citation.

1. These Regulations may be cited as the Companies Regulations.

Forms.

2. The forms set out in the First Schedule to these Regulations shall be used for the purposes of the Act with such variations as circumstances require, and the particulars contained therein are hereby prescribed as the particulars required under the Act.

Printing processes.

3. (1) Any matter which, by the provisions of the Act, is required to be printed shall be accepted by the registrar, notwithstanding that it has been reproduced other than by original letterpress, if it has been reproduced by any one of the following processes-

(a) lithography of any description;

(b) multigraph;

(c) roneotype;

(d) such other process as the registrar may from time to time approve.

(2) Any matter reproduced in a manner referred to in paragraph (1) of this regulation shall bear a certificate signed by the person processing the same in the following terms-

"Certified that this document has been reproduced by the process of ....."

(3) Notwithstanding the provisions of this regulation, the registrar may, in his absolute discretion, refuse to accept for registration any document either printed or reproduced in a manner referred to in paragraph (1) if, in his opinion, such document is not sufficiently legible or of durable quality.

Names of companies.

4. (1) On payment of the prescribed fee, the registrar shall, on the request of any person requiring approval of any name as the name of a proposed company or of any name which it is proposed shall be the new name of an existing company, cause a search to be made in the index of registered companies and also in the register of reserved names, and shall notify the applicant that such name is either not available or desirable or is available unconditionally or subject to specified conditions; and in the event of refusal of any name it shall not be necessary for the registrar to assign any reason for such refusal.

(2) A name which has been approved by the registrar shall be entered in the register of reserved names on behalf of the applicant for a period of thirty days or such longer period not exceeding sixty days as the registrar may allow, and such period shall commence from the date of notification of approval to the applicant.

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[Subsidiary]
Additional fees.

5. The additional fees payable under subsection (2) of section 392 of the Act shall be those set out in Part V of the Second Schedule to these Regulations, and shall be calculated in respect of the period from the day following the last day on which a document should have been delivered in accordance with the provisions of the Ordinance to the day on which such document is received by the registrar:

Provided that if such document is subsequently rejected by the registrar the period from the date on which he first received such document until the date of redelivery thereof to the person presenting the same shall be excluded in calculating the period of the default.

Certification of documents.

6. (1) A certified copy of the charter, statutes or memorandum and articles of the company or other instrument constituting or defining the constitution of the company required to be delivered to the registrar under subsection (1) of section 366 of the Act in the case of an overseas company incorporated under the laws of a foreign country shall be deemed to be certified as a true copy if in such foreign country it is-

(a) duly certified as a true copy by an official of the government to whose custody the original is committed; or

(b) duly certified as a true copy by a notary public of such nation or place; or

(c) duly certified as a true copy on oath by some officer of the company before some person having authority to administer an oath in such country.

(2) (Deleted by L.N.44/1969.)

(3) A copy of the instrument by which a charge is created or evidenced to be delivered to the registrar under proviso (i) to section 369 of the Act shall be verified or certified to be a true copy under the seal of the company or under the hand of some person interested therein otherwise than on behalf of the company.

Certified translations.

7. (1) A translation of a charter, statutes or memorandum and articles of association or other instrument constituting or defining the constitution of a company or any account, prospectus or document to be delivered to the registrar of companies under the Act shall be certified to be a correct translation-

(a) in the case of a translation made in a foreign country, by any person having authority by law to administer an oath;

(b) (Deleted by L.N.44/1969);

(c) in the case of a translation made within Kenya-

(i) by an advocate; or

(ii) by a notary public of Kenya.

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[Subsidiary]

(2) The registrar may in any particular case, if he thinks fit so to do and upon such conditions as he thinks fit, permit certified copies or translations to be delivered to him, though not certified in accordance with the above requirement.

8. The fees payable to the registrar shall be those specified in the Second Schedule to these Regulations in respect of the several matters mentioned therein. Fees.

FIRST SCHEDULE (r. 2)

FORMS

No. of Company..... Form No. 201

NOTICE OF SITUATION OF REGISTERED OFFICE
OR OF ANY CHANGE THEREIN
(section 108)

Name of Company..... Limited
Presented by.....
.....

To the Registrar of Companies

..... Limited hereby gives you notice, in accordance with section 108 of the Companies Act, that the registered office of the *company on incorporation is situated at..... .....[or] *with effect from the.....day of ....., 19....., has been changed to ..... registered Mortgage or Charge by a Company.

Date …....., 19..... *Signature*.....
[*State whether Director or Secretary*]

Fee Sh. 10.

No. of Company..... Form No. 202

ANNUAL RETURN OF A COMPANY NOT HAVING A SHARE CAPITAL
(sections 126 to 128)

Name of Company..... Limited

Presented by.....

.....

Annual Return of.....Limited, made up to the.....day of..... ....., 19....., (being the fourteenth day after the date of the annual general meeting for the year 19.....).

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[Subsidiary]

1. Address of registered office of the Company:.....

.....

2. Situation of registers of members and debenture-holders -

(a) Address of place at which the register of members is kept, if other than the registered office of the company: .....

.....

Form No.202-(*Contd.*)

(b) Address of any place in Kenya other than the registered office of the Company at which is kept any register of holders of debentures of the Company or any duplicate of any such register or part of any such register which is kept outside

Kenya: .....

.....

3. Total amount of indebtedness of the Company in respect of all mortgages and charges which are required to be registered with the Registrar of Companies, under the Companies Act:.....

4. Particulars of directors and secretaries-

PARTICULARS OF THE PERSONS WHO ARE DIRECTORS OF THE COMPANY AT THE DATE OF THIS RETURN

1 Name (in the case of an individual, present Christian name or names and surname: in the case of a corporation, the corporate name)	2 Any former Christian name or names and surname	3 Nationality	4 Postal address (in the case of a corporation, the registered or principal office)	5 Bussiness, occupation and particulars of other directorships	6 Date of birth

[P.T.O.

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[Subsidiary]

PARTICULARS OF THE PERSON WHO IS SECRETARYOF THE COMPANY AT THE DATE OF THIS RETURN

1 Name (in the case of an individual, present Christian name or names and surname: in the case of a corporation the corporate name)	2 Any former Christian name or names and surname	3 The postal address (in the case of a corporation the registered or principal office)

Signed ……..……..
……..…….....
Date ……..., 19 ……..…… ……..…….....

} *Directors*
Secretary

Fee Sh. 20.

NOTES

"directors" includes any person who occupies the position of a director by whatsoever name called, and any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

"Christian name" includes a forename, and "surname", in the case of a peer or person usually known by a title different from his surname, means that title.

"former Christian name" and "former surname" do not include –

(a) in the case of a peer or a person usually known by a British title different from his surname, the name by which he was known before the adoption of or succession to the title; or

(b) in the case of any person, a former Christian name or surname where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years or has been changed or disused for a period of not less than twenty years; or

(c) in the case of a married woman, the name or surname by which she was known before the marriage

The names of all bodies corporate incorporated in Kenya of which the director is also a director should be given, except bodies corporate of which the company making the return is the wholly-owned subsidiary or bodies corporate which are the wholly-owned subsidiaries either of the company or of another company of which the company is the wholly-owned subsidiary. A body corporate is deemed to be the wholly-owned subsidiary of another if it has no members except that other and that other's wholly-owned subsidiaries and its or their nominees. If the space provided in the form is insufficient, particulars of other directorships should be listed on a separate statement attached to this return.

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[Subsidiary]

Form No.202–(*Contd.*)

Dates of birth need only be given in the case of a company which is subject to section 186 of the Companies Act, namely a company which is not a private company, or which, being a private company, is a subsidiary of a body corporate incorporated in Kenya which is not a private company.

Where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated.

CERTIFICATES AND OTHER DOCUMENTS ACCOMPANYING ANNUAL RETURNS

Certified copies of Accounts

In the case of every company to which setion 128 of the Companies Act appplies, there shall be annexed to this return a written copy, certified both by a director and by the secretary of the company to be a true copy, of every balance sheet laid before the company in general meeting during the period to which this return relates (including every document required by law to be annexed to the balance sheet) and a copy (certified as aforesaid) of the report of the auditors on, and of the report of the directors accompaying each balance sheet. If any such balance sheet or document required by law to be annexed thereto is in a foreign language, there must also be annexed to that balance sheet a translation in English of the balance sheet or documents certified in the prescribed manner to be a correct translation. If any such balance sheet as aforesaid or document required by law to be annexed thereto did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheet or documents aforesaid, as the case may be, there must be made such additions to and corrections in the copy as would have been required to be made in the balance sheet or document in order to make it comply with the said requirements, and the fact that the copy has been so amended must be stated thereon.

No. of Company..... Form No. 203

PARTICULARS OF DIRECTORS AND SECRETARIES
(section 201)

Name of Company .....Limited

Presented by.....

.....

PARTICULARS OF THE PERSONS WHO ARE DIRECTORS OF THE COMPANY AT THE DATE OF THIS RETURN

(1) Name (in the case of an individual, present Christian name or names and surname: in the case of a corporation, the corporate name)	(2) Any former Christian name or names and surname	(3) Nationality	(4) Postal address (in the case of a corporation, the registered or principal office)	(5) Bussiness, occupation and particulars of other directorships	(6) Date of birth

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[Subsidiary]

Form No.203–(*Contd.*)

PARTICULARS OF THE PERSON WHO IS SECRETARYOF THE COMPANY AT THE DATE OF THIS RETURN

(1) Name (in the case of an individual, present Christian name or names and surname: in the case of a corporation the corporate name)	(2) Any former Christian name or names and surname	(3) The postal address (in the case of a corporation the registered or principal office)

Date ……..., 19 ……

Signed ...……...……..……..……

[*State whether Director or Secretary*]

Fee Sh. 10

NOTES

"Directors" includes any person who occupies the position of a director by whatsoever name called and any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

"Christian name" includes a forename, and "surname", in the case of a peer or person usually known by a title different from his surname, means that title.

"former Christian name" and "former surname" do not include-

(a) in the case of a peer or a person usually known by a British title different from his surname, the name by which he was known before the adoption of or succession to the title; or

(b) in the case of any person, a former Christian name or surname where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years or has been changed or disused for a period of not less than twenty years; or

(c) in the case of a married woman, the name or surname by which she was known before the marriage

Directorships.- The names of all bodies corporate incorporated in Kenya of which the director is also a director should be given, except bodies corporate of which the company making the return is the wholly-owned subsidiary or bodies corporate which are the wholly-owned subsidiaries either of the company or of another company of which the company is the wholly-owned subsidiary. A body corporate is deemed to be the wholly-owned subsidiary of another if it has no members except that other's and that other's wholly-owned subsidiaries and its or their nominees. If the space provided in the form is insufficient, particulars of other directorships should be listed on a separate statement attached to this form.

Dates of birth need only be given in the case of a company which is subject to section 186 of the Companies Act (Cap. 486), namely a company which is not a private company, or which, being a private company is a subsidiary of a body corporate incorporated in Kenya, which is not a private company.

Where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated.

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[Subsidiary]
No. of Company…….....…. Form No. 203A

NOTIFICATION OF CHANGE OF DIRECTORS AND SECRETARIES OR IN THEIR PARTICULARS

(section 201)

Name of Company..... Limited
Presented by.....
.....
To the Registrar of Companies
…… Limited hereby gives you notice, in accordance with section 201 of the Companies Act, that –

[*Specify nature and date of change. If change consists of appointment of Director or Secretary fill in particulars overleaf.*]

PARTICULARS OF PERSONS NEWLY APPOINTED AS DIRECTORS OF THE COMPANY

(1) Name (in the case of an individual, present Christian name or names and surname: in the case of a corporation, the corporate name)	(2) Any former Christian name or names and surname	(3) Nationality	(4) Postal address (in the case of a corporation, the registered or principal office)	(5) Bussiness, occupation and particulars of other directorships	(6) Date of birth	(7) Date of Appoint-ment

PARTICULARS OF THE PERSON NEWLY APPOINTED AS SECRETARY OF THE COMPANY

(1) Name (in the case of an individual, present Christian name or names and surname: in the case of a corporation the corporate name)	(2) Any former Christian name or names and surname	(3) Postal address (in the case of a corporation the registered or principal office)	(4) Date of Change

Date ……..., 19 ….…

Signed ...……...…….……
[*State whether Director or Secretary*]

Fee Sh. 10.

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[Subsidiary]

NOTES

"Directors" includes any person who occupies the position of a director by whatsoever name called, and any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

"Christian name" includes a forename, and "surname", in the case of a peer or person usually known by a title different from his surname, means that title.

"former Christian name" and "former surname" do not include-

(a) in the case of a peer or a person usually known by a title different from his surname, the name by which he was known before the adoption of or succession to the title; or

(b) in the case of any person, a former Christian name or surname where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years or has been changed or disused for a period of not less than twenty years; or

(c) in the case of a married woman, the name or surname by which she was known before the marriage.

Directorships.- The names of all bodies corporate incorporated in Kenya of which the director is also a director should be given, except bodies corporate of which the company making the return is the wholly-owned subsidiary or bodies corporate which are the wholly-owned subsidiaries either of the company or of another company of which the company is the wholly-owned subsidiary. A body corporate is deemed to be the wholly-owned subsidiary of another if it has no members except that other's and that other's wholly-owned subsidiaries and its or their nominees. If the space provided in the form is insufficient, particulars of other directorships should be listed on a separate statement attached to this form.

Dates of birth need only be given in the case of a company which is subject to section 186 of the Companies Act (Cap. 486), namely a company which is not a private company, or which, being a private company is a subsidiary of a body corporate incorporated in Kenya, which is not a private company.

Where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated.

No. of Company…….....… Form No. 204

NOTICE OF INCREASE IN NOMINAL CAPITAL
(section 65)

Name of Company .....Limited

Presented by.....

.....

To the Registrar of Companies.

..... Limited hereby gives you notice, pursuant to section

65 of the Companies Act, that by *(a)* .....

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[Subsidiary]

resolution of the Company dated the.....day of.....,19.....,

the nominal capital of the Company has been increased by the addition thereto of the sum of

Sh. ..... beyond the registered capital of Sh. .....

The additional capital is divided as follows -

Number of shares	Class of share	Nominal amount of each share

The conditions (e.g. voting rights, dividend rights, winding-up rights, etc.) subject to which the new shares have been or are to be issued are as follows-

(*if any of the new shares are preference shares state whether they are redeemable or not.*)

Date ……..…., 19 …..… Signed …….....…….....……
[State whether Director or Secretary]

(a) Insert "an ordinary" or "a special".

No. of Company…..…….....… Form No. 205

NOTICE OF INCREASE IN NUMBER OF MEMBERS
(section 10 (3) (a))

Name of Company .....Limited

Presented by.....

.....

To the Registrar of Companies.

..... Limited gives you notice, pursuant to section 10 (3) *(a)* of the Companies Act, that by *(a)*.....resolution

of the Company dated the ..... day of ....., 19....., the

number of members in the Company has been increased by the addition thereto of .....

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[Subsidiary]

members beyond the present registered number of .....

Date ……..., 19 ……. *Signed* ...……...……..……..……

[*State whether Director or Secretary*]

(a) Insert "an ordinary" or "a special".

No. of Company…...…….....… Form No. 206

NOTICE OF CONSOLIDATION, DIVISION, SUBDIVISION OR CONVERSION INTO STOCK OF SHARES, SPECIFYING THE SHARES SO CONSOLIDATED, DIVIDED, SUBDIVIDED OR CONVERTED INTO STOCK, OR OF THE RECONVERSION INTO SHARES OF STOCK, SPECIFYING THE STOCK SO RECONVERTED, OR OF THE REDEMPTION OF REDEEMABLE PREFERENCE SHARES OR OF THE CANCELLATION OF SHARES (OTHERWISE THAN IN CONNECTION WITH A REDUCTION OF SHARE CAPITAL)

(section 64)

Name of Company..... Limited

Presented by.....

.....

To the Registrar of Companies.

..... Limited hereby gives you notice, in accordance with section 64 of the Companies Act, that -

Date ……..., 19 ……. *Signed* ...……...……..……..……

[*State whether Director or Secretary*]

Fee Sh.10.

No. of Company…...…….....… Form No. 207

NOTICE OF THE SITUATION OF THE OFFICE WHERE A BRANCH REGISTER IS KEPT, OR OF ANY CHANGE IN, OR DISCONTINUANCE OF, ANY SUCH OFFICE

(section 121 (2))

Name of Company .....Limited

Presented by.....

.....

To the Registrar of Companies.

..... Limited hereby gives you notice, in accordance with section 121 (2) of the Companies Act, and by the authority of *(a)*.....

..... that a branch register is now kept at *(b)*.....

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[Subsidiary]
Date ……., 19 ……. *Signed* ..……..……..……..……
[*State whether Director or Secretary*]

Fee Sh. 10.

---

a) e.g. "a special resolution of the Company, duly passed on the .....day of ..... 19.....," or "Clause ..... of the Company's articles of association".
b) In cases of change, the words "in lieu of" and the previous address should be inserted after the present address. In the case of discontinuance, strike out the words "is now kept" and insert the words "it discontinued" after the address.

No. of Company…..…….....… Form No. 208

DECLARATION OF COMPLIANCE WITH THE REQUIREMENTS OF THE COMPANIES ACT ON APPLICATION FOR REGISTRATION OF A COMPANY

(section 17 (2))

Name of Company .....Limited

Presented by.....

.....

I,....., of.....,
do solemnly and sincerely declare that I am *(a)*.....
of .....Limited, and that all the requirements of the Companies Act in respect of matters precedent to the registration of the said Company and incidental thereto have been complied with. And I make this declaration conscientiously believing the same to be true and according to the Oaths and Statutory Declarations Act.
Declared at .....
this ..... day of....., 19.....,
Before me, ...
A Commissioner for Oaths *(b)*.

Fee Sh.10.

(a) Insert "an advocate of the High Court engaged in the formation" or "a person named in the article of association as a director or secretary".
(b) Or "Notary Public" or "Magistrate".

No. of Company…..…….....… Form No. 209

CONSENT TO ACT AS DIRECTOR OF A COMPANY

(section 182 (1) *(a)*)

Name of Company .....Limited

Presented by.....

.....

To the Registrar of Companies.

I [We], the undersigned, hereby testify my [our] consent to act as director of .... Limited, pursuant to section 182 (1) *(a)* of the Companies Act.

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[Subsidiary]

Signature *(a)*	Address	Description

Dated the …….....….. day of ….....……..., 19 …...….

Fee Sh. 10.

(a) If a director signs by his agent authorized in writing, the authority must be produced.

No. of Company ....

Form No. 210

LIST OF PERSONS WHO HAVE CONSENTED TO BE DIRECTORS OF A COMPANY

(section 182 (4))

Name of Company .....

.....Limited

Presented by.....

.....

.....

.....

List of the persons who have consented to be directors of .... Limited, delivered to the Registrar of Companies, pursuant to section 182 (4) of the Companies Act, by..... of .... the applicant[s] for registration of the memorandum and articles of the Company.

Surname	Christian name	Address and description

Date ……..., 19 ….…. *Signed*...……...……..…

[Applicant(s)]

Fee Sh. 10.

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[Subsidiary]

No. of Company…..…. Form No. 211

DECLARATION THAT THE CONDITIONS OF SECTION 111 (1) *(b)* AND *(c)* OF THE COMPANIES ACT HAVE BEEN COMPLIED WITH

(section 111 (1) *(d)*)

[*To be used by a company which issued a prospectus on or with reference to its formation*]

Name of Company ..... Limited

Presented by.....

.....

I, ...,

of .....,
being *(a)*..... of..... Limited,
do solemnly and sincerely declare as follows: -

That the amount of the share capital of the Company offered to the public for subscription is Sh. .....

That the amount stated in the prospectus as the minimum amount which in the opinion of the directors must be raised by the issue of share capital in order to provide for the matters specified in paragraph 4 of Part I of the Third Schedule to the Companies Act is Sh. .....

That shares held subject to the payment of the whole amount thereto in cash have been allotted to the amount of Sh. .....

* Delete words not applicable.

*That every director of the Company has paid to the Company on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash a proportion payable on application and allotment on the shares offered for public subscription, *except the following director[s] namely..... .....,who has [have] not taken or contracted to take any shares for which he is [they are] liable to pay in cash.

*That no director of the Company has taken or contracted to take any shares for which he is liable to pay in cash.

That no money is or may become liable to be repaid to applicants for any shares or debentures which have been offered for public subscription by reason of any failure to apply for or to obtain permission for the shares or debentures to be dealt in on any stock exchange.

And I make this declaration conscientiously believing the same to be true and according to the Oaths and Statutory Declarations Act.

Declared at .....
this ..... day of ....., 19.....,
Before me, ...,
A Commissioner for Oaths (b).
Fee Sh. 10.

(a) Insert "the secretary" or "a director".
(b) Or "Notary Public" or "Magistrate".]

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[Subsidiary]

No. of Company..... Form No. 212

DECLARATION THAT THE PROVISIONS OF SECTION 111 (2) (q) OF THE COMPANIES ACT HAVE BEEN COMPLIED WITH

(section 111 (2) *(c)*)

[*To be used by a company which has delivered to the Registrar of Companies a statement in lieu of prospectus*]

Name of Company ..... Limited

Presented by.....

.....

I, ...

of .....,

being *(a)* ..... of .....

..... Limited, do solemnly and sincerely declare as follows:–

*That every director of the Company has paid to the Company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash, *except the following directors namely.....
..... , who has [have] not taken or contracted to take any shares for which he is [they are] liable to pay in cash.

* Delete words not applicable.

*That no director of the Company has taken or contracted to take any shares for which he is liable to pay in cash.

And I make this declaration conscientiously believing the same to be true and according to the Oaths and Statutory Declarations Act.

Declared at .....

this ..... day of ....., 19 .....,
Before me, ...,
A Commissioner for Oaths (b).

Fee Sh. 10.

(a) Insert "the secretary " or "a director".

(b) Or "Notary Public" or "Magistrate".

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[Subsidiary]

No. of Company..... Form No. 213

RETURN OF ALLOTMENTS FROM THE *(a)*

....., 19....., to the

.....,19..... of ....

(section 54)

Name of Company .....Limited

Presented by.....

.....

Number of the *(b)*..... shares allotted payable in cash .....

Nominal amount of the ..... shares so allotted

Nominal amount of the.....shares so allotted

Amount paid or due and payable on each share.....

Amount paid or due and payable on each share.....

Number of .....shares allotted for a consideration other than in cash

Nominal amount of the..... shares so allotted

Amount to be treated as paid on each such share.....

The consideration for which such shares have been allotted is as follows: -

NAMES, DESCRIPTIONS AND ADDRESSES OF THE ALLOTTEES

Name and description	Address	Number of shares allotted		
		Preference	Ordinary	Other kinds
	Total …….....			

Signed …….....…….....……..

[*State whether Director or Secretary*]

Fee Sh. 10.

(a) (i) When a return includes several allotments made on different dates, the dates of only the first and the last of such allotments should be entered at the top of the front page, and the registration of the return should be effected within sixty days of the first date.

(ii) When a return relates to one allotment only, made on one particular date, that date only should be inserted, and the spaces for the second date struck out and the word "made" substituted for the word "from" after the word "Allotments".

*(b)*Distinguish between preference, ordinary, redeemable preference, etc.

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[Subsidiary]

No. of Company..... Form No. 214

PARTICULARS OF A MORTGAGE OR CHARGE CREATED BY A COMPANY REGISTERED IN KENYA

(section 96)

Name of Company .....Limited

Presented by.....

.....

Particulars of mortgage or charge created by.....

..... Limited, a Company registered in Kenya.

(1) Date and description of the instrument creating or evidencing the mortgage or charge *(a)*	(2) Amount secured by the mortgage or charge	(3) Short particulars of the property mortgaged or charged	(4) Names, postal addresses and descriptions of the mortgagees or persons entitled to the charge	(5) Amount of rate per cent of the commission, allowance or discount (if any) paid or made either directly or indirectly by the Company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any of the debentures included in this return *(b)*

Date ……, 19 …….. Signed …….....……..

[*Designation of position in relation to the Company*]

Fee Sh. 20.

(a) A description of the instrument, e.g. "trust deed", "mortgage", "debenture", etc., should be given.

(b) The rate of interest payable under the terms of the debentures should not be entered.

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[Subsidiary]

No. of Company..... Form No. 215

PARTICULARS OF A SERIES OF DEBENTURES CONTAINING, OR GIVING BY REFERENCE TO ANY OTHER INSTRUMENT, ANY CHARGE, TO THE BENEFIT OF WHICH THE DEBENTURE HOLDERS OF THE SAID SERIES ARE ENTITLED PARI PASSU, CREATED BY A COMPANY REGISTERED IN KENYA

(section 96)

[*This Form (No. 215) is to be used for registration of particulars of the entire series. When more than one issue of debentures in the series is made, particulars of each issue subsequent to the first should be sent to the Registrar on Form No. 217.*]

Name of Company .....Limited

Presented by.....

.....

Particulars of a series of debentures created by.....

..... Limited, a Company registered in Kenya.

(1) Total amount secured by the whole series	(2) Amount of the present issue of the series	(3) Dates of the resolutions authorizing the issue of the series	(4) Date of the covering deed (if any) by which the security is created or defined or, if there is no such deed, the date of the first execution of any debenture of the series	(5) General description of the property charged	(6) Names of the trustees (if any) for the debenture holders	(7) Amount or rate per cent of the commission, allowance or discount (if any) paid or made either directly or indirectly by the Company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any of the debentures included in this return *(a)*

Date ……, 19 …….. *Signed* ……..……..

[*Designation of position in relation to the Company*]

Fee Sh. 20.

(a) The rate of interest payable under the terms of the debentures should be entered.

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[Subsidiary]

No. of Company..... Form No. 216

PARTICULARS OF A MORTGAGE OR CHARGE SUBJECT TO WHICH PROPERTY HAS BEEN ACQUIRED BY A COMPANY REGISTERED IN KENYA

(section 98)

Name of Company .....Limited

Presented by.....

.....

Particulars of a mortgage or charge subject to which property has been acquired by

.....Limited, a Company registered in Kenya.

(1) Date and description of the instrument creating or evidencing the mortgage or charge *(a)*	(2) Date of the acquisition of the property	(3) Amount owing on security of the mortgage or charge	(4) Short particulars of the property mortgaged or charged	(5) Names, postal addresses and descriptions of the mortgagees or persons entitled to the charge

Date ……, 19 …….. *Signed* …….....……..

[*Designation of position in relation to the Company*]

Fee Sh. 20.

(a) A description of the instrument, e.g. "trust deed", "mortgage", etc., should be given.

Note.- The instrument should accompany this statement of particulars for verification.

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[Subsidiary]

No. of Company..... Form No. 217

PARTICULARS OF AN ISSUE OF DEBENTURES IN A SERIES BY A COMPANY REGISTERED IN KENYA

(section 96 (7))

[*For registration of the entire series, Form No. 215 must be used.*]

Name of Company .....Limited

Presented by.....

.....

Particulars of an issue of debentures in a series when more than one issue in the series is made, by .....Limited, a Company registered in Kenya.

(1) Date of registration of the series *(a)*	(2) Date of present issue	(3) Amount of present issue	(4) Particulars as to the amount or rate per cent of the commission, allowance or discount (if any) paid or made either directly or indirectly by the Company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any of the debentures included in this return *(b)*

Date ……., 19 …….. *Signed* …….....……..

[*Designation of position in relation to the Company*]

Fee Sh. 20.

(a) The date of registration may be confirmed from the certificate of registration.

(b) The rate of interest payable under the terms of the debentures should not be entered.

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[Subsidiary]

No. of Company..... Form No. 218

MEMORANDUM OF SATISFACTION OF A REGISTERED CHARGE OR MORTGAGE
(section 101)

Name of Company .....Limited

Presented by.....

.....

.....Limited hereby gives notice that the registered charge being *(a)*.....of which particulars were registered with the Registrar of Companies on the *(b)*..... day of....., 19....., was wholly satisfied on the.....day of....., 19....., the debt for which the charge was given having been paid or satisfied. *(c)*

In witness whereof the common seal of the Company was hereunto affixed the ....day of....., 19.....

Signed …….....……..……..
…….....
…….....

} *Directors*
Secretary

Fee Sh. 20.

(a) A description of the instrument(s) creating or evidencing the charge, e.g. "mortgage", "charge", "debenture", etc., with the date thereof, should be given. If the registered charge was a "series of debentures or debenture stock", the words "Authorized by resolution", together with the date of the resolution, should be added.

(b) The date of the registration may be confirmed from the Certificate of Registration and (except in the case of a series of debentures) from the registration stamp affixed to the instrument(s) registered.

(c) The discharge or release of the registered charge or mortgage should be lodged with this memorandum as evidence of satisfaction. Where this document cannot be produced, written evidence of the discharge or release will be required.

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[Subsidiary]

No. of Company..... Form No. 219

MEMORANDUM OF PARTIAL SATISFACTION OF A REGISTERED CHARGE OR MORTGAGE
(section 101)

Name of Company .....Limited

Presented by.....

.....

..... Limited hereby give notice that the registered charge being (a) ..... of which particulars were registered with the Registrar of Companies on the (b) ..... day of....., 19....., was satisfied on the ..... day of....., 19....., to the extent of ..... *(c)* the debt for which the charge was given having been partly paid or satisfied, and part of the property or undertaking charged having been released from the charge *(d)*

Short particulars of the property or undertaking no longer charged .....
.....
.....
.....
.....
In witness whereof the common seal of the Company was hereunto affixed the ..... day of ....., 19.....

Signed ……..…….……..……..
……..……..... } *Directors*
……..……..... *Secretary*

Fee Sh. 20.

(a) A description of the instrument(s) creating or evidencing the charge, e.g. mortgage", "chargee", "debenture", etc., with the date thereof, should be given. If the registered charge was a "series of debenture stock" the words "Authorized by resolution", together with the date of the resolution, should be added.

(b) The date of registration may be confirmed from the Certificate of Registration and (except in the case of a series of debentures) from the registration stamp affixed to the instrument(s) registered.

(c) Delete as necessary.

Written evidence of the partial discharge or release should be forwarded to the Registrar with this Memorandum.

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[Subsidiary]

No. of Company..... Form No. 220

DECLARATION VERIFYING MEMORANDUM OF DISPOSAL OF PART OF PROPERTY MORTGAGED OR CHARGED

(section 101)

Name of Company .....Limited

Presented by.....

.....

We, ..., of....., a director of .... Limited and ....., of ....., the secretary thereof, do solemnly and sincerely declare that the particulars contained in the Memorandum annexed hereto are true to the best of our knowledge, information and belief. And we make this declaration conscientiously believing the same to be true and according to the Oaths and Statutory Declarations Act.

Declared at.....
this.....day of....., 19.....,
Before me.....,

A Commissioner for Oaths *(a)*.

MEMORANDUM OF FACT THAT PART OF PROPERTY OR UNDERTAKING MORTGAGED OR CHARGED HAS CEASED TO FORM PART OF PROPERTY OR UNDERTAKING OF COMPANY

..... Limited
hereby gives notice that on the ..... day of....., 19....., part of the property or undertaking secured by the registered charge, being *(b)*....., of which particulars were registered with the Registrar of Companies on the *(c)*..... day of..... .....,19....., ceased to form part of the Company's property or undertaking.

Short particulars of such property.....
.....
.....

In witness whereof the common seal of the Company was hereunto affixed the ..... day of..... ....., 19.....

Signed …….....……..……..
……..... *Directors*
……..... *Secretary*

Fee Sh. 20.

(a) Or "Notary Public" or "Magistrate".
(b) A description of the instrument(s) creating or evidencing the charge, e.g. "mortgage",

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[Subsidiary]

"charge","debenture", etc., with the date thereof, should be given. If the registered charge was a series of debentures or debenture stock, the words "authorized by resolution", together with the date of the resolution, should be added.

(c) The date of registration may be confirmed from the Certificate of Registration and (except in the case of a series of debentures) from the registration stamp affixed to the instrument(s) registered.

No. of Company..... Form No. 221

PARTICULARS OF CONTRACT RELATING TO SHARES
(section 54)

[The particulars must be stamped with the same stamp duty as would have been payable if the contract had been reduced to writing]

Name of Company .....Limited

Presented by.....

.....

Particulars of contract relating to shares allotted as fully or partly paid up otherwise than in cash by ..... Limited.

(1) The number of shares allotted as fully or partly paid up otherwise than in cash: .....

(2) The nominal amount of each share: Sh. .....

(3) The amount to be considered as paid up on each share otherwise than in cash:

Sh. .....

(4) If the consideration for the allotment of such shares is services, or any consideration other than that mentioned below in (5), state the nature of such consideration, and the number of shares so allotted .....

.....

(5) If the allotment is made in satisfaction or part satisfaction of the purchase price of property, give brief description of such property, and full particulars of manner in which the purchase price is to be satisfied—

(a) Brief description of property .....

.....

.....

(b) Purchase price .. .. ..

[Subsidiary]

Form No. 221-(*Contd.*)

(e) Amount of debt released or liabilities assumed by the purchaser (including mortgages on property acquired) .. .. Sh. .....

Total purchase price ..... Sh. .....

[P.T.O.

(6) Give full particulars, in the form of the following table, of the property which is the subject of the sale, showing in detail how the total purchase price is apportioned between the respective heads-

	Sh.	cts.
Legal estates in freehold property and fixed plant and machinery and other fixtures thereon *(a)*		
Legal estates in leasehold property *(a)*		
Fixed plant and machinery on leasehold property (including tenants', trade and other fixtures)		
Equitable interests in freehold or leasehold property *(a)*		
Loose plant and machinery, stock-in-trade and other chattels *(b)* …….....….		
Goodwill and benefit of contracts		
Patents, designs, trade marks, licences, copyrights, etc		
Book and other debts		
Cash in hand and at bank on current account, bills, notes, etc		
Cash on deposit at bank or elsewhere		
Shares, debentures and other investments		
Other property, viz.		
	Sh.	

Date .....,19..... *Signed*.....

[*State whether Director or Secretary*]

Fee Sh.10.

(a) Where such properties are sold subject to mortgage, the gross value should be shown.

(b) No plant and machinery which was not in actual state of severance on the date of the sale should be included under this head.

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[Subsidiary]

No. of Company..... Form No. 222

NOTICE OF APPOINTMENT OF A RECEIVER OR MANAGER

(section 103)

Name of Company .....Limited
Presented by.....
.....
To the Registrar of Companies.
I,....., of .....,
with reference to ..... Limited,
hereby give notice that -

(a) I have obtained an Order of the *(b)*.....
dated the..... day of....., 19....., for the
appointment of.....of.....,
as *(c)*.....

* Delete as necessary.

*(1) of the whole or substantially the whole of the property of this Company,

*(2) of part of the property of this Company,

*(3) of the income arising from the property or part of the property of this Company,

on behalf of the holders of *(d)*.....
.....

(a) On the ..... day of....., 19.....,

I appointed....., of....., as *(c)*
.....

*(1) of the whole or substantially the whole of the property of this Company,

*(2) of part of the property of this Company,

*(3) of the income arising from the property or part of the property of this Company,

on behalf of the holders of *(d)*.....
under the powers contained in that instrument.

Date....., 19..... *Signed*.....

Fee Sh. 10.

(a) Of these two paragraphs, strike out that which does not apply.

(b) Name of Court making the order.

(c) "Receiver" or "Manager" or "Receiver and Manager", as the case may be.

(d) Describe fully the instrument under which appointment is made, and state whether it is a debenture secured by a floating charge.

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[Subsidiary]

No. of Company..... Form No. 223

RECEIVER'S OR MANAGER'S ABSTRACT OF RECEIPTS AND PAYMENTS
(sections 351 (2) and 353 (1))

Name of Company .....Limited

Presented by.....

.....

Name and address of Receiver or Manager .....

.....

Date and description of security containing the powers under which Receiver or Manager is appointed .....

.....

Period covered by the abstract { from .....
to.....

ABSTRACT

Receipts		Payments	
	Sh. *cts.*		*Sh.* *cts.*
Brought forward		*Brought forward .. ..*	
Carried forward		*Carried forward .. ..*	

Note.- The receipts and payments must severally be added up at the foot of each sheet and the totals carried forward from one abstract to another without any intermediate balance, so that the gross totals shall represent the total amounts received and paid by the Receiver or Manager since the date of appointment.

Date ….....….....…..…., 19 ……, Signed …….....……

Fee Sh. 10.

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[Subsidiary]

No. of Company..... Form No. 224

NOTICE OF CEASING TO ACT AS RECEIVER OR MANAGER
(section 103(2))

Name of Company .....Limited

Presented by.....

.....

To the Registrar of Companies.
I, ..., of.....
....., hereby give you notice that I ceased to act as Receiver and [or] Manager of.....Limited, on the..... day of....., 19.....

Date ....., 19..... *Signed*.....

Fee Sh. 10

No. of Company..... Form No. 225

STATEMENT OF THE AMOUNT OR RATE PER CENT OF THE COMMISSION PAYABLE IN RESPECT OF SHARES AND OF THE NUMBER OF SHARES FOR WHICH PERSONS HAVE AGREED FOR A COMMISSION TO SUBSCRIBE ABSOLUTELY
(section 55 (1) (c) (ii))

Name of Company .....Limited

Presented by.....

.....

Article of association authorizing commission .. .. No. .....
Particulars of amount payable as commission for subscribing or agreeing to subscribe, or for procuring or agreeing to procure subscriptions, for any shares in the Company ……. Sh.....
or
Rate of such commission .. .. Rate per cent.....
Date of circular or notice (if any) not being a prospectus, inviting subscriptions for the shares and disclosing the amount or rate of the commission .. .. Date .....

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[Subsidiary]

Number of shares for which persons have agreed for a commission to subscribe absolutely .. .. No. .....

Signatures of all the Directors or of their Agents
authorized in writing .....
.....
.....
.....

Date ....., 19..... *Signed*.....

Fee Sh. 10.

Form No. 226

NOTICE TO DISSENTING SHAREHOLDERS
(section 210 (1))

re (a)..... Limited
(hereinafter called "the transferor Company").

Notice by *(b)*..... Limited
(hereinafter called "the transferee Company").
To *(c)*.....

.....

.....

.....

Whereas on the ..... day of ....., 19....., the transferee Company made an offer to all the holders of *(d)*..... shares in the transferor Company [state shortly the nature of the offer].....
.....

And Whereas up to the.....day of.....,19....., being a date within four months of the date of the making thereof, such offer was approved by the holders of not less than nine-tenths in value of the said *(d)* …….. shares (other than shares already held at the date of the offer by or by a nominee for the transferee company or its subsidiary):

Now therefore the transferee Company, in pursuance of subsection (1) of section 210 of the Companies Act, hereby gives you notice that it desires to acquire the *(d)* ..... shares held by you in the transferor company.

And further take notice that, unless upon an application made to the Court by you the said *(c)* .....
.....
.....

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[Subsidiary]

on or before the .....day of .....,19....., being one month from the date of this notice, the Court thinks fit to order otherwise, the transferee Company will be entitled and bound to acquire the *(d)* ……. shares held by you in the transferor Company on the terms of the above-mentioned offer approved by the approving *(d)*..... shareholders of the company.

Date....., 19..... *Signed*.....
[*State whether Director or secretary*]

(a) Name of transferor Company.
(b) Name of transferee Company.
(c) Name(s) and address(es) of dissenting shareholder(s).
(d) If the offer is limited to a certain class or classes of shareholders state description of that class or those classes.

Form No. 227

NOTICE TO NON-ASSENTING SHAREHOLDERS
(section 210 (2))

re (a)..... Limited
(hereinafter called "the transferor Company").

Notice by *(b)*..... Limited
(hereinafter called "the transferee Company").
To *(c)*.....

.....

.....

.....

Whereas in pursuance of a scheme or contract involving the transfer of the *(d)*.....
..... shares in the transferor Company to the transferee Company certain shares were on the.....day of....., 19....., transferred to the transferee Company or to its nominee:

Now therefore the transferee Company, in pursuance of subsection (2) of section 210 of the Companies Act, hereby gives you notice that those shares together with such other *(d)*.....
..... shares in the transferor Company as were held by or by a nominee for the transferee Company or its subsidiary at the said date comprise or include nine-tenths in value of all the *(d)* ..... shares in the transferor Company.

And further take notice that you may within three months from the giving of this notice give notice that you require the transferee Company to acquire your holding of *(d)*.....
..... shares in the transferor Company, and that if you give such notice the transferee Company shall be entitled and bound to acquire those shares on the terms on which under the said scheme or contract the shares of the approving shareholders were transferred to it, or on such other terms as may be agreed or as the Court on the application of either the transferee Company or yourself [yourselves] thinks fit to order.

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[Subsidiary]

Date....., 19..... *Signed*.....

[*State whether Director or secretary*]

(a) Name of transferor Company.
(b) Name of transferee Company.
(c) Name(s) and address(es) of non-assenting shareholders.
(d) If the offer is limited to a certain class or classes of shareholders state description of that class or those classes.

FORM 228

NOTICE TO TRANSFEREE COMPANY BY NON-ASSENTING SHAREHOLDER
(section 210 (2))

re (a)..... Limited
(hereinafter called "the transferor Company").

To *(b)*.....

.....

.....

.....
Notice by *(c)*..... Limited
(hereinafter called "the transferee Company").

Whereas on the..... day of....., 19....., *(c)*.....
..... gave notice to me [us] that on the ..... day of ....., 19....., by reason of the *(d)* ..... shares in the transferor Company having that day been transferred to the transferee Company or its nominee in pursuance of a scheme or contract involving the transfer of those shares to the transferee Company the shares so transferred together with other *(d)*..... shares in the transferor Company held by or by a nominee for the transferee Company or its subsidiary at the date of transfer comprised or included nine-tenths in value of all the *(d)*..... shares in the transferor Company.

Now I [we] the said.....
.....
.....
.....

being the holder[s] of *(e)* ..... shares in the transferor Company hereby give notice in accordance with subsection (2) of section 210 of the Companies Act to the transferee Company that I [we] require it to acquire the said shares held by me [us].

Date....., 19..... Signed.....

Note. - Where a shareholder has given this notice to the transferee Company, the transferee Company is entitled and bound to acquire the shares on the terms of the scheme or contract, or on agreed terms, or on such other terms as the Court on the application of either party may fix.

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[Subsidiary]

(a) Name of transferor Company.

(b) Name(s) and address(es) of non-assenting shareholder(s).

(c) Name of transferee Company.

(d) If the offer is limited to a certain class or classes of shareholders, state description of that class or those classes.

(e) State the number and description of shares held by the non-assenting shareholders.

No. of Company..... Form No.229

NOTICE OF APPLICATION MADE TO THE COURT FOR THE CANCELLATION OF AN ALTERATION MADE BY SPECIAL RESOLUTION TO THE PROVISION OF THE MEMORANDUM OF THE COMPANY

(section 8 (7))

Name of Company .....Limited

Presented by.....

.....

To the Registrar of Companies.

.....Limited hereby gives you notice, pursuant to subsection (7) of section 8 of the Companies Act, that an application has been made to the Court under that section for the cancellation of the alteration made to the provisions of the memorandum of the company by a special resolution dated the ..... day of....., 19....., of which a copy was forwarded to you on the .....day of ....., 19.....

Date....., 19..... Signed.....

[*State whether Director or secretary*]

Fee Sh. 10.

No. of Company..... Form No. 230

NOTICE OF PLACE WHERE A REGISTER OF HOLDERS OF DEBENTURES OR A DUPLICATE THEREOF IS KEPT OR OF ANY CHANGE IN THAT PLACE

(section 88 (2))

Name of Company .....Limited

Presented by.....

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[Subsidiary]

To the Registrar of Companies.

..... Limited hereby gives you notice, in accordance with subsection (2) of section 88 of the Companies Act, that a register of holders of debentures of the Company is kept at .....

.....

Date....., 19..... Signed.....
[*State whether Director or secretary*]

Fee Sh. 10.

No. of Company..... Form No. 231

NOTICE OF PLACE WHERE REGISTER OF MEMBERS IS KEPT OR OF ANY CHANGE IN THAT PLACE
(section 112 (3))

Name of Company .....Limited

Presented by.....

.....

To the Registrar of Companies.

.....Limited

hereby gives you notice, in accordance with subsection (3) of section 112 of the Companies Act, that the register of members of the Company is kept at .....

.....

Date....., 19..... Signed.....
[*State whether Director or secretary*]

Fee Sh. 10.

FORM No. 232

LETTER FORWARDING STATEMENT AS TO THE AFFAIRS OF

..... Limited
(section 351 (1) (c) (i))

To the Registrar of Companies.

I, ..., of.....
the Receiver of *(a)* ..... of the property of the above Company appointed under the powers contained in *(b)* ....., hereby transmit to you, pursuant to section 351 (1) *(c)* (i) of the Companies Act, a copy of the Statement of Affairs of the said Company received by me from the Company on *(c)*.....

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[Subsidiary]

Date....., 19..... Signed.....

Fee Sh. 10.

(a) Short description of the property over which appointed.
(b) Describe fully the instrument under which the appointment is made.
(c) Date of receipt by the Receiver of the Statement from the Company.

FORM No. 233

NOTICE OF APPOINTMENT OF RECEIVER OR MANAGER

(section 351 (1))

To *(b)*.....

I, ..., of....., hereby give notice that -

(b) Under the Order of the *(c)* .....dated the.....

day of....., 19....., in the matter of *(d)*.....

I was appointed *(e)*..... of *(f)*.....
of the property of your Company.

(b) On the..... day of....., 19....., I was appointed
(e)..... of *(g)*.....
of the property of your Company under the powers contained in an instrument dated *(h)*.....
.....

Date....., 19..... Signed.....

Fee Sh. 10.

(a) Name of Company.
(b) Of these two paragraphs strike out that which does not apply.
(c) Name of Court making Order.
(d) Short title of action.
(e) "Receiver" or "Manager" or "Receiver and Manager", as the case may be.
(f) Short recital from the Order of the property over which appointed.
(g) Short description of the property over which appointed.
(h) Describe fully the instrument under which the appointment is made.

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[Subsidiary]

No. of Company..... Form No. 234

STATEMENT AS TO THE AFFAIRS OF

*..... Limited

(sections 351 (1) *(b)* and 352 (2))

In the Matter of a Debenture [Series of Debentures] Registered ....., 19.....
Statement as at the .....day of....., 19....., the date of the appointment of the Receiver.
We,.....,of.....,
a director of..... Limited,
and ....., of.....,
the secretary thereof, do solemnly and sincerely declare that the statement made overleaf and the several lists hereunto annexed marked..... are to the best of our knowledge and belief a full, true and complete statement as to the affairs of the above-named Company on the .....day of.....,19....., the date of the appointment of the Receiver. And I make this solemn declaration conscientiously believing the same to be true and according to the Oaths and Statutory Declarations Act.

Declared at.....
this..... day of....., 19.....,
Before me,.....,

A Commissioner for Oaths *(b)*.

The Commissioner is particularly requested, before taking the declaration, to ascertain that the full name, address and description of each declarant are stated, and to initial all crossings-out or other alterations on the printed form. A deficiency in the declaration in any of the above respects will entail its refusal, and will necessitate its being re-declared.

Fee Sh. 10.

Note.—The several lists annexed are not exhibits to the declaration.
*Insert full name of Company.

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[Subsidiary]

No. of Company..... FORM No. 235

STATEMENT AS TO THE. AFFAIRS OF

*..... Limited

(sections 351 (1) (b) and 352 (2))

IN THE HIGH COURT OF KENYA
IN THE MATTER OF

+.....

Statement as at the.. ..... day of....., 19....., the date of the appointment of the Receiver.

We ....., of.....,a director of..... ..... Limited, and ....., of ....., the secretary thereof, make oath and say that the statement made overleaf and the several lists hereunto annexed marked .....are to the best of our knowledge and belief a full, true and complete statement as to the affairs of the above-named Company on the..... day of.....,19....., the date of the appointment of the Receiver. And we make this solemn declaration conscientiously believing the same to be true and according to the Oaths and Statutory Declarations Act.

Sworn at .....

this.....day of ....., 19.....,

Before me, ...,

A Commissioner for Oaths.

The Commissioner is particularly requested, before taking the affidavit, to ascertain that the full name, address and description of each deponent are stated, and to initial any crossing-out or other alterations in the printed form. A deficiency in the affidavit in any of the above respects will entail its refusal by the Court, and will necessitate its being resworn,

---

Note. - The several lists annexed are not exhibits to the affidavit.
*Insert full name of Company.
+insert title of action.

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[Subsidiary]

Page 2 STATEMENT OF TO BE ANNEXED TO

STATEMENT AS TO THE AFFAIRS OF

..... Limited

ON THE …....., 19 ....…., THE DATE OF THE APPOINTMENT OF THE RECEIVER SHOWING ASSETS AT ESTIMATED REALIZABLE VALUES AND LIABILITIES EXPECTED TO RANK

	Estimated realizable values
ASSETS NOT SPECIFICALLY PLEDGED (as per List "A")	
Balance at bank …….....	*Sh.*
Cash in land bank……....	
Marketable securities……....	
Bills receivable...……....	
Trade debtors...……....	
Loans and advances.……....	
Unpaid calls...……....	
Stock in trade……....	
Work in progress……....	

Freehold property …….....	
Leasehold property …….....	
Plant and machinery …….....	
Furniture, fittings, utensils, etc …….....	
Patents, trade marks, etc …….....	
Investments other than marketable securities	
Other property, viz:-	

ASSETS SPECIFICALLY PLEDGED (as per List "B") Freehold property	*(a)* Estimated realizable values	*(b)* Due to secured creditors	*(c)* Deficiency ranking as unsecured (see next page)	Surplus carried to last column
	Sh.	*Sh.*	*Sh.*	*Sh.*

Sh.				

Estimated surplus from assets specifically pledged …….....	
ESTIMATED TOTAL ASSETS AVAILABLE FOR PREFERENTIAL CREDITORS, DEBENTURE HOLDERS SECURED BY A FLOATING CHARGE, UNSECURED CREDITORS* (carried forward to next page) ……	
SUMMARY OF GROSS ASSETS …….....	*(d)*
Gross realizable value of assets specifically pledged …….....	
Other assets …….....	
GROSS ASSETS ….....…… Sh.	

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[Subsidiary]

AFFAIRS AND LISTS
FORMS 232, 234 and 235

	ESTIMATED TOTAL ASSETS AVAILABLE FOR PREFERENTIAL CREDITORS, DEBENTURE HOLDERS SECURED BY A FLOATING CHARGE, AND UNSECURED CREDITORS* (brought forward from preceding page) ……...		
(e) Gross liabilities	LIABILITIES (*to be deducted from surplus or added to deficiency as the case may b*e)		
	SECURED CREDITORS (as per List "B") to extent to which claims are estimated to be covered by assets specifically pledged (item *(a)* or *(b)* on preceding page, whichever is the less) …..... (*Insert in "Gross liabilities" column only*)		
	PREFERENTIAL CREDITORS (as per List "C") .....….		
	Estimated balance of assets available for debenture holders secured by a floating charge, and unsecured creditors* …….....….		
	DEBENTURE HOLDERS secured by a floating charge (as per List "D")		
	Estimated SURPLUS/DEFICIENCY as regards debenture holders* ….....……...		
	UNSECURED CREDITORS (as per List "E") :- Estimated unsecured balance of claims of creditors partly secured on specific assets, brought from preceding page *(c)* .. .. Trade accounts …….....……..... Bill payable …….....……..... Outstanding expenses .. .. …….....…….....… …….....…….....… Contingent liabilities (state nature):- …….....…….....… …….....…….....…	*Sh.*	
£	ESTIMATED SURPLUS/DEFICIENCY AS REGARDS CREDITORS* being difference between: GROSS ASSETS brought from preceding page *(d)* ..... and GROSS LIABILITIES as per column *(e)* ….....	*Sh.*	
	ISSUED AND CALLED-UP CAPITAL: preference shares of ……..…….. each called up …..... ordinary shares of ……. each called up … ….....….	*Sh.*	
	ESTIMATED SURPLUS/DEFICIENCY AS REGARDS MEMBERS* (as per List "F") …….....…….....…….....

LIST "A"—ASSETS NOT SPECIFICALLY PLEDGED

Full particulars of every description of property not specifically pledged and not included in any other list are to be set forth in this list.

STATEMENT OF AFFAIRS
LIST "A"

Full statement and nature of property	Book value		Estimated to produce	
Balance at bank (state name of bankers).....	*Sh.*	*cts.*	*Sh.*	*cts.*
Cash in hand				
Marketable securities, viz.....				
Bills receivable (as per Schedule I)				
Trade debtors (as per Schedule II)				
Loans and advances, viz.				
Unpaid calls (as per Schedule III)				
Stock in trade (state nature)				
Freehold property, viz.				
Leasehold property, viz.				
Plant and machinery, viz.				
Furniture, fittings, utensils, etc				
Patents, trade marks, etc., viz.				
Investments other than marketable securities, viz.				
Other property, viz.				

Date ....., 19..... *Signed* .....

[Subsidiary]

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SCHEDULE 1—BILLS OF EXCHANGE, PROMISSORY NOTES, ETC. ON HAND AVAILABLE AS ASSETS

The names to be arranged in alphabetical order and numbered consecutively

STATEMENT OF AFFAIRS
SCHEDULE I TO LIST "A"

No.	Name of acceptor of bill or note	Address, etc.	Amount of bill or note		Date when due	Estimated to produce		Particulars of any property held as security for payment of bill or note
			Sh.	*cts.*		*Sh.*	*cts.*	

Signed ……

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SCHEDULE II—TRADE DEBTORS

The names to be arranged in alphabetical order and numbered consecutively

STATEMENT OF AFFAIRS
SCHEDULE II TO LIST "A"

NOTE.-If the debtor to the Company is also a creditor, but for a less amount than his indebtedness, the gross amount due to the Company and the amount of the contra account should be shown in the third column, and the balance only inserted under the heading "Amount of debt", thus:-

	Sh.	*cts.*
Due to Company ……		
Less: *Contra* Account …….....		

No such claim should be included in List "E".

No.	Name	Residence and occupation	Amount of debt						Folio of ledger or other book where particulars are to be found	When contracted		Estimated to produce		Particulars of any securities held for debt
			Good		Doubtful		Bad			Month	Year			
			Sh.	*cts.*	*Sh.*	*cts.*	*Sh.*	*cts.*				*Sh.*	*cts.*	

Date ……..…….....……..... 19…..… *Signed* …….....……..

[Subsidiary]

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SCHEDULE III—UNPAID CALLS

The names to be arranged in alphabetical order and numbered consecutively.

STATEMENT OF AFFAIRS
SCHEDULE III TO LIST "A"

Consecutive No.	No. in share register	Name of shareholder	Address	No. of shares held	Amount of call per share unpaid		Total amount due		Estimated to realize	
					Sh.	*cts.*	*Sh.*	*cts.*	*Sh.*	*cts.*

Date …….....…….....…….. 19…....… *Signed* …….....……..

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LIST "B"—ASSETS SPECIFICALLY PLEDGED AND CREDITORS FULLY OR PARTLY SECURED
(NOT INCLUDING DEBENTURE HOLDERS SECURED BY A FLOATING CHARGE)

STATEMENT OF AFFAIRS
LIST "B"

The names of the secured creditors are to be shown against the assets on which their claims are secured, numbered consecutively, and arranged in alphabetical order as far as possible.

Particulars of assets specifically pledged	Date when security given	Estimated value of Security		No.	Name of creditor	Address and occupation	Amount of debt		Date when contracted		Considera-tion	Balance of debt unsecured carried to List "E"		Estimated surplus from security	
									Month	Year					
		Sh.	*cts.*				*Sh.*	*cts.*				*Sh.*	*cts.*	*Sh.*	*cts.*

Date …….....…….....…….. 19…...… *Signed* …….....…….

[Subsidiary]

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LIST "C" — PREFERENTIAL CREDITORS FOR RATES, TAXES, SALARIES, WAGES AND OTHERWISE

The names to be arranged in alphabetical order and numbered consecutively.

STATEMENT OF AFFAIRS
LIST "C"

No.	Name of creditor	Address and occupation	Nature of claim	Period during which claim accrued due	Date when due	Amount of claim		Amount payable in full		Balance not preferential carried to List "E"	
						Sh.	*cts.*	*Sh.*	*cts.*	*Sh.*	*cts.*

Date ……..……..…….. 19…..… *Signed* …….....…….

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LIST "D"— LIST OF DEBENTURE HOLDERS SECURED BY A FLOATING CHARGE

The names to be arranged in alphabetical order and numbered consecutively.

STATEMENT OF AFFAIRS
LIST "D"

Separate lists must be furnished of holders of each issue of debentures, should more than one issue have been made.

No.	Name of holder	Address	Amount		Description of assets over which security extends
			Sh.	*cts.*	

Date ……..…….....……..... 19…..…. *Signed* …….....……

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LIST "E —UNSECURED CREDITORS

The names to be arranged in alphabetical order and numbered consecutively.

STATEMENT OF AFFAIRS
LIST "E"

NOTES-

1. When there is a *contra* account against the creditor less than his claim against the Company, the amount of the creditor's claim and the amount of the *contra* account should be shown in the third column, and the balance only inserted under the heading "Amount of debt", thus: -

	Sh.	*cts.*
Total amount of claim ……		
Less: Contra Account ……		

No such set-off should be included in Schedule I attached to list "A".

2. The particulars of any bills of exchange and promissory notes held by a creditor should be inserted immediately below the name and address of such creditor.

No.	Name	Address and occupation	Amount of debt		Date when contracted		Consideration
					Month	Year	
			Sh.	*cts.*			
	Unsecured balance of creditors partly secured-brought from List "B".						
	Balance not preferential creditors-brought from List "C".						

Date …….....…….....…….. 19…..… *Signed* …….....…….

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[Subsidiary]

LIST "F"—DEFICIENCY OR SURPLUS ACCOUNT

STATEMENT OF AFFAIRS
LIST "F"

The period covered by this account must commence on a date not less than years before the appointment of the Receiver or, if the Company has not been incorporated for the whole of that period, the date of formation of the Company, unless the Receiver otherwise agrees.

ITEMS CONTRIBUTING TO DEFICIENCY (OR INCLUDING SURPLUS)– *Sh.*

1. Excess (if any) of capital and liabilities over assets on the …....…..., 19….., as shown by balance sheet (copy annexed)

2. Net dividends and bonuses declared during the period from .....…….., 19….., to the date of the statement …….....

3. Net trading losses (after charging items shown in note below) for the same period …….....……

4. Losses other than trading losses written off for which provision has been made in the books during the same period (give particulars or annex schedule) …….....…..

5. Estimated losses now written off or for which provision has been made for the purpose of preparing the statement (give particulars or annex schedule)

6. Other items contributing to deficiency or reducing surplus ……
.....…….

ITEMS REDUCING DEFICIENCY (OR CONTRIBUTING TO SURPLUS)–

7. Excess (if any) of assets over capital and liabilities on the ……, 19……, as shown on the balance sheet (copy annexed) …….....…….

8. Net trading profits (after charging items shown in note below) for the period from the …….....…., 19 ...…..., to the date of the statement

9. Profits and income other than trading profits during the same period (give particulars or annex schedule) ……..

10. Other items reducing deficiency or contributing to surplus ……
…….....….....…

DEFICIENCY SURPLUS as shown by statement.....……..

NOTE AS TO NET TRADING PROFITS AND LOSSES–

Particulars are to be inserted here (so far as applicable) of the items mentioned below, which are to be taken into account in arriving at the amount of net trading profits or losses shown in this account:—

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[Subsidiary]

Provisions for depreciation, renewals or diminution in value of fixed assets
Charges for Kenya income tax and other Kenya taxation on profits ……
Interest on debentures and other fixed loans …….
Payments to directors made by the Company and required by law to be disclosed in the accounts ……..
Exceptional or non-recurring expenditure…….…….
…….....…..
Less: Exceptional or non-recurring receipts ……
……
Balance, being other trading profits or losses ……
Net trading profits or losses as shown in deficiency or surplus account above

Date …….....……., 19 …....… *Signed* …….....……

LIST "G"

In substitution for such of the lists "A" to "F" as will have to be returned blank.

STATEMENT OF AFFAIRS
LIST "G"

List	Particulars	Remarks Where no entries are made on any one or more of the lists "A" to "F" the word "nil" should be inserted in this column opposite the list or lists thus left blank
A	Assets not specifically pledged …….....……....	
B	Assets specifically pledged and creditors fully or partly secured (not including debenture holders secured by afloating charge) .....……....	
C	Preferential creditors for rates, taxes, salaries, wages and otherwise ……....	
D	Debenture holders secured by floating charges.....	
E	Unsecured creditors …….....…..	
F	Deficiency or surplus account .....…….	

Date …….....……., 19 …....… Signed …….....……..

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[Subsidiary]

No. of Company F …….....…..... Form No. 236

LIST OF DOCUMENTS DELIVERED FOR REGISTRATION BY A COMPANY INCORPORATED OUTSIDE KENYA

(section 366)

Name of Company.....

Presented by .....

.....

List of documents delivered to the Registrar of companies for registration, pursuant to section 366 of the Companies Act by .....a Company incorporated in *(a)* .....and which has a place of business within Kenya at .....

(a).....

(b).....

(c).....

(a) A certified copy of the charter, statutes or memorandum and articles of the Company, or other instrument constituting or defining the constitution of the Company, and, if the instrument is not written in the English language, a translation thereof, certified in the prescribed manner.

(b) A list of the directors and secretary of the Company containing with respect to the directors and secretary the particulars required by section 366 (2) of the Companies Act.

(c) The names and addresses of some one or more persons resident in Kenya authorized to accept on behalf of the Company service of process and any notices required to be served on the Company.

Date....., 19.....

Signatures of the persons authorized under section 366 (1) *(d)* of the Companies Act or of some other person in Kenya duly authorized by the Company. .....

.....

.....

.....

.....

(a) Country of origin.

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[Subsidiary]

No. of Company F …….....…..... Form No. 237

LIST AND PARTICULARS OF THE DIRECTORS AND SECRETARY OF A COMPANY INCORPORATED OUTSIDE KENYA

(section 366 (1) *(b)* and 366 (2))

Name of Company.....

Where incorporated.....

Address of place of business in Kenya.....

Presented by.....

.....

PARTICULARS OF THE PERSONS WHO ARE DIRECTORS* OF THE COMPANY AT THE DATE OF THIS RETURN

1 Name (in the case of an individual, present Christian name or names and surname; † in the case of a corporation the corporate name)	2 Any former Christian name or names and surname‡	3 Nationality	4 Postal address (in the case of a corporation the registered or principal office)	5 Other business occupation or directorship, if any; if none, state so§

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[Subsidiary]

PARTICULARS OF THE PERSON WHO IS THE SECRETARY OF THE COMPANY AT THE DATE OF THIS RETURN

1 Name (in the case of an individual, present Christian name or names and surname; † in the case of a corporation, the corporate name)//	2 Any former Christian name or names and surname ‡	3 Postal address (in the case of a corporation, the registered or principal office)//

Date …….....……., 19 ……..

Signatures of the persons authorized under section 366 .....
(1) *(d)* of the Companies Act or of some other person
in Kenya duly authorized by the Company. .....

.....

.....

.....

.....

Fee Sh. 10.

NOTES

* "Director" includes any person who occupies the position of a director by whatsoever name called, and any person in accordance with whose directions or instructions the directors of the Company are accustomed to act.

† "Christian name" includes a forename, and "surname" in the case of a peer or a person usually known by a British title different from his surname means that title.

‡ "former Christian name" and "former surname" do not include -

(a) in the case of a peer or a person usually known by a British title different from his surname, the name by which he was known previous to the adoption of or succession to the title; or

(b) in the case of any person, a former Christian name or surname where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years or has been changed or disused for a period of not less than twenty years; or

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[Subsidiary]
(c) in the case of a married woman, the name or surname by which she was known previous to the marriage.

§ In the case of an individual who has no business occupation but holds any other directorship or directorships, particulars of that directorship or some one of those directorships must be entered.
Where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated.

No. of Company F …….....…..... Form No. 238

LIST OF THE NAMES AND ADDRESSES OF PERSONS RESIDENT IN KENYA AUTHORIZED TO ACCEPT SERVICE ON BEHALF OF A COMPANY INCORPORATED OUTSIDE KENYA

(section 366 (1) *(d)*)

Name of Company.....

Presented by.....

.....

List of persons resident in Kenya authorized to accept on behalf of the Company service of process and any notices required to be served on....., a Company incorporated in *(a)* ..... and which has established a place of business in Kenya at .....

Surname	Christian Name	Address

Date …….....……., 19 ……..

Signatures of the persons authorized under section 366 .....
(1) *(d)* of the Companies Act or of some other person
in Kenya duly authorized by the Company. .....

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Fee Sh. 10.

Country of origin.

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[Subsidiary]

No. of Company F …….....…..... Form No. 239

RETURN OF ALTERATION IN THE CHARTER, STATUTES, MEMORANDUM OR ARTICLES OF ASSOCIATION OR OTHER INSTRUMENT CONSTITUTING OR DEFINING THE CONSTITUTION OF A COMPANY INCORPORATED OUTSIDE KENYA

(section 368 (1) *(a)*)

Name of Company.....

Presented by.....

.....

Return of alteration in the *(a)*.....
constituting or defining the constitution of.....
..... a Company incorporated in *(b)*.....
and which has established a place of business in Kenya.

(c) Certified copy of alteration or certified copy of new deed, if one has been executed, and certified translation of alteration or deed, if not in English language, must accompany his return and be shortly referred to here.

Date …….....……., 19 ……..

Signatures of the persons authorized under section 366 .....
(1) *(d)* of the Companies Act or of some other person
in Kenya duly authorized by the Company. .....

.....

.....

.....

.....

Fee Sh. 10.

(a) "Charter", "statutes", "memorandum or articles of association" or other instrument as the case may be.
(b) Country of origin.
(c) The copy and translation (if any) must be certified in the prescribed manner.

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[Subsidiary]

No. of Company F …….....…..... Form No. 240

RETURN OF ALTERATION IN THE LIST OF PARTICULARS OF DIRECTORS AND THE SECRETARY OF A COMPANY INCORPORATED OUTSIDE KENYA

(section 368 (1) *(b)*)

Name of Company.....

Where incorporated.....

Address of place of business in Kenya.....

Presented by.....

.....

RETURN OF ALTERATION IN THE LIST OF PARTICULARS OF DIRECTORS AND THE SECRETARY OF THE PERSONS WHO ARE DIRECTORS* OF THE COMPANY

1 Name (in the case of an individual, present Christian name or names and surname; † in the case of a corporation, the corporate name)	2 Any former Christian name or names and surname‡	3 Nationality	4 Postal address (in the case of a corporation, the registered or principal office)	5 Other business occupation or directorships, if any; if none state so§	6 Remarks as to the alteration

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[Subsidiary]

PARTICULARS OF THE PERSON WHO IS THE SECRERARY OF THE COMPANY

1 Name (in the case of an individual, present Christian name or names and surname; † in the case of a corporation, the corporate name)‖	2 Any former Christian name or names and surname‡	3 Postal address (in the case of a corporation the registered or principal office)‖	4 Remarks as to the alteration

Date …….....……., 19 ……..

Signatures of the persons authorized under section 366 .....
(1) *(d)* of the Companies Act or of some other person
in Kenya duly authorized by the Company. .....

.....

.....

.....

.....

Fee Sh. 10

NOTES

*"Director" includes any person who occupies the position of a director by whatsoever name called, and any person in accordance with whose directions or instructions the directors of the Company are accustomed to act.

†"Christian name" includes a forename, and "surname" in the case of a peer or a person usually known by a title different from his surname means that title.

‡"former Christian name" and "former surname" do not include-

(a) in the case of a peer or a person usually known by a British title different from his surname, the name by which he was known previous to the adoption of or succession to the title; or

(b) in the case of any person, a former Christian name or surname where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years or has been changed or disused for a period not less than twenty years; or

(c) in the case of a married woman, the name or surname by which she was known previous to the marriage.

§In the case of an individual who has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships must be entered.

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[Subsidiary]

‖Where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated.

A complete list of the directors and secretary shown as existing in the last return must always be given.

A note of the changes since the last list was filed should be made in this column, e.g. by placing against a new director's name the words "in place of ……", and by writing against any former director' "dead", "resigned" or as the case may be.

No. of Company F …….....…..... Form No. 241

RETURN OF ALTERATION IN THE NAMES OR ADDRESSES OF THE PERSONS RESIDENT IN KENYA AUTHORIZED TO ACCEPT SERVICE ON BEHALF OF A COMPANY INCORPORATED OUTSIDE KENYA

(section 368 (1) *(c)*)

Name of Company.....

Presented by.....

.....

Return of alteration in the names or addresses of the persons resident in Kenya authorized to accept on behalf of the Company service of process and any notices required to be served on .... a Company incorporated in *(a)*..... and which has established a place of business in Kenya at.....

Date …….....……., 19 ……..

Signatures of the persons authorized under section 366 ..... (1) *(d)* of the Companies Act or of some other person in Kenya duly authorized by the Company. .....

.....

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Fee Sh. 10.

(a) Country of origin.

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[Subsidiary]

No. of Company F …….....…..... Form No. 242

PARTICULARS OF A MORTGAGE OR CHARGE ON PROPERTY IN KENYA CREATED BY A COMPANY INCORPORATED OUTSIDE KENYA

(sections 97 and 369)

Name of Company.....

Presented by.....

.....

Particulars of a mortgage or charge created by.....
..... a Company incorporated in *(a)*.....
and which has established a place of business in Kenya at .....

1 Date and description of the instrument creating or evidencing the mortgage or charge *(b)*	2 Amount secured by the mortgage or charge	3 Short particulars of the property mortgaged or charged	4 Names, addresses and descriptions of the mortgagees or persons entitled to the charge	5 Amount or rate per cent of the commission, allowance or discount (if any) paid or made either directly or indirectly by the Company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any of the debentures included in this return *(c)*

Date …….....……., 19 ……..

Signatures of the persons authorized under section 366 .....
(1) *(d)* of the Companies Act or of some other person
in Kenya duly authorized by the Company. .....

.....

.....

.....

.....

Fee Sh. 20.

(a) Country of origin.

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[Subsidiary]

(b) A description of the instrument, e.g. "trust deed", "mortgage", "debenture", etc., as the case may be should be given.The rate of interest payable under the terms of the debentures should not be entered.

No. of Company F …….....…..... Form No. 243

PARTICULARS OF A MORTGAGE OR CHARGE SUBJECT TO WHICH PROPERTY IN KENYA HAS BEEN ACQUIRED BY A COMPANY INCORPORATED OUTSIDE KENYA

(sections 97 and 369)

Name of Company.....

Presented by.....

.....

Particulars of a mortgage or charge subject to which property in Kenya has been acquired by....., a Company incorporated in *(a)* ..... and which has established a place of business in Kenya at.....

1 Date and description of the instrument creating or evidencing the mortgage or charge *(b)*	2 Date of the acquisition of the property	3 Amount secured by the mortgage or charge	4 Short particulars of the property mortgaged or charged	5 Names, addresses and descriptions of the mortgagees or persons entitled to the charge

Date …….....……., 19 ……..

Signatures of the persons authorized under section 366 .....
(1) *(d)* of the Companies Act or of some other person
in Kenya duly authorized by the Company. .....

.....

.....

.....

.....

Fee Sh. 20.

(a) Country of origin.

(b) A description of the instrument, e.g. "trust deed", "mortgage", "debenture", etc., as the case may be, should be given.

A copy of the instrument verified or certified in the manner prescribed by regulation 6 (3) of the

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[Subsidiary]

Companies Regulations must be delivered with these particulars.

No. of Company F …….....…..... Form No. 244

PARTICULARS OF A SERIES OF DEBENTURES CONTAINING, OR GIVING BY REFERENCE TO ANY OTHER INSTRUMENT, ANY CHARGE ON PROPERTY IN KENYA, TO THE BENEFIT OF WHICH THE DEBENTURE HOLDERS OF THE SAID SERIES ARE ENTITLED *PARI PASSU*, CREATED BY A COMPANY INCORPORATED OUTSIDE KENYA

(sections 96 (7) and 369)

[*This form (No. 244) is to be used for registration of particulars of the entire series. When more than one issue of debentures in the series is made, particulars of the date and amount of each subsequent issue to the first should be sent to the Registrar on Form No. 245.*]

Name of Company.....

Presented by.....

.....

Particulars of a series of debentures created by .....
a Company incorporated in *(a)*.....
and which has established a place of business in Kenya at .....

1	2	3	4	5	6	7
Total amount secured by the whole series	Amount of the present issue of the series	Dates of resolutions authorizing the issue of the series	Date of the covering deed (if any) by which the security is created or defined; or, if there is no such deed, the date of the execution of any debenture of the series	General description of the property charged	Names of the trustees (if any) for the debenture holders	Amount or rate per cent of the commission, allowance or discount (if any) paid or made either directly or indirectly by the Company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any of the debentures included in this return *(b)*

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[Subsidiary]
Date …….....……., 19 ……..

Signatures of the persons authorized under section 366 .....
(1) *(d)* of the Companies Act or of some other person
in Kenya duly authorized by the Company. .....

.....

.....

.....

.....

Fee Sh. 20.

(a) Country of origin.
(b) The rate of interest payable under the terms of the debenture should not be entered.

No. of Company F …….....…..... Form No. 245

PARTICULARS OF AN ISSUE OF DEBENTURES IN A SERIES BY A COMPANY INCORPORATED OUTSIDE KENYA

(sections 96 (8) and 369)

[For registration of particulars of the entire series, Form No. 244 must be used.]

Name of Company.....

Presented by.....

.....

Particulars of an issue of debentures in a series, where more than one issue in the series is made, by....., a Company
incorporated in *(a)*..... and which has established a place of business in
Kenya at .....

1 Date of registration of the series *(b)*	2 Date of present issue	3 Amount of present issue	4 Particulars as to the amount or rate per cent of the commission, allowance or discount (if any) paid or made either directly or indirectly by the Company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any of the debentures included in this return *(c)*

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[Subsidiary]

Date ……..…….., 19 ……..

Signatures of the persons authorized under section 366 (1) *(d)* of the Companies Act or of some other person in Kenya duly authorized by the Company. .....

.....

.....

.....

.....

Fee Sh. 20.

(a) Country of origin.

(b) The date of registration may be confirmed from the certificate of registration.

(c) The rate of interest payable under the terms of the debentures should not be entered.

No. of Company F …….....…..... Form No. 246

DECLARATION VERIFYING MEMORANDUM OF SATISFACTION OF A REGISTERED MORTGAGE OR CHARGE BY A COMPANY INCORPORATED OUTSIDE KENYA

(section 101)

Name of Company.....

Presented by.....

.....

I [We]....., of ....., the person[s] authorized under section 366 (1)(d) of the Companies Act by *(a)*....., do solemnly and sincerely declare that the particulars contained in the Memorandum of Satisfaction annexed hereto are true to the best of my [our] knowledge, information and belief. And I [we] make this declaration conscientiously believing the same to be true and according to the Oaths and Statutory Declarations Act.

Declared at.....
this..... day of....., 19.....,
Before me,.....,

A Commissioner for Oaths *(b)*.

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[Subsidiary]

MEMORANDUM OF COMPLETE SATISFACTION OF MORTGAGE OR CHARGE

Name of Company ..... Limited

I [We].....
hereby give notice that the registered charge, being *(c)*.....
....., of which particulars were registered with the Registrar of Companies on the *(d)* ....., day of ....., 19....., was wholly satisfied on the.. ..... day of....., 19....., the debt for which the charge was given having been paid or satisfied.

Date …….....……., 19 ……..

Signatures of the persons authorized under section 366 .....
(1) *(d)* of the Companies Act or of some other person
in Kenya duly authorized by the Company. .....

.....

.....

.....

.....

Fee Sh. 20.

(a) Name of Company.

(b) Or "Notary Public" or "Magistrate"

(c) A description of the instrument(s) creating or evidencing the charge, e.g. "mortgage", "charge", "debenture", etc., with the date thereof should be given. If the registered charge was a "series of debentures", or "debenture stock", the words "authorized by resolution" together with the date of the resolution, should be added.

(d) The date of registration may be confirmed from the Certificate of Registration and (except in the case of a series of debentures) from the registration stamp affixed to the instrument(s) registered.

No. of Company F …….....…..... Form No. 247

DECLARATION VERIFYING MEMORANDUM OF PARTIAL SATISFACTION OF REGISTERED MORTGAGE OR CHARGE BY A COMPANY INCORPORATED OUTSIDE KENYA

(section 101)

Name of Company.....

Presented by.....

.....

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[Subsidiary]

I [We]..... of .....
the person[s] authorized under section 366 (1) *(d)* of the Companies Act by *(a)*.....
....., do solemnly and sincerely declare that the particulars contained in the Memorandum annexed hereto are true to the best of my [our] knowledge, information and belief. And I [we] make this declaration conscientiously believing the
same to be true and according to the Oaths and Statutory Declarations Act.

Declared at.....
this..... day of....., 19.....,
Before me,.....,

A Commissioner for Oaths *(b)*.

MEMORANDUM OF (1) PARTIAL PAYMENT OR SATISFACTION OF MORTGAGE OR CHARGE (2) RELEASE OF PART OF PROPERTY OR UNDERTAKING FROM MORTGAGE OR CHARGE

Name of Company .....

I [We] .....
hereby give notice that the registered charge, being *(c)*....., of which particulars were registered with the Registrar of companies on the *(d)*..... day of ....., 19....., to the extent of .....

*(1) the debt for which the charge was given having been partly paid or satisfied and

*(2) part of the property or undertaking charged having been released from the charge

*Short particulars of the property or undertaking no longer charged .....
.....

Date …….....……., 19 ……..

Signatures of the persons authorized under section 366 .....
(1) *(d)* of the Companies Act or of some other person
in Kenya duly authorized by the Company. .....

.....

.....

.....

.....

Fee Sh. 20.

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* Delete as necessary.

(a) Name of the Company.

(b) Or "Notary Public" or ''Magistrate".

(c) A description of the instrument(s) creating or evidencing the charge, e.g. "mortgage", "charge", "debenture", etc., with the date thereof, should be given. If the registered charge was a "series of debentures"

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[Subsidiary]
or " debenture stock", the words "authorized by resolution", together with the date of the resolution, should be added.
(d) The date of registration may be confirmed from the Certificate of Registration and (except in the case of a series of debentures) from the registration stamp affixed to the instrument(s) registered.

No. of Company F …….....…..... Form No. 248

DECLARATION VERIFYING MEMORANDUM OF DISPOSAL OF PART OF PROPERTY MORTGAGED OR CHARGED BY A COMPANY INCORPORATED OUTSIDE KENYA
(section 101)

Name of Company.....

Presented by.....

.....

I [We]....., of.....
the person[s] authorized under section 366 (1) (d) of the Companies Act by (a) ....., do solemnly and sincerely declare that the particulars contained in the Memorandum annexed hereto are true to the best of my [our] knowledge, information and belief. And I [we] make this declaration conscientiously believing the same to be true and according to the Oaths and Statutory Declarations Act.

Declared at.....
this..... day of....., 19.....,
Before me,.....,

A Commissioner for Oaths *(b)*.

MEMORANDUM OF FACT THAT PART OF PROPERTY OR UNDERTAKING MORTGAGED OR CHARGED HAS CEASED TO FORM PART OF PROPERTY OR UNDERTAKING OF COMPANY

Name of Company.....

I [We].....
hereby give notice that on the.....day of....., 19....., part of the property or undertakings secured by the registered charge, being *(c)* ...., of which particulars were registered with the Registrar of Companies on the *(d)* .....day of....., 19..... eased to form part of the company's property or undertaking.
Short particulars of such property.....
.....

Date …….....……., 19 ……..

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[Subsidiary]

Signatures of the persons authorized under section 366 .....
(1) *(d)* of the Companies Act or of some other person

in Kenya duly authorized by the Company. .....

.....

.....

.....

.....

(a) Name of Company.

(b) Or "Notary Public" or "Magistrate".

(c) A description of the instrument(s) creating or evidencing the charge, e.g. "mortgage", "debenture", "charge" , etc., with the date thereof, should be given. If the registered charge was a "series of debentures" or "debenture stock", the words "authorized by resolution", together with the date of the resolution, should be added.

(d) The date of registration may be confirmed from the Certificate of Registration and (except in the case of a series of debentures) from the registration stamp affixed to the instrument(s) registered.

No. of Company F …….....…..... Form No. 249

NOTICE OF CESSATION OF BUSINESS OF A COMPANY INCORPORATED OUTSIDE KENYA

(section 373 (1))

Notice is hereby given that.....
a Company incorporated in *(a)*..... and which had established a place of business in Kenya at ..... has now ceased to carry on such business in Kenya.

Date …….....……., 19 ……..

Signatures of the persons authorized under section 366 .....
(1) *(d)* of the Companies Act or of some other person
in Kenya duly authorized by the Company. .....

.....

.....

.....

.....

Fee Sh.10.

(a) Country of origin.

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[Subsidiary]

No. of Company F …….....…..... Form No. 250

NOTICE OF SITUATION OF REGISTERED OR PRINCIPAL OFFICE OR OF ANY CHANGE THEREIN OF A FOREIGN COMPANY

(sections 366 (1) and 368 (1))

Name of Company.....

Presented by.....

To the Registrar of Companies

..... Limited hereby gives you notice, in accordance with sections *366 (1)/368 (1) of the Companies Act, that the *registered or principal office of the company at the date of establishment of a place of business in Kenya is situated at .....

.....

or

*with effect from the.....day of....., 19.....

has been changed to.....

.....

Date....., 19.....

Signatures of the persons authorized under section 366 .....

(1) *(d)* of the Companies Act or of some other person

in Kenya duly authorized by the Company. .....

.....

.....

.....

.....

No. of Company F …….....…..... Form No. 251

CERTIFICATE VERIFYING CONDITIONS FOR EXEMPTION OF A FOREIGN COMPANY FROM FILING ACCOUNTS

(section 370 (1))

Name of Company.....

Presented by.....

.....

To the Registrar of Companies

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[Subsidiary]

We .....
of ..... a director
and .....
of ..... the secretary
of ..... Limited
hereby certify that ..... Limited
is incorporated in ..... a country within the Commonwealth and that it would, had it been incorporated in Kenya, have been exempted from the provisions of section 128 of the Companies Act by virtue of subsection (4) of that section.

Date ....., 19.....

Signed ..... *Director.*

Signed ..... *Secretary.*

Fee: Sh. 10.

Note.— In accordance with section 370 (1) of the Companies Act a certificate in the above form is required to be delivered to the Registrar for registration in every calendar year to obtain exemption from the requirement to deliver copies of accounts for registration.

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SECOND SCHEDULE (r.3)

FEES TO BE PAID TO THE REGISTRAR

PART I—BY A COMPANY HAVING A SHARE CAPITAL

	Kshs.
1. For registration of a company, the following fees shall be payable, regulated ccording to the amount of nominal share capital—	
(a) for the first Kshs. 100,000 of nominal capital or part of Kshs. 100,000.....	2, 200
(b) for every Kshs. 20,000 of nominal capital after the first Kshs.100,000 or part thereof	120
2. For registration of an increase in the share capital of any company, an amount equal to the difference, if any, between the amount which would have been payable hereunder, on first registration by reference to its capital as increased and the amount which would have been so payable by reference to its capital immediately before the increase:	

Provided that no company shall be liable to pay in respect of nominal capital, on registration or afterwards any greater amount of fees than Kshs. 60,000 taking into account in the case of fees payable on an increase of share capital after registration the fees paid on registration.

3. For registration of an annual return of a company	400
4. For registration of copy of a balance sheet for a certificate that no invitation has been made to public to subscribe to its shares.....	200
5. For registration of a resolution for change of name of company.....	1,100
6. For registration of a resolution for revision of the memorandum of association or articles of association of a company.....	1,100
7. For registration of a revised memorandum or articles of association of a company.....	1,500
8. For registration of any other documents by the Act required or authorized to be registered or required to be delivered, sent or forwarded to the registrar other than the memorandum or the abstract required to be delivered to the registrar by a receiver or manager or the statement required to be sent to the registrar by the liquidator in a winding up in Kenya	200

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[Subsidiary]

9. For making a record of any fact by the Act required or authorized to be recorded by the registrar 200

PART II — BY A COMPANY NOT HAVING A SHARE CAPITAL

1. For registration of a company whose number of members as stated in the articles of association does not exceed twenty..... 1,500

2. For registration of a company whose number of members as stated in the articles exceeds twenty but does not exceed one hundred 6,000

3. For registration of a company whose number of members as stated in the articles of association exceeds one hundred but is not stated to be unlimited, a fee of Kshs.10,000 with an additional Kshs. 1,000 for every additional fifty members or less after the first one hundred.

4. For registration of a company in which the number of members is stated in the articles of association to be unlimited. 11,000

5. For registration of an increase in the membership of a company limited by guarantee or unlimited company, an amount equal to the difference, if any, between the amoun which would have been payable hereunder on first registration by reference to its membership as increased and the amount which would have been so payable by reference to its membership immediately before the increase—

Provided that no company shall be liable to pay on the whole a greater fee than Kshs.10,000 in respect of its number of members, taking into account the fee paid on the first registration of the company.

6. For registration of any unlimited company as a limited company, the same fee as is charged for registering a new company.

7. For registration of an annual return of a company..... 200

8. For registration of any other document by the Act required or authorized to be registered or required to be delivered, sent or forwarded to the registrar, other than memorandum or the abstract required to be delivered to the registrar by a receiver or manager or the statement required to be sent to the liquidator in a winding up in Kenya..... 200

9. For making a record of any fact by the Act required or authorized to be recorded by the registrer 100

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[Subsidiary]

PART III — BY A COMPANY TO WHICH PART X OF THE ACT APPLIES

1. For registration of a certified copy of the charter, statutes or memorandum and articles of the company or other instrument constituting or defining the constitution of the company 6,000

2. For registration of any other document required to be delivered to the registrar under Part X of the Act 200

PART IV — ON REGISTERING CHARGES

1. For registering under Part IV of the Act, particulars of any charge required to be registered thereunder, whether created by a company or existing on property acquired by the company 600

2. For registration of particulars of a series of debentures under Part IV of the Act 600

3. For registration of appointment of a receiver or manager of the property of a company under section 103 of the Act.....1,100

4. For registration of particulars of discharge of a charge 1,000

PART V — ADDITIONAL FEES

For registration of any document out of time pursuant to subsection (2) of section 392 of the Act:—

(a) for the first month or part thereof during which the default continues (exclusive of the periods mentioned in regulation 5) 200

(b) for each and every subsequent month (up to a maximum of Kshs.2,000) 100

PART VI — MISCELLANEOUS

1. For inspecting the register of companies in respect of any one company 200

2. For a certified copy of a certificate of incorporation 200

3. For a certified copy of, or a certified extract from a document filed in the registry, per folio 200

4. For a certified photographic copy of any document, per sheet 200

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5. On making any request to the Registrar to approve and reserve any name for registration of a company or a change of name of a company 100

6. For the issue of a licence pursuant to subsection (1) or subsection (2) of section 21 of the Act 2,200

7. On making application to the Registrar for an investigation under section 173 1,500

8. On making application to the Registrar for exemption from subsection (1) of section 202 or subsection (2) of section 371 of the Act 1,100

9. For the issue of an order of the Registrar granting exemption from subsection (1) of section 202 of the Act and for any renewal thereof 600

10. For the issue of an official search showing the names of the directors, principal shareholders and the share structure of the company 600

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